**MCE 2021 Open Season**

**POWER PURCHASE 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 power purchase agreement (the “**PPA**”) for renewable energy (the “**Proposed Transaction**”) to be negotiated between Seller and Buyer in connection with the MCE Open Season 2021 (“**Open Season**”). Negotiation of the PPA 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 PPA.

**1. Power Purchase Agreement Terms and Conditions**

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| **Description of Facility:** | A [XX] MWAC renewable energy electricity generating facility, located in \_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_ (“**Facility**”). |
| **Product:** | The “**Product**” shall meet the Portfolio Content Category 1 specifications, and includes all of the following:   1. Facility Energy; 2. Environmental Attributes: All renewable energy credits (“**RECs**”) and any other environmental attributes associated with Facility Energy; 3. Capacity Attributes: All capacity rights, including resource adequacy benefits, if any, associated with the Facility; 4. Ancillary Services: All ancillary services, products and other attributes, if any, that may be obtained from the Facility; and   Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders. |
| **Contract Price:** | The Contract Price shall be $[XX]/MWh. [*If there is an escalator, this should be noted.*] |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years. “**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 Date. |
| **Guaranteed Capacity:** | The Facility has a Guaranteed Capacity of [XX] MWAC. |
| **Expected Energy:** | “**Expected Energy**” means[XXX,XXX] MWh during the first Contract Year and for each Contract Year thereafter during the Delivery Term. [*If there is an annual adjustment for degradation, this should be noted.*] |
| **Interconnection Point:** | The Facility shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. |
| **Delivery Point:** | “**Delivery Point**” means the Facility Pnode on the CAISO-Controlled Grid. |
| **Test Energy Rate:** | Prior to COD, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues. |
| **Guaranteed Energy Production:** | Seller shall deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period.  The “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by the applicable percentage, based on technology type:   * Wind: 75% * Geothermal: 90% * Small Hydro: 85%   The “**Performance Measurement Period**” shall be each two (2) consecutive Contract Year period during the Delivery Term, except for geothermal, which shall be each Contract Year, all calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.  For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, and Curtailment Periods (the “**Adjusted Energy Production**”).  If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (a) the difference of the Guaranteed Energy Production less the Adjusted Energy Production, multiplied by (b) the replacement price for the energy and RECs less the Contract Price. No payment shall be due if the calculation yields a negative number. |
| **Performance Guarantee:** | The occurrence of any of the following shall constitute an Event of Default:if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year; andif, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year. |
| **Excess Energy:** | If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“**Excess Energy**”), then the price paid by Buyer for the Excess Energy shall be zero dollars ($0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy. |
| **Annual Excess Energy:** | If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than $0.00/MWh.  If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to $0.00/MWh. |
| **Curtailment:** | In the event the Facility is curtailed due to a System Emergency (to be defined in the PPA), Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer’s sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.  Buyer shall have the right to order Seller to curtail deliveries of Facility Energy, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments in excess of the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions.  “**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.  “**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to a Buyer-directed curtailment, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments. |
| **REC Tracking System:** | Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in the WREGIS Operating Rules.  Each party shall be responsible for setting up an account with WREGIS. |
| **Progress Reporting:** | After execution of the PPA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility Development Milestones; (b) identifies any missed Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller’s corrective actions to achieve the missed Facility Development Milestones and all subsequent Facility Development Milestones by the Guaranteed Commercial Operation Date.  In the event Seller misses any Facility Development 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. |
| **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.*] |
| **Resource Adequacy Failure:** | For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Guaranteed RA Amount, minus (ii) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy for System RA and, if applicable, Local RA, (such difference, the “**RA Shortfall**”), multiplied by the sum of (a) the CPUC System RA Penalty and (b) 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 amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. |
| **Station Use:** | Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility. |
| **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 (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, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the PPA, or (iv) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, 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 Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that and delays described above, including from Force Majeure Events, 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 Buyer, (the “**Construction Delay Damages**”) for each day of delay, in the amount equal to [$XXX/day, which is equal to 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 Buyer shall have the right, in its sole discretion, to terminate the PPA and retain a damage payment in the amount of 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 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 the Buyer for each day of delay until Seller achieves COD.  “**COD Delay Damages**” are equal to [$XXX/day, which is 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 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) through (v):   1. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity. 2. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. 3. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. 4. 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. 5. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications. 6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner. 7. Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff. 8. Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable. 9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility. 10. All applicable permits and government approvals required for the operation of the Facility have been obtained. 11. Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc. 12. Seller has delivered the Performance Security to Buyer. 13. Seller has paid Buyer all amounts owing under this Agreement, if any.   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 Guaranteed Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Guaranteed Capacity exceeds the Guaranteed Capacity, and the Guaranteed 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 shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. |
| **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*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*] – Expected Commercial Operation Date |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Dedicated Interconnection Capacity**: | Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer’s dispatch rights of the Facility to be fully reflected in the CAISO’s market optimization and not result in CAISO market awards that are not physically feasible (collectively, the “**Dedicated Interconnection Capacity**”). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller’s inability to provide the Dedicated Interconnection Capacity. |
| **Scheduling Requirements and CAISO Settlements:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; 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 Facility (including RAIMM and other 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.  Seller shall provide to Buyer non-binding annual, monthly and day-ahead forecasts of Facility energy within a timeline that allows Buyer’s Scheduling Coordinator to meet the CAISO day-ahead scheduling protocols and deadlines. |
| **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. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the energy generating 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 electrical practices, or (iv) the Parties agree otherwise in writing. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $90,000 per MW of Guaranteed Capacity  **Performance Security** – $105,000 per MW of Guaranteed Capacity  To secure its obligations under this PPA, 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.  To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  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. |
| **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.  If Seller’s Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the “PLA”). The PLA applies to “Covered Work” (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker.  If Seller’s Facility is located in MCE’s service territory, but outside Contra Costa County, Seller is required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.  [If Seller’s Facility is located outside MCE’s service territory, Seller to describe whether the Facility will be constructed with union labor and/or will employ a project-labor agreement (PLA).]  As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. |
| **Diversity Reporting:** | Seller shall be required under the PPA 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. |
| **Responsible Procurement:** | Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly 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. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility. |
| **Pollinators:** | **[*Use for resources using solar-PV technology.*]**If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a Pollinator-friendly solar scorecard (“**Pollinator Scorecard**”) (a form of which is included in the PPA). The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first scorecard, however planning documentation must be provided that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on the Pollinator Scorecard.Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to Buyer that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated Pollinator Scorecard.Seller shall provide Buyer with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation. Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs: 36-inch minimum height above ground of the lowest edge of the solar panels;Burying conduits and wiring with homeruns tight to bottom of panels;Designing inter-row access/spacing to enable vegetation management; andUtilizing ‘BeeWhere’ registration if beehives are placed onsite. Additional pollinator reference materials can be found at Pollinator Partnership at [www.pollinator.org](http://www.pollinator.org) and EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019). |
| **Other Seller Commitments:** | Seller to check as applicable:  Inclusion of contractors or subcontractors that are Veteran owned or from a DAC Zone  At least fifty percent (50%) of labor sourced from 100 mile radius  At least [XX]% of materials sourced from within 100 mile radius  US made equipment and components  Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [*describe community benefits*].  If Seller unable to provide the pollinator-friendly habitat, make donation to habitat improvement elsewhere in the form of [*describe habitat improvement*]. |
| **Site Control:** | Seller shall maintain site control of the Facility throughout the Delivery Term. |
| **Assignment:** | Neither party may assign the PPA without prior written consent of the other party, which shall not be unreasonably withheld.  Notwithstanding anything to the contrary Buyer may make a limited assignment to a Person that has creditworthiness that is equal to or better than the creditworthiness of Buyer (“**Prepay Assignee**”) of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Prepay Assignee’s timely payment of amounts due under the PPA in accordance with this Consent and subject to negotiation and execution of an assignment agreement between and among Seller, Buyer, and Prepayment Assignee.  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 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 PPA. |
| **Dispute Resolution:** | In the event of any dispute arising under the PPA, 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 remedies 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:** | “**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 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 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; (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 use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether 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, including in connection with efforts occurring after the Effective Date to combat the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (“**COVID-19**”). 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. |
| **Other Standard Contract Terms to be included in the PPA:** | * 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 PPA, bankruptcy, and assignment other than as permitted by the PPA. 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 PPA. * Governing Law: State of California * Venue: San Francisco County |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:  “**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.  “**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.  “**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 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, in a form substantially similar to the letter of credit set forth in the PPA, or as otherwise 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.  “**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff. |

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 PPA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the PPA 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 PPA 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 or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
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.

[*Signatures appear on the following page*.]

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |