

# 2022AS RFP Appendix K-1

## SERVICE AND MAINTENANCE AGREEMENT TERM SHEET

THIS TERM SHEET DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS TERM SHEET OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS TERM SHEET SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND A DEFINITIVE AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS TERM SHEET OR IN THE COURSE OF ANY NEGOTIATIONS.

<u>Contractor:</u>	[ ] (“ <b>Contractor</b> ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ <b>Owner</b> ”). Owner and [ ] (“ <b>Developer</b> ”) have entered into that certain Build Transfer Agreement (“ <b>Build Transfer Agreement</b> ”) whereby Owner shall purchase (and Developer shall sell and transfer) the Facility (as defined below) prior to Availability Completion (as defined in the Build Transfer Agreement).
<u>Scope:</u>	Contractor and Owner would enter into a Service and Maintenance Agreement (the “ <b>Agreement</b> ”) for the provision of scheduled and unscheduled maintenance services on wind turbine generators (“ <b>WTGs</b> ”), towers, SCADA system, fire suppression system, switchgear, climb assists, foundation, FAA lighting, CMS monitoring and other ancillary WTG related equipment (and on replacement parts installed in any of them) (the “ <b>Serviced Equipment</b> ”) at Owner’s wind-powered electric generation facility (the “ <b>Facility</b> ”) to be located in [ ] (the “ <b>Site</b> ”) and to be constructed pursuant to a Balance of Plant Engineering, Procurement and Construction Agreement (the “ <b>EPC Agreement</b> ”) between [ ] (“ <b>EPC Contractor</b> ”) and Developer. In addition to the Agreement, there will be a separate Turbine Supply Agreement (“ <b>TSA</b> ”) with respect to the WTGs to be executed by Contractor and Developer. The EPC Agreement and TSA will be assigned by Developer to Owner prior to Project Mechanical Completion and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).
<u>SMA Services:</u>	<p>Contractor shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the Serviced Equipment for the duration of the Term, which services shall include typical and customary long-term servicing activities for WTGs, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, (i) Planned Maintenance and Unplanned Maintenance including provision and maintenance of all labor, tools, equipment and safety equipment including cranes or such other lifting equipment required for such maintenance and service of WTGs, (ii) In-and-Out Activities and (ii) services comprising or related to inspections and testing of parts or components of the WTGs including vibration analysis (the “<b>SMA Services</b>”).</p> <p>In addition, Contractor may perform certain extra work requested by Owner or recommended by Contractor and documented in a written change order executed by</p>

	Owner and Contractor (the “ <b>Extra Work</b> ”).
<u>Planned Maintenance:</u>	<p>“<b>Planned Maintenance</b>” shall include any and all typical and customary inspection, testing, maintenance and replacement of Covered Parts and Miscellaneous Hardware of the Serviced Equipment and any SMA Services as may be necessary:</p> <ul style="list-style-type: none"> <li>(i) to complete all inspections in accordance with a schedule and scope of work to be agreed by Owner and Contractor and set forth in the Agreement (the “<b>Scheduled Inspections</b>”);</li> <li>(ii) to perform, as necessary, typical and customary maintenance on each WTG following the removal of such WTG from electric or power generation service due to Planned Maintenance (a “<b>Planned Maintenance Outage</b>”); and</li> <li>(iii) to repair or replace Covered Parts as required by the original manufacturer’s recommendations, including all Service Bulletins issued by Contractor or its Affiliates and relating to potential defects of the Covered Parts or any parts or components thereof.</li> </ul>
<u>In-and-Out:</u>	Contractor shall be responsible for all in-and-out activities (and costs related thereto) necessary to perform all Planned Maintenance, Unplanned Maintenance and Extra Work on the Serviced Equipment, including (i) the removal, disassembly and opening of all coverings, assemblies, systems, structures and components of the Serviced Equipment so as to allow access as required, (ii) the replacing, reassembly and closing of such coverings, assemblies, systems, structures and components of the Serviced Equipment that were affected, and (iii) the provision of all tools, equipment, labor, technical direction, and start-up support in connection therewith (the “ <b>In-and-Out Activities</b> ”).
<u>Covered Parts:</u>	During the Term, Contractor shall provide Covered Parts, Miscellaneous Hardware and Spare Parts for Planned Maintenance, Unplanned Maintenance and Extra Work. “ <b>Covered Parts</b> ” shall include parts typical and customary in the operation of WTGs of the model(s) used in the Facility.
<u>Miscellaneous Hardware:</u>	“ <b>Miscellaneous Hardware</b> ” shall include the consumable and contingency hardware (such as bolts, studs, screws, nuts, washers, lock wire, lock washers, pins and springs) required for disassembly and reassembly of the Serviced Equipment.
<u>Spare Parts Title:</u>	<p>Contractor shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply (in conjunction with provision of Spare Parts by the Contractor under the TSA) all necessary and recommended spare parts and consumables for the Facility (collectively, the “<b>Spare Parts</b>”). Contractor shall maintain the Spare Parts at its own expense at the Site and on a dedicated basis for exclusive use for the Facility; <u>provided, however</u>, that with respect to Spare Parts related to Extra Work, Contractor shall offer to sell to Owner such Spare Parts as are manufactured by Contractor or its affiliates (including Seller under the TSA) at Contractor’s then-current market prices in the United States for spare parts and consumables subject to an agreed-upon discount set forth in the Agreement.</p> <p>Contractor shall provide a monthly report with respect to the inventory of Spare Parts, including any parts procured or replaced during such period, and shall make recommendations to Owner regarding the appropriate number and type of Spare Parts for the Facility. Contractor shall replenish the inventory of Spare Parts on an</p>

	<p>ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee.</p> <p>All Spare Parts procured or used with respect to the Facility shall be new OEM parts that comply with any applicable warranty requirements and are of equal or better quality as compared to the OEM parts used in the initial construction of the Facility. Title to such Spare Parts shall transfer from Contractor to Owner upon the earlier of Owner's payment therefor or installation of the same into the Facility.</p>
<u>Technical Advisory Services:</u>	<p><b>"Technical Advisory Services"</b> shall include technical advice, instruction, direction, information, or assistance and counsel provided by Contractor or its personnel (including, but not limited to, the individual who shall be on-Site on a full-time basis) or any field engineers, supervisors or inspectors who may be provided by Contractor for the purpose of Planned Maintenance, Unplanned Maintenance or Extra Work concerning installation, operation, inspection, maintenance, repair and removal of Covered Parts or for the Serviced Equipment. Unless otherwise specified in the Agreement, Technical Advisory Services would not include supervision or management of Owner's employees, agents, or other contractors.</p>
<u>Unplanned Maintenance:</u>	<p>Contractor shall provide all Covered Parts, Miscellaneous Hardware, tools and equipment (including cranes) and SMA Services, and undertake all activities necessary to plan and perform all Unplanned Maintenance. <b>"Unplanned Maintenance"</b> shall include any and all inspection, testing, maintenance, replacement and refurbishment of parts and components of the Serviced Equipment and the performance of SMA Services as may be necessary to remedy any sudden and accidental in-service failure of any part or component (without prejudice to Contractor's warranty obligations), including any "downstream" or "collateral" physical property damage caused by Covered Parts, Miscellaneous Hardware or SMA Services provided by Contractor. Contractor's Unplanned Maintenance obligations would result from (without limitation) the following circumstances: (a) the Covered Parts or Miscellaneous Hardware proved defective, (b) damage occurred to the Serviced Equipment, Covered Parts or Miscellaneous Hardware while within the care, custody and control of Contractor (e.g., foreign object damage), (c) the root technical cause of an incident involving a Covered Part or Miscellaneous Hardware cannot be determined after a reasonable time for technical assessment, or (d) a Covered Part fails after a Planned Maintenance interval has been extended based on Contractor's technical recommendation.</p>
<u>SMA Fee:</u>	<p>The Agreement shall provide for a typical and customary fixed annual fee covering the SMA Services and Technical Advisory Services (the <b>"SMA Fee"</b>). Contractor shall not be entitled to any additional compensation, except as set forth in a change order with respect to Extra Work and in connection with Owner's purchase of Spare Parts as described above.</p>
<u>Term:</u>	<p>The Agreement shall be executed and effective on or before the date that the EPC Agreement is executed by both Developer and EPC Contractor, <u>provided</u> that the operational term of the Agreement shall commence upon Project Mechanical Completion (as defined in the EPC Agreement) of the Facility and expire upon the date that is [ ] ( ) calendar years from the commencement of the Agreement (the <b>"Term"</b>). <i>Note that the Term should match the warranty term of the TSA such that the Term is aligned with the term for "Covered Parts" (or similar concept)</i></p>

	<i>under the TSA.</i>
<u>Independent Contractor:</u>	Contractor is acting and shall be deemed for all purposes to be an independent contractor and nothing in the Agreement shall be construed as constituting any relationship with Owner other than that of owner and independent contractor. Contractor shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers or service-providers. Owner and Contractor are not partners, agents or joint venturers with each other, and the Agreement is not intended to nor shall it be construed to create a partnership or joint venture between Owner and Contractor. Contractor shall complete the SMA Services according to its own means and methods of work, which shall be in the exclusive charge and control of Contractor and which shall not be subject to the control and supervision of Owner, except as to the results of the SMA Services.
<u>Subcontracts:</u>	Subject to Owner's consent, not to be unreasonably withheld, Contractor may enter into subcontracts for particular aspects of its obligations under the Agreement. All subcontracts shall incorporate and flow-down applicable requirements from the Agreement (including with respect to insurance), be assignable to the Owner upon termination of the Agreement and provide that Owner is a third-party beneficiary thereunder. Contractor shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner's warranty requirements.
<u>Personnel:</u>	Contractor shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the SMA Services, and such personnel shall perform such SMA Services in accordance with the applicable Requirements (defined below). Contractor shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the SMA Services. Contractor shall be responsible for all matters relating to labor relations (including confirming labor union agreement with applicable project labor agreements), working conditions, training, employee benefits, safety programs and related matters pertaining to such personnel, including, if applicable, with any prevailing wage, project labor or other requirements.
<u>Business Practices:</u>	Contractor, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the SMA Services. In conjunction with its performance of the SMA Services, Contractor and its employees, officers, agents and representatives shall comply with, and cause its subcontractors and their respective employees, officers, agents and representatives to comply with, all applicable laws prohibiting bribery, corruption, kick-backs or similar unethical practices including, without limitation, the United States Foreign Corrupt Practices Act and Owner's "code of business conduct", which code of business conduct would be included as an exhibit to the Agreement.
<u>Cyber Security</u>	Contractor shall have and maintain security controls to protect the Owner's networks, systems, software, confidential information, and data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems-Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management. All cyber security shall meet the Cybersecurity Requirements contained in Appendix A-1.2 "Wind Work Specifications" to the Request for Proposal to which this term sheet is attached. Note that prior to

	execution of a definitive agreement, Owner reserves the right to update its cybersecurity requirements to which Contractor must comply, as Owner deems advisable, in its sole discretion.
<u>SMA Manual:</u>	Not later than one hundred eighty (180) days prior to the commencement of the Term, Contractor shall prepare and submit, for Owner's review and approval, a manual relating to the operation and maintenance of the Facility that incorporates any specific service requirements necessary to comply with the Requirements or that are an integral part of Contractor's obligations in connection with the SMA Services and the Technical Advisory Services (the " <b>O&amp;M Manual</b> "). Owner shall provide comments, if any, to the O&M Manual to Contractor within thirty (30) days after Owner's receipt of such O&M Manual. Contractor shall modify the O&M Manual based upon Owner's comments and shall provide Owner with a copy of such revised O&M Manual within thirty (30) days after Contractor's receipt of Owner's comments. Once approved by the parties, the O&M Manual may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the O&M Manual be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause SMA Services and Technical Advisory Services to be performed in accordance with applicable law and insurance requirements.
<u>Annual Maintenance Plan:</u>	Not later than ninety (90) days prior to the commencement of each contract year, Owner and Contractor shall meet to discuss the projected SMA Services and Technical Advisory Services for the Facility to be performed for such upcoming calendar year in accordance with the Requirements. Within twenty (20) days after each such meeting, Contractor shall prepare and submit, for Owner's review and approval, a recommended plan (an " <b>Annual Maintenance Plan</b> ") setting forth (i) Contractor's intended work plan for the SMA Services and Technical Advisory Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the SMA Services and Technical Advisory Services to be performed, and (iv) any other related activities for each calendar month over the ensuing contract year, which Annual Maintenance Plan shall be in compliance with the Requirements. Owner shall provide comments to the Annual Maintenance Plan, if any, to Contractor within fifteen (15) days after such meeting. Contractor shall modify the Annual Maintenance Plan based upon Owner's comments. Once approved by the parties, the Annual Maintenance Plan may not be amended or modified without the written consent of the parties, which approval shall not be unreasonably withheld; provided that, Owner may require that the Annual Maintenance Plan be amended or modified to account for updated security (including cyber-security) requirements of Owner or to cause the SMA Services and Technical Advisory Services to be performed in accordance with applicable law and insurance requirements. The approved Annual Maintenance Plan shall be integrated into the O&M Manual.
<u>Minimal Interference:</u>	Contractor shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the SMA Services in a manner that will minimize interference with the operation of the Facility (by the BOP O&M operator) and to conduct its work at such times so as to minimize reduction of production in respect of the Facility, including where applicable, coordination with the BOP O&M operator. Unless granted prior written approval from Owner, Contractor shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to

	reduce Facility production during wind season, determined by site location, unless winds are below 4 m/s.
<u>Hazardous Substances:</u>	Contractor shall minimize the use of hazardous substances and shall not permit any of its subcontractors, directly or indirectly, to use, handle, store, generate, manufacture, transport or release any hazardous substances in, on or under the Facility, the Site and any adjacent areas thereto, except to the extent required for the performance of the SMA Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Contractor. Contractor or subcontractors shall be responsible for the disposal, transportation and reporting of hazardous substances at the Site, in each case, by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable laws. Contractor shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Contractor discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Contractor shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by the Requirements in connection with the release of hazardous substances by Contractor. Contractor shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Contractor as a result of the remediation or removal of hazardous substances for which Contractor is responsible.
<u>Title; Risk:</u>	The Agreement shall provide for typical and customary provisions with respect to delivery of Covered Parts and Miscellaneous Hardware as well as transfer of title.
<u>Standard of Performance:</u>	All SMA Services shall be performed by Contractor in a good and workmanlike manner, free of any defect or deficiency, consistent with prudent industry practices with respect to first-tier, grid-interconnected, rate-based wind facilities in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the warranties applicable to the Serviced Equipment and the Covered Parts, the SMA Manual, the Safety Plan and Owner's operating procedures (collectively, the " <b>Requirements</b> ").
<u>Services Warranty:</u>	Contractor shall warrant in the Agreement that the SMA Services will be performed in a good and workmanlike manner and be free from defects in workmanship and materials in accordance with the Requirements for a period of two (2) years after completion thereof. The Agreement shall provide for typical and customary provisions with respect to Contractor's warranty of the SMA Services, including a services warranty that extends at least two (2) years after the conclusion of the Term of the Agreement and extensions of the services warranty for two (2) years following repair and replacement of parts and equipment. Contractor shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and materials related to the SMA Services, which such obligation shall survive expiration of the Term. When Contractor detects or is notified of a defect covered by the services warranty, Contractor shall, at its sole cost and expense, promptly repair, replace, and/or re-perform the services and/or materials as necessary to cure such defect, in each case to the satisfaction of Owner.
<u>Safety</u>	Contractor shall take necessary safety and other precautions to protect property and

<u>Requirements:</u>	persons from damage, injury or illness arising out of the performance of the SMA Services and Technical Advisory Services and be responsible for the compliance by Contractor, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the SMA Services and Technical Advisory Services. Contractor shall strictly comply with the terms of Owner's site safety plan (the " <b>Safety Plan</b> "). Owner shall be entitled to review and provide comments to the Safety Plan and Contractor shall incorporate any comments provided by Owner. Contractor shall be responsible for updating and revising the Safety Plan to comply with all Requirements including any changes thereto. Contractor shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site.
<u>Performance Guarantee:</u>	The Agreement shall provide for typical and customary performance guarantee provisions.
<u>Credit Support:</u>	Contractor will provide such credit support as may be reasonably required by Owner based on Owner's analysis of relevant financial criteria with respect to Contractor's financial capability to satisfy its obligations under the Agreement. Such credit support shall cover Contractor's performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the SAM Services or the Facility.
<u>Regulatory/ Compliance:</u>	Contractor shall comply with all requirements of any governmental authorities including, but not limited to, FERC, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Site Access:</u>	Owner shall provide Contractor with such access to the Facility as reasonably necessary to enable Contractor to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Contractor and to local electric utility personnel, and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Contractor shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Owner's use of the Site, the BOP O&M operator's performance of its services, and any of Owner's separate contractors' activities at the Site.
<u>Indemnification:</u>	Contractor shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (" <b>Owner Parties</b> ") and hold them harmless from and against all reasonable out-of-pocket costs, expenses and actual liabilities arising out of or relating to any claim or any litigation or other proceeding that relate to (i) claims for injury or property damage, (ii) worker's compensation claims, (iii) penalties due to failure to comply with applicable law, (iv) taxes owed by Contractor, (v) Liens arising with respect to the Facility and (vi) hazardous substances.
<u>Liens:</u>	Contractor shall keep and maintain the Facility and the Site free and clear of all liens, encumbrances, claims, charges that if unpaid, might become a lien, and rights of retention (" <b>Liens</b> ") resulting from the action of Contractor or work done at the request of Contractor (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Contractor shall

	<p>take prompt steps to discharge any such Lien. Contractor shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Contractor shall indemnify and hold harmless Owner for any losses or expenses incurred by Owner (including reasonable attorneys' fees) in discharging any such Lien. Upon request from Owner, Contractor shall request lien waivers from a subcontractor upon completion and payment for such subcontractor's relevant work and, upon request from Owner, Contractor shall supply copies of such lien waivers to Owner.</p>
<u>Termination Rights:</u>	<p>The Agreement shall provide for typical and customary termination rights and associated termination payments, including termination for insolvency, bankruptcy, non-payment, prohibited assignment, etc. Owner shall have termination rights related to a failure for Contractor to satisfy certain benchmarks related to the Performance Guarantee.</p> <p>Following any termination of the Agreement for any reason, Contractor shall (a) withdraw from the Site and expeditiously transfer to Owner any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility and the SMA Services and (b) cooperate with Owner and any replacement service provider concerning the transition to such replacement service provider.</p>
<u>Insurance:</u>	<p>The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Contractor's performance of its obligations with respect to the Facility.</p>
<u>Intellectual Property Matters:</u>	<p>Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Contractor in connection with the SMA Services and Technical Advisory Services. In addition, Contractor shall grant to Owner, for the life of the Facility, a paid-up, irrevocable, non-exclusive, transferrable, royalty-free right and license under all intellectual property rights that are used by Contractor in providing the SMA Services and Technical Advisory Services as necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose, and transfer ownership of the Facility.</p>
<u>Limitation of Liability:</u>	<p>The Agreement shall provide for typical and customary terms regarding Contractor's aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement (with a liability cap in any contract year of two hundred percent (200%) of the fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Contractor to pay liquidated damages under the Agreement or the Performance Guarantee), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; <i>provided</i> that to the extent not fully covered by insurance, each party shall remain liable for any damage to or loss of any property or equipment (including any deductible amounts) caused by such party's fraud, negligence, gross negligence, or willful misconduct.</p>
<u>Taxes:</u>	<p>Contractor shall pay any and all sales and use, goods and services, value added, customs and duties (including federal import taxes, including any import duties or</p>



	fees, on materials imported for performance of the SMA Services), withholding, service, general excise, ad valorem or similar taxes to the extent assessed or assessable under applicable law, and taxes measured by or imposed on the net income or net profit of Contractor.
<u>Records; Audit:</u>	Contractor shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the SMA Services and the Facility for a period not less than the Term of the Agreement plus five (5) years. To the extent specified in the SMA Manual, such records shall be maintained in electronic form on the secure shared file site relating to the Facility. In addition, Owner shall have the right to audit and inspect Contractor's records upon reasonable advance notice.
<u>Assignment:</u>	Contractor may not assign its rights and obligations under the Agreement without Owner's prior written consent, which consent shall not be unreasonably withheld. For the avoidance of doubt, Owner may, without the consent of Contractor, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, including assignment or delegation made consistent with the assignment provisions of the Build Transfer Agreement.
<u>Confidentiality:</u>	Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Contractor shall acknowledge that certain governmental authorities have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to such governmental authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.
<u>Dispute Resolution;</u> <u>Governing Law:</u> <sup>1</sup>	<p>This Term Sheet is, and the Agreement shall be, governed by the laws of the State of [____], without regard to its conflict of laws provisions.</p> <p>The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in [____], [____], or, if such court does not have subject matter jurisdiction, the state courts of the State of [____]. Each party shall waive any objection to forum or venue, and any right to jury trial. The parties shall consent to joinder or consolidation with respect to any disputes involving common issues of law or fact with respect to the Facility, the EPC Agreement or any other agreement relating to the Facility.</p> <p>Any disputes between the parties not resolved via good faith negotiations may proceed to litigation unless the parties mutually agree to arbitration, which arbitration shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.</p>

<sup>1</sup> Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.