**MCE 2021 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 2021 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 the grid-connected [*Insert location and description of energy storage facility, and any other relevant identifying details, including technology, e.g., lithium ion.*] battery energy storage facility, located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_\_\_ |
| **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 *multiplied* by current Storage Capacity, as adjusted for the Storage Capacity Test (as set forth in the ESA), *multiplied* by the Round-Trip Efficiency Factor, and *multiplied* by the monthly Availability Adjustment. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. The Contract Price shall not be subject to an escalator and shall allow for a minimum of 365 cycles per Contract Year.  RA Product: $[XX]/kW-month of delivered RA Capacity. |
| **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. |
| **Storage Contract Capacity:** | The Storage Facility will have an initial Storage Capacity of [XX] MWAC for [XX] hour discharge [*may not be less than four (4) hours*]. |
| **RA Capacity:** | The Net Qualifying Capacity (NQC) of the Storage 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 Storage 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. |
| **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-Controlled Grid. |
| **Guaranteed Round-Trip Efficiency:** | “**Guaranteed Round-Trip Efficiency**” means [eighty-eight percent (88%)].   |  |  | | --- | --- | | Contract Year | Guaranteed Round-Trip Efficiency | | 1 | 88.0% | | 2 - XX | [*Seller to fill out rest of table*] |   Liquidated Damages for Failure to Achieve Guaranteed Round-Trip Efficiency: If during any month during the Delivery Term, the Actual Round-Trip Efficiency for such month is less than the Guaranteed Round-Trip Efficiency, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, by (iii) Buyer’s weighted-average cost on a per/MWh basis, for Charging Energy for such month, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice. |
| **Minimum Round-Trip Efficiency:** | “**Minimum Round-Trip Efficiency**” means [eighty-four percent (84%)]. |
| **Ramp Rate:** | [XX] MW/minute |
| **Annual Cycle Limits:** | 365 cycles per Contract Year |
| **Daily Dispatch Limits:** | Charging: 2 times per day  Discharging: 2 times 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] |
| **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% |
| **Other Operating Limits:** | [Seller to describe all applicable operating limits on dispatch of the Storage Facility, if any] |
| **Ancillary Services Capability:** | [Seller to describe capability of Storage Facility to provide CAISO Ancillary Services, e.g., Regulation, Spinning Reserve, Non-Spinning Resource, and Voltage Support, and other ancillary services that may be developed from time to time.] |
| **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**” or “**AA**”) is calculated as follows:   1. If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:   AA = 100%   1. If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:   AA = 100% - [(98% - monthly storage availability) × 2]   1. If the monthly storage availability is less than 70%, then:   AA = 0 |
| **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 ESA, 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 ESA 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 Storage 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 ESA 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. Storage Facility has met all Interconnection Agreement requirements and is capable of receiving charging energy from, and delivering discharging energy to, the CAISO Controlled-Grid; 2. Commissioning of equipment has been completed in accordance with the manufacturer’s specification; 3. 100% of Storage Contract Capacity has been installed and commissioned; 4. Storage Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Storage Facility; 5. Seller has demonstrated functionality of the Storage Facility’s communication systems and automatic generation control (AGC) interface to operate the Storage 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 ESA and/or the CAISO; 6. 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 Storage Facility; 7. Seller has provided Buyer with a copy of written notice from the CAISO that the Storage Facility has achieved Full Capacity Deliverability Status, if applicable; 8. All applicable permits and government approvals required for the operation of the Storage Facility have been obtained; 9. 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.; 10. Seller has delivered the Performance Security to Buyer; and 11. 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. |
| **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*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*] – Expected Commercial Operation Date |
| **Deliverability:** | The Storage 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 Storage Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Storage Facility that is no less than the Storage Contract 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 Storage 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. |
| **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 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.  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. |
| **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 Storage Contract Capacity  **Performance Security** – $105,000 per MW of Storage Contract Capacity  To 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. |
| **Standalone Storage Tax Credit Price Reduction:** | In the event any Federal or State tax credit is enacted for standalone energy storage projects, Seller shall use commercially reasonable efforts to cause such credit to be available for the Storage Facility. The value of such tax credit shall be reflected as a reduction in the Contract Price of $[XX]/kW-mo. per one percent (1%) of applicable tax credit. |
| **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 Storage 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 and associated energy storage projects for which MCE is the power supply off-taker.  If Seller’s Storage 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 Storage Facility is located outside MCE’s service territory, Seller to describe whether the Storage 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 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. |
| **Responsible Procurement:** | Buyer will not accept any proposals for generating and/or storage 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 Storage Facility. |
| **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*]. |
| **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:** | “**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 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. 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 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 |
| **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.  “**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 ESA, 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.  “**Round-Trip Efficiency Factor**” means (a) if the Actual Round-Trip Efficiency is greater than or equal to the Guaranteed Round-Trip Efficiency, one hundred percent (100%), (b) if the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency but greater than or equal to the Minimum Round-Trip Efficiency, the Actual Round-Trip Efficiency, or (c) if the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, zero percent (0%).  “**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff. |

1. **Additional Term Sheet Provisions**
2. **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.

[*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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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