# Proforma Term Sheet – Energy Storage

THIS TERM SHEET FOR ENERGY STORAGE SERVICES 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 energy storage services agreement (“**ESA**”) 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 ESA.

1. **ESA Terms and Conditions**

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| **Storage Facility:** | “**Storage Facility**” or “**Project**” means the [\_\_\_] project, located in [County], in the State of [California]. |
| **Storage Product:** | “**Product**” means all energy tolling services, capacity, Resource Adequacy Benefits, and ancillary services, however described, produced by, associated with, or capable of being produced by, the Storage Facility, for which Seller has obtained and continues to maintain eligibility for Full Capacity Deliverability Status.Buyer receives full dispatchable rights and energy revenues earned. For clarity, during the Delivery Term Seller may not use the Storage Facility to provide services or attributes to any third party.  Related Definitions:  “**Full Capacity Deliverability Status**” or “**FCDS**” has the meaning set forth in the CAISO Tariff.  “**Resource Adequacy Benefits**” means the rights and privileges attached to the Storage Facility that satisfy any entity’s resource adequacy obligations, and includes any local, zonal or otherwise locational attributes associated with the Storage Facility, in addition to flex attributes. |
| **Storage Contract Capacity:** | The Storage Facility will have an initial Storage Capacity of [XX] MWAC for [four (4)] hours (the “**Storage Contract Capacity**”). |
| **Delivery Term:** | [XX] Contract Years from the Commercial Operation Date, with each 12-month period following the Commercial Operation Date considered a “**Contract Year**.” Buyer shall have the right to extend the Delivery Term for an additional Contract Year upon written notice to Seller no less than ninety (90) days prior to the expiration of the final Contract Year of the current Delivery Term, provided, however, that this right may not be exercised for more than five Contract Years in total. |
| **Interconnection Point:** | The Project shall interconnect to [*e.g., XX substation*] (the “**Interconnection Point**”). Seller shall be responsible for all costs of interconnecting the Project to the Interconnection Point. |
| **Delivery Point:** | “**Delivery Point** means [the Storage Facility Pnode] on the CAISO grid. |
| **Contract Price:** | $[XX]/kW-month (flat, with no escalation). |
| **Payment:** | Seller shall be paid on a monthly basis at the applicable Contract Price, *multiplied* *by* the Storage Capacity as adjusted for the Storage Capacity Test, for such month, *multiplied by* the Availability Adjustment for such month, and *multiplied by* zero (0) in the event that the Efficiency Rate is less than the Minimum Efficiency Rate. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. |
| **Progress Reporting:** | After execution of the ESA, 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. |
| **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 Storage Contract 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 ESA 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 the 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 Storage Contract Capacity. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance monthly. 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 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 ESA and retain the Development Security. |
| **Commercial Operation Date:** | The “**Commercial Operation Date**” or “**COD**” shall be the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved. “**Commercial Operation**” means the condition existing when Seller has fulfilled the following conditions precedent in the ESA and provided notice of same to Buyer, including providing a certificate to Buyer from an independent licensed professional engineer with respect to subparts (ii), (iii) and (iv):   1. The Storage Facility has met all Interconnection Agreement requirements; 2. Commissioning of equipment has been completed in accordance with the manufacturer’s specifications; 3. 95% of Storage Contract Capacity has been installed and commissioned; 4. Storage Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Storage Facility; 5. All applicable permits and government approvals required for the operation of the Storage Facility have been obtained; 6. Seller has obtained all real property rights for site control; 7. Security requirements for the Delivery Term have been met; 8. Seller has paid Buyer all amounts owing under this ESA, if any, including for delay damages; and 9. Insurance requirements for the Storage Facility have been met, with evidence provided in writing to Buyer.   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. Buyer shall have five (5) Business Days to approve or reject Seller’s request for COD. Upon Buyer’s approval of Seller’s achievement of COD, Buyer shall provide Seller with written acknowledgement of the COD.  If Seller has not installed one hundred percent (100%) of the Storage Contract Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Storage Contract Capacity exceeds the Storage Capacity, and the Storage Contract Capacity and other applicable portions of the ESA shall be adjusted accordingly.  “**Capacity Damages**” means an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) per MW. |
| **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 Facility is or will be constructed. Seller agrees and acknowledges that Buyer is simply purchasing energy and storage services under the ESA and does not intend to be the lead agency for the Facility. |
| **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 |
| **Guaranteed Efficiency Rate:** | [XX]% |
| **Minimum Efficiency Rate:** | [XX]% |
| **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 monthly average On-Peak Hours LMP for the Storage Facility’s PNode, which amount shall be credited by Seller against amounts owed by Buyer in the applicable monthly invoice. |
| **Resource Adequacy Failure:** | For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the 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. |
| **Ramp Rate Range:** | [XX] MW/minute to [XX] MW/minute |
| **Annual Cycles:** | 365 cycles per Contract Year |
| **Additional Energy Storage Products:** | Buyer is entitled to all ancillary services and environmental attributes, if any, produced by the Storage Facility. |
| **Ancillary Services Capability:** | [List frequency regulation, spin, regulation up, regulation down, etc., and specify relevant operating parameters for each.] |
| **Deliverability:** | The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date. |
| **Dedicated Interconnection Capacity**: | Seller shall ensure that 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 Storage Contract 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 ESA, 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 ESA resulting from Seller’s inability to provide, or any third party use of, the Dedicated Interconnection Capacity. |
| **Scheduling Coordinator:** | Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges (including for Charging energy) and retain all CAISO payments (including for Discharging energy); 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 Storage 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.  Outage and curtailment notifications will be required by Buyer as well as access to Storage Facility charging and discharging data. |
| **Station Use:** | Buyer will not be responsible for Station Use and Station Use will not be provided by the Storage Facility. Expected Station Use: [XX] MWh per year. |
| **Guaranteed Storage Availability:** | [XX%] [percentage of hours each month that Seller agrees the Storage Facility will be available] |
| **Availability Adjustment:** | The Availability Adjustment (“**AA**”), which is calculated as follows:   1. If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:   AA = 100%   1. If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:   AA = 100% - [([XX%] - monthly storage availability) x 1.5]   1. If the monthly storage availability is less than 70%, then:   AA = 0 |
| **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. |
| **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:** | During the months of June through September, Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Storage Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Storage 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:** | The Seller shall post security as follows:  Development Security – $90/kW of Storage Contract Capacity  Performance Security – $105/kW of Storage Contract Capacity  To secure its obligations under the ESA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.  Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.  To secure its obligations under the ESA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. |
| **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: |
| **Assignment:** | Neither Party may assign the ESA without prior written consent of the other Party, which will not be unreasonably withheld; provided, that Seller has the right to assign the ESA 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 ESA, or to modify such ESA. |
| **Reserved** | ***Reserved*** |
| **Dispute Resolution:** | In the event of any dispute arising under the ESA, 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 ESA. 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 ESA. |
| **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 ESA or from complying with all or a portion of the conditions under this ESA 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 ESA 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 ESA, 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 ESA.  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 ESA:** | * **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 ESA, bankruptcy, assignment not permitted by the ESA, 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 |

**2. Additional Term Sheet Provisions**

1. **Neither Party Obligated to Enter Into Proposed Transaction**. This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into an ESA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the ESA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the ESA 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.
2. **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.
3. **Expenses**. Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.
4. **Termination**. This Term Sheet will terminate upon the earlier of (a) execution of the ESA 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.
5. **Governing Law**. This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
6. **Counterparts and Electronic Signatures**. This Term Sheet may be executed electronically and in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. The Parties may rely on electronic or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including email transmission of a PDF image) shall be the same as delivery of an original executed signature page.
7. **Prior Agreements**. This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
8. **Assignment**. This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party’s prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
9. **No Consequential Damages**. IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

[*Signatures appear on the following page*.]

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

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| **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: |

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