

2022AS RFP Appendix K-4

INTEGRATED SOLAR/STORAGE O&M 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>Operator:</u>	[] (“ Operator ”).
<u>Owner:</u>	PacifiCorp, an Oregon corporation (“ Owner ”). Owner and [] (“ Developer ”) have entered into that certain Build Transfer Agreement (“ Build Transfer Agreement ”) 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>	Operator and Owner would enter into an Operations and Maintenance Agreement (the “ Agreement ”) for the provision of O&M Services (defined below) with respect to an integrated [] MW(ac) ground-mounted solar photovoltaic electric generating and energy storage facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to an Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. The EPC Agreement will be assigned by Developer to Owner prior to the Substantial Completion (as defined in the EPC Agreement) and the commencement of the Term of the Agreement (at closing of the Build Transfer Agreement).

<p><u>O&M Services:</u></p>	<p>Operator shall provide all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services for the entire Facility for the duration of the Term (the “O&M Services”), which shall include (i) certain basic services that constitute typical and customary operation and maintenance activities for a regulated electric utility, to be defined and set forth in an exhibit to the Agreement, but including, at a minimum, annual cleaning (x2), full preventative maintenance (including mechanical, electrical, inverter, tracker and MV/HV maintenance services and including maintenance services with respect to the energy storage system), visual inspection, system testing and calibration, corrective and unscheduled maintenance, failure response, notifications, forecasting, staffing and remote monitoring, warranty support, asset management, regulatory/compliance, site and vegetation management (including any site grading and maintenance of storm water structures), garbage disposal, security services, perimeter fencing, restroom and Facility maintenance (including janitorial services), water supply, dust containment, snow and ice removal, road maintenance, reporting and compliance (including environmental compliance), training of personnel and reasonable assistance to Owner in its annual operation, maintenance, administrative and general budgeting and capital planning efforts (the “Basic Services”), (ii) any additional services requested by Owner or recommended by Operator and documented in a written change order executed by the parties (the “Additional Services”) and (iii) any emergency services necessary to address emergency affecting the safety or protection of persons or endangering the Facility or other property located at the Site (the “Emergency Services”).</p>
<p><u>Spare Parts Title:</u></p>	<p>Operator shall maintain any initial spare parts provided by Owner or EPC Contractor and otherwise supply all necessary and recommended spare parts and consumables for the Facility (the “Spare Parts”). Operator 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 Additional Services, Operator shall offer to sell to Owner such Spare Parts as are manufactured by Operator or its affiliates at Operator’s then-current market prices in the United States for spare parts and consumables for utility-scale projects subject to an agreed-upon discount set forth in the Agreement.</p> <p>Operator 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. Operator shall replenish the inventory of Spare Parts on an ongoing basis as necessary to ensure operation of the Facility in accordance with the Performance Guarantee. 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 Operator to Owner upon the earlier of Owner’s payment therefor or installation of the same into the Facility.</p>

<u>O&M Fee:</u>	Owner shall pay Operator a fee of \$[]/kW (DC) determined on the basis of final capacity of the Facility as certified under the EPC Agreement (the “ O&M Fee ”). The O&M Fee shall be paid in semi-annual installment in arrears. The O&M Fee covers all Basic Services. Operator shall not be entitled to any additional compensation, except as set forth in a change order with respect to Additional Services or with respect to Emergency Services or in connection with Owner’s purchase of Spare Parts as described above. Payment for Additional Services or Emergency Services shall be capped at (i) Operator’s personnel costs (at an agreed rate schedule) plus (ii) any actual, direct third-party costs to Operator plus a markup of five percent (5%).
<u>Term:</u>	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 be a period of [] years, commencing upon Substantial Completion of the Facility (the “ Term ”) with mutually agreed term extension provisions.
<u>Independent Contractor:</u>	Operator 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. Operator shall have no authority to bind Owner to any contractual obligations with third parties, including any vendors, suppliers, or service-providers. Owner and Operator 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 Operator. Operator shall complete the O&M Services according to its own means and methods of work, which shall be in the exclusive charge and control of Operator and which shall not be subject to the control and supervision of Owner, except as to the results of the O&M Services.
<u>Subcontracts:</u>	Subject to Owner’s consent, not to be unreasonably withheld, Operator 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. Operator shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Owner’s warranty requirements.
<u>Personnel:</u>	Operator shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the O&M Services including, for the avoidance of doubt, all such O&M Services related to the energy storage system, and such personnel shall perform such O&M Services in accordance with the applicable Requirements (defined below). Operator shall pay all wages and benefits required by applicable law or contract with respect to personnel performing the O&M Services. Operator shall be responsible for all matters relating to labor relations, 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.

<p><u>Business Practices:</u></p>	<p>Operator, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing the O&M Services. In conjunction with its performance of O&M Services, Operator 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.</p>
<p><u>Cyber Security</u></p>	<p>Operator 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 Operator must comply, as Owner deems advisable, in its sole discretion.</p>
<p><u>O&M Manual:</u></p>	<p>Not later than one hundred eighty (180) days prior to the commencement of the Term, Operator 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 Operator’s obligations in connection with the O&M Services (the “O&M Manual”). Owner shall provide comments, if any, to the O&M Manual to Operator within thirty (30) days after Owner’s receipt of such O&M Manual. Operator 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 Operator’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; <u>provided</u> 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 the O&M Services to be performed in accordance with applicable law and insurance requirements.</p>

<u>Annual Maintenance Plan:</u>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Operator shall meet to discuss the projected O&M Services for the Facility to be performed for such upcoming contract year in accordance with the Requirements. Within twenty (20) days after each such meeting, Operator shall prepare and submit, for Owner’s review and approval, a recommended plan (an “Annual Maintenance Plan”) setting forth (i) Operator’s intended work plan for the O&M Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the O&M 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 Operator within fifteen (15) days after such meeting. Operator 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; <u>provided</u> 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 O&M 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.</p>
<u>Reporting Requirements:</u>	<p>Operator shall provide usual and customary reports and summaries to Owner, including: (i) a daily production report (via email and File Share upload) relating to the weather, irradiance, availability and performance of the Facility; (ii) a detailed monthly report (in written and electronic format) relating to the monthly and year-to-date availability and performance of the Facility, inverter performance metrics, energy storage system performance metrics, spare parts utilization and inventory, equipment failures and warranty claims, OSHA and safety-related matters, scheduled and unscheduled maintenance activities, alarm logs and failure reports and any Emergency Services or Additional Services performed; and (iii) an annual report (in written and electronic format) including a summary of the monthly performance reports together with totals for the Performance Guarantee calculations and performance metrics and Owner recommendations. Operator shall provide such reports and summaries in formats as requested by Owner.</p>
<u>Forecasting:</u>	<p>Operator shall deliver to Owner (i) day-ahead and hour-ahead (with five (5) minute increments) forecasts of electrical energy deliveries from the Facility using Operator’s then current forecasting tools, (ii) projections of scheduled outages of the Facility and (iii) notification of changes to any forecast of electrical energy deliveries or of any forced outage of the Facility.</p>

<u>Notifications:</u>	<p>Operator shall promptly notify Owner regarding any pending or threatened litigation, claim, dispute, action, investigation or proceeding relating to the Facility or the Site, or which may impact the Facility or the Site, any refusal or threatened refusal to grant, renew, or extend any governmental approval, any discovery of any existing or concealed hazardous substances, forced outages of the Facility (and the known causes thereof and the corrective action taken with respect thereto), all notices and other communications from any governmental authority in relation to the Facility or the Site and any other event or circumstance that reasonably could be expected to adversely impact the operation of the Facility or access to the Site including labor disputes, violations of applicable laws or applicable governmental approvals, material damage to any of the major pieces of equipment comprising the Facility, or notices or other communications from the transmission provider.</p>
<u>Monitoring Services:</u>	<p>Operator shall staff and maintain a first-tier network operations center, and shall provide remote monitoring of the Facility therefrom on a twenty-four (24) hour a day, seven (7) days a week basis via connection with the Facility’s SCADA system. Remote monitoring shall include real time performance, weather and operational metrics and remote event notification. Operator shall cause Owner to have a direct, real-time data feed with respect to the foregoing, install and maintain a dedicated T-1 line and such other telecommunications and equipment necessary to support the same, and shall host and maintain an electronic file share (“File Share”) and provide Owner with a license to access same.</p> <p>Operator shall maintain on-site and area staffing consistent with minimum levels and qualifications to be established and included in the O&M Manual.</p>
<u>Alarm and Failure Response:</u>	<p>Operator shall, in consultation with Owner, establish an alarm and failure notification protocol. Pursuant to the O&M Manual, upon receiving a system alarm or failure notification, Operator shall immediately initiate a response plan appropriate in light of the nature of the alarm or failure. Owner and Operator shall agree on a detailed, tiered failure response protocol, which shall require Operator to respond on-site to failures involving the outage of the Facility or one or more inverters within four (4) hours.</p> <p>Operator shall promptly curtail the production of the Facility upon direction by the transmission provider, utility or other governmental authority.</p>
<u>Minimal Interference:</u>	<p>Operator shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the O&M Services in a manner that will minimize interference with the operation of the Facility and to conduct its work at such times so as to minimize reduction of production in respect of the Facility. Unless granted prior written approval from Owner, Operator shall not conduct any scheduled maintenance on Facility equipment that would reasonably be expected to reduce Facility production during summer peak hours.</p>

<u>Hazardous Substances:</u>	<p>Operator 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 O&M Services, and, in each such case in accordance with the Requirements and at the sole cost and expense of Operator. Operator 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. Operator shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Operator discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Operator shall promptly notify Owner thereof and stop work in and restrict access to the area containing such hazardous substances. Operator 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 Operator. Operator shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Operator as a result of the remediation or removal of hazardous substances for which Operator is responsible.</p>
<u>Standard of Performance:</u>	<p>All O&M Services shall be performed by Operator 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, integrated utility-scale photovoltaic solar and energy storage plants in the Western United States, applicable laws, applicable governmental approvals, applicable project documents, the Warranties, the O&M Manual, the Safety Plan and Owner’s operating procedures (collectively, the “Requirements”).</p>
<u>Services Warranty:</u>	<p>Operator shall warrant in the Agreement that the O&M 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 the completion thereof (the “Services Warranty”) and Operator shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and material related to the O&M Services, which such obligation shall survive the expiration of the Term. When Operator detects or is notified of a defect covered by the Services Warranty, Operator 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. For any O&M Services (including any parts or equipment) required to be re-performed, repaired, corrected or replaced following discovery of a defect, the Services Warranty shall be extended for two (2) additional years after the date such performance, repair, correction or replacement is complete. In addition, to the extent not covered by a Warranty, Operator shall ensure that any replacement modules, inverters, trackers, energy storage system components or other key equipment have warranties consistent with Owner’s warranty requirements.</p>
<u>Warranty Enforcement:</u>	<p>Operator shall, on Owner’s behalf, maintain, administer and pursue claims with respect to all applicable warranties provided by EPC Contractor and suppliers of the modules, inverters, trackers, energy storage system components and other components of the Facility (the “Warranties”). Operator shall manage, supervise</p>

	and verify that all persons providing Warranties for the Facility comply promptly and diligently with all of their respective warranty obligations and coordinate and schedule the provision of all warranty work with the O&M Services. Operator shall keep Owner reasonably informed of the status of any warranty claims and, in any case, provide information and documentation reasonably requested by Owner. Operator shall not be required to commence or prosecute a legal action (whether litigation, arbitration or otherwise) to enforce a warranty claim, except as may be agreed as part of the Additional Services, but Operator shall cooperate with Owner's reasonable requests in connection with any such legal action.
<u>Safety Requirements:</u>	Operator shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the O&M Services and be responsible for the compliance by Operator, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Operator shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of the O&M Services. Not later than one hundred twenty (120) days prior to the commencement of the Term, Operator shall provide Owner with a Site-specific safety plan in connection with Operator's performance of its obligations that complies with the Requirements (the " Safety Plan "). Owner shall be entitled to review and provide comments to the Safety Plan and Operator shall incorporate any comments provided by Owner. Operator shall be responsible for updating and revising the Safety Plan to comply with all Requirements, including any changes thereto. Operator 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>	Operator shall deliver a performance guarantee (" Performance Guarantee ") to Owner which shall guarantee that the actual annual output of the Facility is at least ninety-eight percent (98%) of the expected output on a weather-adjusted basis, subject to customary limitations with respect to force majeure, scheduled maintenance and outages directed by Owner or the transmission provider. Shortfalls in output shall be compensated based upon Owner's avoided energy price. Operator shall be excused under the Performance Guarantee if Owner terminates the O&M Agreement for convenience. Owner may, in its sole discretion, accept an availability guarantee in lieu of the Performance Guarantee.
<u>Credit Support:</u>	Operator shall deliver (i) an ultimate parent guaranty covering Operator's performance under the Agreement, the Performance Guarantee and any other agreements or undertakings related to the O&M Services or the Facility and (ii) such other credit support as may reasonably be required by Owner.
<u>Regulatory/ Compliance:</u>	Operator shall register with the North American Electric Reliability Corporation (NERC) as the " Generator Operator " with respect to the Facility and shall cause the Facility to comply with all requirements of any governmental authorities including, but not limited to, NERC, WECC, CAISO, WREGIS and the applicable public service commission.
<u>Project Labor:</u>	Operator shall ensure compliance and confirm labor union agreement with all project labor agreements related to the Facility.

<u>Training:</u>	Operator shall provide two (2) separate eight (8) hour training sessions per year for Owner’s personnel.
<u>Force Majeure;</u> <u>Excusable</u> <u>Events:</u>	In the event a force majeure (to be defined in the Agreement) or excusable event (to be defined in the Agreement, but including Owner-caused delays and certain specified changes in law) prevents Operator from performing any services, Operator shall be excused from performing such services for the duration of the event, subject to Operator using best efforts to mitigate the impact on its performance. Owner may, at its sole option, request that Operator remediate the effects of such event by agreeing to a change order that details the remediation work and Operator’s fee to perform such work.
<u>Site Access:</u>	Owner shall provide Operator with such access to the Facility as reasonably necessary to enable Operator to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Operator 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. Operator 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 and any of Owner’s separate contractors’ activities at the Site.
<u>Indemnification:</u>	Operator shall indemnify Owner and its affiliates, successors, assigns, officers, directors, employees and agents (“ Owner Parties ”), 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 Operator, (v) Liens arising with respect to the Facility and (vi) hazardous substances.
<u>Liens:</u>	Operator 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 (“ Liens ”) resulting from the action of Operator or work done at the request of Operator (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Operator shall take prompt steps to discharge any such Lien. Operator shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Operator 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, Operator shall request lien waivers from a subcontractor upon completion and payment for such subcontractor’s relevant work and, upon request from Owner, Operator shall supply copies of such lien waivers to Owner.
<u>Termination</u> <u>Rights:</u>	Owner may terminate the Agreement for convenience upon sixty (60) days’ notice in which case Owner shall pay Operator for any O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed by the parties). In the event of an Operator Default, (a) Owner may terminate the Agreement and exercise any rights available thereunder, at law or in equity, and (b) Operator shall

	<p>pay Owner a termination payment equal to the positive difference between the O&M Fee and the cost to Owner of, or market price associated with, procuring replacement services for the remainder of the Term.</p> <p>For purposes hereof, an “Operator Default” shall include any of the following:</p> <ul style="list-style-type: none"> i. Operator becomes insolvent; ii. Operator fails to pay to Owner any amounts due (other than any amounts which are the subject of a bona fide dispute) within thirty (30) days after written notice of such failure from Owner to Operator; iii. Operator fails to perform any of its material obligations and such failure is not remedied within thirty (30) days after written notice of such failure from Owner to Operator; iv. Any representation or warranty by Operator is false or misleading; v. Operator attempts to assign the Agreement in violation of its terms; vi. Operator or any affiliate defaults under any other agreement, warranty, guaranty or instrument relating to the operation, construction or management of the Facility, the equipment comprising the Facility or the O&M Services; vii. The Facility production is below ninety percent (90%) of the expected output on a weather-adjusted basis for any consecutive twelve (12) month period; or viii. The aggregate liability of Operator exceeds Operator’s Limitation of Liability in any period. <p>In the event of an Owner default, as its sole remedy therefor, (a) Operator may terminate the Agreement and (b) Owner shall pay Operator for any O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed to by the parties).</p> <p>Following any termination of the Agreement for any reason, Operator 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 O&M Services and (b) cooperate with Owner and any replacement operator concerning the transition of operational responsibility for the Facility.</p>
<u>Insurance:</u>	The Agreement shall provide for typical and customary insurance provisions with respect to coverage for Operator’s performance of its obligations with respect to the Facility.
<u>Intellectual Property Matters:</u>	Owner shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Operator in connection with the O&M Services. In addition, Operator 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 Operator in

	providing the O&M Services as necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose of and transfer ownership of the Facility.
<u>Limitation of Liability:</u>	<p>The Agreement shall provide for typical and customary terms regarding Operator'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 O&M Fee).</p> <p>With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Operator 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; <u>provided</u> 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>	Operator 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 fees, on materials imported for performance of the O&M 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 Operator.
<u>Records; Audit:</u>	Operator shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the O&M 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 O&M Manual, such records shall be maintained in electronic form on the File Share. In addition, Owner shall have the right to audit and inspect Operator's records upon reasonable advance notice.
<u>Assignment:</u>	Operator 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 Operator, 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, Operator 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.

<p><u>Dispute Resolution;</u> <u>Governing Law:</u>¹</p>	<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>
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¹ Note to Bidders – PacifiCorp will accept governing law and venue in Oregon or Utah.