**MCE 2023 CS-GT RFO**

**TERM SHEET**

**FOR**

**POWER PURCHASE AGREEMENT**

**(SUB-500 KW)**

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’s Request for Offers (“**RFO**”) for the Community Solar Green Tariff (“**CS-GT**”) program. Negotiation of the PPA is subject to Seller’s selection for the RFO shortlist by Buyer, the terms and conditions of the RFO, and timely execution of the Exclusive Negotiating Agreement. Until a definitive agreement is approved by MCE’s management and Board of Directors and the California Public Utilities Commission (“**CPUC**”), 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] kWAC solar photovoltaic electricity generating facility, located in \_\_\_\_\_\_\_\_\_ County, in the State of California (“**Facility**”). The Facility is located in a disadvantaged community (“**DAC**”) within five (5) miles of the participating customers’ DAC census tract located in MCE’s service territory. |
| **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; and 4. Ancillary Services: All ancillary services, products and other attributes, if any, that may be obtained from the Facility.   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.][*Per MCE Advice Letter 42-E, “bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC’s Energy Division Staff via email on September 5, 2019”.]* |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years. “**Contract Year**” means a period of twelve (12) consecutive months. 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] kWAC. [*Guaranteed Capacity* *may not exceed 500 kW.*] |
| **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 Interconnection Point. |
| **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 eighty percent (80%).  The “**Performance Measurement Period**” shall be each two (2) consecutive Contract Year period during the Delivery Term, 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. |
| **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 ten percent (110%) 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. |
| **Green-E Certification:** | Seller shall submit a Green-e® Energy Tracking Attestation Form (“**Attestation**”) to the Center for Resource Solutions, or its successor (“**CRS**”) for all renewable energy delivered under the PPA. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. |
| **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.*] |
| **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 eighty (180) 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 180]. 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 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 90]. 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 90 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 commissioned all equipment in accordance with its respective manufacturer’s specifications. 5. Authorization to parallel the Facility was obtained from the Participating Transmission Owner. 6. All applicable permits and government approvals required for the operation of the Facility have been obtained. 7. Twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers. 8. CPUC Approval has been obtained, or waived by MCE in MCE’s sole discretion, and such waiver is set forth in writing. 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. 11. Seller has paid Buyer all amounts owing under this PPA, 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 Dollars ($250) per kW.  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 |
| **Dedicated Interconnection Capacity**: | Seller shall ensure 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 fulfill Seller’s obligations under the PPA (the “**Dedicated Interconnection Capacity**”). Seller shall hold Buyer harmless from any penalties or other costs resulting from Seller’s inability to provide the Dedicated Interconnection Capacity. |
| **Monthly Settlement and Invoice:** | 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:** | During the months of June through September, inclusive, Seller shall not 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** – $75/kW of Guaranteed Capacity  **Performance Security** – $75/kW 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. |
| **Condition Precedent:** | Within ninety (90) days after the Effective Date of the PPA, MCE shall file with the CPUC the appropriate request for CPUC Approval. As requested by MCE, Seller shall use commercially reasonable efforts to support MCE in obtaining CPUC Approval.  MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the PPA or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.  Either Party has the right to terminate this PPA on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by MCE in its sole discretion within one hundred eighty (180) days after MCE files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after MCE files the request for CPUC Approval. |
| **Workforce and Prevailing Wage Requirements:** | 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 the project labor agreement attached thereto (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 outside Contra Costa County, Seller is required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.  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. |
| **Local Hire Requirements:** | Seller shall ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date and ending on the Commercial Operation Date (the “**Local Hire Requirement**”). Seller’s construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. As a condition precedent to commencement of the Delivery Term, Seller must certify to Buyer in writing that Seller met the Local Hire Requirement and, if requested by Buyer, demonstrate compliance with this requirement via 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, 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:** | Seller is required to establish and maintain at Seller’s sole expense a pollinator-friendly habitat at the Site as provided herein (“**Pollinator-Friendly Habitat**”). 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>.   * + - 1. Seller shall provide a written narrative of Seller’s proposal to establish a Pollinator-Friendly Habitat that describes the proposed 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 for Buyer’s review and approval, not to be unreasonably withheld. Seller shall provide such narrative to Buyer no later than the Construction Start Date.       2. In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard (“**Pollinator Scorecard**”) in a form to be attached to the PPA. Seller shall use commercially reasonable efforts to achieve a score that meets pollinator standards of 80 or above on each Pollinator Scorecard.  1. Seller shall complete installation of the Pollinator-Friendly 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 scorecard. 2. Seller shall provide Buyer with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation. 3. Rare exceptions to the Pollinator-Friendly Habitat requirements may be considered by Buyer in its sole discretion. |
| **Signage:** | Seller agrees to install and maintain permanent signage during the Delivery Term at the Site displaying Buyer’s logo, Seller’s logo, and the name of the Facility. The sign shall be located on property frontage with visibility to the most populous roadway, subject to any local ordinance restrictions. The sign shall be large enough to be visible from such roadway. The materials should be environmentally friendly, such as aluminum composite or wood, and shall not be made of acrylic or similar materials. No lighting is required. Buyer shall provide a design file for the sign. Location and final specifications for signage, including design, are subject to Buyer’s approval, not to be unreasonably withheld. Seller shall construct and maintain the sign at Seller’s sole expense, and Seller shall be responsible for obtaining any required permits or approvals. The sign shall be installed within 30 days of the Commercial Operation Date. |
| **Low-Income Community Bonus Credit:** | Seller shall use commercially reasonable efforts to qualify for and receive the Low-Income Community Bonus Credit under Section 48(e) of the Internal Revenue Code and shall pass through the benefits of such incentive to Buyer in the form of a reduction to the Contract Price. |
| **Other Seller Commitments:** | Seller to check as applicable:   |  |  | | --- | --- | |  | Participation of contractors or subcontractors or businesses that are Disabled Veteran-owned. | |  | Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s (“CalEPA”) CalEnviroScreen 4.0 (or the latest version) Tool. | |  | A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the Facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation. | |  | Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation. | |  | Projects that commit to including components and materials manufactured and/or assembled in the United States. | |  | Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [*describe community benefits*]. | |  | [*describe other community benefits provided by Project*]. | |
| **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. |
| **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 and provide a Shortlist Deposit in accordance with the Exclusive Negotiating Agreement. |
| **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 PPA. 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 PPA. |
| **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 PPA or from complying with all or a portion of the conditions under this PPA 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 PPA 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 PPA, 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. 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 90 days after the Guaranteed COD. * Indemnification: Mutual indemnification for third party claims arising from negligence, willful misconduct, or breach of the PPA. * Venue: San Francisco County * Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]. * Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]. * Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2]. * Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. |
| **Definitions:** | The following terms, when used herein with initial capitalization, shall have the meanings set forth below:  “**CAISO**” means the California Independent System Operator.  “**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.  “**CPUC Approval**” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves the PPA in its entirety, including payments to be made by Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.  “**kW**” means kilowatts in alternating current, unless expressly stated in terms of direct current.  “**kWh**” means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.  “**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. |

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 Period (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Period 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |