



## **TURBINE SUPPLY AGREEMENT TERM SHEET**

### **Background**

The purpose of this non-binding Term Sheet ("Term Sheet") is to set forth the terms upon which the Massachusetts Technology Collaborative ("MTC") will transfer ownership to a purchaser (the "Purchaser") of the Turbine Equipment, as set forth in Exhibit "B" of that certain Turbine Supply Agreement and Intellectual Property License dated as of December 9, 2005, by and between MTC, as Buyer, and Vestas-American Wind Technology, Inc. ("Vestas"), as Supplier, as modified by a certain Change Order No. One dated December 18, 2006 and a certain Change Order No. Two dated November 8, 2007 (the "Change Orders") (collectively, the "Turbine Supply Agreement"). This Term Sheet is intended to identify certain elements of a potential transaction that would be embodied in the Definitive Agreements (as defined below).

Capitalized terms used, but not otherwise defined, herein have the meanings set forth in the Turbine Supply Agreement.

### **Purpose of Sale**

**Any Turbine Equipment purchased pursuant to this Term Sheet is intended to be installed at the Float Realty Trust site at 82 / 100 Technology Park Drive in Falmouth, Massachusetts.**

### **Disclaimer**

**This Term Sheet is not a binding offer, agreement or commitment of MTC or any MTC affiliate to sell the Turbine Equipment.** The potential transaction described herein will be subject to the negotiation and execution of the Definitive Agreements.

### **Certain Definitive Agreements**

The agreements necessary to complete the potential transaction described in this Term Sheet (the "Definitive Agreements") shall include, at a minimum: (1) a purchase and sale agreement between MTC and the Purchaser transferring all of MTC's rights, title and interest in the Turbine Equipment upon payment of the Price in full, which agreement will contain customary commercial terms for transactions of this type; and (2) an agreement between Vestas and the Purchaser, setting forth the services which shall be provided by Vestas (including, but not limited to, delivery of the Turbine Equipment to the site, and commissioning services). The Purchase and Sale Agreement is subject to the approval of Vestas, as set forth in the provisions of MTC's existing Turbine Supply Agreement with Vestas.

## **Turbine Equipment**

The Turbine Equipment that is the subject of this Term Sheet includes the following, as further specified in the Turbine Supply Agreement:

WTG: One (1) Vestas V82-1650 kW, wind turbine generators with the following:

- rotor blades, rotor hub and fastening hardware
- internal nacelle crane to hoist tools, gear oils, etc.
- base (ground) and nacelle control panels
- electrical power, grounding and communication cables for connection between ground control panel and nacelle equipment (all exposed "not-in cabinet" power cables to be labeled and marked as rated for 600V or higher)
- 115 V convenience outlets in ground and nacelle control panels with ground-fault-interrupter (GFI) breakers for safety (meeting NEC codes or UL approved)
- All WTG electrical equipment suitable for 60Hz

Tower: One (1) eighty (80) meter hub height three section tubular steel tower including the following items:

- Tower fasteners (nuts, bolts, washers) for connection of internal tower flanges (excluding tower foundation bolts) and tower-to-nacelle flange
- US standard 115 V rated internal lighting system and rubber mounted anti-vibration pads (UL approved)
- Tower protection coating system (paint), which shall consist of the RAL 7035 or a comparable white colored paint system
- Internal ladder and safety cables with anti cable-slap hooks all pre-installed in tower
- Tower internal mounting and ladder hardware fastened with ny-lock nuts
- Rubber anti-vibration pads for tower hatches
- Tower name plate with manufacturing details such as mfg date, material types, weights, reference documents, serial

number, etc.

- Tower doorway equipped with positive latch-open device, door handle and padlock latches
- Tower manufacturing as-built drawings, including material heat sheet.
- Material and weld quality certificates with trace-ability and heat numbers for tower and bolts
- Use of foundation template ring matching tower base flange. The Purchaser is responsible at the Purchaser's expense for shipping the template ring to the Project Site and returning the same prepaid to Vestas.
- Touch up paint and activator

#### Equipment and Other Items:

- All materials shipped and insured to the Delivery Site.
- One (1) Vestas Online Standard System (not including supply, installation or termination of fibre optic cables and communication cables to the WTGs).
- One (1) set of WTG operation and maintenance manuals and Vestas Online Standards manuals with updates during Warranty, if any.
- One (1) sets of WTG erection and start-up manuals.
- One (1) technical advisor for two consecutive 5-business day week, each day consisting of 8-work hours.
- Use of one (1) foundation template ring and (1) V82 Installation Tool Container for up to two (2) weeks at Project Site. Additional weeks subject to a \$2500/week rental fee. Return transportation to Vestas' facility in Portland, OR or other Project Site in the United States as designated by Vestas not included.
- Start-up testing and commissioning in accordance with the Test and Inspection Procedures.
- Blade repair kit for minor transportation damage

- One (1) red strobe medium intensity aviation warning lights

### **Service Agreement**

Vestas is willing to provide a three year Service Agreement for the Turbine Equipment. Terms and pricing for the Service Agreement must be negotiated directly with Vestas.

### **Pricing**

The price for the Turbine Equipment (“Price”) shall be the sum of (1) Two Million Six Hundred Fourteen Thousand Eight Hundred Seventy and 17/100 Dollars (\$2,614,870.17) (the “Equipment Price”) (i.e., 49.5% of the initial contract amount), (2) 50% of additional project management and/or legal costs payable to Vestas as the result of selling the two turbines separately; (3) 50% of the cost of an additional SCADA system; (4) 50% of the cost of an additional tower certification, and (5) 50% of the additional transportation costs as calculated by Vestas, with the sum not to exceed a fixed cost of Two Million Eight Hundred Thousand Dollars (\$2,800,000.00). The Price shall be payable as provided below under “*Payment Schedule.*”

Notwithstanding anything herein to the contrary, the Price shall **not** include, and the Purchaser shall be solely responsible for:

(1) Payment to Vestas of Twenty-Five Thousand Four Hundred Twelve and 83/100 Dollars (\$25,412.83) pursuant to the Turbine Supply Agreement and the Change Orders;

(2) Any and all additional costs of the Turbine Equipment not included in the Contract Price or the revised contract amount specified in the Change Orders, including but not limited to any storage charges, taxes, and other expenses relating to storage of the Turbine Equipment beyond the date of execution of the Definitive Agreements; any stand-by charges or excess charges or duties due to any delay caused by the Purchaser; any federal, state or local sales, use or property taxes relating to the Turbine Equipment; any cost associated with the transportation and delivery of the Turbine Equipment to an Alternative Delivery Site; the cost of unloading the Turbine Equipment at the Project Site; any costs due to failure of the Purchaser to timely unload the equipment; and any other administrative costs or fees incurred in connection with the unloading, storage, assembly, erection and installation of the Turbine Equipment, as to which costs, fees and expenses the Purchaser agrees to pay and to hold MTC harmless.

### **Payment Schedule**

By federal funds wire transfer in U.S. dollars without regard to any fluctuation in currencies, the Purchaser shall pay the Price to MTC according to the following schedule:

- 25% of the Price upon execution of the Definitive Agreements;
- the remaining 75% of the Price within ninety (90) days of execution of the Definitive Agreements.

**Payment Default**

In the event that Purchaser fails to make timely payment to MTC on the schedule set forth above (a “Payment Default”), MTC shall have the right, to be exercised in its sole discretion, to terminate the Definitive Agreements, in which case: (a) all interests in and title to the Turbine Equipment shall remain with MTC, (b) MTC shall have the right, in its sole discretion, to assign or sell its interest in and title to the Turbine Equipment to another party, and (c) MTC shall refund to Purchaser all amounts paid by it to MTC under the Definitive Agreements, less an amount equal to 25% of the Price, which Purchaser agrees MTC shall retain as liquidated damages.

**Closing**

The closing of the potential transaction described in this Term Sheet (the “Closing”) would occur upon execution of the Definitive Agreements and the satisfaction or waiver of conditions precedent specified in this Term Sheet and the Definitive Agreements. At the Closing, the Purchaser will purchase the Turbine Equipment from MTC subject to the terms set forth herein and in the Definitive Agreements, **STRICTLY “AS IS, WHERE IS, WITH ALL FAULTS”**, WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT AS PROVIDED IN THE TURBINE SUPPLY AGREEMENT AND THE WARRANTY AND SERVICE AGREEMENT WITH RESPECT TO VESTAS, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND MTC DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY.

**MTC Contact**

The Purchaser may direct any questions for MTC to:

Nils Bolgen  
Massachusetts Technology Collaborative  
75 North Drive  
Westborough, MA 01581  
508-870-0312 x. 1-402  
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**Transaction Taxes**

The Purchaser will be responsible for the payment of all sales, conveyance, transfer, real estate excise, business and occupation or similar transaction taxes assessed with respect to or imposed on either

party relating to the Purchaser's purchase of the Turbine Equipment or otherwise in connection with a potential transaction. MTC will agree to cooperate with the Purchaser to minimize both parties' respective transaction taxes.

**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.

**Indemnification**

The Purchaser will agree to indemnify, hold harmless and defend MTC and MTC's affiliates, directors, officers, employees, representatives, and agents from and against any claims, damages, loss, liability, judgment, award, fine, penalty, cost or expense, including reasonable fees of attorneys arising out of, relating to or in connection with any event, occurrence, circumstance, condition, action or omission prior to Closing. The Definitive Agreements will also set forth provisions by which the Purchaser will indemnify, hold harmless and defend MTC 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.

**Dispute Resolution**

The Definitive Agreements will contain provisions for the resolution of disputes, and this Term Sheet and the Definitive Agreements and any dispute arising hereunder or in connection herewith shall be construed, and the rights and obligations of the parties hereunder shall be determined, in accordance with the internal laws of the Commonwealth of Massachusetts.

**Expenses**

Each party shall bear its own legal, accounting, regulatory and other professional fees and expenses and other costs associated with the request for bids and a potential transaction, regardless of whether a transaction is consummated.

**Assignability**

The Purchaser is not permitted to assign the Definitive Agreements or its rights and obligations under them without the prior written consent of MTC, and, to the extent applicable, Vestas.