# Proforma Term Sheet – Renewable Energy

THIS TERM SHEET FOR POWER PURCHASE AGREEMENT (“**Term Sheet**”) is entered into as of [\_\_\_\_\_], 2023 (the “**Effective Date**”), between Central Coast Community Energy, a California joint powers authority (“**3CE**” 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 to be negotiated between Buyer and [*e.g., Project Company LLC*] (“**Seller**”) in connection with Buyer’s 2023 Request for Proposals for Renewable Energy & Standalone Storage Projects (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “**Party**” and collectively the “**Parties**.” Notwithstanding anything herein to the contrary, that until a definitive agreement is approved by Buyer’s respective management and Board of Directors, signed and delivered by Buyer and Seller, 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.

1. **PPA Terms and Conditions**

|  |  |
| --- | --- |
| **Description of Facility:** | A [XX] MWAC renewable Generating Facility located in \_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_ (collectively “**Facility**”). |
| **Product:** | “**Product**” means all energy, capacity, resource adequacy, ancillary services, and environmental attributes (including RECs) produced by the Facility. |
| **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 each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date. |
| **Guaranteed Capacity:** | The Generating Facility has a Guaranteed Capacity of [XX] MWAC. |
| **Interconnection Point:** | The Facility shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. |
| **Delivery Point:** | “**Delivery Point**” means the Facility Pnode on the CAISO grid. |
| **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.*] |
| **Contract Price:** | The “**Contract Price**” shall be $[XX]/MWh (flat with no escalation). |
| **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. |
| **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:   * Wind: 75% * Solar: 85% * Geothermal: 90% * Small Hydro: 85%   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 (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, and Curtailment Periods (the “**Adjusted Energy Production**”).  If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (a) the difference of the Guaranteed Energy Production less the Adjusted Energy Production, multiplied by (b) the replacement price for the energy and RECs less the Contract Price. No payment shall be due if the calculation yields a negative number. |
| **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. |
| **Excess Energy:** | If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“**Excess Energy**”), then the price paid by Buyer for the Excess Energy shall be zero dollars ($0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy. |
| **Annual Excess Energy:** | If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than $0.00/MWh.  If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to $0.00/MWh. |
| **Curtailment:** | In the event the Facility is curtailed due to a System Emergency (to be defined in the PPA), Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer’s sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.  Buyer shall have the right to order Seller to curtail deliveries of Facility Energy, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments in excess of the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions.  “**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.  “**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to a Buyer-directed curtailment, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments. |
| **REC Tracking System:** | Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in the WREGIS Operating Rules.  Each party shall be responsible for setting up an account with WREGIS. |
| **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. |
| **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**”) 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 Qualifying Capacity 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 for System RA and, if applicable, Local RA, (such difference, the “**RA Shortfall**”), multiplied by the sum of (a) the CPUC System RA Penalty and (b) CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. |
| **Station Use:** | Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility. |
| **Expected Construction Start Date:** | Seller reasonably expects to achieve Construction Start by the following date: [\_\_\_\_\_\_\_] (the “**Expected Construction Start Date**”). |
| **Guaranteed Construction Start Date:** | The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller (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.  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 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development Security. |
| **Expected Commercial Operation Date:** | Seller reasonably expects to achieve Commercial Operation by the following date [\_\_\_\_\_\_\_] (the “**Expected Commercial Operation Date**”). |
| **Guaranteed Commercial Operation Date:** | The “**Guaranteed Commercial Operation Date**” or “**Guaranteed COD**” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis under the Development Cure Period.  If Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to 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 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.  Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security. |
| **Commercial Operation Date (“COD”):** | The COD shall be the date when all of the following requirements have been met to Buyer’s reasonable satisfaction including Seller providing a certificate from an independent engineer to Buyer certifying to the following:   1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System. 2. Seller has installed equipment for the 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 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, and such peak electrical output, as adjusted, was [peak output in MW]. 5. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on [Date]. 6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [Date]. 7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date]   Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. |
| **Facility Development Milestones:** | * [*mm/dd/yyyy*] – Execute Interconnection Agreement * [*mm/dd/yyyy*] – Procure major equipment * [*mm/dd/yyyy*] – Obtain federal and state discretionary permits * [*mm/dd/yyyy*] – Expected Construction Start Date * [*mm/dd/yyyy*] – Obtain Full Capacity Deliverability Status * [*mm/dd/yyyy*] – Expected Commercial Operation Date |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Dedicated Interconnection Capacity**: | Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the 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. |
| **Scheduling Requirements and CAISO Settlements:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; 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 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 a 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 and real-time scheduling protocols and deadlines. |
| **Monthly Settlement and Invoice:** | Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.  Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process. |
| **Operations and Maintenance:** | Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the energy generating capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing. |
| **Credit Requirements:** | Seller shall post security as follows:  **Development Security** – $90/kW of Guaranteed Capacity  **Performance Security** – $105/kW of Guaranteed Capacity  To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date.  Development Security shall be in the form of cash or a Letter of Credit.  To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.  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. |
| **Prevailing Wage Requirement:** | Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Buyer agrees that Seller’s obligations for the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility. |
| **Responsible Procurement:** | Buyer will not accept any proposals for generating and/or storage facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility. |
| **Other Seller Commitments:** | Seller to check as applicable:  At least [*e.g., fifty percent (50%)*] of labor sourced from 100 mile radius  At least [XX]% of materials sourced from within 100 mile radius  US made equipment and components  Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [*describe community benefits*].  Other: |
| **Site Control:** | Seller shall maintain site control of the Facility 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 Facility is or will be constructed. Seller agrees and acknowledges that Buyer is simply purchasing energy services under the PPA and does not intend to be the lead agency for the Facility. |
| **Assignment:** | Neither Party may assign the PPA without prior written consent of the other Party, which shall not be unreasonably withheld.  Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which shall not be unreasonably withheld.  Seller shall pay Buyer’s out of pocket expenses, including reasonable attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing for the 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 this 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 this 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 in form and substance reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer. |
| **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. |

|  |  |
| --- | --- |
| **Confidentiality:** | Upon shortlisting, Seller shall execute a Mutual Non-Disclosure Agreement with Buyer. |
| **Exclusivity:** | Upon shortlisting, Seller shall execute an Exclusive Negotiating Agreement with Buyer. |
| **No Recourse to Members of Buyer:** | Buyer is organized as a Joint Powers 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 this 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. |
| **Force Majeure:** | “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this PPA or from complying with all or a portion of the conditions under this PPA if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this PPA at the Contract Price unprofitable or otherwise uneconomic (including 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 this PPA, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA. 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 for all periods prior to Buyer’s receipt of such 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. |
| **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 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**: Monterey County |

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 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 pursuant to 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. **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.
8. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
9. **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).
10. **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.

|  |  |
| --- | --- |
| **CENTRAL COAST COMMUNITY ENERGY, a California joint powers authority** | **[*RESPONDENT/SELLER***] |
| By:  Printed Name:  Title:  Approved as to form:  By:  Printed Name:  Title: | By:  Printed Name:  Title: |
|  |  |