**BUYER**

Minnesota Power, an operating division of ALLETE, Inc. (“Buyer”).

**SELLER**

[Developer/Seller Name] (“Seller”).

**SELLER SECURITY**

Buyer will require credit support from a corporate guarantor, letter of credit, or other form of security acceptable to Buyer (“Seller Credit Support”) covering all of Seller’s obligations under this Term Sheet.

Subject to Seller providing Seller Credit Support acceptable to Buyer, Buyer will consider making progress payments from and after the date on which both Parties shall have executed and delivered this Term Sheet (“Commencement Date”) and prior to Closing. Any progress payments may be tied to the achievement of specific Major and Commercial Operation Milestones as outlined and agreed in the Term Sheet.

In no case will the amount of the Purchase Price paid prior to Substantial Completion exceed \_\_\_\_ of the total Purchase Price, and Buyer will be entitled to withhold from the Purchase Price installment paid in connection with Substantial Completion an amount equal to \_\_\_\_% of the amount sufficient to complete all punch list items.

**TYPE OF TRANSACTION**

The transaction will be structured as an entity acquisition though Buyer is open to asset purchase arrangements under certain circumstances.

**PURCHASE PRICE AND PAYMENT TERMS**

Unless the parties agree to progress payments, the “Purchase Price,” which is not to exceed [$ per MW ], will be paid by Buyer in two installments, one installment at Closing and one installment on the date (the “Substantial Completion”) upon which Seller has achieved an agreed set of “Conditions to Commercial Operations” which shall include the following without limitation an officer of Seller who has knowledge of the Facility must certify in written Notice to MP that all the conditions set forth in this Section have been satisfied:

* that the Facility is substantially complete in all material respects, that Seller is in compliance with its Construction Contract, that Seller is in full compliance with the terms of this Term Sheet, that Seller is in material compliance with the Interconnection Agreement, and that the Facility can be safely operated in conformance with this Term Sheet;
* that Seller has successfully completed testing of the Facility which is required by the Facility’s Permits and the Interconnection Agreement, and the generating facility has been commissioned by the manufacturer in accordance with Good Utility Practice and any applicable agreements;
* that Seller has executed all agreements and made all arrangements necessary to deliver the Contract Energy and Accreditable Capacity from the Facility to the Point of Delivery in compliance with the provisions of this Term Sheet;
* that all Security Credit Support arrangements have been established in a form and in the amounts sufficient to meet the requirements of this Term Sheet and that Seller has provided MP with proof that such arrangements are in place;
* that certificates proving insurance coverages required by this Agreement have been submitted to MP;
* that all Permits required to be obtained from any Governmental Authority to construct and/or operate the Facility in compliance with applicable Requirements of Law and this Term Sheet have been obtained and are in full force and effect;
* that the Seller has contracted with the local utility to provide House Power to the site; and
* that the Seller has provide MP with any applicable information required to register the Facility with the appropriate Green Tag tracking system.

**CONDITIONS PRECEDENT TO THE COMMENCEMENT DATE**

The Agreement shall provide for the satisfaction, on or prior to the Commencement Date and in each case in form and substance acceptable to Buyer and at Seller’s sole cost (except for costs of obtaining Buyer’s regulatory approvals, which shall be at Buyer’s sole cost) certain conditions precedent (“Commencement Date CPs,” and the date all such Commencement Date CPs have been satisfied or waived in writing by Buyer, the “Commencement Date”).

The Commencement Date CPs will include, without limitation,

* that all regulatory approvals Buyer requires from the Minnesota Public Utilities Commission (the “MPUC”), and all other required governmental approvals and permits (including without limitation the siting permit, environmental permits, and, if applicable, FERC approvals, and approvals under the Hart-Scott-Rodino Antitrust Improvements Act of 1976) have been obtained in form and substance acceptable to Buyer in its sole discretion and are final and non-appealable;
* Seller has obtained all land contracts (including that Seller shall obtain (a) amendments to the existing leases as needed to ensure that the lease payment provisions and other applicable terms provide for utility ownership, that the term of the leases is no shorter than the 35 years following construction of the Facility and/or to address other matters reasonably required by Buyer, and (b) new lease agreements required for site setbacks or other requirements or otherwise reasonably required by Buyer) and otherwise secured full site control, including real estate rights required to interconnect the Facility;
* Seller has obtained and delivered to Buyer title reports and title insurance commitments, and completed any curative work required by Buyer;
* Seller has obtained wind equipment and other required equipment procurement agreements, O&M agreement (if applicable), construction contracts, letters of credit and guarantees, all third-party reports and studies (including without limitation those relating to wildlife, environmental, geotechnical, archaeological, noise impact, wind resources, engineering and cost segregation) and related reliance letters, and all required third-party estoppels (including with respect to each lease and other land contracts) and third-party consents;
* the design documents have been finalized;
* Buyer has received a bring down of the Signing Opinion (defined below) confirming the Signing Opinion as of the Commencement Date and otherwise in form and substance acceptable to Buyer;
* Seller has secured interconnection rights for the Facility and obtained an effective interconnection agreement for the Facility acceptable to Buyer; and
* Seller will provide Buyer with evidence that the Commencement Date CPs have been satisfied in accordance with this Term Sheet and Buyer shall have a stated period to object or agree whether the Commencement Date CPs have been satisfied.

**SELLER’S WORK AND OTHER RESPONSIBILITIES**

Seller will be responsible, at its sole cost and expense, under the Agreement for all work required to achieve Commercial Operation Date, including with respect to the Facility substation, O&M building, and all other integrated and operational infrastructure facilities, all radial transmission lines and other interconnection facilities required to deliver power from the electric grid to the Facility and from the Facility to [insert] substation/point of interconnection, and including without limitation the fully assembled, installed, tested and commercially operational step-up transformers and related equipment, all in compliance with prudent utility practices, prudent engineering practices, applicable law, applicable permits, an agreed site plan, the applicable supply agreements, all manufacturer’s warranties, specifications and recommendations, the operations and maintenance agreement (if applicable), the applicable construction agreements, the interconnection agreement, Seller’s quality management plan, Buyer’s Technical Requirements (see Appendix D of the RFP)) that specify Buyer’s standards and requirements for the design, construction, materials, equipment and supplies for certain aspects of the Facility, and the Agreement (the foregoing, collectively, the “Performance Standard”). Buyer and Buyer’s authorized representatives shall have the right to inspect the work and to maintain personnel at the Facility site for such purpose. For the avoidance of doubt, the foregoing obligations of Seller will continue after the Closing and Seller will remain responsible for all costs and expenses of completing the work, including those arising under the applicable supply agreements and construction agreements.

**SELLER’S CLOSING DELIVERABLES**

Upon the terms and conditions to be defined within the Agreement, the obligations of Buyer to consummate the transactions contemplated are subject to the satisfaction by Seller of certain conditions as of the Closing date, including without limitation:

* Achievement of the Commencement Date.
* Transfer of all the ownership interests of any entity established for the purpose of this Term Sheet which include all rights and title to assets relating to the Facility, to Buyer or its designated affiliate.
* Certification that the Facility has achieved project mechanical, electrical and structural completion in compliance with the Performance Standard.
* Buyer has received, at Seller’s sole cost, a bring down of the Signing Opinion confirming the Signing Opinion as of the Closing date and otherwise in form and substance acceptable to Buyer.
* Evidence that any liens on the Seller, Company, Facility, real property or any other assets or interests of the Company have been removed as of the Closing other than permitted liens which have been scheduled or liens which have been scheduled and bonded to Buyer’s satisfaction.
* Seller has obtained all certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Seller pertaining to the closing.
* Seller has delivered the title insurance commitment and title policy (premium to be paid by Seller).

**BUYER’S CLOSING DELIVERABLES**

Upon the terms and conditions to be defined within the Agreement, the obligations of Seller to consummate the transactions contemplated are subject to the satisfaction by Buyer of certain conditions as of the Closing date, including without limitation:

* Payment of the Purchase Price installment due on the Closing date, subject to certain adjustments.
* Buyer has obtained all certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Buyer pertaining to the closing.

**REQUIRED APPROVALS**

The transaction is subject to obtaining specified approvals, authorizations, or orders, on or before the Closing date, including without limitation (to the extent necessary):

* Approval of the board of directors of Buyer and the board of directors or similar governing body of Seller shall be obtained prior to execution of the definitive agreement.
* Third party consents.
* Applicable governmental and regulatory approvals prior to Closing, including to the extent necessary, any applicable state agencies or commissions regulating utility activities and any government agencies having approval, consent or authority over the transactions contemplated by the Agreement, including without limitation the MPUC, the IRS, the FERC, the Department of Justice, the US Fish and Wildlife Service and the FAA. All such approvals shall have been obtained in form and substance acceptable to Buyer in its sole discretion and are final and non- appealable.

**REPRESENTATIONS AND WARRANTIES**

The transaction is subject to customary representations and warranties to be made by Buyer and Seller as of the execution date or the effective date of the definitive agreement, the Commencement Date, and the Closing date thereunder, including without limitation:

* Corporate existence and powers – Seller is a [corporation] validly existing and in good standing and has the power and authority to conduct its business as now conducted.
* Company existence and powers – the Company is a limited liability company validly existing and in good standing and has the power and authority to develop, construct, operate and own the Facility and has been engaged in no other business since its formation.
* Authority (execution and delivery)
* No conflicts - the transaction does not create any conflicts.
* Consents and approvals – no consent, approval or authorization is required in connection with the execution and performance of the Agreement.
* Legal proceedings of Buyer – there are no legal proceedings pending, or to Buyer’s knowledge, threatened, against Buyer, that affect the consummation of the transaction contemplated by the Agreement.
* Legal proceedings of Seller and Company – there are no legal proceedings pending, or to Seller’s knowledge, threatened, against (i) Seller relating to the Facility or affecting Seller’s ability to sell the Company or (ii) the Company or the Facility, and there are no material legal proceedings pending, or to Seller’s knowledge, threatened, against (x) the Company relating to the Facility or (y) the Company or the Facility.
* Compliance with Laws – Seller and the Company are in compliance with all laws applicable to Seller, Company, Facility and the transactions contemplated by the Agreement.
* Environmental – Seller, the Company and its affiliates have no environmental liabilities relating to the Facility and are in compliance with environmental requirements relating to the Facility. Seller and its affiliates have not received any notice of an alleged violation of environmental law pertaining to the Facility from any governmental entity. There are no facts, circumstances, conditions or occurrences relating to the Facility that could reasonably be expected to form the basis of a claim, requirement or obligation imposed by any governmental entity under any environmental law on Seller or its affiliates.
* Contracts – Schedule of contracts (i) binding on the Company, (ii) binding on Seller that relate to the Facility, or (iii) to which the Facility is subject or bound, and Seller has furnished to Buyer true, correct and complete copies of all such contracts.
* Land Contracts – The land contracts and real property owned by the Company are in full force and effect, and shall comprise all of the real property interests necessary in connection with the acquisition, development, construction, installation, interconnection, completion and operation of the Facility, all in accordance with all laws, and are sufficient to enable the Facility to be commercially operable as contemplated in the Agreement, including legal and physical ingress and egress rights to and from public right-of-way for construction, operation, and maintenance of the Facility.
* Permits - All permits required to develop, construct, own, and attain commercial operation of the Facility are held by the Company, are final and non-appealable, are scheduled, and Seller has obtained and furnished to Buyer true, correct and complete copies of such permits. Such permits are in full force and effect and are legal, valid, binding and enforceable in accordance with their respective terms.
* Wind Data – Seller has delivered to buyer true, correct and complete copies of all insolation and related meteorological data, and energy production estimates if any, related to the Facility.
* Title – The Company is in possession of and has good and marketable title to the Facility free and clear of all encumbrances, except for Permitted Encumbrances. Seller has good and marketable title to the Company’s equity interests, free and clear of all encumbrances. Seller and its affiliates have no legal obligation to, or non-binding agreement in principle with any other person, to sell or affect a sale of all, or any portion of, the Facility or the Company.
* Other representation and warranties customary in a transaction of this nature, including those pertaining to ITCs or PTCs, taxes, title, finders, intellectual property, brokers and insurance or that are required following Buyer’s due diligence review.

**OTHER AGREEMENTS**

* Interconnection. Seller shall be responsible for complying with all costs and requirements necessary to attain the final interconnection of the Facility, including, but not limited to, all costs for the construction of any gen tie transmission line to [insert] substation/point of interconnection and any necessary network upgrade costs.
* Technology. The major equipment components of the Facility shall be manufactured by top tier manufacturers acceptable to Buyer as specified in Buyer’s Technical Requirements in Appendix D of the RFP.
* Buyer’s right to inspect. Buyer and Buyer’s authorized representatives shall have the right to inspect the work and to maintain personnel at the Facility site for such purpose. Such inspection of any part of the work shall in no way relieve Seller of its obligations under the agreement.
* Seller will cause the Facility to satisfy (in accordance with the Internal Revenue Code and associated guidance) requirements that qualify the Facility for the ITC at the [XX%] level or at the PTC rate of [$ x.xx/mWh]. Seller has qualified the Facility for the ITC and/or PTC using the following process: [Seller to provide detailed description of qualification method]
* At Seller’s cost, a legal opinion (the “Signing Opinion”) from tax counsel selected by Buyer and in form and substance acceptable to Buyer shall be delivered to Buyer prior to the effective date of the Agreement, which Signing Opinion shall speak to the tax benefits associated with the transactions contemplated by the Agreement accruing to Buyer upon or after the Closing, and must include, without limitation, an opinion that, under the rules, regulations, and other laws in effect as of the date of the Signing Opinion, the Facility will, based on among other things, the representations made by Seller on the date the Signing Opinion is delivered, generate a [XX%] ITC or [$x.xx/mWh] PTC (including by having begun construction, within the meaning of applicable IRS guidance, on or prior to December 31, 20[XX]) and, assuming the Closing occurs, that the exclusive rights to such tax credits will accrue to Buyer upon the placed in service date of the Facility in accordance with applicable law and tax rules.
* In addition to, and independent of any pass-through warranties from the wind turbine and monitoring equipment manufacturers, balance of plant contractor and other suppliers and subcontractors, Seller shall provide a full wrap project warranty of no less than two years in duration as to defects in materials, workmanship and title, quality of work and performance.
* Seller shall assume all risks arising from any change in its commodity prices and all changes associated with any change in law affecting Seller’s Facility costs including, but not limited to, changes in tariff rates.
* Seller shall be responsible for all taxes relating to the pre-closing period and all transfer taxes and any sales, use or other taxes related to the purchase and sale of the ownership interests of the Company and any purchase or conveyance of real or personal property to the Company to be used in the Facility.
* Buyer will not be required to close if the aggregate installed capacity of the Facility is less than 95% of the Expected Energy of the Facility (the “Output Guarantee”).
* Seller shall make a per diem liquidated damages payment, in an amount of $400 MW, for each day after a guaranteed Substantial Completion that the Facility has not achieved, such delay damages not to exceed an agreed percentage of the Purchase Price in the aggregate.
* NERC Matters: Seller shall comply with the NERC Reliability Requirements applicable to generating projects during the period from the date of Closing and Substantial Completion and shall ensure the Facility meets all NERC Reliability Requirements under the interconnection agreement. Seller shall maintain records required by NERC of such compliance actions and shall perform such other tasks and responsibilities as are set forth in Buyer’s Technical Requirements. No later than fifteen (15) business days before Closing, Seller will provide Buyer current applicable compliance records related to the Facility developed during testing or prior to Closing (such as test records, relay settings, energization and synchronization reporting activities, and voltage schedule). Seller will provide Buyer design documents required by NERC (such as the Reactive Power Report, Reactive Power Control design (for VAR-002 and to meet the Voltage Schedule), Facility Ratings, Coordination Studies, etc.) no later than 30 days before Closing.

**TERMINATION PROVISIONS**

The Agreement may be terminated upon written notice by the terminating party (as described below) in the event of certain occurrences, including without limitation:

* If applicable, by Buyer if the Commencement Date has not occurred by the Outside Commencement Date, regardless of the reason for such failure, provided that the terminating party is not in breach of the Agreement.
* By either party if the Closing has not occurred by the Outside Closing Date [date TBD], regardless of the reason for such termination, provided that the terminating party is not in breach of the Agreement.
* By either party if regulatory approvals for the transaction are not obtained by the Outside Commencement Date on terms acceptable to Buyer in its sole discretion.
* By Buyer if applicable law or any order issued by, or any other action taken by, an authority restrains, enjoins, or otherwise prohibits the consummation of the transactions contemplated by the Agreement.
* By either party in the event of a material uncured breach or repudiation of the Agreement by the other party.
* By Buyer in the event of abandonment of the Facility by Seller or the Company.
* By either party if the other party or, in the case of Seller, the provider of the Seller Credit Support, suffers insolvency or bankruptcy.
* By Buyer if there is a change of control of Seller.
* Termination Payment. Without limiting any other legal or contractual right or remedy available to Buyer (including Buyer’s rights to liquidated damages under the Agreement that accrued prior to such termination), if the Agreement is terminated Seller will pay to Buyer a termination payment in the indicated amount:
* if the Mechanical Completion Date has not occurred and the termination occurs on or prior to Commercial Operation Date, an amount equal to $300.00 multiplied by the number of kW in the Expected Nameplate Capacity;
* if the Commercial Operation Date has not occurred and the termination occurs, an amount equal to $300.00 multiplied by the number of kW in the Expected Nameplate Capacity;
* Return of Progress Payments. In addition to any termination payment owing by Seller to Buyer, if the Agreement is terminated prior to Closing Seller will repay to Buyer the aggregate amount of progress payments paid by Buyer as of such date.

**INDEMNIFICATION**

Each party shall indemnify and hold harmless the other party and its respective employees, representatives, officers, directors and agents from and against any and all damages arising out of any breach or violation of any representation, warranty, covenant, inaccuracy within the Agreement, or any liability not assumed as part of the Agreement, or negligence in performance of the Agreement. Seller shall indemnify Buyer for any environmental (including hazardous material) claims arising prior to the Closing date. No claim for indemnification shall be brought against the indemnifying party until the total damages for which such party is liable exceeds in the aggregate a threshold amount of $100,000, at which point indemnification may be sought for the full aggregate amount of damages, including those amounts that do not exceed the threshold. The aggregate damages to which the indemnified parties are entitled in respect of breaches or representations and warranties shall not exceed the indemnity cap, which shall be 30% of the purchase price.[[1]](#footnote-1) Such threshold and indemnity cap shall not apply to damages to the extent they arise from a party’s fraud, willful misconduct or gross negligence or a breach of certain “fundamental” representations (as applicable to each party) such as corporate existence, power, authority, conflicts, title, land contracts, real property,

environmental, intellectual property or tax matters or any liability not assumed as part of the Agreement. The aggregate damages to which the indemnified parties are entitled shall not exceed the Purchase Price. Such cap shall not apply to damages to the extent they arise from a party’s fraud, willful misconduct or gross negligence or any liability not assumed as part of the Agreement.

**CHANGES TO TRANSACTION STRUCTURE**

The parties recognize that changes to the ITC or PTC may be made, or other incentives for wind energy generation may become available for U.S. federal income tax purposes, and that the parties may need to restructure the transaction for Buyer to be able to utilize such revised ITC, PTC, or other incentives. The parties agree that they will negotiate in good faith to restructure the transaction in a manner that will maximize the ability of the parties to utilize any such revised ITC, PTC, or other incentives.

**EXHIBIT A**

**FACILITY DESCRIPTION, ONE-LINE DIAGRAM, AND SITE MAP**

*Exhibit A contains a scaled map that identifies the Site, the location of the Facility at the Site, the equipment and components which make up the Facility, a one-line diagram, the location of the Interconnection Point, the location of Electric Metering Devices, and the Point of Delivery.*

The Facility will consist of \_\_\_\_\_\_\_\_\_\_ wind turbines manufactured by \_\_\_\_\_\_\_\_\_\_\_\_\_ and designated as its \_\_\_\_\_\_ including associated \_\_\_\_\_\_\_\_\_\_\_, rated at \_\_\_\_ MW, for a total Installed Capacity of \_\_\_\_\_ MW.

**EXHIBIT B**

**MAJOR AND COMMERCIAL OPERATION MILESTONE(S)**

|  |  |
| --- | --- |
| **Milestone** | **Date** |
| **Project boundary defined and land acquisition complete** |  |
| **All Project Permits Received** |  |
| **Interconnection Agreement Executed** |  |
| **Execution of all Construction Contracts required to Construct the Facility** |  |
| **Closing on Financing for the Facility with Proof of Financial Capability to Construct the Facility** |  |
| **Issuance of Full Notice to Proceed to Contractor** |  |
| **All Wind Turbines and Step-Up Transformers Delivered and Installed at the Site** |  |
| **Interconnection Facilities Placed In-Service** |  |
| **Mechanical Completion** |  |
| **Substantial Completion** |  |
| **Commercial Operation Date** |  |

1. If deemed appropriate by Buyer based on the size and/or technology of the Facility, the indemnity threshold and cap may be determined on a $/kW or $/MW basis. [↑](#footnote-ref-1)