**Term Sheet for Power Purchase Agreement**(For Projects less than 1 MW)

*This term sheet includes the key commercial terms and conditions that will be included in a proposed power purchase agreement to be negotiated between Seller and Buyer (as defined below) if Bidder is selected for the shortlist of offers submitted in the 2021 DAC-GT and CSGT RFO.*

THIS TERM SHEET FOR POWER PURCHASE AGREEMENT (“**Term Sheet**”) is entered into as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), between Peninsula Clean Energy Authority, a California joint powers authority (“**PCE**” or “**Buyer**”) and [*e.g., Project Company LLC* ] (“**Seller**”). This Term Sheet includes the key commercial terms and conditions to be included in a proposed power purchase agreement (“**PPA**”) to be negotiated between Buyer and Seller (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “Party” and collectively the “Parties.” Notwithstanding anything herein to the contrary, until a definitive agreement is approved by Seller’s management, the PCE Board of Directors, and the California Public Utilities Commission (“**CPUC**”) no Party shall have any legal obligations, expressed or implied, in connection with, or arising in any manner under, this Term Sheet, and neither Party will be obligated to continue negotiations or enter into the Proposed Transaction.

1. **PPA Terms and Conditions**.

|  |  |
| --- | --- |
| **Seller:** | [*Seller Name*, *e.g., Project Company LLC*] |
| **Buyer:** | Peninsula Clean Energy Authority, a California joint powers authority |
| **Defined Terms:** | Please see the Definitions section below for additional definitions. |
| **Description of Facility:** | A new [X] MW RPS-elibible [solar photovoltaic][wind][ hydroelectric][ biogas] project located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of California (as used herein, the “**Generating Facility**” or the “**Facility**”). The Facility shall comply with California Air Resources Board’s Voluntary Renewable Electricity Program. The Facility shall not be a CAISO Participating Generator and may not serve any on-site or other loads, other than Facility station loads. |
| **Site Location:** | The Facility’s Site shall be located in the following Disadvantaged Community in PG&E’s service territory as set forth in the CalEnviroscreen 4.0 system (“**DAC**”): \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Census Tract Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **DAC-GT Qualification:** | The Facility shall qualify as a DAC-GT Project pursuant to CPUC Decisions 18-06-027, 18-10-007, and Resolution E-4999. |
| **Product:** | The “**Product**” shall meet the Portfolio Content Category 1 specifications, and includes all of the following:   1. Delivered Energy: All of the electric energy generated by the Generating Facility, delivered to the Delivery Point as measured by CAISO-approved meters, pursuant to the Scheduling Requirements; 2. Environmental Attributes: All renewable energy credits (“**RECs**”) and any other environmental attributes associated with Delivered 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. |
| **Guaranteed Capacity:** | The Generating Facility has a guaranteed capacity of [XX] MW (the “**Guaranteed Capacity**”). [*Guaranteed Capacity must be less than 1 MW.*] |
| **Interconnection Status:** | [Describe status of interconnection studies/agreement]. The Facility will be interconnected as a wholesale generator; Rule 21 interconnection is expressly prohibited. |
| **Interconnection Capacity**: | The Facility has, or will obtain by the Commercial Operation Date, [XX] MW of dedicated interconnection capacity. |
| **Delivery Term:** | “**Delivery Term**” means [XX] Contract Years. |
| **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.*] |
| **PPA Rate:** | The PPA Rate shall be $[XX]/MWh, with no escalation. |
| **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; orif, 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. |
| **Curtailment:** | In the event the Facility is curtailed due to a Force Majeure Event, by the CAISO or the transmission owner, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy. |
| **Delivery Point:** | “**Delivery Point**” means the Interconnection Point. |
| **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. |
| **Settlement Point:** | The “**Settlement Point**” shall be the revenue meter at the point of common coupling between the Facility and the relevant Distribution or Transmission System operator. |
| **Expected Construction Start Date:** | Seller reasonably expects to achieve Construction Start by the following date [\_\_\_\_\_\_\_] (the “**Expected Construction Start Date**”).  “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the site. |
| **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 Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the “**Development Cure Period**”). For clarity, the permitted extensions under 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 under the Development Cure Period if, and to the extent that (i) the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, (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 due to a Force Majeure Event, but in no case more than thirty (30) days after Seller becomes aware of an actual delay affecting the Facility, 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 seven (7) Business Days of Seller becoming aware of such delay. As used in the preceding sentence, “actual delay” does not include Seller’s receipt of generic notices of potential delays due to a Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delay was the result of a Force Majeure Event and 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 “**Daily Delay Damages**”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.  Failure to achieve Construction Start for any reason within 120 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 receive 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 for the Development Cure Period; provided that the Commercial Operation Date shall occur no later than December 31, 2024.  If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD.  “**Delay Damages**” are equal to the Development Security divided by 60. Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which Delay Damages were paid in advance.  Failure to achieve COD for any reason within 60 days of the Guaranteed COD, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and receive a damage payment in the amount of the Development Security (“**Damage Payment**”). For the avoidance of doubt, Seller’s liability for an Event of Default comprising the failure to timely achieve COD shall equal the sum of any Daily Delay Damages and Delay Damages that are due and owing, plus the Damage Payment. |
| **Commercial Operation Date (“COD”):** | The COD shall be the later of (a) the Expected Commercial Operation Date or (b) 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 certifying to the following:   1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. 2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity. 3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications. 4. The Generating 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 Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. 5. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate]. 6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate].   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*]– Expected Commercial Operation Date |
| **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. |
| **Force Majeure:** | 1. “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under 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. 2. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.   Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of the PPA at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy 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; (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; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence; (ix) interconnection facilities or network upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, or (ix) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date due to a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period. |
| **Site Control:** | Seller shall maintain site control throughout the Delivery Term. |
| **Permits and Approvals:** | Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project. |
| **Scheduling Requirements and CAISO Settlements:** | If the Facility’s electric output is required to be scheduled with CAISO, PCE shall designate a Scheduling Coordinator (as defined by CAISO Tariff) for the Facility.  If the Facility’s electric output is scheduled with the CAISO, PCE and Seller shall cooperate to minimize CAISO delivery imbalances and any resulting fees, liabilities, assessments or similar charges assessed by the CAISO (“**CAISO Charges**”) to the extent possible, and shall each promptly notify the other as soon as possible of any material loss of system capability, deviation or imbalance that is occurring or has occurred. Subject to Seller’s compliance with the foregoing requirements, PCE shall be responsible for imbalance charges; provided, however that if the Facility’s electric output is scheduled with the CAISO, Seller shall reimburse PCE for any CAISO Charges PCE incurs as a result of Seller's violation of the terms and conditions of the PPA or the CAISO Tariff.  To the extent that the Facility’s electric output is scheduled with the CAISO, Seller shall be responsible for any “non-Performance Penalties” assessed to PCE by the CAISO (“**CAISO Penalties**”), under the CAISO Tariff Enforcement Protocol, and not due to any fault of PCE, which shall include, without limitation, any deviation, imbalance or uninstructed energy charges or penalties payable to the CAISO that are due to the fault of Seller. To the extent that Seller materially deviates from its energy schedules (other than an adjustment imposed by the CAISO, a deviation due to any fault of PCE, or an excused Seller failure to deliver, whether for reasons of Force Majeure or otherwise), and such departure results in CAISO Penalties being assessed to PCE, such CAISO Penalties shall be passed on to Seller.  Seller shall provide to Buyer non-binding annual, monthly, day-ahead, and real-time forecasts of Delivered Energy within a timeline that allows Buyer or Buyer’s agent the ability to meet CAISO market and scheduling deadlines. Outage and curtailment notifications will be required by Buyer as well as access to Facility generation data. |
| **Monthly Settlement and Invoice:** | Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.  Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process.  A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under the PPA or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the Energy generation 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. |
| **REC Tracking System:** | The Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in WREGIS Operating Rules.  Each party shall be responsible for setting up an account with WREGIS. |
| **Metering:** | The Facility shall be installed with a revenue-quality meter that is compliant with WREGIS Operating Rules. Seller shall provide real-time read-only access to the Facility’s metering data. Seller shall provide Qualified Reporting Entity services as required to meet WREGIS requirements. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $60/kW of Guaranteed Capacity  **Performance Security** – [*An amount equal to the first Contract Year’s revenues, assuming deliveries of 100% of Expected Energy*.]  To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date.  Development Security shall be in the form of cash or a Letter of Credit.  To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount. |
| **Compliance with Laws:** | 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 those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. |
| **Workforce Requirements:** | Seller shall comply with Buyer’s Inclusive and Sustainable Workforce Policy. |
| **RPS and Green-e Compliance:** | Seller must ensure the Facility obtains CEC pre-certification prior to the COD, obtains CEC certification within 180 days of COD and maintains such CEC certification during the Delivery Term. Seller shall ensure that the Facility is certified by Green-e as of the Commercial Operation Date and shall maintain such Green-e certification throughout the Delivery Term. Seller shall ensure that the Product qualifies as Portfolio Content Category 1 throughout the Delivery Term. If a change of law occurs after execution of the PPA that impacts Facility’s CEC certification, the Product’s qualification as Portfolio Content Category 1, or the Facility’s Green-e certification, then Seller shall comply with such change of law as necessary to maintain the Facility CEC certification and Product eligibility described above. |
| **Assignment:** | Neither party may assign the PPA without prior written consent of the other party, which will 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 will not be unreasonably withheld.  Seller shall pay Buyer’s reasonable expenses, including 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 PPA, or to modify such PPA. |
| **No Recourse to Members of PCE:** | PCE 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. PCE 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 PCE’s constituent members in connection with this Agreement. |
| **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 achieve Construction Start within one hundred twenty (120) days of Guaranteed Construction Start Date, Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, and other Events of Default expressly provided for in this Term Sheet.  Indemnification: Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees collectively (“**Indemnifiable Event**”), to the extent such Indemnifiable Event arises out of, pertains to, or relates to any of the following:(a) the negligent act or omission, recklessness or willful misconduct of the Seller, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Seller or any of its subcontractors or anyone that they control; (b) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Buyer’s use of the Product, deliverables or other items provided by the of the Seller pursuant to the requirements of this Proposed Transaction, or (c) any breach of the Proposed Transaction.  The Seller’s indemnity obligations apply to the maximum extent allowed by law and includes defending Peninsula Clean Energy, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code, if applicable. Upon the Buyer’s written request, the Seller, at its own expense, must defend any suit or action that is subject to the Seller’s indemnity obligations.  The Seller’s indemnity obligations survive the expiration or earlier termination of the Proposed Transaction.  Governing Law: State of California  Venue: San Mateo County (PCE) |
| **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 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.  **“CEQA**” means the California Environmental Quality Act.  “**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.  “**Contract Year**” means a period of twelve (12) consecutive months beginning on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.  “**Generating Facility Energy**” means that portion of energy that is delivered from the Generating Facility directly to the Delivery Point, net of electrical losses and station use, as measured by the Facility meter, which will be adjusted in accordance with CAISO meter requirements to account for electrical losses and station use.  “**Guaranteed Capacity**” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, as the same may be adjusted pursuant to the PPA.  “**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 with such bank (a) 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 or (b) being 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.  “**Production Tax Credits**” or “**PTCs**” means 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.  “**PTC Amount**” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination. |

1. **Additional Term Sheet Provisions.**
2. **No Obligation 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 or will be bound by any term thereof, unless and until authorized representatives of Buyer and Seller have executed final definitive documents, enforceable in accordance with their terms.
3. **Other Agreements**. In connection with this Term Sheet, Seller shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) of $3,000/MW of Guaranteed Capacity to Buyer within three (3) Business Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.
4. **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.
5. **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 by the Parties in accordance with the Exclusivity Agreement.
6. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between and among 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. No Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Parties’ prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
9. **No Consequential Damages**. IN NO EVENT SHALL ANY 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.