**MCE Open Season 2024**

**TERM SHEET**

**FOR**

**POWER PURCHASE AGREEMENT**

This term sheet (“**Term Sheet**”) is entered into as of [\_\_\_\_\_], 2024 (the “**Effective Date**”), between Marin Clean Energy, a California joint powers authority (“**MCE**” or “**Buyer**”) and [*Respondent*] (“**Respondent**”). This Term Sheet includes the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) for renewable energy (the “**Proposed Transaction**”) to be negotiated between Buyer and [*e.g., Project Company LLC*] (“**Seller**”) in connection with the MCE 2024 Open Season (“**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 Procedural Overview & Instructions, 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. PPA Terms and Conditions**

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| **Facility:** | “**Facility**” means a [XX] MWAC renewable energy electricity generating facility, located in \_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_. |  |
| **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. | Agree  Disagree  Comments: |
| **Contract Price:** | The “**Contract Price**” shall be $[XX]/MWh (flat with no escalation). | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **Guaranteed Capacity:** | The Facility has a Guaranteed Capacity of [XX] MWAC. | Agree  Disagree  Comments: |
| **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.*] | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **Delivery Point:** | “**Delivery Point**” means the Facility Pnode on the CAISO-Controlled Grid. | Agree  Disagree  Comments: |
| **Test Energy Rate:** | Prior to COD, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at an amount equal to hundred percent (100%) of net CAISO revenues associated with such Test Energy. | Agree  Disagree  Comments: |
| **Scheduling Coordinator:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator for the Facility.  [*Note that if Seller is the Scheduling Coordinator, Buyer will require additional modifications to the PPA.*] | Agree  Disagree  Comments: |
| **Facility Milestones:** | * [*mm/dd/yyyy*] – Obtain Site Control * [*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 | Agree  Disagree  Comments: |
| **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: [eighty-five percent (85%) – *solar*][ seventy-five percent (75%) – *wind*][ninety percent (90%) - *geothermal*][eighty-five percent (85%) – *small hydro*]  The “**Performance Measurement Period**” shall be each two (2) consecutive Contract Year period during the Delivery Term, all calculated on a rolling basis (e.g., Contract Years 1-2, 2-3, 3-4, etc.), except for geothermal, which shall be each Contract Year.  For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (a) all Facility Energy, (b) any Deemed Delivered Energy and (c) 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, calculated by Buyer in a commercially reasonable manner, less the Contract Price. No payment shall be due if the calculation yields a negative number. | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **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 as Scheduling Coordinator, 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 the CAISO VER forecast or as otherwise agreed to by Buyer and Seller. | Agree  Disagree  Comments: |
| **Progress Reporting:** | Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (b) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress.  If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Facility Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, Seller shall provide a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Facility Milestone dates, including the cause of the delay, if known, and Seller’s detailed description of its proposed course of action to achieve the missed Facility Milestones and all subsequent Facility Milestones by the Guaranteed Commercial Operation Date. | Agree  Disagree  Comments: |
| **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 of the Facility, 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 Benefits for System RA and, if applicable, Local RA, (such difference, the “**RA Shortfall**”), multiplied by the Replacement Price. Seller may 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 substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21‑06-035 in order for Buyer’s purchase of the Product to comply with the requirements of CPUC Decision 21-06-035, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under the PPA. “**Replacement Price**” means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Resource Adequacy Benefits not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Resource Adequacy Benefits, or at Buyer’s option, (b) the market price for such replacement Resource Adequacy Benefits not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. Upon request from Seller, Buyer shall provide reasonable documentation demonstrating the Replacement Price amounts sought by Buyer from Seller were incurred or determined, as applicable, by Buyer in a commercially reasonable manner consistent with the components set forth in the immediately preceding sentence.  “**Guaranteed RA Amount**” means an amount equal to the Qualifying Capacity of a generating facility of the same technology and an installed capacity equal to the Guaranteed Capacity. The Qualifying Capacity shall be exclusive of any reductions due to excessive forced outages of the Facility or Seller’s failure to perform its obligations under the PPA, including maintaining the Monthly Storage Availability at no less than the Guaranteed Storage Availability.  “**RA Guarantee Date**” means the Commercial Operation Date. | Agree  Disagree  Comments: |
| **Station Use:** | Seller shall be responsible for providing all energy to serve Station Use (including paying the cost of any Energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility. | Agree  Disagree  Comments: |
| **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 (the “**Development Cure Period**”). The Development Cure Period, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, the Development Cure Period extends both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.  Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.  In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages for each day of delay until Seller achieves Construction Start. “**Construction Delay Damages**” are equal to Seven Hundred Fifty Dollars ($750) per MW of Guaranteed Capacity. The maximum amount of Construction Delay Damages paid by Seller is capped at the amount of the Development Security.  If Seller fails to pay the Construction Delay Damages within 10 Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such Construction Delay Damages from the Development Security.  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 one hundred eighty (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. | Agree  Disagree  Comments: |
| **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 Fifteen Hundred Dollars ($1,500) per MW of Guaranteed Capacity. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. If Seller fails to pay the COD Delay Damages within ten (10) Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such COD Delay Damages from the Development Security. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The maximum amount of COD Delay Damages paid by Seller is capped at the amount of the Development Security.  Failure to achieve COD within ninety (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 a damage payment in the amount of the Development Security. | Agree  Disagree  Comments: |
| **Pre-COD Limitation of Liability and ROFO:** | In the event Buyer terminates the PPA due to a Seller Event of Default, Seller’s total liability prior to Seller’s achievement of the Commercial Operation Date shall not exceed two (2) times the Development Security, including for payment of Construction Delay Damages, Commercial Operation Delay Damages, and the Damage Payment. For the avoidance of doubt, this provision shall not be applicable once the Facility has achieved Commercial Operation.  If the PPA is terminated due to a Seller Event of Default, Seller shall not enter into any agreement to sell any Product from the Facility within two (2) years after the effective date of such termination without first having provided written notice to Buyer of an offer to purchase such Product (a “**ROFO Offer**”). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer. If Buyer provides notice to Seller accepting the ROFO Offer within thirty (30) days, then the Parties shall negotiate in good faith to enter into a binding agreement for purchase and sale of Product in accordance with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of the PPA. If the Parties fail to enter into a ROFO Agreement within ninety (90) days of Buyer’s acceptance of the ROFO Offer, then Seller shall have the right to enter into any other agreement, within the next one hundred eighty (180) days, so long as the prices under such agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any agreement to sell any Product from the Facility that Seller enters into within two (2) years after Buyer’s termination of the PPA due to a Seller Event of Default. | Agree  Disagree  Comments: |
| **Commercial Operation Date:** | The “**Commercial Operation Date**” or “**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 licensed professional engineer to Buyer with respect to subparts (i) through (iv):   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. 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 the 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 Installed 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. | Agree  Disagree  Comments: |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. | Agree  Disagree  Comments: |
| **CPUC Mid-Term Reliability Requirements; Other CPUC Mandated Procurement Requirements; Compliance with Other Regulatory Agency Requests for Information:** | Buyer intends to use the PPA to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC Decision 21-06-035, Decision 23-02-040, other potential future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable.  Seller represents and warrants to Buyer that:   * + 1. The Facility shall be incremental to the CPUC’s baseline generator list identified in CPUC Decision 21-06-035 as modified from time to time by the CPUC;     2. The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035, Decision 23-02-40, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable;     3. Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035, Decision 23-02-040, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable during the Delivery Term to any other person or entity; and     4. Seller, upon reasonable request of Buyer, will provide additional information and documentation to Buyer to assist Buyer to meet compliance with regulatory agency requests and requirements that the Facility meets the procurement mandates set forth in CPUC Decision 21-06-035, Decision 23-02-040, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable. Such documentation includes, but is not limited to, copies of the execution version of the PPA, the execution version of the Interconnection Agreement, land leases, title deed or other documentation demonstrating Site Control, information regarding Facility development timelines, copies of notices to proceed with construction and similar evidence of Construction Start and Commercial Operation. Seller hereby authorizes Buyer to submit this and similar documentation to any requesting regulatory agency as may be required in connection with satisfying Buyer’s compliance obligations for the Facility under the PPA, provided that Buyer shall use reasonable efforts to obtain confidential treatment by the requesting regulatory agency for all information that qualifies as Confidential Information under the PPA and is eligible for confidential or protective treatment under the requesting regulatory agency’s rules, orders, decisions on confidential or protected information.   Note: Depending on the resource, MCE may require additional compliance language. | Agree  Not Applicable  Disagree  Comments: |
| **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 PPA, 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 PPA resulting from Seller’s inability to provide, or any third party use of, the Dedicated Interconnection Capacity.  To the extent that transmission service is required to deliver the Product to the Delivery Point, Seller shall maintain firm transmission equal to the Guaranteed Capacity during the Delivery Term at Seller’s expense. | Agree  Disagree  Comments: |
| **Scheduling Requirements and CAISO Settlements:** | As Scheduling Coordinator for the Facility, Buyer shall be financially responsible for such services and shall pay for all CAISO charges and shall be entitled to retain all CAISO revenues; 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.  Seller shall provide the data to Buyer that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with the PPA at least ten (10) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC’s Master Resource Database for the Facility consistent with the PPA to Buyer for review and approval at ten (10) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party’s prior written consent. | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $125/kW of Guaranteed Capacity  **Performance Security** – $105/kW of Guaranteed Capacity  To secure its obligations under the 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.  Within five (5) Business Days following any draw by Buyer on the Development Security, including for payment of delay damages, Seller shall replenish the amount drawn such that the Development Security is restored to the initial amount; provided, that Seller’s obligation to replenish the Development Security after the initial positing is limited to an amount equal to the initial amount of the Development Security.  To secure its obligations under the PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  “**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank, or a U.S. branch of a foreign bank, in each case 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. | Agree  Disagree  Comments: |
| **Metering and Shared Facilities:** | The Facility shall be separately metered from any other generation or storage facility and 100% of the output and services available from the Facility shall be conveyed to Buyer under the PPA.  Seller will provide and maintain at its sole expense separate metering and separate CAISO resource IDs for the Facility.  Seller may share interconnection facilities with affiliates owning other generation or storage facilities, subject to commercially reasonable and customary shared facilities arrangements to be further described in the PPA; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) continue to provide for separate metering and separate CAISO resource IDs for the Facility. | Agree  Disagree  Comments: |
| **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 within a 50-mile radius  At least [XX]% of materials sourced within a 50-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*]. | Agree  Disagree  Comments: |
| **Site Control:** | Seller shall maintain site control of the Facility throughout the Delivery Term. | Agree  Disagree  Comments: |
| **Tax Credits:** | Seller does not intend as of the Effective Date of the PPA to utilize the Production Tax Credit and no payment will be owed to Seller for PTC amounts associated with curtailments in the event Seller later elects to utilize the PTC. | Agree  Disagree  Comments: |
| **Assignment:** | Neither party may assign the PPA without prior written consent of the other party, which shall not be unreasonably withheld; provided, that Seller has the right to assign the PPA as collateral for any financing or refinancing of the Facility without the consent of Buyer.  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.  Buyer shall have the right to make a limited assignment in connection with a municipal prepayment transaction to an entity (“**Limited Assignee**”) that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an investment grade credit rating, of Buyer’s right to receive Product and Buyer’s obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee’s timely payment of amounts due under the PPA. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under the PPA notwithstanding the limited assignment. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. Subject to the foregoing, Buyer may make such assignment upon not less than thirty (30) days’ advance written notice by delivering to Seller a written request for Seller’s consent to such assignment, which request must include a proposed assignment agreement substantially in the form attached as an Exhibit to the PPA, or as otherwise reasonably acceptable to Seller. | Agree  Disagree  Comments: |
| **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. | Agree  Disagree  Comments: |
| **No Recourse to Members of Buyer:** | Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of the PPA. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this PPA. | Agree  Disagree  Comments: |
| **Force Majeure:** | “**Force Majeure Event**” means any act or event occurring after the Effective Date that delays or prevents a party from timely performing all or a portion of its obligations under the PPA or from complying with all or a portion of the conditions under the 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 the PPA at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, 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 the 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. 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 written 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 written notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods prior to Buyer’s receipt of such written notice. 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. | Agree  Disagree  Comments: |
| **Bioenergy Transactions:** | 1.  For all electric generation using biomethane as fuel, Seller shall transfer to Buyer sufficient renewable and environmental attributes of biomethane production and capture to ensure that there are zero net emissions associated with the production of electricity from the generating facility using the biomethane.  2.  For all electric generation using biomethane as fuel, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane if the capture and destruction is required by law. If the capture and destruction of the biomethane is not required by law, neither Buyer nor Seller may make a marketing, regulatory, or retail claim that asserts that a procurement contract to which that entity was a party resulted, or will result, in greenhouse gas reductions related to the destruction of methane, unless the environmental attributes associated with the capture and destruction of the biomethane pursuant to that contract are transferred to Buyer and retired on behalf of the retail customers consuming the electricity associated with the use of that biomethane, or unless Seller's procurement contract with the source of biomethane prohibits the source of biomethane from separately marketing the environmental attributes associated with the capture and destruction of the biomethane sold pursuant to that contract, and such attributes have been retired. (STC 2). | Agree  Not Applicable  Disagree  Comments: |
| **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, assignment not permitted by the PPA, Seller failure to deliver a reasonable Remedial Action Plan if not remedied within ten (10) Business Days after written notice thereof, Seller failure to achieve Construction Start within one hundred eighty (180) days of Guaranteed Construction Start Date, and Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date. * **Indemnification**: Mutual indemnification from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by negligence or willful misconduct of the indemnifying party, its affiliates, its directors, officers, employees, or agents. * **Governing Law**: State of California * **Venue**: San Francisco County * **Miscellaneous:** Seller has reviewed and accepts the following provisions in Appendix B of the Procedural Overview & Instructions: Local Hire, Prevailing Wage Requirements, Responsible Procurement, Pollinator Friendly Habitat, Diversity Reporting, Permits and Approvals, Tax Credits, Site Control, Seller Equipment Required for Dispatch and Curtailment Instructions, REC Tracking System, and Non-Modifiable California Renewables Portfolio Standard Terms and Conditions, which will be incorporated into the PPA. | Agree  Disagree  Comments: |
| **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.  “**Facility Energy**” means the energy generated by the Facility and delivered to the Delivery Point, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.  “**Full Capacity Deliverability Status**” has the meaning set forth in the CAISO Tariff.  “**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.  “**Production Tax Credits**” or “**PTCs**” means the production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible.  “**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.  “**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 a 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. **Other Agreements**. In connection with this Term Sheet, Seller shall execute that certain Exclusive Negotiating Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) to Buyer in accordance with the requirements of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.
4. **Contract Price**. Respondent represents and warrants that the Contract Price set forth above is not subject to any other conditions, adjustments, requirements or assumptions that are not expressly set forth in this Term Sheet.
5. **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.
6. **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 Exclusivity Agreement), as such Exclusivity Period may be extended pursuant to the Exclusivity Agreement.
7. **Changed Circumstances.** Respondent will promptly notify MCE of any material change in circumstances that may affect Respondent’s ability to proceed with the Proposed Transaction, at any time from the Effective Date of this Term Sheet until the termination of this Term Sheet.
8. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
9. **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 as a PDF attachment to an email shall be the same as delivery of an original executed signature page.
10. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the parties regarding the subject matter herein contemplated.
11. **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 (which consent will not be unreasonably withheld, delayed, or encumbered).
12. **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 executed this Term Sheet effective as of the Effective Date.

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| --- | --- |
| **MARIN CLEAN ENERGY, a California joint powers authority** | **[*RESPONDENT/SELLER***] |
| By:  Printed Name:  Title: | By:  Printed Name:  Title: |
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