

**TERM SHEET  
FOR  
RENEWABLE GENERATION**

THIS TERM SHEET FOR RENEWABLE GENERATION (“**Term Sheet**”) is entered into as of [\_\_\_\_], 2023 (the “**Effective Date**”), between San Diego Community Power (“**SDCP**”) and [Respondent] (“**Respondent**”). This Term Sheet is intended to set forth the key commercial terms and conditions to be included in a proposed agreement for the purchase and sale of renewable energy and energy storage product (each such agreement, a “**PPA**”) to be negotiated between SDCP (“**Buyer**”) and [e.g., Project Company LLC] (“**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 fully negotiated and all applicable approvals have been received for each Party, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction or the PPA.

Please note, the following Term Sheet presumes co-located resources within the CAISO market, with separate CAISO meters for the Generating Facility and Storage Facility. The Term Sheet does not account for grid charging, import resources, nor Seller as scheduling coordinator. Such terms to be negotiated upon shortlisting. At minimum, SDCP requires import resources to have firm transmission rights and commit to pseudo-tied or dynamic scheduling.

**1. Terms and Conditions.**

<b>Description of Facility:</b>	A [ ] MW [renewable energy facility] and [ ] MW [ ]-hour battery energy storage project located in [ ] County, in the State of [ ].
<b>Product</b>	Generating Facility Energy, Green Attributes (PCC1), Capacity Attributes including Full Capacity Deliverability Status, Storage Capacity, Discharging Energy, and Ancillary Services.
<b>Contract Price:</b>	Renewable Rate: <input type="checkbox"/> \$[ ]/MWh for all Contract Years.  Storage Rate: <input type="checkbox"/> \$[ ]/kW-month for all Contract Years.
<b>Settlement Point:</b>	The Settlement Point shall be [e.g., SP-15/SG&E DLAP/Facility PNode].
<b>Delivery Term:</b>	[10 / 15 / 20] Contract Years.
<b>Contract Capacity:</b>	The sum of the Guaranteed Capacity and the Storage Contract Capacity. <ul style="list-style-type: none"> <li>• Guaranteed Capacity of the Generating Facility is [ ] MW<sub>AC</sub>.</li> <li>• Storage Contract Capacity is [ ] MW for [ ]-hour discharge</li> </ul>
<b>Guaranteed RA Amount:</b>	Buyer is entitled to all Capacity Attributes of the Facility. The Guaranteed RA Amount shall be the Qualifying Capacity of the Facility determined as of the Effective Date pursuant to CPUC D.20-06-031.

<b>RA Guarantee Date:</b>	“ <b>RA Guarantee Date</b> ” means Commercial Operation Date.
<b>Capacity Area:</b>	[CAISO System, Sierra, Stockton, LA Basin, SD-IV, etc.]
<b>Deliverability:</b>	The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date.
<b>Storage Contract Output</b>	[ ] MWh based on [ ]-hour discharge
<b>Guaranteed Efficiency Rate</b>	[ ] percent ([ ]%) for all Contract Years
<b>Minimum Efficiency Rate</b>	Seventy percent (70%) for all Contract Years
<b>Guaranteed Storage Availability</b>	During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-eight percent (98%). Excused Hours include Force Majeure Events (excluding Insurable Force Majeure Events), Buyer Bid Curtailments, Buyer Curtailment Orders, Curtailment Orders, System Emergencies, Buyer Dispatched Tests, Buyer Defaults or Operating Restrictions. “ <b>Insurable Force Majeure Event</b> ” means any Force Majeure Event which (a) results in direct, physical loss to the Facility, and (b) excludes Force Majeure Events that occur beyond the Delivery Point.
<b>Scheduling Coordinator:</b>	Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) or “SC” for the Facility.
<b>Interconnection Point:</b>	The Facility shall interconnect to [e.g., <i>XX substation</i> ] (the “ <b>Interconnection Point</b> ”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.
<b>Facility Development Milestones:</b>	<ul style="list-style-type: none"> <li>• [mm/dd/yyyy] – Evidence of site control</li> <li>• [mm/dd/yyyy] – CEC Pre-Certification Obtained</li> <li>• [mm/dd/yyyy] – Seller’s receipt of Phase I and Phase II interconnection study results</li> <li>• [mm/dd/yyyy] – Execute Interconnection Agreement</li> <li>• [mm/dd/yyyy] – Financial close</li> <li>• [mm/dd/yyyy] – Procure major equipment</li> <li>• [mm/dd/yyyy] – Obtain federal and state discretionary permits</li> <li>• [mm/dd/yyyy] – Expected/Guaranteed Construction Start Date</li> <li>• [mm/dd/yyyy] – Obtain Full Capacity Deliverability Status</li> <li>• [mm/dd/yyyy] – Expected/Guaranteed Commercial Operation Date</li> </ul>

<p><b>Commercial Operation Date (“COD”):</b></p>	<p>The COD shall be the date when each of the following requirements have been met to Buyer’s reasonable satisfaction, including Seller providing certificates from an independent engineer to Buyer with respect to installation commissioning, and performance testing of at least 95% of Guaranteed Capacity and 95% of Storage Contract Capacity:</p> <ul style="list-style-type: none"> <li>(i) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed;</li> <li>(ii) An Interconnection Agreement between Seller and the PTO shall have been executed;</li> <li>(iii) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date;</li> <li>(iv) Seller has obtained Full Capacity Deliverability Status;</li> <li>(v) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);</li> <li>(vi) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation;</li> <li>(vii) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;</li> <li>(viii) Insurance requirements for the Facility have been met;</li> <li>(ix) Seller has delivered the Performance Security to Buyer; and</li> <li>(x) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.</li> </ul> <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving COD.</p>
<p><b>Guaranteed Construction Start Date:</b></p>	<p>The “<b>Guaranteed Construction Start Date</b>” means the following date of [REDACTED], 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 that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions (the “<b>Development Cure Period</b>”) extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p>

	<p>Seller shall have the option to pay daily delay damages to Buyer in advance (the “<b>Construction Delay Damages</b>”) to extend the Guaranteed Construction Start Date by up to one-hundred twenty (120) days. Construction Delay Damages shall equal the amount of the Development Security divided by one-hundred twenty (120). The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by a Development Cure Period or payment of Construction Delay Damages, 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.</p>
<p><b>Guaranteed Commercial Operation Date (Guaranteed COD):</b></p>	<p>“<b>Guaranteed Commercial Operation Date</b>” or “<b>Guaranteed COD</b>” means the following date of [ ], subject to extensions on a day-for-day basis under the Development Cure Period.</p> <p>Seller shall have the option to pay daily delay damages to Buyer in advance (the “<b>COD Delay Damages</b>”) to extend the Guaranteed Commercial Operation Date by up to sixty (60) days. COD Delay Damages shall equal the amount of the Development Security divided by sixty (60).</p> <p>Failure to achieve COD on or before the Guaranteed COD, as such date may be extended by a Development Cure Period or payment of COD Delay Damages, 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.</p>
<p><b>Storage Capacity Tests</b></p>	<p>Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date.</p> <p>Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days’ prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).</p> <p><u>Test Results and Re-Setting of Storage Capacity and Efficiency Rate.</u> No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. The actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract</p>

	Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.
<b>Environmental Attributes:</b>	<p>Buyer shall be entitled to renewable energy credits (“<b>RECs</b>”) and any other environmental attributes associated with Generating Facility Energy. 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.</p> <p>Each party shall be responsible for setting up an account with WREGIS.</p>
<b>Seller Security Requirements:</b>	<p>Seller shall post security as follows:</p> <p>“<b>Development Security</b>” – \$90/kW multiplied by the Contract Capacity</p> <p>“<b>Performance Security</b>” – \$105/kW multiplied by the Contract Capacity</p> <p>“<b>Contract Capacity</b>” means the sum of the Guaranteed Capacity and the Storage Contract Capacity.</p> <p>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.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p> <p>Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p> <p>Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p>
<b>Expected Energy (Generating Facility):</b>	“ <b>Expected Energy</b> ” means [ ] MWh during the first Contract Year and for each subsequent Contract Year thereafter during the Delivery Term, subject to [ ]% degradation per Contract Year.
<b>Guaranteed Energy Production:</b>	<p>Seller shall deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period.</p> <p>The “<b>Guaranteed Energy Production</b>” means an amount of Generating Facility 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:</p> <ul style="list-style-type: none"> <li>• Solar: 85%</li> <li>• Wind: 75%</li> </ul> <p>The “<b>Performance Measurement Period</b>” shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis.</p> <p>For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any</p>

	<p>Deemed Delivered Energy and (ii) Lost Output (the “<b>Adjusted Energy Production</b>”).</p> <p>If Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:</p> <p><math>[(A - B) * (C - D)]</math></p> <p>where:</p> <p>A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh</p> <p>B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh</p> <p>C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50.00/MWh and (y) the market value of Replacement Green Attributes as reasonably determined by Buyer.</p> <p>D = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in \$/MWh</p> <p>“<b>Adjusted Energy Production</b>” shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output provided with respect to such Performance Measurement Period.</p> <p>“<b>Lost Output</b>” means Generating Facility Energy in the amount Seller could reasonably have delivered to Buyer at the Delivery Point but was prevented from delivering to Buyer at the Delivery Point during Force Majeure Events, System Emergencies, and Curtailment Periods.</p> <p>“<b>Replacement Green Attributes</b>” means Renewable Energy Credits that are Portfolio Content Category 1 (PCC1) and of the same type of resource (e.g., wind, solar, etc.) as the Renewable Energy Credits that would have been generated by the Facility.</p> <p>No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.</p>
<p><b>RA Failure:</b></p>	<p>Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “<b>RA Deficiency Amount</b>”) equal to the product of (i) the difference, expressed in kW, of (A) the Guaranteed RA Amount for such Showing Month, minus (B) the lowest amount of Net Qualifying Capacity able to be included on the Supply Plan as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month (such difference, the “<b>RA Shortfall</b>”), multiplied by (ii) the sum of (1) the CPUC System RA Penalty and (2) the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA</p>

	<p>Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the deadline (as established by CAISO or any other Governmental Authority) that Buyer must meet to submit its Resource Adequacy Plan for the applicable Showing Month for the purpose of monthly RA reporting.</p>
<p><b>Compensation</b></p>	<p>(a) <u>Renewable Rate</u>. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred five percent (105%) of the Expected Energy for each Contract Year. [If applicable, the Renewable Rate shall be subject to a Settlement Point adjustment. The “Settlement Point” shall be [pNode/SP-15].]</p> <p>(b) <u>Excess Contract Year Deliveries Over 105%</u>. If, at any point in any Contract Year, the amount of Generating 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 Generating 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, but not less than \$0.00/MWh, or (b) fifty percent (50%) of the Renewable Rate.</p> <p>(c) <u>Excess Settlement Interval Deliveries</u>. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Generating Facility Energy, in excess of the product of the Installed PV Capacity and the duration of the Settlement Interval, expressed in hours (“<b>Excess MWh</b>”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“<b>Negative LMP Costs</b>”).</p> <p>(d) <u>Curtailment Payments</u>. Seller shall receive no compensation from Buyer for (i) Generating Facility Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the Renewable Rate. The “<b>Curtailment Cap</b>” equals the Expected Energy per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.</p> <p>“<b>Deemed Delivered Energy</b>” means the amount of Generating Facility Energy, expressed in MWh, in excess of the Curtailment Cap that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or 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 Curtailment Period, less the amount of Generating Facility</p>

Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). For all purposes under this Agreement, including compensation under Exhibit C and the Curtailment Cap, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Generating Facility Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment (as defined in the PPA) or (b) a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

(e) **Storage Rate.** All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by the Storage Contract Capacity, as adjusted for the Storage Capacity Test, for such month multiplied by the Round-Trip Efficiency Factor multiplied by the Availability Adjustment for such month. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. **“Round-Trip Efficiency Factor”** means (a) if the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, one hundred percent (100%), (b) if the Efficiency Rate is less than the Guaranteed Efficiency Rate but greater than or equal to the Minimum Efficiency Rate, then one hundred percent (100%) - [(Guaranteed Efficiency Rate – Efficiency Rate) x .5], or (c) if the Efficiency Rate is less than the Minimum Efficiency Rate, zero percent (0%).

(f) **Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate.** If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(g) **PTC Amount.** If applicable for new eligible PTC resources, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, Buyer shall pay the PTC Amount for Deemed Delivered Energy above the Curtailment Cap until the sum of Delivered Energy plus the amount of Deemed Delivered



	Energy above the Curtailment Cap exceeds one hundred percent (100%) of the Expected Energy for such Contract Year.
<b>Invoicing:</b>	<p>Seller shall provide statement of amounts due within ten (10) days after the end of the prior monthly delivery period.</p> <p>Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the later of receipt of the invoice or the end of the prior monthly delivery period, with disputed payments subject to the Dispute Resolution process described below.</p>
<b>Costs:</b>	Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. All other third party costs and charges (including the cost of registering the RECs and other attributes) shall be the responsibility of Seller, except as addressed herein in the sections titled “Environmental Attributes,” and “Additional Products,” and subject to Change in Law.
<b>Operations &amp; Maintenance:</b>	<p>Seller shall develop written operating procedures for the Facility before the applicable initial delivery date which shall set forth the protocol under which the Parties shall perform their respective obligations under the PPA. During the Term, each Facility shall be operated and maintained by Seller or its designee in accordance with those practices, methods, and acts that are commonly used by a significant portion of the renewable electric generation industry.</p> <p>Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff, and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including the cost of any replacement Capacity Attributes as required by the CAISO).</p> <p>During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.</p>
<b>Compliance Expenditure Cap:</b>	If a change in law occurring after the Effective Date increases Seller’s known or reasonably expected costs and expenses to comply with Seller’s

	<p>obligations under the PPA with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Environmental Attributes or Capacity Attributes (any action required to be taken by Seller to comply with such change in law, a “<b>Compliance Action</b>”), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at twenty-five thousand dollars (\$25,000) per MW of Contract Capacity, in the aggregate over the term of the PPA. If Buyer agrees to fund such Compliance Actions in excess of the foregoing limits, Seller shall take such actions.</p>
<p><b>Change in Tax Law:</b></p>	<p>In the event that as a result of a Change in Tax Law, Seller or the Facility becomes eligible for or entitled to any new Tax Benefits or changes to or extensions of existing Tax Benefits, Seller and Buyer shall share such additional Tax Benefit Amount on a 50%/50% basis by making an adjustment to the Contract Price for the remainder of the Delivery Term.</p> <p>“<b>Change in Tax Law</b>” means (a) (i) any change in or amendment to the Code or another applicable federal income tax statute; (ii) any change in, or issuance of, or promulgation of any temporary or final regulations by the U.S. Department of the Treasury that would result in any change to the interpretation of the Tax Code or existing temporary or final regulations promulgated by the U.S. Department of the Treasury; (iii) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (iv) any change in the interpretation of any of the authorities described in clauses (a)(i) through (iii) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law, and (b) in the case of (a)(i) through (iv), such change or new or different interpretation, as applicable, occurs between the Execution Date and before the end of the Congress in session when the Commercial Operation Date occurs.</p> <p>“<b>Tax Benefits</b>” means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45 or 48 of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or the operation of, construction, investments in or ownership of the Facility (including any cash payment or grant).</p>
<p><b>Force Majeure Event:</b></p>	<p>“<b>Force Majeure Event</b>” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under</p>

this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. 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; 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 this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy the Product at a lower price, or Seller's ability to sell Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Generating Facility or the Storage Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Generating Facility or Storage Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Generating Facility or Storage Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Generating Facility or Storage Facility, except to the extent expressly permitted as an extension pursuant to the Development Cure Period 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 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 as to all periods prior to the delivery of a timely 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.
<b>Dispute Resolution:</b>	In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement any Party may deliver to the other Parties notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “ <b>Dispute Notice</b> ”). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with the PPA.
<b>Applicable Law:</b>	California
<b>No Recourse to Members of Buyer:</b>	Buyer is organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members in connection with the PPA.
<b>Assignment:</b>	<p>Except with respect to collateral assignment to support a financing by Seller of the Facility and assignment to an affiliate, prior written consent of the non-assigning party shall be required for assignment of any interest in the PPA, including a change of control. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment that includes required terms to be set forth in the PPA.</p> <p>“<b>Permitted Transferee</b>” means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:</p> <p>(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&amp;P, BBB- from Fitch, or Baa3 from Moody’s; and</p> <p>(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.</p>
<b>Events of Default:</b>	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. Events of Default also include:

	<ul style="list-style-type: none"> <li>(i) any consecutive six (6) month period, Adjusted Energy Production is not at least ten (10%) of Expected Energy, subject to a Cure Plan not to exceed one hundred eighty (180) days;</li> <li>(ii) any Contract Year, the simple average of the Monthly Storage Availability for such Contract Year is not at least seventy percent (70%), subject to a Storage Cure Plan not to exceed one hundred eighty (180) days;</li> <li>(iii) 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;</li> <li>(iv) if, in any two (2) consecutive Contract Year period 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;</li> <li>(v) if, Seller fails to maintain an average Efficiency Rate of at least seventy percent (70%) over a rolling twelve (12) month period;</li> <li>(vi) if, Seller fails to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for more than three hundred sixty (360) days;</li> <li>(vii) if Construction Start is not achieved on or before the Guaranteed Construction Start Date or Commercial Operation is not achieved on or before the Guaranteed COD, as such dates may be extended under a Development Cure Period or by payment of daily delay damages as set forth herein.</li> </ul>
<p><b>CPUC Non-Modifiable Terms</b></p>	<p><u>Eligibility.</u> 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].</p> <p>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].</p>

	Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].
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**2. Additional Term Sheet Provisions.**

(a) **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 any Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Buyer nor Seller 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 Buyer and Seller execute final definitive documents, enforceable in accordance with their terms.

(b) **Other Agreements.** In connection with this Term Sheet, Respondent shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Exclusivity and Bid Deposit (as defined in such agreement) of \$3,000 per MW of proposed Guaranteed Capacity to Buyer(s) within seven (7) 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.

(c) **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.

(d) **Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Negotiation Period and any applicable Extension Period (as defined in the Exclusivity Agreement), as such Exclusivity Deadline may be extended pursuant to the Exclusivity Agreement.

(e) **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.

(f) **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.

(g) **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.

(h) **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 prior written consent of the other Party.

(i) **No Consequential Damages.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER 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.

IN WITNESS WHEREOF, the Parties have signed this Term Sheet effective as of the Effective Date.

**SAN DIEGO COMMUNITY POWER, a  
California joint powers authority**

**[RESPONDENT]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_