

## Term Sheet – Battery Storage Agreement

The following are the material terms and conditions of the Battery Storage Agreement (“BSA”) between Seller and PacifiCorp. Capitalized terms used and not defined herein will have the meanings given to such terms in the definitive BSA between the Parties.

1.	<b>PacifiCorp</b>	PacifiCorp, an Oregon corporation.
2.	<b>Seller</b>	[____]. Seller and PacifiCorp are sometimes referred to as a “ <u>Party</u> ” or collectively as the “ <u>Parties</u> ”.
3.	<b>Storage Facility and Premises</b>	Seller will construct, commission, own, operate and maintain an approximately [ ] MW battery energy storage system (“ <u>Storage Facility</u> ”) located in [ ] County, [ ] (“ <u>Premises</u> ”). The Storage Facility will be designed and constructed consistent with the battery energy storage system specifications set forth in <u>RFP Appendix A-1</u> (“ <u>BESS Specifications</u> ”). The Storage Facility will be charged solely from energy provided by PacifiCorp (“ <u>Charging Energy</u> ”) from the electric transmission or distribution facilities owned, operated or maintained by PacifiCorp (the “ <u>System</u> ”).
4.	<b>Term</b>	The BSA will be effective after its been executed and delivered by both Parties and filed by PacifiCorp in accordance with applicable Commission <sup>1</sup> rules (the “ <u>Effective Date</u> ”) and, unless earlier terminated as provided in the BSA, will remain in effect until [ ] (the “ <u>Term</u> ”). <sup>2</sup>
5.	<b>Project Milestones</b>	If any Project Milestone (other than Commercial Operation) is not achieved on or before the date specified in the BSA, then Seller will: (a) inform PacifiCorp of a revised projected date for the achievement of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of Commercial Operation (and on any other Project Milestone); and (b) provide PacifiCorp with a written report containing Seller’s analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Seller intends to undertake to ensure the timely achievement of Commercial Operation by the Scheduled Commercial Operation Date. If Seller complies with the preceding sentence then no failure of Seller to achieve a Project Milestone (other than Commercial Operation) on or

<sup>1</sup> Note to Bidders: The “Commission” will be the relevant state commission with jurisdiction over the Storage Facility and/or the BSA.

<sup>2</sup> Note to Bidders: Depending on the location of the Storage Facility, there may be associated filing or approval requirements with the applicable state public utility commission.

		before the scheduled date in the BSA will constitute an Event of Default.
6.	<b>Delay Damages</b>	If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, then: (a) Seller will pay to PacifiCorp Delay Damages from and after the Scheduled Commercial Operation Date up to, but not including, the earlier of: (i) the date the BSA is terminated in accordance with its terms; and (ii) the date that the Storage Facility achieves Commercial Operation; and (b) PacifiCorp may terminate the BSA.
7.	<b>Purchase of Storage Product</b>	Commencing on the Commercial Operation Date and continuing throughout the Term, Seller will make available to PacifiCorp, and PacifiCorp will receive all rights, title and interest in and to all Discharging Energy, Storage Capacity and Ancillary Services associated with the Storage Facility in accordance with the terms of the BSA (" <u>Storage Product</u> "). Seller will supply and deliver the Storage Product to PacifiCorp at the point of interconnection between the Storage Facility and the System, as specified in the Generation Interconnection Agreement and as further described in the BSA (" <u>Point of Delivery</u> "). Seller warrants that all Storage Product delivered to PacifiCorp will be free and clear of all liens, claims and encumbrances of any nature or kind.
8.	<b>Payments</b>	<p>PacifiCorp will pay Seller the Storage Contract Price equal to \$[ ] (in kW/month) for all Storage Product, and Seller will not be entitled to any compensation over and above the Storage Contract Price. The Storage Contract Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exceptions or give backs.</p> <p>PacifiCorp will not be obligated to purchase, receive or pay for anything other than Storage Product and then only based on the then applicable Storage Capacity Rating of the Storage Facility, not to exceed the maximum Storage Capacity Rating set forth in the Expected Storage Requirements.</p>
9.	<b>Metering</b>	At Seller's cost and expense, Seller will design, furnish, install, own, inspect, test, maintain and replace all metering equipment required by the Generation Interconnection Agreement and the BSA. Seller will reasonably cooperate with PacifiCorp in developing any metering protocols necessary for PacifiCorp to comply with the requirements of the Market Operator. The Storage Facility must be designed to be able to distinguish and separately meter energy for Charging Energy and energy for station load.

10.	<b>Storage Capacity Test</b>	<p>Prior to the Commercial Operation Date, Seller will schedule and complete one or more Storage Capacity Tests in accordance with the testing requirements of the BSA.<sup>3</sup> Thereafter, at least once per Contract Year, Seller will schedule and complete a Storage Capacity Test in accordance with such testing requirements. Both Parties will have the right to run one or more retests (not more often than monthly) of the Storage Capacity Test in accordance with such testing requirements.</p> <p>If the actual capacity of the Storage Facility determined pursuant to a Storage Capacity Test is less than the then current Storage Capacity Rating, then the actual capacity determined pursuant to such Storage Capacity Test will become the new Storage Capacity Rating at the beginning of the day following the completion of the test for all purposes under the BSA until a new Storage Capacity Rating is determined pursuant to a subsequent Storage Capacity Test, <u>provided</u> in no event will the Storage Capacity Rating be greater than the Storage Capacity Rating set forth in the Expected Storage Requirements.</p>
11.	<b>Storage Availability</b>	<p>During the Term, the Storage Facility will maintain a Storage Availability during each Contract Year of no less than the Guaranteed Storage Availability. If the Storage Availability during any Contract Year is less than the Guaranteed Storage Availability, then Seller will cure such failure by paying to PacifiCorp Storage Availability Damages calculated in accordance with the BSA.<sup>4</sup></p>
12.	<b>Storage Facility Scheduling</b>	<p>During the Term, PacifiCorp will have the exclusive right to schedule or designate the Storage Facility to deliver the Storage Product to PacifiCorp and to accept Charging Energy, in accordance with the procedures and protocols governing operations of the Storage Facility attached to the BSA, including (a) minimum and maximum operating parameters, (b) procedures for scheduling and dispatch, and (c) methods of day-to-day communications (collectively, the “<u>Storage Operating Procedures</u>”).<sup>5</sup> The Storage Operating Procedures will allow PacifiCorp to schedule the Storage Facility for seven (7) days per week and twenty-four (24) hours per day (including holidays) for all available components of the Storage Product, unless the Storage Facility is, in whole or in part, incapable of operations due to Force Majeure, a Planned Outage or a Maintenance Outage. During the Term, Seller will operate the Storage Facility to charge or discharge the Storage Facility in accordance with PacifiCorp’s instructions, and</p>

<sup>3</sup> Note to Bidders: The terms and conditions of the Storage Capacity Test will be agreed to by the Parties.

<sup>4</sup> Notice to Bidders: The terms and conditions of the Storage Availability and Guaranteed Storage Availability or other appropriate metrics applicable to storage availability will be agreed to by the Parties.

<sup>5</sup> Note to Bidders: The terms and conditions of the Storage Operating Procedures will be agreed to by the Parties.

		will not dispatch and operate the Storage Facility other than pursuant to an instruction by PacifiCorp in accordance with the BSA.
13.	<b>Standard of Construction and Operation</b>	Seller will construct, operate, maintain and repair the Storage Facility in accordance with: (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors; (b) the Permits and other Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements of the BSA; and (f) Prudent Electrical Practice.
14.	<b>Outages</b>	<p><u>Planned Outages</u>: Seller will provide PacifiCorp with an annual forecast of Planned Outages for the Storage Facility for each Contract Year between 1-3 months before the first day of each Contract Year, and may update such Planned Outage schedule as necessary to comply with the Generation Interconnection Agreement, Prudent Electrical Practices or the Storage Operating Procedures, <u>provided</u> that Seller may not schedule a Planned Outage during any portion of the months of [____],<sup>6</sup> except to the extent required by the Generation Interconnection Agreement, Prudent Electrical Practices or the Storage Operating Procedures.</p> <p><u>Maintenance Outage</u>: If Seller reasonably determines that it is necessary to schedule a Maintenance Outage for the Storage Facility, Seller will notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least 5 days before the Maintenance Outage begins. Seller will take all reasonable measures consistent with the Generation Interconnection Agreement, Prudent Electrical Practices and the Storage Operating Procedures to not schedule any Maintenance Outage during the months of [____]. Seller will use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage <u>provided</u> that such change has no substantial adverse impact on Seller or the Storage Facility. Seller will take all reasonable actions consistent with the Generation Interconnection Agreement, Prudent Electrical Practices and the Storage Operating Procedures to minimize the frequency and duration of Maintenance Outages.</p> <p><u>Forced Outage</u>: Seller will promptly provide notice to PacifiCorp of any Forced Outage of the Storage Facility resulting in more than a 10% reduction in the capacity of the Storage Facility. Seller will take all reasonable actions consistent with the Generation Interconnection Agreement, Prudent Electrical Practices and the Storage Operating Procedures to avoid and minimize the duration of Forced Outages.</p>

<sup>6</sup> Note to Bidders: The specific summer and winter months here and below will be identified based on the location of the Storage Facility in PacifiCorp's west or east balancing authority area.

		<u>Reduced Capacity</u> : Finally, Seller will inform PacifiCorp in writing, of any limitations, restrictions, deratings or outages reasonably predicted by Seller to affect more than five percent (5%) of the capacity of the Storage Facility and will promptly update such notice to the extent of any material changes in this information.
15.	<b>AGC</b>	The Storage Facility must be capable of charging and discharging through PacifiCorp's AGC system installed by Seller.
16.	<b>Access Rights</b>	Upon reasonable prior notice and subject to the prudent written safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller will provide PacifiCorp and PacifiCorp's Representatives with reasonable access to the Storage Facility: (a) for the purpose of reading or testing metering equipment; (b) as necessary to witness any acceptance tests; (c) as necessary to witness any testing associated with the Storage Facility; and (d) for other reasonable purposes at the reasonable request of PacifiCorp.
17.	<b>Taxes</b>	Seller will pay when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Storage Product up to the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp will pay or cause to be paid when due, or reimburse Seller for, all such taxes imposed or levied by any Governmental Authority on the Storage Product beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Storage Contract Price will not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exceptions or give backs.
18.	<b>Fines and Penalties</b>	Each Party will pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law as such fines and penalties relate to the subject matter of the BSA, except where such fines and penalties are being contested in good faith through appropriate proceedings.
19.	<b>Representations and Warranties</b>	The BSA will include representations and warranties for both Parties as are customary and appropriate in transactions and agreements of this type and consistent with the representations and warranties customary in PacifiCorp's power purchase agreements.
20.	<b>Project Development Security</b>	If prior to the Commercial Operation Date Seller fails to satisfy the Credit Requirements, then within 10 Business Days after the earlier of Seller's receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the

		posting of Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with the BSA, a Guaranty or a Letter of Credit in an amount equal to [ ] per kW of the expected Storage Capacity Rating set forth in the Expected Storage Requirements (“ <u>Project Development Security</u> ”). If at any time prior to the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within 10 Business Days after the earlier of Seller’s receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Project Development Security, Seller must provide to PacifiCorp and maintain in accordance with the BSA, alternate Project Development Security. PacifiCorp will be entitled to draw upon the Project Development Security for: (A) any Delay Damages due but unpaid to PacifiCorp under the BSA; (B) damages if the BSA is terminated because of a Seller Event of Default; and (C) any other amounts owing by Seller to PacifiCorp under the BSA.
21.	<b>Default Security</b>	If on or after the Commercial Operation Date Seller fails to satisfy the Credit Requirements, then within 10 Business Days after the earlier of Seller’s receipt of notice from (a) any source that Seller no longer satisfies the Credit Requirements or (b) PacifiCorp requesting the posting of Default Security, Seller must provide to PacifiCorp and maintain in accordance with the BSA, a Guaranty or a Letter of Credit in an amount equal to [ ] per kW of the Storage Capacity Rating (“ <u>Default Security</u> ”). If at any time after the Commercial Operation Date a Security Provider fails to satisfy the Credit Requirements, then within 10 Business Days after the earlier of Seller’s receipt of notice from (i) any source that the Security Provider no longer satisfies the Credit Requirements or (ii) PacifiCorp requesting the posting of alternate Default Security, Seller must provide to PacifiCorp and maintain in accordance with the BSA, alternate Default Security. PacifiCorp will be entitled to draw upon the Default Security for: (A) damages if the BSA is terminated because of a Seller Event of Default; and (B) any other amounts owing by Seller to PacifiCorp under the BSA.
22.	<b>Event of Default; Remedies</b>	<p>An event of default (“<u>Event of Default</u>”) will occur with respect to a Party (the “<u>Defaulting Party</u>”) upon the occurrence of each of the following events and the expiration of any applicable cure period provided for below:</p> <p>(a) the Defaulting Party fails to make a payment when due under the BSA and such failure is not cured within 10 Business Days after the Non-Defaulting Party gives notice to the Defaulting Party of such default.</p>

		<p>(b) the Defaulting Party fails to perform any material obligation in the BSA, and such default is not cured within 30 days after the Non-Defaulting Party gives the Defaulting Party notice of such default; <u>provided, however</u>, that if such default is not reasonably capable of being cured within the 30-day cure period but is reasonably capable of being cured within 90 days, then the Defaulting Party will have an additional reasonable period of time to cure such default, not to exceed 90 days following the date of such notice of default, <u>provided</u> that the Defaulting Party provides to the Non-Defaulting Party a remediation plan within 15 days following the date of such notice of default and the Defaulting Party promptly commences and diligently pursues such remediation plan.</p> <p>(c) the Defaulting Party breaches one of its representations or warranties in the BSA and such default is not cured within 30 days after the Non-Defaulting Party gives the Defaulting Party notice of such default; <u>provided, however</u>, that if such default is not reasonably capable of being cured within the 30 day cure period but is reasonably capable of being cured within 90 days following the date of such notice of default, <u>provided</u> that the Defaulting Party provides to the Non-Defaulting Party a remediation plan within 15 days following the date of such notice of default and the Defaulting Party promptly commences and diligently pursues such remediation plan.</p> <p>(d) the Defaulting Party: (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.</p> <p>(e) The Defaulting Party makes an Assignment in violation of the BSA.</p> <p>(f) Seller fails to deliver, increase or maintain Security as required by the ESA, and such default is not cured within 10 days after PacifiCorp gives notice to Seller of such default.</p> <p>(g) Seller fails to cause the Storage Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date.</p> <p>(h) Seller sells, delivers or transfers Storage Product from the Storage Facility to a party other than PacifiCorp in breach of the BSA, and Seller does not permanently cease the same within 10 days after PacifiCorp gives notice to Seller of such default.</p>
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23.	<b>Termination; Remedies</b>	<p>From and during the continuation of an Event of Default, the Non-Defaulting Party will be entitled to all remedies available at law or in equity, and may terminate the BSA by notice to the Defaulting Party.</p> <p>PacifiCorp will submit an application to the Network Service Provider requesting designation of the BSA as a Network Resource, thereby authorizing transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Network Service Provider. PacifiCorp will have the right to terminate the BSA if the Network Service Provider confirms through the Tariff study process that network upgrades will be required on the Network Service Provider's transmission system in order to accept PacifiCorp's request to designate the BSA as a Network Resource, and the estimated cost to PacifiCorp of such network upgrades are in excess of \$[ ] (the "<u>Network Upgrades Amount</u>").</p>
24.	<b>Indemnification</b>	<p><u>Mutual Indemnity</u>: To the extent permitted by Requirements of Law, each Party will indemnify, defend and hold harmless the other Party and its Affiliates and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "<u>Indemnitees</u>") from and against any and all Liabilities resulting from, arising out of, or in any way connected with, the breach, performance or non-performance by the indemnifying Party of its</p>

<sup>7</sup> Note to Bidders: This and/or additional Events of Default will be included in the BSA depending upon the final agreed upon Storage Capacity, Storage Availability and/or other testing and performance guarantees.

		obligations under the BSA, or relating to the Storage Facility or the Premises, or, where Seller is the indemnifying Party, the Generation Interconnection Agreement, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any third party Person, except to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Indemnatee.
25.	<b>Assignment</b>	<p><u>Prohibition on Assignment</u>: Except as provided below, neither Party may Assign the BSA or any of its rights or obligations under the BSA without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.</p> <p><u>Permitted Assignments</u>: Either Party may, without the need for consent from the other Party (but with prior notice to the other Party, including the name of the Affiliate), Assign the BSA to an Affiliate; <u>provided, however</u>, that it will be a condition precedent to such Assignment that such Affiliate enters into an assignment and assumption agreement pursuant to which such Affiliate assumes all of the assigning Party's obligations under the BSA and agrees to be bound by the terms of the BSA; <u>provided, further</u> that in the case of Assignment by Seller: (a) such Affiliate must possess the same or similar experience and the same or better creditworthiness as Seller as of the Execution Date, as reasonably determined by PacifiCorp; and (b) any Security required pursuant to the BSA must be replaced or remain in full force and effect. In addition, PacifiCorp may without the need for consent from Seller (but with prior notice to Seller, including the name of the assignee) Assign the BSA in whole or in part to any Person if PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp will be released from all liability under the BSA; <u>provided, however</u>, that it will be a condition precedent to such Assignment that such assignee: (i) enters into an assignment and assumption agreement pursuant to which such assignee assumes all of PacifiCorp's obligations under the BSA and agrees to be bound by the terms of the BSA; and (ii) has the same or better credit rating as PacifiCorp as of the Execution Date.</p> <p><u>Assignment to Lenders</u>: Seller may, without relieving itself from its obligations and liabilities under the BSA, Assign the BSA or the revenues or proceeds thereof, or all or any part of its ownership interest in the Storage Facility, including the Premises, to a Lender in connection with a financing or refinancing of the Facility; <u>provided, however</u>, that it will be a condition precedent to the effectiveness of any such Assignment that: (a) Seller provides no less than 10 Business Day's prior notice thereof to PacifiCorp; and (b) Seller, PacifiCorp and Lender enters into a consent to collateral assignment agreement, substantially and in all material respects in the form attached to the BSA (a "<u>Lender Consent</u>"); <u>provided</u> that Seller will</p>

		<p>reimburse PacifiCorp for all reasonable costs and expenses incurred by or on behalf of PacifiCorp in connection with the Lender Consent.</p> <p><u>Restrictions on Change of Control:</u> No Controlling Interest in Seller may be directly or indirectly Assigned (whether through a single transaction or a series of transactions over time) without PacifiCorp's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.</p>
26.	<b>Dispute Resolution; Choice of Forum</b>	<p><u>Informal Dispute Resolution:</u> Prior to proceeding with formal dispute resolution, the Parties must first attempt in good faith to resolve informally all disputes arising out of, related to or in connection with the BSA. If the matter has not been resolved within thirty (30) days after the dispute has been referred to the Parties' respective senior executives, then subject to mediation provided below, either Party may initiate any legal remedies available to the Party.</p> <p><u>Mediation:</u> If a dispute is not resolved by the senior executives above, then either Party may request that the matter be submitted to non-binding mediation. If either Party requests non-binding mediation, then the dispute must be submitted to non-binding mediation before the Parties may exercise any other legal remedies. The costs of the mediation, including fees and expenses, will be borne equally by the Parties.</p> <p><u>Choice of Forum:</u> Each Party irrevocably consents and agrees that any legal action or proceeding arising out of the BSA will be brought exclusively in the state and federal courts in [Portland, Oregon][Salt Lake City, Utah]<sup>8</sup>.</p>
27.	<b>Governing Law; Jury Trial Waiver</b>	<p><u>Governing Law:</u> The BSA will be interpreted and enforced in accordance with the laws of the State of [Utah][Oregon]<sup>9</sup>, without applying any choice of law rules that may direct the application of the laws of another jurisdiction.</p> <p><u>Waiver of Jury Trial:</u> Each Party waives the right to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with the BSA.</p>

<sup>8</sup> Note to Bidders: Storage Facilities interconnecting or delivering to PacifiCorp's eastern balancing area will default to the courts in Salt Lake City, Utah, and Storage Facilities interconnecting or delivering to PacifiCorp's western balancing area will default to the courts in Portland, Oregon.

<sup>9</sup> Note to Bidders: Storage Facilities interconnecting or delivering to PacifiCorp's eastern balancing area will be governed by Utah law, and Storage Facilities interconnecting or delivering to PacifiCorp's western balancing area will be governed by Oregon law.