**TURBINE SUPPLY AGREEMENT TERM SHEET[[1]](#footnote-1)**

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.

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| Seller: | [\_\_] (“**Seller**”). |
| Developer: | [\_\_] (“**Developer**”). |
| Owner: | PacifiCorp, an Oregon corporation d/b/a Rocky Mountain Power (“**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 Closing Completion (as defined in the Build Transfer Agreement). |
| Overview: | Seller and Developer would enter into a Turbine Supply Agreement (the “**Agreement**”) for the supply and commissioning of Wind Turbine Generators (“**WTGs**”) with respect to a 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. The EPC Agreement and the Agreement 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). In addition to the Agreement, there will be a separate Service and Maintenance Agreement (“**SMA**”) with respect to the WTGs to be executed by Seller and Developer and assigned by Developer to Owner at closing of the Build Transfer Agreement. |
| Scope of Supply and Other Obligations | Seller shall supply the following equipment under the Agreement:  1) WTGs: The WTGs shall include the tower, nacelle, hub, climb assist and blades, and all mechanical and electrical equipment within the WTGs.[[2]](#footnote-2)  2) SCADA: [\_\_\_\_\_\_].[[3]](#footnote-3)  3) Spare Parts: Spare parts for the Facility are included as part of the Purchase Price and shall be maintained by Contractor under the SMA.  4) Tools: Seller will provide to Developer, equipment, on a loan and return basis, necessary for EPC Contractor to lift, rig and install the WTG for up to [twelve (12)] weeks following the date of delivery of the last component under the Agreement.  4) Meteorological System: [\_\_\_\_\_\_\_\_\_\_].[[4]](#footnote-4)  5) Type Certificates: Seller will provide Developer with type certificates applicable to the WTGs prior to making any deliveries to the Site and Seller will represent at the time of delivery that such type certificates have not been revoked and that there have been no changes to the WTs which would invalidate any type certificate.  6) [\_\_\_\_\_\_\_\_].[[5]](#footnote-5)  Seller shall ensure that the supply of all equipment listed herein is coordinated with the EPC Contractor to minimize interference with the performance of the EPC Contractor’s obligations under their respective agreements and to allow each party to fulfill its respective obligations in a timely and efficient manner. |
| Purchase Price and Change Orders: | The WTG unit price for [\_\_\_\_][[6]](#footnote-6) WTGs with [\_\_\_][[7]](#footnote-7) meter hub height tower, blades, [\_\_\_\_\_][[8]](#footnote-8) meter rotor diameter, tower, five (5) year equipment defects warranty, Facility SCADA System, Facility turbine monitoring system, technical field assistance and commissioning of the WTG but not including wind delay or weather delay in the price or schedule, and including Spare Parts, transportation of the components from the manufacturing or assembly facility to the Facility (including charges to return the component lifting, support and handling fixtures, shipping containers and other transportation equipment to the point of origin) shall be [***$\_\_\_\_\_\_\_\_\_\_\_\_***].[[9]](#footnote-9)  [\_\_\_\_\_\_\_\_\_\_].[[10]](#footnote-10)  For a change order to be effective, it shall be signed by both Parties to the Agreement and shall state agreement upon (i) a change in the equipment supply obligations, if any, (ii) the amount of the adjustment in the Purchase Price, if any, and/or (iii) the extent of the adjustment, if any, to the delivery schedule, including the guaranteed milestone dates.  Typical and customary change order provisions will be included (similar to other RFP documents). |
| Payment and Invoicing: | The Payment Schedule shall include typical and customary milestone payments culminating with payments at final completion of the WTGs and following Build Transfer Agreement payment requirements. |
| Transportation and Delivery: | The Agreement shall provide for typical and customary provisions regarding transportation and delivery of WTGs and appurtenant equipment. |
| Delivery Delays and Delivery Delay Liquidated Damages | Seller shall deliver the WTGs and appurtenant equipment on or before the applicable guaranteed delivery dates.  Typical and customary liquidated damages provisions shall apply for failure to complete delivery of complete WTGs by the applicable guaranteed delivery dates.[[11]](#footnote-11) |
| Mechanical Completion, Commissioning and Commercial Operation | The Agreement will provide for typical and customary provisions regarding mechanical completion, commissioning and commercial operation.  Seller shall perform a typical and customary availability test following acceptance of a commissioning completion certificate and shall be required to achieve a specified availability rate.  Following commissioning completion, Developer shall commence commercial operation of the WTGs and Seller shall be responsible for completion of punch list items and outstanding equipment supply obligations. Such activities will be conducted so as to minimize interference with commercial operation of the WTGs. |
| Commissioning Delays and Commissioning Delay Liquidated Damages | Seller shall commission each WTG on or before the applicable guaranteed commissioning completion date for such WTG.  Typical and customary liquidated damages provisions and related liability caps shall apply for failure to complete commissioning of WTGs by the applicable guaranteed commissioning dates.[[12]](#footnote-12) |
| Technical Advisory Services: | Seller shall provide at the Site, a technical advisor for each main crane used at the Facility and supporting personnel as required, beginning on the date of delivery of the first component (nacelle, blade, hub or tower section). Technical advisors shall be available for consultation and clarification regarding installation manuals, Mechanical Completion checklists and technical specifications. |
| Permits | Seller shall obtain and maintain all permits required to be obtained in the name of the Seller which are necessary to lawfully perform the equipment supply obligations and warranty obligations including but not limited to (i) transport of the WTGs, (ii) disposing of and/or transporting hazardous substances, and (iii) employing or otherwise engaging personnel of Seller.  Buyer shall obtain and maintain all permits required to develop, construct, install, engineer, own start-up, operate or maintain the Project. |
| Independent Contractor: | Seller 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 Developer other than that of Developer and Seller as independent contractor. Developer and Seller 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 Developer and Seller. Seller shall complete its obligations under the Agreement according to its own means and methods of work, which shall be in the exclusive charge and control of Seller (taking into account cooperation with EPC Contractor with respect to their respective obligations) and which shall not be subject to the control and supervision of Developer, except as to the results of the services provided under the Agreement. |
| Subcontracts: | Subject to Developer’s consent, not to be unreasonably withheld, Seller 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 Developer upon termination of the Agreement and provide that Developer is a third-party beneficiary thereunder. Seller shall ensure that all subcontracts contain warranties with respect to services and equipment that comply with Developer’s warranty requirements. |
| Personnel: | Seller shall provide an appropriate number of suitably qualified, trained, competent and experienced personnel necessary to perform the its obligations under the Agreement, and such personnel shall perform such obligations in accordance with the applicable Requirements (defined below). Seller shall pay all wages and benefits required by applicable law or contract with respect to personnel performing its obligations under the Agreement. Seller 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. |
| Business Practices: | Seller, its employees, agents, representatives and subcontractors shall at all times maintain high ethical standards and avoid conflicts of interest in performing Seller’s obligations under the Agreement. In conjunction therewith, Seller 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 Developer’ “code of business conduct” or similar document, which code of business conduct would be included as an exhibit to the Agreement. |
| Notifications: | Seller shall promptly notify Developer regarding any pending or threatened litigation, claim, dispute, action, investigation or proceeding relating to the Facility or the WTGs, any refusal or threatened refusal to grant, renew, or extend any permit required for Seller to fulfill its obligations under the Agreement, all notices and other communications from any governmental authority in relation to the Facility or the WTGs and any other event or circumstance that reasonably could be expected to adversely impact Seller’s ability to fulfill its obligations under the Agreement including labor disputes, violations of applicable laws or applicable permits, or material damage to any of the major pieces of equipment. |
| Minimal Interference: | Seller shall use commercially reasonable efforts, in light of the circumstances at the time, to perform its obligations under the Agreement in a manner that will minimize interference with EPC Contractor and/or 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, as applicable. |
| Hazardous Substances: | Seller shall minimize the use of hazardous substances and shall not 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 its obligations under the Agreement, and, in each such case in accordance with the Requirements. Seller shall promptly comply with all orders and directives of all governmental authorities regarding the use, transportation, storage, handling or presence of hazardous substances. If Seller discovers, encounters or is notified of the presence or any release of any hazardous substances at the Site, Seller shall promptly notify Developer thereof and stop work in and restrict access to the area containing such hazardous substances. Seller 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 Seller. Seller shall not be entitled to any extension of time or additional compensation for any delay or costs incurred by Seller as a result of the remediation or removal of hazardous substances for which Seller is responsible. |
| Standard of  Performance: | All Seller obligations under the Agreement shall be performed by Seller 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 generating facilities in the Western United States, applicable laws, applicable permits, governmental approvals, applicable project documents, the Warranties, the Safety Plan, the technical specifications and landowner requirements (collectively, the “**Requirements**”). |
| Equipment Warranty: | Seller shall warrant in the Agreement that each WTG, its appurtenant components, the SCADA System and each Spare Part is new and unused, free of defects in design, materials, engineering, manufacture, assembly or workmanship and in compliance with the technical specifications and shall perform its intended function to generate or assist in generating electricity from wind as specified in the Agreement from the date of execution of the Agreement until two (2) years from completion of Facility commissioning or take-over of the WTG by Developer (the “**Warranty Period**”). During the Warranty Period, Seller shall have responsibility for repairing or replacing defective components with new or refurbished components (such refurbished components having the same expected performance and longevity as new components). Documentation shall be provided along with refurbished components detailing the component’s history and refurbishment completed to date. In the event of a repair or replacement of components, the Warranty Period will extend to the longer of (x) the expiration of the base warranty period of the applicable component and (y) two (2) years from the date of completion of the warranty repair/replacement work. |
| Other Warranties and Performance Guarantees | The Agreement shall provide for typical and customary warranties and liquidated damages, as applicable, with respect to the performance of the WTGs and appurtenant components, WTG characteristics and serial defects.[[13]](#footnote-13) |
| Safety Requirements: | Seller shall take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of its obligations under the Agreement and be responsible for the compliance by Seller, its employees, agents, representatives and subcontractors with all requirements governing occupational health and safety in accordance with the Requirements. Seller shall be solely responsible for initiating, maintaining, and supervising all safety measures and programs in connection with the performance of its obligations under the Agreement. Seller shall provide Developer with a Site-specific safety plan in connection with Seller’s performance of its obligations that complies with the Requirements (the “**Safety Plan**”). Developer shall be entitled to review and provide comments to the Safety Plan and Seller shall incorporate any comments provided by Developer. Seller shall be responsible for updating and revising the Safety Plan to comply with all Requirements including any changes thereto. Seller shall comply with the Safety Plan including with respect to passes, badges, drug and alcohol testing and conduct on the Site. |
| Credit Support: | Seller will provide such credit support as may be reasonably required by Owner based on Owner’s analysis of relevant financial criteria with respect to Seller’s financial capability to satisfy its obligations under the Agreement. |
| Force Majeure; Excusable Events: | In the event a force majeure (to be defined but limited to an event in the state where the Facility is located or within a two hundred (200) mile radius of the delivery point) or excusable event (to be defined) prevents Seller from performing any services, Seller shall be excused from performing such services for the duration of the event, but in any event, no longer than Seller is incapable of performing its obligations. Developer may, at its sole option, request that Seller remediate the effects of such event by agreeing to a change order that details the remediation work and Seller’s fee to perform such work. |
| Site Access: | Developer shall provide Seller with such access to the Facility as reasonably necessary to enable Seller to perform its obligations, including ingress and egress rights to the Site. Such access shall extend to the employees, contractors and subcontractors of Seller and be in accordance with any ground lease, easement or related instrument in effect with respect to the Site. Seller shall take commercially reasonable efforts to perform its obligations in such a manner that minimize the inconvenience to and interference with Developer’s use of the Site. | |
| Indemnification: | Seller shall indemnify Developer and its affiliates, successors, assigns, officers, directors, employees and agents (“**Developer 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 Seller, (e) Liens arising with respect to the Facility and (f) hazardous substances. | |
| Liens: | Seller 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 Seller or work done at the request of Seller (including without limitation, work done by any subcontractor, supplier of goods or services, employee, material man or laborer). Seller shall take prompt steps to discharge any such Lien. Seller shall require each of its subcontractors to make payments to their respective subcontractors and sub-subcontractors in a similar manner, and Seller shall indemnify and hold harmless Developer for any losses or expenses incurred by Developer (including reasonable attorneys’ fees) in discharging any such Lien. Upon request from Developer, Seller shall request lien waivers from a subcontractor upon completion and payment for such subcontractor’s relevant work and, upon request from Developer, Seller shall supply copies of such lien waivers to Developer. | |
| Termination Rights: | The Agreement shall provide for typical and customary termination rights and associated termination payments, including termination for insolvency, bankruptcy, non-payment, prohibited assignment, etc.  Following any termination of the Agreement for any reason, Seller shall (a) withdraw from the Site and expeditiously transfer to Developer any Spare Parts, warranties, manuals, software licenses, keys, access credentials, records, reports and other documentation relating to the Facility, the WTGs and any appurtenant equipment and (b) cooperate with Developer and any replacement turbine supplier concerning the transition of turbine supply responsibility for the Facility. | |
| Insurance: | Seller shall maintain in effect, insurance coverage of the following types and limits in addition to any other coverage required by law:[[14]](#footnote-14)  1. Workers’ Compensation Insurance. Workers’ Compensation in the minimum amount required by statute and Employers’ Liability with minimum limit of $1,000,000. 2. Commercial General Liability Insurance. Commercial General Liability on an “occurrence form” in the minimum amount of $2,000,000 per occurrence combined single limit and $3,000,000 in aggregate, including (a) broad form contractual liability coverage, (b) products/completed operations, (c) personal injury, (d) independent contractors and (e) sudden and accidental pollution liability (if not provided by separate pollution coverage). Coverage shall include a cross liability/severability of interests clause. 3. Automobile Liability Insurance.  Comprehensive Automobile Liability in the minimum amount of $1,000,000 each accident combined single limit, including owned, hired and non-owned vehicles. 4. Umbrella or Excess Liability Insurance. Umbrella/Excess Insurance on an “occurrence form” in the minimum amount of $20,000,000 each occurrence and annual aggregate which shall be in excess of the primary coverage referred to in clause (i) (employer’s liability only), clause (ii) and clause (iii) above.   Seller (or its particular contractor or subcontractor) must provide Developer with 30-days prior written notice before any required insurance policy expires, is cancelled, or is altered.  Deductible or retention amounts under the required policies must not exceed 5% of the per occurrence coverage limits, without the express written consent of Developer.  Each contract of insurance must be with an insurer approved to do business in the State of Utah, is “A-” Rated or better by A.M. Best Company (see [www.ambest.com](http://www.ambest.com)) and must include the following provisions or endorsements:   1. Additional Insured. Naming Developer, its directors, officers, and employees as additional insureds on the general liability, automobile liability, pollution liability and excess/umbrella insurance policies. 2. Primary Insurance. Stating that the insurance is primary insurance with respect to the interest of Developer and that any insurance maintained by Developer is excess and not contributory insurance.   (C) Subrogation Waivers. Providing Developer with waivers of subrogation on all coverages.   1. Separation of Insured. Providing for “**Separation of Insured**” coverage in the general liability, automobile liability, pollution liability and excess/umbrella insurance policies. 2. Conversion from Claim Made to Occurrence. Providing that, if any policy is maintained on a “claims made” form and is converted to an “occurrence form”, the new policy will be endorsed to provide coverage back to a retroactive date acceptable to Developer. 3. Notice Requirement. Providing that Developer is entitled to 30-days’ prior written notice before such contract of insurance expires, is cancelled, or is altered.  Before Seller or any of its subcontractors enters upon the Site, Seller must provide Developer with certificates of insurance that name Developer as an additional insured and that evidence the coverage required by the Agreement, including additional insured endorsement numbers. | |
| Intellectual Property Matters: | Developer shall hold title to any drawings, specifications, documents, plans and designs, licenses or other work product provided by or on behalf of Seller in connection with the WTGs and appurtenant equipment. In addition, Seller shall grant to Developer, 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 necessary to own, use, operate, maintain, service, repair, alter commission, decommission, remove, dispose of and transfer ownership of the WTGs and ultimately, the Facility. | |
| Limitation of Liability: | The Agreement shall provide for typical and customary limitations of liability with respect to Seller. In any event, the cap on Seller’s aggregate liability for all losses and all other costs and obligations arising out of or relating to the Agreement shall equal an amount equal to the Purchase Price (“**Seller’s Limitation of Liability**”).  With the exception of the obligations to indemnify against claims of third parties (and without limiting any obligation of the Seller to pay liquidated damages under the Agreement), neither party shall be liable to the other for any consequential, incidental, punitive, exemplary or indirect damages or lost profits; provided 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. | |
| Taxes: | Seller 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 its obligations hereunder), 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 Seller. | |
| Records; Audit: | Seller shall maintain in accordance with good regulated utility accounting practices all records relating to the provision of the WTGs, their appurtenant equipment and the Facility for a period not less than 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, Developer shall have the right to audit and inspect Seller’s records upon reasonable advance notice. | |
| Assignment: | Neither party may assign its rights and obligations under the Agreement without the non-assigning party’s prior written consent, which consent shall not be unreasonably withheld except that Developer/Owner may, without the consent of Seller, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made consistent with the assignment provisions of the Build Transfer Agreement. | |
| Confidentiality: | Each party shall keep confidential and not disclose any confidential information of the other party, subject to customary exceptions. Notwithstanding the foregoing, Seller shall acknowledge that the UPSC and the Utah [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], have the power to examine Developer’s books, records, minutes, papers and property and may, from time to time, request or require Developer to disclose or report to the UPSC and/or BCP (or any representatives thereof), as the case may be, any confidential information so requested or required. | |
| Dispute Resolution; Governing Law: | This Term Sheet is, and the Agreement shall be, governed by the laws of the State of Utah, without regard to its conflict of laws provisions.  The parties shall submit to the exclusive jurisdiction of the United States Federal District Court located in Salt Lake City, Utah, or, if such court does not have subject matter jurisdiction, the state courts of the State of Utah. 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.  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. | |

1. Further conforming changes will be required for a geothermal Project. [↑](#footnote-ref-1)
2. Note to Bidders: Please provide additional technical detail regarding WTG scope of supply. [↑](#footnote-ref-2)
3. Note to Bidders: Please provide proposal for SCADA supply. [↑](#footnote-ref-3)
4. Note to Bidders: Please provide proposal for meteorological system. [↑](#footnote-ref-4)
5. Note to Bidders: Please include information regarding additional scope items included in bid. [↑](#footnote-ref-5)
6. Note to Bidders: Model of WTG to be determined. [↑](#footnote-ref-6)
7. Note to Bidders: To be determined. [↑](#footnote-ref-7)
8. Note to Bidders: To be determined. [↑](#footnote-ref-8)
9. Note to Bidders: To be determined. [↑](#footnote-ref-9)
10. Note to Bidders: If additional scope items are available as cost adders, please provide itemized costs for such typical and customary or recommended adders on a per unit and per project basis. [↑](#footnote-ref-10)
11. Note to Bidders: Please provide liquidated damages to be included in definitive TSA. [↑](#footnote-ref-11)
12. Note to Bidders: Please provide liquidated damages to be included in definitive TSA. [↑](#footnote-ref-12)
13. Note to Bidders: Please provide liquidated damages to be included in definitive TSA. [↑](#footnote-ref-13)
14. Note to Bidders: Insurance coverage, including limit amounts, is subject to further review and change by PacifiCorp. [↑](#footnote-ref-14)