

Kitsap Non-Wires Alternatives RFP:

Exhibit E. Prototype Ownership Term Sheet

EXHIBIT E. PROTOTYPE OWNERSHIP TERM SHEET

*Prototype Ownership Term Sheet***Background**

This Prototype Ownership Term Sheet (“Term Sheet”) sets forth the current requirements that PSE wants the Respondent to address or incorporate into any proposal made to PSE that contemplates the ultimate ownership of Respondent's project by PSE. It is intended to identify certain, but not all, of the elements of a potential transaction that would be embodied in Definitive Agreements (defined below). This Term Sheet may serve as the basis for a project in development or in operation. The terms presented and bracketed herein are indicative of PSE’s expectations and may be subject to negotiation depending upon the particular nature of the proposal and other factors.

PSE has endeavored to identify in this Term Sheet those provisions that would be applicable generally to all Respondents and relevant to any potential transaction arising out of a proposed PSE ownership arrangement involving the sale of a project to PSE. PSE recognizes, however, that the particular facts and circumstances relevant to Respondent's project may vary from the transaction structure described in this Term Sheet, so certain proposals may not incorporate all elements of a PSE ownership arrangement outlined in this Term Sheet.

PSE also recognizes that Respondent may have other reasons (whether legal, regulatory or relating to financing) that may cause Respondent to propose that PSE purchase equity interests (such as limited liability company interests or limited partnership interests) in a project company that owns a generation project, rather than sell the project outright to PSE. By submitting its proposal, Respondent acknowledges that the RFP, including this Term Sheet, has been prepared by PSE as part of PSE's ongoing process solution development for Kitsap transmission capacity needs. This Term Sheet is an integral part of, and subject to, the terms and conditions of the RFP. This Term Sheet shall not be interpreted as an offer, agreement or commitment by PSE to acquire any resource. Also, this Term Sheet shall not limit, restrict or obligate PSE with regard to the conduct of its solution development process or the actual procurement of any resources.

PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other resources and/or seek to acquire resources from one or more parties other

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than any Respondent. PSE may also modify, change, supplement or delete any and all provisions of this Term Sheet, or withdraw and cancel the RFP.

**General
Ownership
Structure**

“PSE ownership arrangement” means a proposal pursuant to which PSE would ultimately own the resource. Ownership shall be transferred to PSE on or after the Commercial Operations Date (“COD”) and using a variety of approaches. Possibilities include, for example, development by Respondent followed by the transfer to PSE, an initial purchase of power by PSE from a generation resource with transfer of ownership later, or other mutually beneficial approaches. PSE will not acquire an ownership interest in a Project (as defined below under “*Respondent and the Project*”) prior to COD.

This Term Sheet sets forth certain terms and conditions which would be embodied in a purchase and sale agreement (the “PSA”) pursuant to which PSE would acquire 100% of all assets, properties and rights of the Project from Respondent.¹

If Respondent's proposal contemplates a PSE ownership arrangement, in addition to containing the other submissions required by the RFP, Respondent will need to set forth in its proposal substantial additional details. PSE will need to review supporting documents, information and data regarding the timing, price, terms and conditions of a proposed sale of the Project to PSE and, in the case of a Project under development, a budget, schedule and other information regarding the funding of construction, operation and maintenance of the Project.

¹ *These assets, properties and rights of the Project would include all of the associated real and personal property, tangible and intangible property, assets, equipment, components, facilities, interconnections, systems, spare and replacement parts, permits, intellectual property, and contractual, expansion and other rights currently held or acquired in the future that are necessary, useful, held for use or appropriate for the ownership, planning, development, permitting, design, engineering, construction, interconnection, transmission, use, operation, maintenance, repair and expansion of the Project.*

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Respondent and the Project	<p>This Term Sheet assumes that Respondent is the owner of a CETA-compliant capacity resource currently operating or under development and having a minimum of 10 MW in nameplate capacity for transmission-connected projects, or between 5 MW and 10 MW for distribution-connected projects (the "<u>Project</u>").</p> <p>In its response to the RFP, in addition to the other submissions that should accompany a proposal that contemplates the sale of all of the Project to PSE, Respondent needs to specify the date by which the Project will be placed in service, which shall be no later than December 31, 2028 (consistent with Section 1 of the RFP). At the placed in-service date, the Project shall be in full compliance with all technical, performance and operating criteria and standards and the requirements of the RFP, applicable laws, regulations, permits and governmental authorities having jurisdiction over the parties or the Project.</p>
Certain Definitive Agreements	<p>PSE expects that the agreements necessary to complete the potential transaction described in this Term Sheet (the "<u>Definitive Agreements</u>") would include, among others: (1) a PSA for the sale by Respondent to PSE of all of the Project, (2) if required, a power purchase agreement ("PPA") and (3) if PSE deems it necessary due to the credit position of Respondent, a guaranty by a creditworthy affiliate of Respondent acceptable to PSE (the "<u>Guarantor</u>"), which would guaranty Respondent's obligations and those of Respondent's affiliates under the Definitive Agreements (the "<u>Respondent Guaranty</u>").</p> <p>The execution and delivery of the Definitive Agreements would be subject, among other things, to PSE's completion of due diligence to its satisfaction and the approval of the transaction by each party's board of directors (or other appropriate management body).</p>
Closing	<p>The Closing would occur after receipt by the parties of all consents, authorizations and approvals and the satisfaction or waiver of conditions precedent specified in the Definitive Agreements. At the Closing, PSE would purchase the Project from Respondent, free and clear of all liens, charges, encumbrances, and conflicting or competing claims.</p>
Early Termination	<p>At any time before Closing, the Definitive Agreement may be terminated upon the occurrence of any of the following events:</p> <ul style="list-style-type: none"> • By mutual written consent of the Parties;

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- By Purchaser or Seller in the event any non-appealable law becomes effective, or a final order is issued, which prohibits the completion of the Proposed Transaction;
- By Purchaser or Seller, as applicable, if
 - (i) the other Party breaches any representation, warranty or covenant in the Build Transfer Agreement,
 - (ii) such breach would result in a failure of, or inability of the other Party to satisfy the applicable Closing conditions(s), and
 - (iii) such breach has not been cured to Purchaser's or Seller's, as applicable, reasonable satisfaction within thirty (30) days following receipt of written notice of such breach or an extended cure period not to exceed the Outside Closing Date;
- By either Party, upon the bankruptcy of the other Party;

If validly terminated, then all further obligations of the Parties will end (other than those which are intended to survive termination), and the Parties will be entitled to pursue all rights or remedies available at law or in equity.

Default

The definitive agreements shall include customary events of default ("Events of Default") including for failure to make payments when due, failure to perform a material obligation, breach of representation or warranty, bankruptcy, failure to maintain required credit support, etc.

In addition to customary Events of Default, the following shall be additional Events of Default, subject to extension for delays caused by Buyer or force majeure events and compliance by Seller of its obligation to mitigate such delays:

Failure to achieve a certain Development Milestones within [] days after the guaranteed date therefor (as described above).

Failure to achieve the Commercial Operation Date within [] days after the Guaranteed Commercial Operation Date (as described above).

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Termination	<p>Buyer may terminate the Definitive Agreements if Seller fails to achieve Commercial Operation by the date that is [] days after the Guaranteed Commercial Operations Date.</p> <p>If an Event of Default shall have occurred, the non-defaulting Party shall have the right to terminate the Definitive Agreements and, in such case, each Party shall pay the other all amounts due for all periods prior to termination. In addition, the defaulting Party shall make a termination payment to the non-defaulting party.</p> <p>Any termination payment under the Definitive Agreements shall be based on a comparison of NPV of payments that non-defaulting Party reasonably expects to be applicable in the market under a replacement contract covering the same services to the NPV of the then remaining payments under the Definitive Agreements, plus the reasonable transactional costs of the non-defaulting Party entering into a new ownership arrangement. Calculations based on reasonable assumptions as to future Facility operations, differences between a replacement contract and the Definitive Agreements, discount rate and similar considerations, as reasonably determined by the non-defaulting Party.</p>
Transaction Taxes	<p>Respondent would be responsible for the payment of all sales, conveyance, transfer, excise, real estate excise, business and occupation or similar transaction taxes assessed with respect to or imposed on either party relating to PSE's purchase of the Project or otherwise in connection with a potential transaction. PSE would agree to cooperate with Respondent to minimize the parties' respective transaction taxes.</p>
Regulatory Approvals	<p>PSE expects that the following regulatory approvals, among others, might be required prior to Closing to implement a proposed transaction:</p> <p>Receipt of FERC approval under Section 203 of the Federal Power Act; and Expiration of any waiting period (or obtaining of any approval required) under Hart-Scott-Rodino.</p>
Representations, Covenants & Warranties	<p>The Definitive Agreements would contain representations, covenants and warranties of each party that are customary for similar transactions.</p>
Terms and Conditions For	<p>If Respondent's proposal involves a development Project, PSE requires that the Respondent keep responsibility for its completion, start-up and commissioning pursuant to a separate engineering, procurement and</p>

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Projects Under Development

construction or similar contract arrangements (collectively, "EPC") in accordance with PSE requirements.

In either case, the Definitive Agreements would include detailed schedules showing the Project's design, engineering and construction status. These schedules will need to include:

- performance and technical specifications of the Project;
- performance guarantees;
- major equipment and systems and vendors;
- major subcontractors;
- the status of development activities including real estate, permitting, connection to the PSE system, etc. ;
- the status of contractors' and vendors' obligations and warranties; and,
- the schedule for completion of the Project and other related information and data;
- labor agreements

The Definitive Agreements would also require Respondent to provide access to the Project to certain designated PSE employees, representatives and agents so that they can observe and monitor the manufacture, fabrication, assembly, installation, construction, start-up, testing and commissioning of the Project and any parts or components of it. PSE's employees, representatives and agents would also be permitted access to the premises of contractors, vendors and consultants and attend meetings and review and copy information, data and documents in connection with PSE's due diligence review. PSE's employees, representatives and agents would be required to observe Respondent's (and Respondent's contractors') rules regarding safety, security and confidentiality and would not interfere with or hinder the construction of the Project, unless in cases of imminent threat. Respondent will be required to make contractors, equipment suppliers, and vendors or personnel available to provide necessary training to PSE personnel who will be responsible for operation of the project after hand over.

Labor

To the extent possible and subject to any collective bargaining agreement of Seller or its affiliates, if any, Seller shall make a good faith effort given its

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commercial requirements to hire local workers (such as local unionized workforce) during construction of the Facility and as permanent employees for the operation of the Facility and performance of Seller's obligations under the terms of the definitive agreement. Seller shall use commercially reasonable efforts to use apprenticeship labor to meet the Washington State Apprenticeship and Training Council requirements so as to allow Purchaser to qualify for the statutory one and two-tenths (1.2) multiplier for quantifying the Attributes from the Facility.

As required by WAC 480-107-075, Respondent shall furnish to Purchaser from time to time, upon Purchaser's reasonable request, and in any event not more than once annually, a report detailing the use by Seller of diverse businesses, including but not limited to women-, minority-, disabled-, and veteran-owned businesses, and a report detailing the application of the labor standards in RCW 82.08.962 and 82.12.962.

Respondent's Completion of the Project

Subject to certain approval rights of PSE, Respondent would be responsible for the direction of, and the cost and expense necessary, incidental to or appropriate for, the construction, completion, start-up and commissioning of the Project, including mobilization, design, engineering, procurement, supply, supervision, and testing expenses (with the exception of such expenses related to fuel for certain tests as set forth below). Guarantor would unconditionally guarantee Respondent's payment, performance, warranty and other obligations with respect to the design, engineering, construction and completion of the Project in accordance with the criteria set forth in the Definitive Agreements. Respondent would cause construction of the Project to be performed or supervised by an EPC contractor experienced in the design, engineering and construction of electric generating facilities similar to the Project and in accordance with applicable laws, regulations, permits, the standards and criteria of original equipment manufacturers, good industry practices and insurance requirements. PSE may require that labor agreements be in place for construction of the project.

Respondent shall use commercially reasonable efforts to achieve the agreed upon Development Milestones for the Facility, which shall include "interim" major milestones, such as receipt of all applicable permits, EPC contract execution, commencement of physical construction, commencement and completion of tie-line construction, completion of construction of foundations, equipment commitment date, energization date, and test energy date. The guaranteed major Development Milestone

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dates shall be subject to extension for delays caused by PSE or force majeure events, subject to compliance by Respondent of its obligation to mitigate such delays. In the event Respondent fails to achieve a major Development Milestone on or before the guaranteed date therefor, Respondent shall be required to pay to PSE "interim" liquidated damages for each day of delay beyond the applicable guaranteed date in an amount per day of [\$] per MW of the Facility's Planned Nameplate Capacity. If certain major Development Milestones have not been achieved within [] days after the guaranteed date therefor, it shall be an Event of Default under the Definitive Agreements and PSE shall be entitled to terminate the Definitive Agreements and seek damages or exercise other remedies at law or equity. Interim liquidated damages shall be credited against the amount of any delay liquidated damages payable for a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and if any such credits are not fully utilized as of the Commercial Operations Date, Buyer shall refund such remaining amount of interim liquidated damages to Respondent. If the Guaranteed Commercial Operation Date ultimately is achieved despite Seller's failure to satisfy one of more of the other major Development Milestones, Buyer shall refund such interim liquidated damages to Seller.

Respondent shall not be permitted to achieve Commercial Operation of the Project unless the Final Nameplate Capacity equals or exceeds [____ percent (%)] of the Planned Nameplate Capacity. If the Commercial Operation Date is achieved, but the Final Nameplate Capacity is less than one hundred percent (100%) of the Planned Nameplate Capacity, Seller shall make a one-time payment of liquidated damages to Purchaser in the amount of [\$] for each MW that the Final Nameplate Capacity is below the Planned Nameplate Capacity.

Respondent shall provide a Guaranteed Commercial Operation Date for the Facility. The Guaranteed Commercial Operation Date shall be extended for delays caused by PSE or force majeure events (with extensions for force majeure events not to exceed [] days in the aggregate), subject to compliance by Respondent of its obligation to mitigate such delays. In the event Respondent fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Respondent shall be required to pay to PSE liquidated damages for each day of delay beyond the Guaranteed Commercial Operation Date in the amount per day of [\$] per MW of the Facility's Planned Nameplate Capacity. If the Commercial Operation Date has not been achieved within [] days after the Guaranteed Commercial Operation Date, it shall be an Event of Default under the Definitive Agreements and Buyer shall be entitled to terminate

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the Definitive Agreements and seek damages or exercise other remedies at law or equity.

Change Orders:

In completing the construction of the Project, Respondent would notify PSE, in writing, prior to making any proposed change order or any other modification to the design, component parts or equipment or operational characteristics of the Project that (A) (i) involves individually an amount in excess of [\$___] or (ii) is proposed after the aggregate value of prior change orders or modifications is [\$___], or (B) which would reasonably be expected to adversely affect the operational characteristics, reliability or costs of operation and maintenance of the Project. PSE would have ten (10) days to notify Respondent in writing that PSE does not consent to the proposed change order or modification described by Respondent in such notice; otherwise, PSE would be deemed to concur with the proposed change order or modification.

Otherwise, Respondent shall have the right, without PSE's consent, to make such substitutions of parts, materials and/or equipment in completing the construction of the Project as would not be reasonably expected to adversely affect the operational characteristics, reliability or costs of operation or maintenance of the Project. Respondent agrees to provide PSE with a list of such substitutions on a monthly basis and at Substantial Completion and Final Completion (each as defined below). In the event Respondent fails to provide timely notice to PSE of any proposed change order or modification of the nature or effect described above, and such change order or modification results in a material adverse change to the operational characteristics, reliability or costs of operation and maintenance of the Project, the Definitive Agreements would set forth mutually agreed upon rights and remedies.

For purposes of this Term Sheet, "Substantial Completion" means the completion of the Project, the completion of the facilities necessary to interconnect the Project to the electric grid and to receive water, fuel supplies and other supplies and services, and the delivery of all permits, interim manuals sufficient for interim operations during the period between Substantial Completion and Final Completion, and other deliverables necessary for PSE to operate the Project on a commercial basis in accordance with the requirements of the Definitive Agreements at an electrical output not less than certain "Minimum Performance Guarantees" to be agreed to in the Definitive Agreements. "Final Completion" shall mean the final completion by Respondent of all items of

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work remaining at Substantial Completion, delivery of all outstanding deliverables, including manuals and lien releases from contractors and vendors, clean-up of the site and removal of all equipment.

No later than at Final Completion, Respondent would provide PSE with statutory lien releases from the EPC contractor and its subcontractors furnishing services, equipment or goods used in the design, engineering, equipping, construction and completion of the Project, evidencing that all amounts due to such parties have been paid or bonded around, such that PSE and the Project would not be liable for payment of any such amounts owed.

Subsequent to Closing, PSE would be the owner of and receive one hundred percent (100%) of all energy products produced in connection with the start-up, testing and commissioning of the Project.

Development Milestones

Seller shall use commercially reasonable efforts to achieve the agreed upon Development Milestones for the Facility, which shall include "interim" major milestones, such as receipt of all applicable permits, EPC contract execution, commencement of physical construction, commencement and completion of tie-line construction, completion of construction of foundations, equipment commitment date, energization date, and test energy date. The guaranteed major Development Milestone dates shall be subject to extension for delays caused by Buyer or force majeure events, subject to compliance by Seller of its obligation to mitigate such delays.

In the event Seller fails to achieve a major Development Milestone on or before the guaranteed date therefor, Seller shall be required to pay to Buyer "interim" liquidated damages for each day of delay beyond the applicable guaranteed date in an amount per day of [\$] per MW of the Facility's Planned Nameplate Capacity. If certain major Development Milestones have not been achieved within [] days after the guaranteed date, it shall be an Event of Default under the Definitive Agreements and Buyer shall be entitled to terminate the PPA and seek damages or exercise other remedies at law or equity.

Interim liquidated damages shall be credited against the amount of any delay liquidated damages payable for a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and if any such credits are not fully utilized as of the Commercial Operations Date, Buyer shall refund such remaining amount of interim liquidated damages to Seller. If the Guaranteed Commercial Operation Date ultimately is

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achieved despite Seller's failure to satisfy one of more of the other major Development Milestones, Buyer shall refund such interim liquidated damages to Seller.

Additional Representations, Warranties and Covenants of Respondent

PSE expects that the Definitive Agreements will include the following additional representations, warranties and covenants:

- (1) Respondent will cause the Project to be developed, designed, engineered, equipped and constructed in accordance with the provisions of the Definitive Agreements so as to meet the Minimum Performance Guarantees and other criteria set forth in the Definitive Agreements and be Substantially Complete and commercially operable on or before a guaranteed Substantial Completion date;
- (2) Respondent will provide a full “wrap” of obligations with respect to the Project and all equipment warranties and cause Guarantor to guarantee Respondent's obligations;
- (3) Respondent would at all times maintain sufficient rights and entitlements to such services and facilities as may be necessary to develop, construct and complete the Project so that upon Substantial Completion the Project may be operated on a commercial basis;
- (4) Respondent would obtain and maintain during the construction of the Project, at Respondent's cost and expense, builder's risk insurance, the terms, conditions, limits of coverage and other provisions of which are normal and customary;
- (5) Respondent, with PSE's commercially reasonable cooperation and assistance, would at Respondent's cost be responsible for applying for, obtaining and maintaining and complying with all permits and other governmental authorizations necessary or appropriate for the construction, start-up, testing, ownership, occupancy, use, operation and maintenance of the Project; and
- (6) Respondent would cause all equipment warranties (the terms and conditions of which PSE will have the right to approve) to be in full force with the respective contractors and vendors and fully assignable to PSE, and Respondent will assign such warranties to PSE as of Substantial Completion of the Project.

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Project Managers and Independent Engineer

Each of the parties would designate a construction project manager no later than the date of Closing. Notices, correspondence and other communication required or contemplated by the Definitive Agreements relating to the construction of the Project would be made through the parties' respective construction project managers, except as otherwise agreed.

An independent engineer would be retained, at Respondent's expense, to verify Respondent has achieved the performance levels and other criteria required to meet Substantial Completion and Final Completion under the Definitive Agreements. PSE and Respondent would select the independent engineer from a mutually agreed list of qualified engineers included in the Definitive Agreements.

**Availability
Guarantee**

For Projects which include an initial purchase of power by PSE from a resource with transfer of ownership later, the availability guarantee shall be as set forth in the relevant provision of the Prototype Clean Energy PPA Term Sheet found in Exhibit G to this RFP.

**Respondent
Guaranty
Requirements**

If PSE determines that Respondent alone is not sufficiently creditworthy, PSE will require Respondent to have Guarantor provide PSE with the Respondent Guaranty, pursuant to which Guarantor would guarantee the performance by Respondent and Respondent's affiliates of Respondent's obligations to or for the benefit of PSE under the Definitive Agreements. The Guarantor would also guaranty the payment of any damages, losses, liabilities, costs and expenses incurred by PSE and payable by Respondent or Respondent's affiliates) under the Definitive Agreements. The parties would address in the Definitive Agreements the circumstances, if any, in which PSE might require adequate assurance by Respondent or Guarantor of Respondent's performance under the Definitive Agreements, and the nature of such assurance.

**Limitations on
Liability**

The Definitive Agreements shall provide that notwithstanding anything to the contrary, in the event of a breach of the obligations of one of the parties or otherwise, such party would be liable for direct damages only, and under no circumstances shall such party be liable to the other party for consequential (including, without limitation, lost profits, business interruption and the like), incidental, punitive, exemplary or similar damages.

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Indemnification The Definitive Agreements would also set forth provisions by which each party would indemnify, hold harmless and defend the other party and its affiliates, directors, officers, employees, representatives and agents from and against certain losses with respect to false or inaccurate representations and warranties or breaches of covenants and obligations under the Definitive Agreements.

Due Diligence For a specified period commencing on the date PSE notifies Respondent that Respondent's proposal has been selected as a potential transaction (this period, and any extensions to it that the parties may agree upon, the "Due Diligence Period"), PSE would be entitled to conduct an in-depth due diligence review of the Project, Respondent, Guarantor and any affiliate of Respondent that would be a party to a Definitive Agreement. Respondent agrees to fully cooperate (and cause Respondent's affiliates to fully cooperate) with PSE and to facilitate this process.

PSE expects that PSE's due diligence would include a review of the following, among other things:

- all technical matters relating to the Project;
- construction, engineering and transmission agreements, and any other commercial arrangements relating to the Project;
- legal and regulatory matters (including the availability and terms of all required permits and licenses);
- information systems, human resources (subject to applicable legal confidentiality and other restrictions), insurance matters; and
- any other matters associated with the development, permitting, design, safety, engineering, construction, interconnection, start-up, commissioning, operation and maintenance of the Project.

PSE agrees that its due diligence review shall not unreasonably disrupt Respondent's (or Respondent's affiliates') business or the business of Respondent's directors, officers, employees and agents. The Due Diligence Period would terminate automatically in the event of the termination of the Term Sheet by either party.

During the Due Diligence Period, Respondent and Respondent's affiliates would provide access to the Project to certain designated PSE employees, representatives and agents so that they could observe, monitor, and assess the manufacture, fabrication, assembly, installation, construction, start-up, testing and commissioning of the Project and any of its parts or components. PSE's employees, representatives and agents would also be

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permitted access to the premises of contractors, vendors and consultants, attend meetings and review and copy information, data and documents in connection with PSE's due diligence review. PSE would be subject to and would be required to observe Respondent's (and Respondent's contractors') rules regarding safety, security and confidentiality and PSE would not interfere with or hinder the construction of the Project.

**Dispute
Resolution**

The Definitive Agreements would contain provisions for the resolution of disputes, and the exclusive forum for the resolution of any dispute arising under or in connection with this Term Sheet or the Definitive Agreements would be King County, Washington or if no such court will accept jurisdiction, in any state or federal court of general jurisdiction in the State of Washington, or if no such court will accept jurisdiction, in any court of competent jurisdiction in the United States) with respect to any proceeding relating to the Definitive Agreements.

Expenses

Unless otherwise provided for in the RFP, each party would bear its own legal, accounting, regulatory and other professional fees and expenses and other costs associated with the RFP and a potential transaction, regardless of whether a transaction is consummated.

Assignability

The parties would not be permitted to assign the Definitive Agreements or their respective rights and obligations under them without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.