

February 9, 2022

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301-3398

Re: UM 2193—PacifiCorp’s Draft 2022 All Source Request for Proposals—Appendix K

On January 14, 2022, PacifiCorp d/b/a Pacific Power filed its final draft 2022 all source request for proposals with the Public Utility Commission of Oregon. The Company submits this supplemental filing to provide Appendix K, the Operations and Maintenance Services form for Build Transfer Agreement bids, which was not included in the original filing.

The Company respectfully requests that all data requests regarding this matter be addressed to:

By e-mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah St., Suite 2000
Portland, OR 97232

Please direct informal inquiries to Cathie Allen, Regulatory Affairs Manager, at (503) 813-5934.

Sincerely,



Shelley McCoy
Director, Regulation

Enclosures

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>	[] (“ Contractor ”).
<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>	Contractor and Owner would enter into a Service and Maintenance Agreement (the “ Agreement ”) for the provision of scheduled and unscheduled maintenance services on wind turbine generators (“ WTGs ”), 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 “ Serviced Equipment ”) at Owner’s wind-powered electric generation facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to a Balance of Plant Engineering, Procurement and Construction Agreement (the “ EPC Agreement ”) between [] (“ EPC Contractor ”) and Developer. In addition to the Agreement, there will be a separate Turbine Supply Agreement (“ TSA ”) 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>	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 “ SMA Services ”). In addition, Contractor may perform certain extra work requested by Owner or recommended by Contractor and documented in a written change order executed by

	Owner and Contractor (the “ Extra Work ”).
<u>Planned Maintenance:</u>	<p>“Planned Maintenance” 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"> (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 “Scheduled Inspections”); (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 “Planned Maintenance Outage”); and (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.
<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 “ In-and-Out Activities ”).
<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. “ Covered Parts ” shall include parts typical and customary in the operation of WTGs of the model(s) used in the Facility.
<u>Miscellaneous Hardware:</u>	“ Miscellaneous Hardware ” 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 “Spare Parts”). 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>“Technical Advisory Services” 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. “Unplanned Maintenance” 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 “SMA Fee”). 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 “Term”). <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

	<p>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.</p>
<p><u>SMA Manual:</u></p>	<p>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 “O&M Manual”). 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.</p>
<p><u>Annual Maintenance Plan:</u></p>	<p>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 “Annual Maintenance Plan”) 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.</p>
<p><u>Minimal Interference:</u></p>	<p>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</p>

	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 “ Requirements ”).
<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 “ Safety Plan ”). 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 (“ 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 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 (“ Liens ”) 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>
<p><u>Termination Rights:</u></p>	<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>
<p><u>Insurance:</u></p>	<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>
<p><u>Intellectual Property Matters:</u></p>	<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>
<p><u>Limitation of Liability:</u></p>	<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>
<p><u>Taxes:</u></p>	<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; Governing Law:</u> ¹	<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>

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

2022AS RFP Appendix K-2

BOP 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 BOP O&M Services (defined below) with respect to an approximately [] MW wind-powered electric generating facility (the “ Facility ”) to be located in [] (the “ Site ”) and to be constructed pursuant to a Balance of Plant 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 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>BOP 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, excluding the SMA Services (defined below), for the duration of the Term (the “BOP 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, visual inspection, system testing and calibration, corrective and unscheduled maintenance, failure response, notifications, staffing and remote monitoring, warranty support, asset management, regulatory/compliance, reporting and compliance (including environmental and avian compliance and unauthorized persons), hazardous waste removal, training of personnel, cooperation and coordination with the SMA Contractor providing the SMA Services for Owner (and the turbine supplier under the Turbine Supply Agreement, if applicable) 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>Contractor shall, as part of the Basic Services, maintain the meteorological towers including all typical and customary, necessary and recommended preventative, scheduled and unscheduled maintenance services necessary to record readings in the Facility SCADA system.</p> <p>The services to be performed by Operator do not include provision of services, parts, and other work (the “SMA Services”) to be furnished by a separate contractor (the “SMA Contractor”) under the Service and Maintenance Agreement (the “SMA”) to be entered into by Owner and SMA Contractor but do include interfacing, coordinating and cooperating with the SMA Contractor and enforcing the terms and conditions of the SMA Services in relation to the Facility.</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 and performance of the BOP O&M Services (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; <i>provided, however</i>, 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>
<p><u>O&M Fee:</u></p>	<p>The Agreement shall provide for a typical and customary fixed annual fee (the “BOP O&M Fee”). 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.</p>
<p><u>Term:</u></p>	<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, <i>provided</i> that the operational term of the Agreement shall be a period of [_____] years, commencing upon Substantial Completion (as defined in the EPC Agreement) of the Facility (the “Term”). <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) under the TSA.</i></p>

<p><u>Independent Contractor:</u></p>	<p>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 BOP 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 BOP O&M Services.</p>
<p><u>Subcontracts:</u></p>	<p>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.</p>
<p><u>Personnel:</u></p>	<p>Operator shall provide an appropriate number of suitably qualified, trained, competent and experienced management, operating and maintenance personnel necessary to perform the BOP O&M Services, and such personnel shall perform such BOP 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 BOP 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>
<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 BOP O&M Services. In conjunction with its performance of BOP 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>

<u>Cyber Security</u>	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.
<u>O&M Manual:</u>	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 BOP 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; 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 the BOP O&M Services to be performed in accordance with applicable law and insurance requirements.

<p><u>Annual Maintenance Plan:</u></p>	<p>Not later than ninety (90) days prior to the commencement of each contract year, Owner and Operator shall meet to discuss the projected BOP 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 BOP O&M Services, (ii) the expected duration of the performance of any scheduled maintenance, (iii) a description of the BOP 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; 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 BOP 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>
<p><u>Reporting Requirements:</u></p>	<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, 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>
<p><u>Notifications:</u></p>	<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>

<p><u>Monitoring Services:</u></p>	<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>
<p><u>Alarm and Failure Response:</u></p>	<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>
<p><u>Minimal Interference:</u></p>	<p>Operator shall use commercially reasonable efforts, in light of the circumstances at the time, to perform the BOP 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, including where applicable, coordination with the SMA Contractor. 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 wind season, determined by site location, unless winds are below 4 m/s.</p>

<u>Hazardous Substances:</u>	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 BOP 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.
<u>Standard of Performance:</u>	All BOP 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, utility-scale wind facilities 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 ”).
<u>Services Warranty:</u>	Operator shall warrant in the Agreement that the BOP 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 Agreement shall provide for typical and customary provisions with respect to EPC Contractor’s warranty of the BOP O&M 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. Operator shall be responsible to Owner for costs and expenses incurred by Owner related to defects in workmanship and materials related to the BOP 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.
<u>Warranty Enforcement:</u>	Operator shall, on Owner’s behalf, maintain, administer and pursue claims with respect to all applicable warranties provided by EPC Contractor, SMA Contractor, turbine supplier and other suppliers of the inverters and other components of the Facility (the “ Warranties ”). Operator shall manage, supervise 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 BOP 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 BOP 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 BOP 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>	The Agreement shall provide for typical and customary performance guarantee provisions.
<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 BOP 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, FERC, 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 typical and customary training sessions to Owner’s personnel each year.

<p><u>Force Majeure:</u> <u>Excusable</u> <u>Events:</u></p>	<p>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.</p>
<p><u>Site Access:</u></p>	<p>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, SMA Contractor’s performance of the SMA Services, and any of Owner’s separate contractors’ activities at the Site.</p>
<p><u>Indemnification:</u></p>	<p>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 (a) claims for injury or property damage, (b) worker’s compensation claims, (c) penalties due to failure to comply with applicable law, (d) taxes owed by Operator, (e) Liens arising with respect to the Facility and (f) hazardous substances.</p>
<p><u>Liens:</u></p>	<p>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.</p>
<p><u>Termination</u> <u>Rights:</u></p>	<p>The Agreement shall provide for typical and customary termination rights and associated termination payments, including as provided below.</p> <p>Owner may terminate the Agreement for convenience upon sixty (60) days’ notice in which case Owner shall pay Operator for any BOP O&M Services performed to date, plus Operator’s reasonable demobilization expenses (not to exceed a demobilization cap to be agreed by the parties).</p>

	<p>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 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. <i>[Placeholder with respect to performance guarantees]</i>; 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 BOP 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 BOP O&M Services and (b) cooperate with Owner and any replacement operator concerning the transition of operational responsibility for the Facility.</p>
<p><u>Insurance:</u></p>	<p>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.</p>

<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 BOP 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 BOP 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 BOP 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; <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>	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 BOP 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 BOP 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

	<p>authorities (or any representatives thereof), as the case may be, any confidential information so requested or required.</p>
<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>

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

2022AS RFP Appendix K-3

SOLAR 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 a [] MW(ac) ground-mounted solar photovoltaic electric generating 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), 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, 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.

<u>Business Practices:</u>	<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>
<u>Cyber Security</u>	<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>
<u>O&M Manual:</u>	<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, 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, utility-scale solar 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 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 and other components of the Facility (the “Warranties”). Operator shall manage, supervise 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</p>

	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 pay Owner a termination payment equal to the positive difference between the O&M

	<p>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>
-------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

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.

<u>Business Practices:</u>	<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>
<u>Cyber Security</u>	<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>
<u>O&M Manual:</u>	<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>

<p><u>Annual Maintenance Plan:</u></p>	<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>
<p><u>Reporting Requirements:</u></p>	<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>
<p><u>Forecasting:</u></p>	<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>

<p><u>Notifications:</u></p>	<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>
<p><u>Monitoring Services:</u></p>	<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>
<p><u>Alarm and Failure Response:</u></p>	<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>
<p><u>Minimal Interference:</u></p>	<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>
-------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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