



**NY Green Bank**  
A Division of NYSERDA

# NY Green Bank

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Request for Information:  
Back Leverage Financing Arrangements for  
Photovoltaic Solar Projects in New York  
State with Remote Net Metering  
Agreements

RFI No. 3335

Due Date for Response:  
August 5, 2016  
by 5:00 p.m. EDT

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# 1 Introduction

The purpose of this Request for Information (“RFI”) is to acquire information that will assist New York Green Bank (“NYGB”) in developing a Request for Proposals (“RFP”) targeted at developers of photovoltaic (“PV”) solar projects selling to commercial, industrial and other institutional organizations<sup>1</sup> (“C&I”) in New York State who plan to utilize third-party tax equity and seek back leveraged financing for projects that (1) generate revenue by selling remote net metering credits to C&I power users under NY Public Service Law § 66-j; (2) use Tier 1 Technology; (3) are in the advanced stage of development; and (4) are 500kW to 2MW in size, ground mounted, canopy mounted and non-residential rooftop PV solar projects.

NYGB’s desire is that this RFI will open a dialogue with stakeholders from New York State’s PV solar development, tax equity and debt financing community to better understand the barriers that the anticipated RFP might address.

NYGB will use the information received from this RFI to identify strategies, key issues, opportunities, current industry practices and resources that may be useful in determining investment strategies. Stakeholders from New York State’s solar development and equity financing community, relevant lenders and investors and clean energy contractors/service providers targeting PV solar project are encouraged to respond to this RFI in order that the RFP will meet the objectives and optimize market impact as outlined below.

C&I offer a substantial market opportunity as purchasers of electricity produced by solar projects. However, the economic viability and the ability to finance solar projects serving C&I customers are often constrained given:

- a) A fragmented market of C&I project developers;
- b) Relatively small transaction sizes on a per project basis;
- c) Lack of a sizeable portfolio of individual projects and credible pipeline of such projects;
- d) Lack of standardization (documentation, financial analysis, project underwriting, etc.);
- e) High transaction soft costs (legal, engineering, consulting, etc.) as a percent of project cost; and
- f) Lack of public credit rating for many C&I organizations as purchasers of the solar electricity or net metering credits, resulting in a burdensome counterparty credit underwriting process for each relatively small transaction.

Under the proposed RFP, NYGB seeks to overcome the above constraints and support the acceleration of solar deployment benefitting the C&I market by offering back leveraged debt financing under terms that result in a multitude of small scale PV solar projects (stand alone or portfolios) that have standardized back leveraged debt that will then attract private sector lenders to collaborate with NYGB.

To optimize its impact on the market, the NYGB financing product/approach intends to provide:

- a) A viable option for PV solar back leveraged transactions from the perspective of a meaningful number of developers and equity investors;
- b) An acceptable set of intercreditor provisions from the standpoint of equity investors and lenders;
- c) An efficient and streamlined solution from the standpoint of PV solar developers, equity investors, private sector lenders, equipment providers/contractors and other market participants;
- d) A standardized documentation, underwriting and pricing approach that will meet the needs of PV solar developers, equity investors and private sector lenders upon replication and the creation of meaningful scale via the NYGB financial product; and
- e) A standardized and streamlined approach to addressing the credit issues associated with C&I offtake counterparties for these relatively small transactions.

**Response Submission:** Responses should be an electronic copy, clearly labeled and submitted to [nicholas.whitcombe@greenbank.ny.gov](mailto:nicholas.whitcombe@greenbank.ny.gov).

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<sup>1</sup> Institutions includes municipalities, non-profits, educational and other similar organizations.

If you have technical questions concerning RFI 3335, contact Nicholas Whitcombe at (212) 379-6253 or [nicholas.whitcombe@greenbank.ny.gov](mailto:nicholas.whitcombe@greenbank.ny.gov).

No communication intended to influence this RFI is permitted except by contacting Nicholas Whitcombe at (212) 379-6253 or [nicholas.whitcombe@greenbank.ny.gov](mailto:nicholas.whitcombe@greenbank.ny.gov).

## **2 Proposed RFP**

See attached NYGB Proposed RFP.

## **3 Information Requested**

NYGB seeks input from PV solar developers, equity investors and contractors, developers and ESCOs on the following questions:

- Does the proposed RFP address market barriers that are hindering the wide-scale development of PV solar projects selling to C&I customers (and portfolios of such projects)?
- Under the Proposed RFP, Section 3 Eligibility Criteria, are the proposed criteria for Counterparty Credit Analysis, Financing Arrangements including equity, tax equity and timing of funding of such equity, Eligible Proposers and Terms sufficient to incentivize developers and equity investors to undertake PV solar projects in New York State selling to C&I customers?
- Are there terms and conditions in either of the term sheets that are not acceptable to either developers or equity investors or to potential lenders to an aggregation of projects? Are there terms that should be modified to meet lenders', developers' and equity investors' requirements?
- Are there gaps or barriers that have not been addressed that, if addressed, would accelerate the wide-scale adoption of PV solar projects in C&I properties?
- Is there market potential that can lead to a scale such that tax equity providers and private sector lenders would routinely provide capital to PV solar projects in New York State?

Respondents should understand that any and all responses provided through this RFI will be treated as preliminary and non-binding. Respondents should provide clear distinction between proprietary and public information in their responses. Information submitted to NYGB that the respondent wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure, as detailed in Section 5 General Conditions. NYGB does not intend to publish the respondents' individual responses.

## **4 Content Of Responses**

Responses should be concise and submitted in electronic format as provided above. Each page of the response should state the name of the respondent, the RFI number and the page number. Responses should adhere to the format outlined in the previous section.

Please respond to the information above and provide the name of your organization, its location, a contact person, phone number and email address when replying to this RFI. A response does not bind, obligate nor preclude the respondent to any current or future agreement of provision or procurement of services referenced.

## **5 General Conditions**

Proprietary Information - Careful consideration should be given before confidential information is submitted to NYGB as part of your response. Review should include whether it is critical for evaluating a response, and whether general, non-confidential information may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers law, Article 6, provides for public access to information NYGB possesses. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information submitted to NYGB that the respondent wishes to have treated as proprietary, and confidential trade secret information, should be identified and labeled "Confidential" or "Proprietary" on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. See Public Officers Law, Section 89(5) and the procedures set forth in 21 NYCRR Part 501. However, NYGB cannot guarantee the confidentiality of any information submitted.

Disclaimers - This RFI is not a contract offer and does not commit NYGB to award a contract, pay any costs incurred in preparing a response, or to procure or contract for services or supplies. Respondents are encouraged to respond to this RFI; however, failure to submit a response will not impact a respondents' ability to respond to any future competitive solicitation process (if any) for projects. NYGB reserves the right to accept or reject any or all information received, or to modify or cancel in part or in its entirety this RFI at any time. Respondents are advised that all costs associated with responding to this RFI will be solely at their expense. There are no representations or warranties regarding the accuracy or completeness of the information contained in this RFI. Respondents are responsible for making their own evaluation of information and data contained in this RFI and for preparing and submitting responses to this RFI.

## NYGB Proposed RFP

### 1 Introduction – Overview of this Solicitation

#### 1.1 Invitation –

New York Green Bank (“**NYGB**”) invites experienced solar developers (“**Applicants**”) to propose solar transactions where the Applicant seeks back leveraged debt financing from NYGB for photovoltaic (“**PV**”) solar projects<sup>2</sup> in New York State (“**NYS**”) (each a “**Project**”) employing tax equity that meet the following key eligibility requirements (“**Key Requirements**”):

- (1) Will generate revenue by selling remote net metering credits to commercial, industrial or institutional power users under NY Public Service Law § 66-j (“**NYPSL § 66-j**”);
- (2) Use Tier 1 technology<sup>3</sup> including panels, inverters and racking;
- (3) Are in the advanced stage of development (commonly described as near “shovel ready”);
- (4) Are 500kW to 2MW in size, ground mounted, canopy mounted or non-residential rooftop Projects at a single location and which rely on remote net metering as defined in NYPSL § 66-j; and
- (5) Meet the terms and conditions laid out in the either of the attached term sheets.

Market participants developing solar projects not utilizing NYPSL § 66-j and not seeking back leveraged debt financing should submit proposals requesting NYGB financial support under RFP 1 rather than under this RFP. Residential solar, including MW aggregations that meet the minimum size limits of this RFP, is not eligible but should apply under RFP 1.

Electronic submission of responses (each, a “**Proposal**”) to this Request for Proposals (“**RFP**”) is required. The submission process has three phases:

- Phase 1, Proposal – Applicant submits a detailed Project description as described in Section 4.1.
- Phase 2, Submittal of Agreements – Upon invitation by NYGB, Applicant submits contracts, agreements and other supporting documentation as described in Section 4.2. The Applicant will also be requested to provide an in-person presentation.
- Phase 3, Due Diligence, Documentation and Approval – All remaining due diligence, engineering review, underwriting and documentation as described in Section 4.3.

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\* NY Public Service Law § 66-j project definition can be reviewed at <http://codes.findlaw.com/ny/public-service-law/pbs-sect-66-j.html>

<sup>3</sup> [http://about.bnef.com/content/uploads/sites/4/2012/12/bnef\\_2012-12-03\\_PVModuleTiering.pdf](http://about.bnef.com/content/uploads/sites/4/2012/12/bnef_2012-12-03_PVModuleTiering.pdf)

All Project Proposals utilizing third-party tax equity are eligible for NYGB back leveraged loans (“**Back Leveraged Loans**”) under the terms described in Section 2.2 and in the term sheets in Attachments D and E (“**Back Leveraged Term Sheets**”). The first term sheet is for senior secured construction financing converting to a back leveraged term loan (“**Single Project Term Sheet**”), and the second term sheet is for senior secured construction financing converting to a back leveraged aggregation financing for such Project converting to a term loan taking out such aggregation financing for multiple Projects (“**Project Portfolio Term Sheet**”). To the extent that a proposal does not require a construction loan, NYGB will review proposals that only require back leveraged financing. Please see Attachment A for structure diagrams.

This RFP is an open request for proposals and therefore Proposals will be evaluated on a rolling basis as received. NYGB encourages those that decide not to apply to continue the development of their projects, targeting areas which would enhance their ability to meet the requirements delineated in this RFP in the future. NYGB reserves the right to supplement or close this RFP at any time. If NYGB supplements or closes this RFP, details will be posted at <http://greenbank.ny.gov/Working-with-Us/Propose-an-Investment>.

NYGB will entertain multiple Proposals under this RFP from the same or related Applicants although each Proposal will be evaluated as a separate transaction. If it receives multiple Proposals from the same or related Applicants, NYGB will process the Proposals in the order in which they are received. For the avoidance of doubt, a Proposal for a portfolio of projects is considered as one Proposal.

Failure to respond to each phase of this RFP in a complete manner by addressing all the matters requested for each phase will render NYGB unable to take further action on a Proposal. As an ongoing solicitation, Applicants have the opportunity to resubmit Proposals if circumstances change or if the initial Proposal does not address the RFP in a complete manner.

Direct communication and engagement between NYGB and potential counterparties is permitted, both before and after the submission of a Proposal. If you have questions or seek further engagement, please contact [info@greenbank.ny.gov](mailto:info@greenbank.ny.gov). If you have concerns regarding the Securities and Exchange Commission Municipal Advisor Rules, please see Section 5.2 (General Conditions – Municipal Advisor Rules).

Applicants can expect a timely response from NYGB for each Proposal phase. NYGB believes that, as a general matter, the time to complete the review, due diligence, documentation and approvals could take up to 20 weeks but will make every effort to accelerate the process and hopes to achieve the following approximate schedule (schedule to be adapted for Project portfolios):

Phase	Task	Schedule (weeks)
1	NYGB Review of Applicant's Phase 1 submittal and Phase 2 invitation issuance, if applicable	2
-	Applicant submittal of Phase 2 materials	4
2	NYGB review of Phase 2 materials	3
3	NYGB due diligence, documentation, approvals	10
Closing	Confirmation of satisfaction of Conditions Precedent and closing/funding	1
Total		20

## 1.2 RFP Objectives –

Commercial, industrial and other institutional organizations<sup>4</sup> (“C&I”) offer a substantial market opportunity as purchasers of electricity produced by solar projects. However, the economic viability of and ability to finance solar projects serving C&I customers are often constrained given:

- (1) A fragmented market of C&I project developers;
- (2) Relatively small transaction sizes on a per project basis;
- (3) Lack of a sizeable portfolio of individual projects and credible pipeline of such projects;
- (4) Lack of standardization (documentation, financial analysis, project underwriting, etc.);
- (5) High transaction soft costs (legal, engineering, consulting, etc.) as a percent of project cost; and
- (6) Lack of public credit rating for many C&I organizations as purchasers of the solar electricity or net metering credits, resulting in a burdensome counterparty credit underwriting process for each relatively small transaction.

Under this RFP, NYGB seeks to overcome the above constraints and support the acceleration of solar deployment benefitting the C&I market by offering debt financing under terms that result in a standardized portfolio of single Projects and aggregated Projects that will attract private sector lenders as financial participants with NYGB. Key elements of this RFP include:

- (1) A request for proposals from a broad underserved target market in order to create financing scale needed to “crowd in” broad private financial market participation;
- (2) A standardized approach to (i) documentation, (ii) project financial analysis, and (iii) engineering and consulting, such that the analysis and underwriting is more efficient for developers, NYGB and future private market financing participants;

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<sup>4</sup> Institutions includes municipalities, non-profits, educational and other similar organizations.

- (3) Substantially reduced transaction soft costs through a standardized approach and the utilization of a consistent set of lawyers, engineers and other consultants on a negotiated program basis;
- (4) A Remote Net Metering Credit Agreement (“**RNMCA**”) counterparty credit underwriting approach that includes a review of creditworthiness but also takes into account the ability to sell net metering credits to another C&I buyer if a current RNMCA counterparty no longer meets its payment or contractual obligations. Critical elements of this aspect of the underwriting methodology are (i) Applicant’s (or a designated party’s) ability to contract with a new RNMCA counterparty if necessary and (ii) likely future value to a new counterparty of net metering credits (see Section 3.2); and
- (5) A phased and clearly defined RFP submission process streamlining the transaction approval process and timeline.

NYGB’s mission is to accelerate clean energy deployment in NYS by working with the private sector to transform financing markets. Through this RFP, NYGB seeks to (i) accelerate the deployment of solar energy in a manner that supports a significant segment of the underserved C&I market and (ii) provides a financing framework that will be utilized in the future by tax equity investors and private sector lenders. More information about NYGB can be found at [www.greenbank.ny.gov](http://www.greenbank.ny.gov).

## **2 NYGB Approach to Financing Structure & Pricing**

NYGB operates as a self-sustaining entity, pricing investments to cover its operating expenses and portfolio default risk, and to preserve its capital base. In so doing, NYGB intends to serve as both a prudent custodian of ratepayer funds and an agent for greater private investment in the clean energy sector in New York State. Pricing for the Back Leveraged Loans will reflect the underlying transaction credit risk and level of standardization and scale NYGB seeks to facilitate, with the goal being that the private sector lenders will ultimately find to be reasonable. NYGB investment terms will be determined by credit risk and exposure assumed by NYGB and other investment participants. For NYGB products, upfront and ongoing fees generally apply as described in the Back Leveraged Term Sheets.

NYGB intends to issue Back Leveraged Loans for both Projects and portfolios of Projects which involve tax equity commitments. The Back Leveraged Loans consist of:

Single Project	Portfolio
Credit Facility which is to be used for funding a portion of Project Costs and secured by “ <b>Borrower</b> ” (as defined in the Back Leveraged Term Sheets) and Project assets. At the completion of construction, the security interest in the Project assets will be released to facilitate the entry of the tax equity.	Construction loan facility used for funding a portion of Project Costs and secured by Borrower and Project assets.
	An aggregation loan facility takes out the construction loan for each Project and is secured by the assets of the Borrower. At the completion of construction of each Project, the security interest in the Project assets will be released to facilitate the entry of the tax equity.
	Term Loan takes out the aggregation loan and secured by the assets of the Borrower.

### 3 Specific Eligibility Requirements

#### 3.1 Eligibility –

As described in [Section 1.1](#), the Key Requirements must be met. In completing a Proposal, Applicants are encouraged to pragmatically review the status of all agreements and not to oversell their level as such overselling will quickly become apparent in Phase 2. Consistent with NYGB’s objective of accelerating the pace of solar development in NYS, eligibility requirements are designed to demonstrate shovel-ready Projects appropriate for near term financing and to allow Applicants to make a self-determination if they meet the eligibility requirements thus conserving resources for all parties.

Phase 1 requirements are listed below in [Section 3.1](#). Of these requirements, those marked with an asterisk (\*) and **bolded**, are threshold eligibility requirements (“**Threshold Requirements**”). NYGB will not consider Projects that do not meet the described Threshold Requirements. For all other requirements, contracts do not have to be finalized or executed although the more advanced they are, the greater the weight that will be given to them in the evaluation process. First drafts of agreements, especially those which have not been subjected to a negotiation process between the parties, will be given limited weight as they will be considered early stage.

For single Projects, NYGB will determine eligibility based on evaluation of the following criteria. For portfolios, all Projects in the portfolio must be identified and for at least one Project NYGB must be able to determine eligibility based on evaluation of the following criteria. Subsequent Projects in the portfolio will be evaluated on the same basis as described in this RFP. The treatment of these evaluation criteria in Proposals is described in more detail in [Section 4](#):

- 3.1.1 **\*Certifications** – As a threshold matter, the Applicant must include the certifications in [Attachment B](#) with its Proposal.
- 3.1.2 **\* CESIR or Interconnection Arrangements – Completion of the Coordinated Electric System Interconnect Review (“CESIR”)**. NYGB views completion of the CESIR as a threshold matter for demonstrating an advanced stage of development and readiness for financing discussions. Accordingly, it will not consider Proposals for Projects which do not have a completed utility CESIR and notification, which is defined

as the utility completion of the CESIR and receipt of the subsequent notification from the utility to the Applicant.

- 3.1.3 \* **Completed and submitted application to the NY-Sun Incentive Program (<http://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun>)** – NYGB views the NY-Sun Incentive Program application to be a threshold requirement for determining that a Project is in advanced development. Recognizing that some Projects may not apply to the NY-Sun Incentive Program, NYGB will waive this requirement for those Proposals that contain a statement that the Project will not be applying under the NY-Sun program.
- 3.1.4 \* **Site Control** – Site control is critical to the development of a successful Project. Therefore, the Applicant must demonstrate the means by which it controls or will control the Project site for at least the duration of the RNMCA.
- 3.1.5 Permits – Applicants which have met the requirements for the NY-Sun Incentive Program will have submitted all necessary permits, approvals and certificates required for construction of the Project to the appropriate agencies. Therefore, approval of a NY-Sun application will demonstrate an advanced stage of Project development with regard to permitting. For Projects not applying for the NY-Sun Incentive Program, confirmation that all permit applications have been completed addressing all requisite aspects and submitted to all jurisdictional agencies is required.
- 3.1.6 \* **New York State Environmental Quality Review Act (“SEQRA”)** – All Projects that include the installation of PV panels with total panel surface area exceeding 4,000 square feet will be subject to further SEQRA analysis. For such Projects, the Applicant must provide a short form Environmental Assessment Form (“EAF”) directly to NYGB in Phase 2 along any other SEQRA materials prepared for other permitting or approval agencies relevant to the Project.
- 3.1.7 \* **Municipal Moratorium** – NYGB may decide to defer consideration of the Proposals for Projects which are located in towns with solar moratoriums.
- 3.1.8 \* **Property Tax Exemption** – The loss of the property tax exemption will affect Project economics. NYGB will need confirmation that the property tax exemption will continue to apply to the Project.
- 3.1.9 Equipment Supply – NYGB will judge a Project to be in an advanced development stage if all major equipment (including but not limited to panels, inverters and racking) is identified, is “Tier 1” and is subject to finalization of a purchase order with vendors. Executed agreements do not have to be in place. If equipment supply is part of an Engineering, Procurement & Construction (“EPC”) contract, these eligibility requirements will be evaluated as part of Section 3.1.10.
- 3.1.10 Construction Contracts – Advanced development stage Projects will have well defined and negotiated contracts for the installation of equipment, balance of plant (“BOP”) or EPC arrangements. The status of such construction contracts will be evaluated in determining the development status.
- 3.1.11 RNMCA Arrangements – NYGB will only consider Projects with a well-developed RNMCA. All revenue arrangements must comply with NYPSS § 66-j. The RNMCA counterparty must have a public rating (see Section 3.2.1) or alternatively, the revenue arrangements must meet the requirements of Section 3.2.2.

- 3.1.12 O&M Arrangements – O&M arrangements should be well developed and include pricing and providers with demonstrated expertise and capabilities to fulfill their responsibilities.
- 3.1.13 Management & Administration Arrangements – Management and administration arrangements should be well developed and include pricing and providers with demonstrated expertise and capabilities to fulfill their responsibilities.
- 3.1.14 Equity Commitment – NYGB will evaluate the level of equity (“**Sponsor**” (as defined in the Back Leveraged Term Sheets) equity and tax equity) to be invested in the Project including its sources and the debt-to-equity ratio. The greater the amounts of equity planned, the lower the debt-to-equity ratio and the strength of the equity commitment at the time of the Proposal will all be addressed in determining eligibility. The level of Sponsor equity will also be an evaluation factor. Projects with equity required but without sources identified may, depending on the status of other eligibility requirements, be eliminated from further consideration by NYGB as not being at a sufficiently advanced stage of development.
- 3.1.15 Debt Term – For single Projects, NYGB intends to limit the term of any offered Back Leveraged Loan to at least one (1) year prior to the termination of the RNMCA but no later than ten (10) years from the COD. For portfolios, the limits will be the same based on the last Project included in the portfolio. If the RNMCA(s) are longer in term than 10 years, then full amortization will not be required.
- 3.1.16 Key Financial Terms Including Debt Service Coverage Ratio – In its initial evaluation, NYGB intends to use a pro forma model (See Attachment F for input data sheet and Section 4.1.1.5) to evaluate the quarterly DSCRs for the proposed Back Leveraged Loans. Proposals for single projects and portfolios of projects are expected to have a minimum P50 DSCR of at least 1.35x. NYGB will place greater weight to transactions with higher DSCRs. In recognition of seasonality and the constraints imposed by a maximum term of 10 years, NYGB will entertain alternative principal amortization schedules and/or reserves to meet acceptable DSCRs. NYGB may consider a mandatory refinancing for some level of principal repayment provided sufficient term remains under the RNMCA to allow for such a refinancing. Due to the cash flow issues arising from seasonality, NYGB will evaluate quarterly DSCRs over both trailing and projected 12 month periods in addition to comparing the RNMCA pricing with market forecasts.
- 3.1.17 Assignment – As part of its security package for the Back Leveraged Loans, NYGB intends during construction to take a first-priority security interest in all assets of the Project company and the Borrower including all contracts and agreements. NYGB will release the security interests in all assets of the Project company subject to the intercreditor rights of the tax equity provider. As part of its Phase 2 contract review, NYGB will seek to confirm that contracts have provisions for the assignment of major contracts and agreements to NYGB.
- 3.1.18 In addition to an appropriately sized debt service reserve, NYGB will generally require the establishment of a 1-year O&M reserve and an appropriate inverter replacement reserve.
- 3.1.19 Independent Engineer (“**IE**”) – Applicant should be prepared to support the complete data request that comes with the preparation of an IE report which will be completed following the Phase 2 submittal and prior to approval of any Back Leveraged Loan. In some cases, if the Applicant has retained an IE, NYGB may accept the IE report

prepared by Applicant's IE subject to a reliance letter, provided that such report meets the requirements of NYGB.

- 3.1.20 Multiple Proposals – If the Applicant contemplates making multiple Proposals, indication of such intent should be included in the Phase 1 Proposal, and the Applicant should state whether the same equity parties will be participating in all of the proposed Projects.
- 3.1.21 Prevailing Wages – If the Project is considered a public work covered by Article 8 of the NY Labor Law or a building service agreement covered by Article 9 thereof by reason of the involvement of a public entity as host or RNMCA Counterparty, then Borrower, Project Company and Sponsor will, during the construction of the Project, comply (and cause each contractor and subcontractor to comply), and will certify compliance, with all State of New York prevailing wage and hours laws and regulations (see Back Leveraged Term Sheets Conditions Precedent to Financial Closing). Applicant will be required to address the applicability of prevailing wage requirements.

### **3.2 RNMCA Counterparty Credit Analysis –**

NYGB will conduct RNMCA counterparty credit analysis whether the RNMCA counterparty is publicly rated by one or more of the major rating agencies or not.

- 3.2.1 Rated Counterparties – For publicly rated counterparties, traditional counterparty credit analysis will be conducted including a review of ratings prepared by S&P Global (formerly Standard & Poor's), Moody's or Fitch.
- 3.2.2 Unrated Counterparties – NYGB will conduct RNMCA counterparty credit analysis based on the following information to include, but not be limited to, the following:
- No bankruptcy;
  - Proof of no late payments to the utility
  - In business for at least five [5] years;
  - Evaluation of a least three (3) years of financial statements and IRS filings;
  - FICO Business Score greater than [\_\_\_\_\_];
  - D&B score greater than [\_\_\_\_\_]; and
  - RNMCA represents no less than [3] times of counterparty's metered power consumption.

In order to utilize the counterparty credit analysis above, NYGB will also evaluate the proposed transaction on the assumption that remarketing of remote net metering credits is a credit mitigant if the current RNMCA counterparty were to default.

RNMCA counterparty credit issues that might imperil the transaction and will assess the following information:

- Identification of remarketer which may be the Applicant (if qualified) or a qualified third-party;
- Identification of at least [5] other C&I customers in same utility service zone where the RMCA represents no less than [3] times of counterparty's metered power consumption; and
- While the strength of any particular RNMCA is important, NYGB will need to evaluate the Project revenues annually based on the possibility that a replacement RNMCA counterparty will be needed (the "Replacement Analysis"). NYGB will do this by using a proxy RNMCA with pricing derived from discounting forecasted applicable metered rates for the particular utility territory and zone and P50 production levels. If the Replacement Analysis results in DSCRs that are below the minimum required levels, distributions at the Borrower level will be blocked and used to pay down the NYGB loan, until the required debt service coverage ratio is achieved.

## 4 Proposals

### 4.1 Phase 1: Proposal –

- The purpose of the Proposal is to provide a complete and detailed description of the Project(s). The Proposal should clearly demonstrate the advanced stage of Project development. While being comprehensive, the Proposal should simultaneously strive to be succinct.
- The Proposal should be organized as described below and should address all requested components. Should the Project(s) have special attributes or features not captured by the categories below, they should be included in the description.
- The Phase 1 Proposal has several objectives:
  - NYGB should be able to develop a clear understanding of the Project(s), including its features, structure and all associated risks, allowing NYGB to make an informed decision on whether or not to invite the Proposal into Phase 2.
  - Given NYGB's emphasis on late-stage development Projects for this RFP, there should be a clear demonstration of the advanced development of the Project(s) and the readiness for financing in a relatively short time period.
  - The Proposal should clearly articulate the status of each aspect of the Project(s) as part of the description of each component.
  - The Proposal should clearly articulate the remaining major steps requiring completion before financing, any issues expected in the completing these steps and the schedule for such completion.

#### 4.1.1 Proposal Structure<sup>5</sup>:

- 4.1.1.1 Cover Letter – The cover letter should provide a concise summary of the Project(s) which:
- Identifies the Applicant and contact information;
  - Summarizes salient features of the Project(s) including their Project address, capital cost, Project size (kW or MW), technology and revenue agreement type;
  - Describes the key components of the requested Back Leveraged Loan, applicable Back Leveraged Term Sheet, amount, term and method of amortization; and
  - Includes as an attachment, the certifications required by Attachment B.
- 4.1.1.2 Detailed Description of Project(s) – This is intended to be a more detailed summary description in recognition that many of the elements that will be included in this description will be covered in additional detail in subsequent sections. The description should address major Project areas including but not limited to the Project technologies, site, permit status, major parties, revenue arrangements, status of equity raise including sources and amounts, and major outstanding issues to be resolved prior to financing.
- 4.1.1.3 NYGB Financing – The Applicant should provide a detailed description of the financing that it is seeking from NYGB under this RFP. For portfolios, the information should be provided on a Project basis and in aggregate for the portfolio. Topics to be addressed include:
- Back Leveraged Term Sheet to be used for the transaction;
  - Size of the loan including, for portfolios, the aggregate amount requested;
  - Debt to equity ratio;
  - Term, including for portfolios, the overall term;
  - Amortization schedule including discussion of any requested sculpting or refinancing requirements;
  - DSCRs including average over the term portion of the Back Leveraged Loan and minimum;
  - Debt Service, O&M, and inverter replacement reserves; and

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<sup>5</sup> For portfolio transactions, all Projects in the portfolio must be identified and provide Threshold Requirements. For at least one project, the Proposal must provide all the Phase 1 information as detailed in this Section 4.1. For the other Projects in the portfolio, a summary description must be provided that includes the anticipated development schedule, the RNMCA counterparty, the expected date for the start of construction and the Threshold Requirements.

- Conformity with the requirements of either Section 3.2.1 or Section 3.2.2.

4.1.1.4 Equity, Tax Equity and Other Financial Support – These financial components are critical to the success of the Project as NYGB will not lend 100% of the money necessary to build the Project. The Proposal should address, at a minimum, the following topics in order to provide clarity on the proposed capitalization amounts, equity participants and equity amounts by source:

- Equity and tax equity source(s), amount(s) and the status of the equity and tax equity raise;
- If all of the equity is not sourced from the Applicant or its Sponsor, the name and contact information for all third-party equity, including tax equity. NYGB may contact third-party equity during its evaluation to discuss the Project;
- The level of Applicant equity to be invested in the Project including the amount of Applicant equity during construction and the amount remaining during the term period post-COD; and
- All incentives that will be applied to the Project including any incentives received during construction and operation under NY-Sun Incentive Program or other NYSERDA programs and the use of federal tax incentives, including corresponding incentive amounts and timing of expected receipt thereof.

Note that NYGB will require that the Applicant or Sponsor equity is fully invested in the Project, which may include payments to the utility for interconnection infrastructure and upgrades, before debt can be drawn.

4.1.1.5 Pro Forma Model – During its Phase 1 review, NYGB will model each Project using its pro forma financial model and will consolidate Borrower cash flows for portfolios. Attachment F contains a financial model data input sheet that the Applicant is required to fully complete for each Project and submit with its Phase 1 Proposal.

4.1.1.6 Technology – A complete description of the technology utilized by the Project(s) is required including:

- Equipment components, configuration and suppliers for, at a minimum, the panels, inverters and racking and confirmation that the components are Tier 1;
- A description of the contractual arrangements for the procurement of all major equipment and their current status;
- Identification of the installation, EPC and/or BOP contractors including their qualifications to perform their respective roles on the Project(s);
- A description of the contractual arrangements for the installation, EPC and/or BOP activities including their current status; and

- A description of warranties and performance guarantees, if any.

4.1.1.7 Interconnection

- Provide confirmation that the CESIR process has been completed through Step 6<sup>6</sup>;
- Detail any necessary interconnection arrangements including equipment, if any, and status; and
- Provide projected costs and timeline for construction.

4.1.1.8 Site Control – Since NYGB considers the ability to control the site to be a threshold matter, provide a description of the means by which the Applicant does or will control the Project site for at least the duration of the Back Leveraged Loans plus 2 years. Include in this description details of the necessary contractual arrangements and their current status. If there are any steps remaining to fully control the site, such as conditions precedent in contractual arrangements, please identify them and describe the process and schedule for completing these steps.

4.1.1.9 RNMCA Arrangements – Provide a detailed description of the RNMCA including a description of counterparties and the RNMCA arrangements with sufficient detail for NYGB to evaluate the revenue arrangements. Please provide the name and contact information for the RNMCA counterparty. NYGB plans to contact the RNMCA counterparty during its evaluation to discuss the Project. Also include the current status of the contractual arrangements, the steps necessary to complete, and the schedule for doing so. Address the requirements of Section 3.2.1 or Section 3.2.2.

4.1.1.10 Permits & Environmental – Permits and environmental reviews are often long lead time items. Accordingly, the status of the permits and environmental review process will be a factor in the evaluation of the development status of the Project. Applicant is requested to describe the following:

- The status of permit acquisition including permits received, significant outstanding permits and the permitting schedule to support transaction closing;
- If the Project contains more than 4,000 square feet of solar panels, it will be subject to SEQRA. Please indicate whether the Project is subject to SEQRA and the status of the SEQRA process. In particular, provide confirmation that the EAF has been fully completed and submitted to relevant agencies;

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<sup>6</sup> As described in “New York State Standardized Interconnection Requirements and Application Process for New Distributed Generators 5MW of Less Connected in Parallel with Utility Distribution Systems” issued by the New York State Public Service Commission in March 2016 as published on the NY PSC website. Since the URL is complex, Google search for “Updated NYS Standardized Interconnection Requirements (March 2016)” to be directed to the appropriate page.

- Describe any special site characteristics such as being a former landfill or if brownfield, previous site uses. If there are special site characteristics, describe how they are being addressed in the design and development process for the Project along with any special permitting or consultation with environmental agencies which is required;
- Describe any identified environmental issues such as hazardous waste contamination on the site. Note that NYGB will require at least a Phase 1 environmental assessment;
- Indicate whether the Project has attracted any environmental or other opposition and the extent and nature of such opposition including a description of the opposing parties. Include any steps taken to address such opposition; and
- Indicate whether the town in which the Project will be located is subject to a solar moratorium and provide details on any such moratorium.

#### 4.1.1.11 O&M Arrangements

- Provide information on the party that will be providing the O&M for the Project including their qualifications for this role;
- A summary of basic terms of the O&M arrangements, including pricing and the source for determining such pricing; and
- A description of the status of the O&M arrangements.

#### 4.1.1.12 Management & Administration

- Provide information on the party that will be providing the management and administration services for the Project including their qualifications for this role;
- A summary of basic terms of the management and administration arrangements including pricing and the source for determining such pricing; and
- A description of the status of the management and administration arrangements.

#### 4.1.1.13 Insurance

- Provide a description of the contemplated insurance program including proposed limits for the construction, operation and liability cover, key sub limits and deductibles.

#### 4.1.1.14 Expected Clean Energy Outcomes – As part of its mission, NYGB must demonstrate successful clean energy outcomes for all of the Projects into which it deploys capital. For all Projects funded pursuant to this RFP,

NYGB plans to calculate the expected clean energy outcomes itself based on Applicant supplied info as follows:

- Aggregate annual energy production projected over estimated life of Project with the initial estimate provided in the Phase 1 Proposal and confirmed prior to transaction closing including projected annual production. NYGB will require reporting of the actual production quarterly during the life of the Back Leveraged Loan.

4.1.1.15 Applicant Description – It is important for NYGB to know its Applicants so that it can evaluate their capabilities for completing the Project and servicing the Back Leveraged Loan over its life.

- Identify the officers and management of the Applicant. If the proposed Borrower is different, then include the officers and managers of the proposed Borrower as well;
- Provide a structure diagram showing all organizational entities from the Project Company and the Borrower to the ultimate parent(s) including ownership percentages. If there are options or other instruments that may be exercised, include structure diagrams for both pre-exercise and post-exercise of the options, showing the structure on a fully diluted basis (as applicable);
- Detail the qualifications of the Applicant for undertaking the Project(s) including its experience with similar projects; and
- Provide summary biographies and resumes for key personnel.

4.1.1.16 Remaining Development Requirements – This section of the Proposal should clearly articulate the remaining major steps requiring completion before financing, any issues expected in their completion and the schedule for completing the outstanding steps.

## 4.2 Phase 2: Contractual Arrangements & Fee –

Upon invitation by NYGB, Applicants are to submit contracts, agreements and other supporting documentation as described below and will be requested to provide an in-person Proposal presentation. Phase 2 is intended by NYGB to allow for a review of the contracts and agreements to confirm the stage of Project development and to determine any major contractual issues. The other elements of the due diligence process, including the work of the IE, will take place in Phase 3. Along with the Phase 2 requested materials described below, the Applicant will be required to pay a non-refundable fee of per Project (“**Phase 2 Fee**”) which will be used by NYGB to cover the costs of initial review. NYGB will only continue to consider Projects that have paid the required fee. Specific fee submittal instructions will be included in the NYGB invitation to Phase 2.

The elements of the Phase 2 Proposal and process include:

- Invitation to the Applicant from NYGB to enter the Proposal into Phase 2. From receipt of invitation, the Applicant will be given 4 weeks to submit (1) the Phase 2 materials as

described below, and (2) the Phase 2 Fee. Delays in submitting the full set of required materials may be grounds for discontinuing consideration of the transaction.

- In the invitation to Phase 2, the Applicant will be requested to schedule a detailed, in-person presentation of the Proposal by management to NYGB in its New York City offices. Its purpose will be to introduce the senior management team to NYGB and provide a synopsis of the Proposal.
- In Phase 2, NYGB is requesting all Project contracts and agreements (See Section 3.2) in their current form as of the Phase 2 submission even if they are not executed or in a final executable form. The contracts and agreements should be submitted with a cover note to each contract or agreement explaining its current status, and which elements of each contract are still being negotiated. For each contract or agreement that is not executed or in near final or executable form, the cover note should provide the schedule for reaching this level of contract development.
- In general, NYGB believes that first drafts of agreements that have not undergone negotiations do not demonstrate an acceptable level of development of that specific contract. Therefore, Applicants are advised to keep such first draft agreements to a minimum and to avoid such drafts for the more significant contractual arrangements.
- Applicant should submit the EAF along with any other SEQRA materials prepared for other permitting or approval agencies relevant to the Project.
- NYGB will re-evaluate the Project as part of its Phase 2 contract review using the same methodology as employed for Phase 1 taking into consideration all advances in the Project development and to determine if the Project is acceptable for Phase 3.
- The agreements, in aggregate, should provide a clear picture of the Project.
- The Phase 2 Proposal should also include an update of the Project development, if any, from that detailed in Phase 1. In particular, areas where significant development advances have occurred should be carefully delineated.
- The Applicant should also include its comments on the appropriate Back Leveraged Term Sheet. As a reminder, NYGB endeavored to create term sheets that balance the interests of all parties so they should only be marked up as absolutely necessary.
- At the conclusion of its Phase 2 evaluation, NYGB will inform the Applicant of its findings and its decision to either (1) invite the Project into Phase 3, or (2) require resolution of Project deficiencies before the invitation into Phase 3 can be extended. Applicants whose Projects are invited into Phase 3 will be provided with the NYGB credit agreement, assignment and consent agreements and other required financing documents (collectively the "**Transaction Documents**").

#### **4.3 Phase 3: Due Diligence, Approval & Documentation –**

During Phase 3, NYGB will complete the remainder of its required due diligence, work with the Applicant to prepare all required documentation for the financing of the transaction and seek the necessary NYGB approvals. The Applicant is expected to provide support for each of these tasks and should be prepared to answer specific questions and fulfill detailed data requests, including those generally forthcoming from an IE. Each component of Phase 3 is described below.

**The costs for NYGB third-party advisors such as the IE and outside counsel will be borne by the Applicant.**

4.3.1 Due Diligence –

- 4.3.1.1 Construction & Operating Performance – NYGB will seek to determine the readiness for construction and the projected Project performance based on due diligence including but not limited to the following construction and performance related items:
- Equipment Supply
  - Installation, EPC and/or BOP Agreements; Note that on a case by case basis, NYGB reserves the right to require performance guarantees
  - Construction Schedule
  - Environmental Issues including any Phase 1 environmental audit
  - Site Control
  - CESIR
  - Interconnection agreement
  - IE Report – NYGB will commission an IE report covering typical issues and including PVsyst® analysis for the Project. If the Applicant has already engaged an IE, NYGB may, upon review of the IE firm and its qualifications as well as the scope for the IE work, decide to utilize the Applicant's IE upon the provision of a reliance letter to NYGB, provided that such report is acceptable to NYGB. Prior to commencing the IE report, the Applicant will be provided with a scope of work and budget for the report.
- 4.3.1.2 Operations/Administration – NYGB will evaluate the plans for the operation and administration of the Project including evaluation of a Project pro forma model (See Section 4.3.1.9) covering the term of the Back Leveraged Loans. NYGB will use the pro forma model to address various scenarios relating to the operation of the Project.
- 4.3.1.3 Revenue Arrangements – At this stage, NYGB expects to be able to evaluate near final remote net metering arrangements. The Applicant will also need to demonstrate that the RNMCA meets the requirements of NYPSL § 66-j including the analysis in Section 3.2.1 and Section 3.2.2.
- 4.3.1.4 Financing Plan – NYGB will evaluate the financing plan for the Project including the requested level of debt financing, equity by source and amounts and evidence of each equity provider's availability and commitment over the near term and the long term. Such evaluation will also consider the level of sponsor investment and the extent it remains in the Project over time as NYGB considers continued Sponsor net investment to be a positive feature of any Project signifying a continuing commitment to the Project.

- 4.3.1.5 Construction Budget – A complete construction budget showing sources and uses, a draw schedule for both debt and equity and a detailed construction budget with all expenditures prior to Project completion. NYGB will require that the equity be funded in advance of draws on the Back Leveraged Loan.
- 4.3.1.6 Permits & Approvals – Demonstration that the NY-Sun process, if applicable, has been completed, all permits have been issued or are expected to be issued prior to the scheduled financial closing and, if applicable, the SEQRA process has been completed or is expected to be completed before the scheduled financial closing.
- 4.3.1.7 Credit Quality – NYGB will evaluate the credit quality of all Project parties and counterparties in order to assist in gauging counterparty risk. With respect to the RNMCA counterparty, NYGB will also look at the applicable forecasted metered rates, as described earlier in Section 3.2.2.
- 4.3.1.8 Title Report – Due to the importance of site control, early in Phase 3, the Applicant will be required to submit a title report for all properties comprising the Project site and any necessary access rights-of-way or easements.
- 4.3.1.9 Pro forma Model – During Phase 3 due diligence, the Applicant will be required to provide the inputs to populate the NYGB detailed Project operating and financial model. The more detailed model will incorporate panel output and degradation, solar irradiance, etc., and will be used by NYGB to evaluate the Project. This model will include a data input sheet documenting the source of all inputs. The model will be a Project document as defined in the loan agreement and will jointly be agreed to between NYGB and the Borrower.
- 4.3.1.10 Know Your Customer – NYGB will conduct “Know Your Customer” due diligence similar to that conducted by financial institutions and other government agencies.
- 4.3.2 NYGB Approval – NYGB will prepare its Transaction Approval Memo concurrently with the due diligence and documentation effort but cannot seek approval until the due diligence is completed and the Back Leveraged Loan documentation is in an advanced stage. NYGB approval is in accordance with the NYGB Policies & Procedures is generally received shortly before financial closing.
- 4.3.3 Documentation – As part of its effort to standardize the documentation of PV solar transactions as contemplated by this RFP, NYGB will utilize standard loan documentation prepared by its counsel. The Back Leveraged Loan documentation will include all necessary Transaction Documents which will be provided to the Applicant and its counsel during Phase 3. The Transaction Documents will be consistent with the Back Leveraged Term Sheets provided as part of this RFP with the proposed Applicant changes to the Back Leveraged Term Sheets (provided in Phase 2) to be considered.
- 4.3.4 Closing – Once the conditions precedent to financial closing have been met, closing of the transaction can proceed quickly. Conditions precedent are described in the Back Leveraged Term Sheets.

## 5 General Conditions

### 5.1 Municipal Advisor Rules –

NYGB is aware of the amendments to Section 15B of the Securities Exchange Act of 1934 effectuated by Section 975 of Title IX of the Dodd-Frank Act, as well as SEC Release No. 34-70462 (September 20, 2013). In this regard, please note that NYGB considers discussions with potential Applicants, and the review of Proposals, to be arms-length negotiations. NYGB recognizes that Applicants have financial and other interests that differ from NYGB; as such, NYGB does not consider a fiduciary relationship to arise in this context. NYGB has engaged an independent registered municipal advisor (“**IRMA**”) with the intent of relying (i.e., taking into careful consideration, along with any other information deemed relevant or appropriate) on that IRMA for advice related to any potential transactions (but not bound to follow that advice), and consequently allowing Applicants to qualify for the exemption provided by 17 CFR §240.15Ba1-1(d)(3)(vi) (the “IRMA exemption”). The name and contact information of the IRMA is listed on the NYGB website at [www.greenbank.ny.gov/IRMA](http://www.greenbank.ny.gov/IRMA), and the IRMA is available to respond to any questions an entity preparing to submit a Proposal may have with respect to the IRMA’s independence.

### 5.2 Proprietary Information –

Among NYGB’s goals is the promotion of standardization of material contract terms and structures, and the collection of Project performance data across NYGB transactions. NYGB is keenly aware that commercial markets and their incumbents value non-disclosure extremely highly in protecting confidential transaction terms and other competitive information and NYGB remains highly sensitized to usual and customary confidentiality practices. Nevertheless, as a division of NYSERDA, certain state laws specifically apply to NYGB and it is recommended that careful consideration be given before confidential information is submitted to NYGB as part of any Proposal. Review should include whether it is critical for evaluating a Proposal, and whether general, non-confidential information may be adequate for review purposes.

New York’s Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSERDA and its divisions possess. Public Officers Law, Section 87(2)(d) provides for exceptions to disclosure for records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” Information submitted to NYGB that the Applicant wishes to have treated as proprietary and confidential trade secret information, should be identified and labeled “Confidential” or “Proprietary” on each page at the time of disclosure. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. See Public Officers Law, Section 89(5) and the procedures set out in 21 NYCRR Part 501. The confidentiality of any information submitted cannot be guaranteed.

### 5.3 Limitation –

This RFP does not commit NYGB to agree to participate in any transaction, proceed to negotiate any terms or definitive documentation, pay any costs incurred in preparing a Proposal or to procure or contract for services or supplies. NYGB reserves the right to accept or reject any or all Proposals

received, to negotiate with all qualified parties or to cancel in part or in its entirety this RFP when it is in NYGB's best interest.

#### **5.4 Disclosure Requirement –**

The Applicant shall disclose, for any team member, any indictment for alleged felony, or any conviction for a felony within the past five years, under the laws of the United States or any state or territory of the United States, and shall describe the relevant circumstances. When an Applicant is an association, partnership, corporation or other organization, this disclosure requirement includes the organization and its officers, partners, and directors or members of any similar governing body. If an indictment or conviction comes to the attention of NYGB or NYSEDA after NYGB has indicated its interest to, or has agreed to enter into or participate in, any transaction NYGB may terminate the agreement and the Applicant may be subject to penalties for violation of any law which may apply in the particular circumstances. Applicants must also disclose if any team members have ever been disbarred or suspended by any agency of the United States Government or the New York State Department of Labor.

## **6 Attachments**

Attachment A – Structure Charts

Attachment B – Mandatory Certifications

Attachment C – Instructions for Submitting Proposals

Attachment D – Single Project Term Sheet

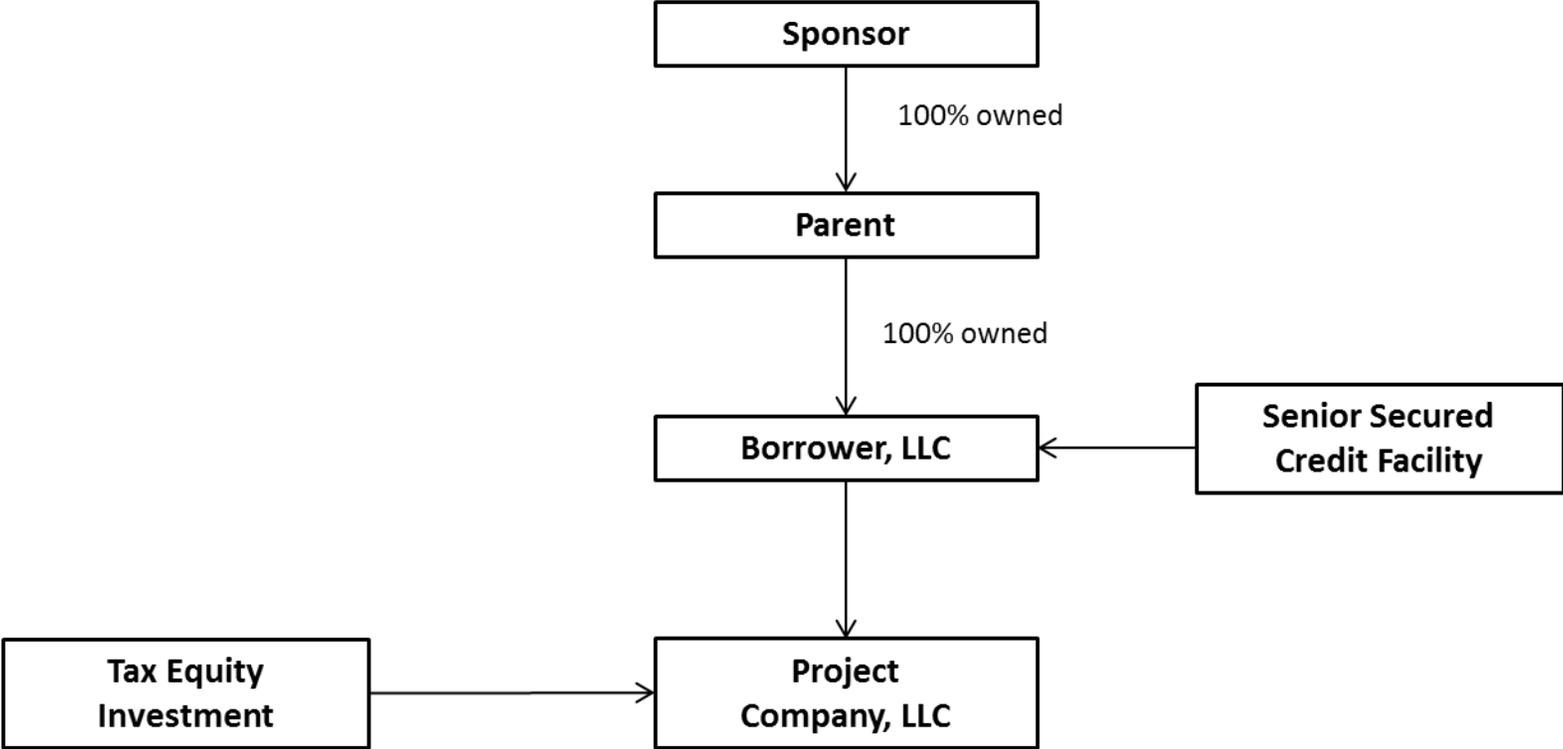
Attachment E – Portfolio Term Sheet

Attachment F – NYGB Pro forma Data Input Sheet

**RFP 7 -- Attachment A**

**Structure Diagrams**

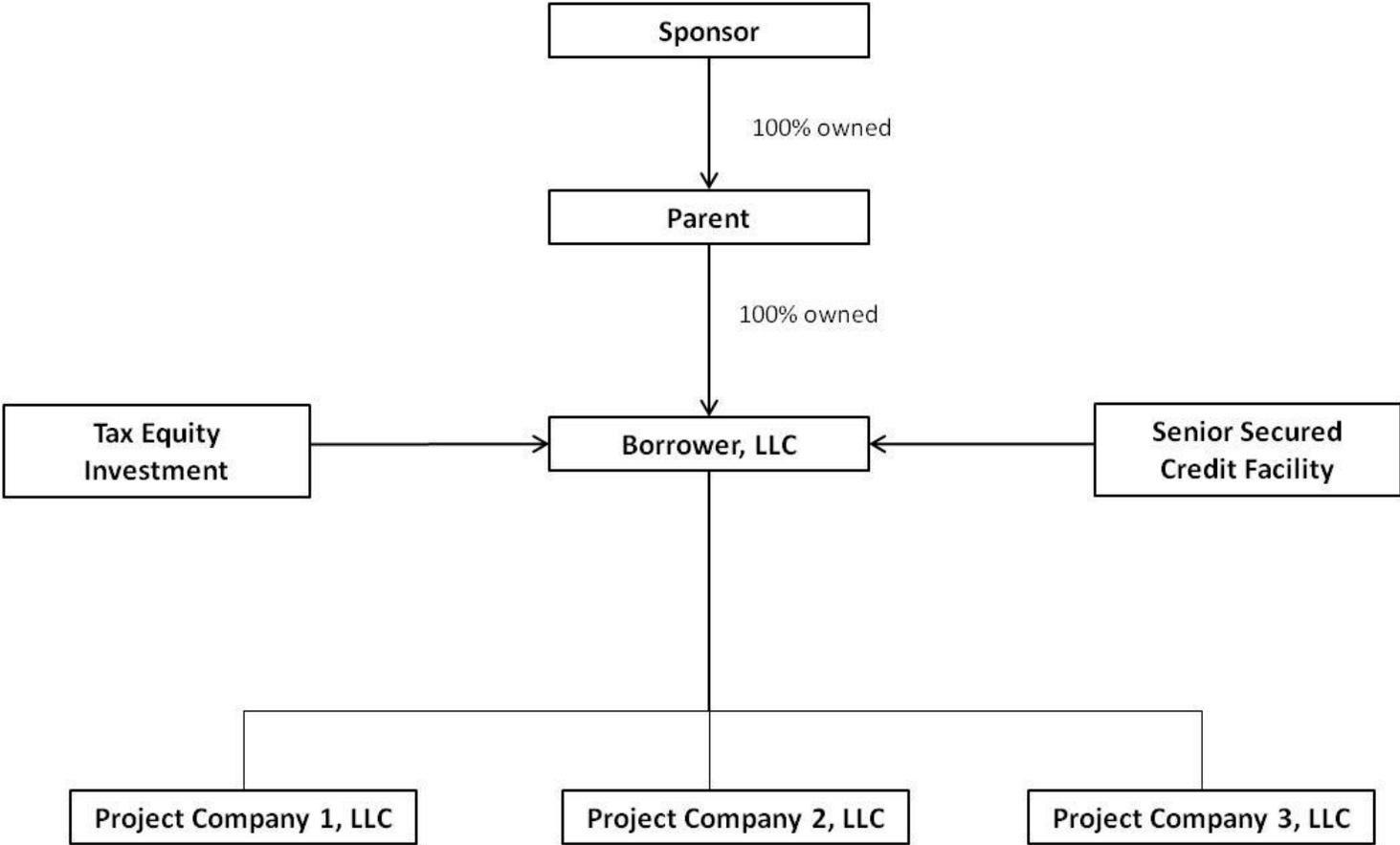
**Single Project Structure**



**RFP 7 -- Attachment A**

**Structure Diagrams**

**Portfolio Structure**



**Note: This structure is as is provided in the Project Portfolio Term Sheet. Applicant may request that structure include an intermediate holding company interposed between Borrower and the Project Companies, which may be done if satisfactory to the Lender**

**RFP 7 -- Attachment B**

**Mandatory Certifications**

To be in the form of Attachment A to RFP 1 but not to include the page number reference section and to have a line for authorized signature (sign, print, title, date).

**RFP 7 -- Attachment C**  
**Instructions for Submitting Proposals**

**RFP 7 -- Attachment D**

**Summary of Indicative Financing Terms for [NAME] Project**

Single Project - Senior Secured Construction Financing

Converting to Back Leveraged Term Loan

This term sheet is for discussion purposes only and has not been approved by New York Green Bank (“**NY Green Bank**”), a division of the New York State Energy Research & Development Authority (“**NYSERDA**”). Subject to NY Green Bank’s obligations under the New York Freedom of Information Law (see NY Public Officers Law, Article 6) or any regulatory request or legal obligation, this document and the contents herein are confidential and shall not be revealed to any party that does not have a need to know the contents for the purpose of negotiating and approving a potential financing involving NY Green Bank. This term sheet does not constitute an offer or agreement by NY Green Bank or commitment by NY Green Bank to enter into a financing agreement. The terms set forth herein, including indicative pricing terms, are not the complete terms and conditions of any financing agreement and are subject to withdrawal and change at any time. The final approval and completion of the proposed financing facility described in this term sheet will be dependent upon, among other things, the completion of satisfactory due diligence and document review by the NY Green Bank and the execution of definitive documentation agreeable to NY Green Bank, the terms of which may differ substantially from the terms set forth herein. The parties recognize that, neither party shall have any liability or obligation to the other as a result of this term sheet (other than in respect of the parties’ confidentiality obligation as provided above), it being understood that only such provisions as shall be set forth in any definitive documents shall have any legal effect.

**Borrower; Parent:** [NAME], [ORGANIZATIONAL INFORMATION], a special purpose entity established solely to manage and own [ ]% of the Project Company described below (the “**Borrower**”). Borrower is 100% owned by [NAME] (the “**Parent**”).

**Project Company:** [NAME], [ORGANIZATIONAL INFORMATION], a special purpose entity established solely for the development, construction, financing, ownership, operation and maintenance of the Project described below. The Project Company will be governed by a limited liability company operating agreement that shall provide as follows: [DESCRIBE OWNERSHIP INCLUDING ANY TAX EQUITY ARRANGEMENTS, BUYOUTS, FLIPS, MANAGEMENT ARRANGEMENTS, ETC.]. Prior to the Final Withdrawal Date (as defined below), the Project Company shall guaranty the obligations of the Borrower under the Loan Documents, which guaranty shall be secured by all assets of the Project Company as further described below (the “**Project Level Security and Guaranty Arrangements**”). If required by tax equity investors in the Project Company, the Lender shall release the Construction Period Security and Guaranty Arrangements upon the Final Withdrawal Date.

**Sponsor:** [NAME] (“**Sponsor**”). Sponsor owns [100%] of the equity interests in Parent.

**Project Description:** The Project Company is developing a solar photovoltaic (“**PV**”) generating facility to be located in [LOCATION], New York with an expected nameplate capacity of approximately [SPECIFY SIZE 500kw-2MW] and expected total annual production of [TBD] MWh/year. Power will be sold under a net metering contract (“**RNMCA**”) with [NAME],<sup>7</sup> which entity shall comply with the RNMCA Counterparty Criteria (as specified below). The total Project Costs (as defined below) are expected to be approximately \$[TBD].

**Lenders:** New York Green Bank, a division of the NYS Energy Research & Development Authority, together with any additional lenders party to the financing agreement from time to time.

**Collateral Agent:** [TDB]

**Depository Agent:** [TBD]

**Documentation:** The terms and conditions applicable to the Credit Facility, including financial terms, representations and warranties, covenants, conditions, events of default and remedies will be contained in a financing agreement, upstream guaranty, promissory note and other customary transaction documentation, including security agreement, mortgage, equity pledge agreement by Parent, depository agreement, UCC financing statements and third-party consents to assignment (collectively, the “**Loan Documents**”) and legal opinions and an agreed-upon base case financial model. All such documentation shall be in form and substance satisfactory to the Borrower and the Lender.

**Credit Facility; Use of Funds:** An up to \$[TBD] loan facility with final sizing based upon the assumptions contained herein (as modified by the results of the Lender’s due diligence). Proceeds of the Credit Facility shall be used for the sole purpose of funding a portion of Project Costs for the Project.

**Project Costs; Project Construction Budget:** Project Costs associated with the Project, shall mean the reasonable development costs, land acquisition costs, construction costs, capitalized interest, a reasonable development fee, required funding of the Debt Service Reserve Account and the O&M Reserve Account on or prior to the Final Withdrawal Date (as defined below) and transactional fees and

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<sup>7</sup> Each Project is required to serve a single RNMCA Counterparty.

expenses, in each case, in accordance with a construction budget for the Project, which shall include appropriate contingency amounts and the Project's draw schedule, submitted to and approved by Lender, as updated or as otherwise amended from time to time, in each case with the prior written consent of Lender.

**Final Maturity:** [TBD] years from Final Withdrawal Date.<sup>8</sup>

**Project Equity:** The Sponsor's aggregate equity contribution obligations<sup>9</sup> shall be the greater of:

- 1) An amount equal to the total estimated Project Costs as of the Closing Date less the sum of the maximum commitment amount of the Loan Facility; and
- 2) [30]% of the total estimated Project Costs, as of the Closing Date.<sup>10</sup>

**Debt Sizing; Minimum DSCR:** The Loan Facility shall be sized, as of the Closing Date, as not to exceed the lesser of:

- 1) An amount, assuming full amortization of the loan one year prior to scheduled contract termination of RNMCA, which would yield a minimum annual Projected Debt Service Coverage Ratio not less than [1.35x P50] production and 1.15x 1-year P90 production (the "Minimum DSCR") as determined by a third-party consultant satisfactory to the Lender; and
- 2) [70]% of the total estimated Project Costs.

**Net Borrower Revenues; Borrower Revenues:** With respect to any specified period, the difference between (A) Net Project Company Revenues paid to or projected to be paid, as applicable, to the Borrower from the Project Company during such period ("**Borrower Revenues**") and (B) all reasonable costs and administrative expenses paid or projected to be paid, as applicable, by the Borrower during such period. All revenue and expense assumptions used at Financial Closing shall be determined in consultation with third-party consultants satisfactory to the Lender.

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<sup>8</sup> Scheduled maturity of Loan required at least one year prior to the scheduled termination of the RNMCA but no later than ten (10) years from the Final Withdrawal Date (as hereinafter defined).

<sup>9</sup> NYSERDA Incentive Payments expected to be received by the Project during construction may be considered as "Project Equity," provided that Applicant shall be required to utilize cash equity as a bridge to actual receipt of such expected funds from NYSERDA.

<sup>10</sup> To the extent that the Applicant expects to incorporate tax equity into the Project's capitalization structure, Applicant should suggest requisite changes to the Term Sheet, including revisions to the ownership structure, debt/equity ratios and proposed forbearance terms, for the Lender's review and approval. Applicant shall be required to utilize cash equity as a bridge to any tax equity funding. Lender reserves all rights to revise proposed term sheet to further address any proposed tax equity structure.

**Net Project Company Revenues; Project Company Revenues:**

With respect to any specified period, the difference between (A) all cash flow paid or projected to be paid, as applicable, to the Project Company during such period under the Project's RNMCA, assuming a P90 production level and under any NY SUN PON incentive program ("**Project Company Revenues**") and (B) all operation and maintenance expenses, administrative expenses, any ordinary course cash payments due to the tax equity investor by the Project Company prior to the expected Buyout Date (as defined below) and the funding of any Project Company reserves, in each case as contemplated by the Project Company Limited Liability Company Agreement and paid or projected to be payable, as applicable, by the Project Company during such period. Notwithstanding the foregoing, on and after the Final Withdrawal Date, the projected cash flow with respect to any specified period for purposes of clause (A) above, shall be the lesser of (i) Project Company Revenues and (ii) all cash flow projected to be paid to the Project Company assuming P90 production level and energy payments based upon a forward curve of metered rates multiplied by [ ]%<sup>11</sup> and under any NY SUN PON incentive program. All revenue and expense assumptions used at Financial Closing shall be determined in consultation with third-party consultants satisfactory to the Lender.

**Historic Debt Service Coverage Ratio; Projected Debt Service Coverage Ratio:**

With respect to any specified period, the ratio of (A) Net Borrower Revenues paid or projected to be paid, as applicable, to Borrower during such period to (B) Borrower's scheduled amortization payments, interest and fees paid or projected to be paid, as applicable, to the Lender by the Borrower in respect of the Credit Facility during such period. For purposes of calculating the Minimum DSCR, Historic Debt Service Coverage Ratio or the Projected Debt Service Coverage Ratio, Net Project Company Revenues and Net Borrower Revenues shall exclude any (a) revenues generated from casualty insurance, condemnation proceeds or asset sales; (b) warranty payments or (c) payments from any affiliates of the Project Company (including any tax equity investors) that are gifts, loans, equity or capital contributions.

**RNMCA Counterparty Criteria:**

Threshold criteria, including but not limited to:

- 1) No less than [ ]% of the RNMCA Counterparty's load is represented by the RNMCA;
- 2) If RNMCA Counterparty is not rated or rated below investment grade, including but not limited to:

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<sup>11</sup> The forward curve methodology to project future metered rates to be agreed upon and to be utilized for the relevant zone and utility service territory, equitable to all Project Sponsors

- a) No bankruptcy;
  - b) Proof of no late payments by such entity to utility;
  - c) In business or in operation for more than five years;
  - d) To provide the last three years of financial statements and IRS filings;
  - e) D&B minimum credit score; and
  - f) Major rating agency service utilized to provide a counterparty credit score;
- 3) If RNMCA Counterparty is a governmental entity or a non-profit, the Lender shall evaluate on a case-by-case basis, with rated governments contractual agreements being evaluated on the basis of that governmental entity's legal ability to appropriate, among other things.

At Closing, Applicant shall be required to demonstrate a satisfactory number of potential replacement RNMCA Counterparties that have required load and otherwise satisfy the requisite criteria (subject to availability).

**Mandatory Amortization:** The Loan Facility will amortize, commencing upon the Final Withdrawal Date through and including the Final Maturity of the Loan Facility, quarterly with payments of the required principal repayment amount set forth on the amortization schedule to be attached to the Loan Documents.<sup>12</sup>

**Interest Rate:** Loans under the Credit Facility shall bear interest at a rate equal to [TBD]%.<sup>13</sup>

Interest rate will increase by 2.00% per annum starting on the fifth anniversary of the Final Withdrawal Date.

Interest will be capitalized during the construction period until the Project's Final Withdrawal Date, but no later than the Date Certain. Except as set forth in the prior sentence, interest will be payable in arrears quarterly, upon any refunding, prepayment, including due to acceleration, and at final maturity.

Upon the occurrence of a Default under the Loan Documents, interest shall increase by 2.00%.

**Date Certain:** The "**Date Certain**" with respect to the Project to be determined by the Lender by reference to the Project's construction schedule, budgeted

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<sup>12</sup> Applicant to proposed quarterly amortization amounts.

<sup>13</sup> Interest Rate to be determined by the Lender. Such rate may vary by Applicant based upon the Lender's review of the credit quality of the Sponsor and the RNMCA Counterparty, among other factors.

capitalized interest and any relevant milestone dates in underlying project contracts and licenses.

**Fees:**

Closing Fee: [1.50]% of the Loan Facility commitment payable to the Lender.

Agency Fee: [\$5,000] at Closing and thereafter, annually in advance, payable to the Lender.

**Borrower Security Package:**

Customary back leveraged finance security package to be provided at Financial Closing including, but not limited to, a first-priority security interest in the following collateral:

- 1) All membership interests in the Borrower held by the Parent (including all economic, voting and managerial rights related thereto);
- 2) All membership interests in the Project Company held by the Borrower (including all economic, voting and managerial rights related thereto);
- 3) the contract rights, accounts receivable, bank accounts, general intangibles and all other assets of the Borrower;
- 4) All agreements entered into by the Borrower;
- 5) All insurance policies and proceeds thereof as well as condemnation proceeds received by the Borrower;
- 6) All revenue, accounts with respect to the Project payable to the Borrower, collateral accounts and any cash therein held by the Borrower (including all undisbursed loan proceeds on deposit in the Construction Account);
- 7) All accounts receivable and general intangibles of the Borrower;
- 8) All rights the Borrower, the Parent and the Sponsor have in any equity capital contribution agreement; and
- 9) All other real or personal property of the Borrower (including cash and financial instruments).

**Project Level Security Package and Guaranty Arrangements:**

At Financial Closing, the Project Company will be required to provide a secured guaranty of all of the Borrower's obligations under the Loan Documents (subject to customary fraudulent conveyance savings provisions). Such Guaranty to be secured by a customary project finance security package including, but not limited to, a first-priority security interest in the following collateral:

- 1) The real property rights and all inventory, machinery and equipment comprising the Project;
- 2) The contract rights, accounts receivable, bank accounts, general intangibles and all other assets of the Project Company;
- 3) All agreements entered into by the Project Company;

- 4) All governmental approvals for the Project, to the extent assignable as collateral;
- 5) All insurance policies and proceeds thereof payable in respect of the Project as well as condemnation proceeds;
- 6) All revenue, accounts with respect to the Project, collateral accounts and any cash therein held by the Project Company (including all undisbursed loan proceeds on deposit in the Construction Account);
- 7) All accounts receivable and general intangibles of the Project Company;
- 8) All rights the Project Company may have in any equity capital contribution agreement;
- 9) All other real or personal property of the Project Company (including cash and financial instruments); and
- 10) Upon the Final Withdrawal Date in respect of the Project, Lender shall, if required by tax equity investors in the Project Company, release the Project Company from its Guaranty and terminate the Project's Project Level Security Package.

**Reserve Accounts:**

**Debt Service Reserve Account:**

Equal to the maximum amount of Debt Service over any [9]-month period within the tenor of the Loan Facility. "Debt Service" is defined as the sum of fees, interest and principal due in such period as set forth in the amortization schedule. The Debt Service Reserve Account shall be considered a Project Cost to be funded upon the Final Withdrawal Date utilizing both loan proceeds and equity, in proportion to the overall Debt/Equity ratio. Equity to support its proportionate funding obligation at Closing in the form of cash or provision of a letter of credit or guarantee, in each case, satisfactory to the Lender in its sole discretion.

**O&M Reserve Account:**

Equal to the maximum amount of O&M expenses over any [12] month period within the tenor of the Loan Facility, to be funded as provided above in the case of the Debt Service Reserve Account.

**Inverter Replacement Reserve Account:**

Inverter Replacement Reserve Account to be determined based on diligence review (including inverter warranty terms) and IE (defined below) input, which account shall be funded following the Final Withdrawal Date with Borrower Revenues in accordance with the Borrower Waterfall. The Inverter Replacement Reserve Account will be sized and funded so as to be fully funded in advance of the end of the expected life of the inverters.

**Buyout Reserve Account:**

In the event that the Borrower may or shall be required to buy out the equity held by a tax equity investor in the Project Company following the recapture

period (such acquisition date, the “**Buyout Date**”) and provided that such Buyout Reserve Account is required by the Lender in its sole discretion, such account shall be funded to required levels following the Final Withdrawal Date with Borrower Revenues in accordance with the Borrower Waterfall. The Buyout Reserve Account will be sized and funded so as to be fully funded in advance of the call period specified for such buyout in the Project Company’s Limited Liability Company Agreement. In lieu of the Buyout Reserve Account, Sponsor may provide letters of credit or other liquid security, in each case in form and substance satisfactory to the Lender.

**Accounts; Depositary Agreement:**

The Project Company, the Borrower, the Lender and the Depositary Agent shall be party to a Depositary Agreement that shall perfect the Lender’s security interests over the various accounts established and maintained thereunder. Terms and conditions of withdrawals from such Accounts to be customary, including provision of requisite certifications by the Borrower.

**Borrower Waterfall:**

Borrower Revenues (which, pursuant to the depositary agreement, shall be required to be deposited directly into a controlled account) shall be applied as follows:

**First**, on a monthly basis, to the payment of fees, indemnities and other expenses due and payable to the Lender, the Depositary Agent and the Collateral Agent under the Credit Facility;

**Second**, quarterly, to the payment of interest due and payable to the Lender under the Credit Facility;

**Third**, quarterly, to the payment of principal under the Loan Facility in the amount of the Mandatory Amortization for such period;

**Fourth**, quarterly, to the funding of all Reserve Accounts up to the reserve requirements then in effect;

**Fifth**, quarterly, to the prepayment of principal under the Loan Facility solely to extent necessary to cause the Projected Debt Service Coverage Ratio as calculated on such quarterly date with respect to the balance of the term of the loan to equal the Minimum DSCR; and

**Sixth**, quarterly, as a cash distribution to the Parent, so long as the below Distribution Conditions are satisfied.

**Distribution Conditions:** Distributions to Parent (including repayment of affiliate loans or similar payments to be described in the Loan Documents) shall be permitted to be made by the Borrower on a quarterly basis provided:

- 1) The Final Withdrawal Date shall have occurred;
- 2) No Default or Event of Default outstanding;
- 3) No Material Adverse Effect has occurred;
- 4) Reserve Accounts are fully funded to then-required levels;
- 5) The Borrower's Historic Debt Service Coverage Ratio as determined as of such quarterly date with respect to the prior 12-month period shall be at least [1.35:1:00]; and
- 6) The Borrower's Projected Debt Service Coverage Ratio as determined as of such quarterly date with respect to the following 12-month period shall be at least [1.35:1:00].

Notwithstanding the foregoing, provided that no Default or Event of Default exists and is continuing, cash receipts by the Borrower constituting tax equity contributions and/or NYSERDA incentive payments specifically bridged by cash equity contributions (or the subject of acceptable credit support therefore previously provided by, or on behalf of, the Sponsor) may be distributed.

**Funding Protection:** Customary for transactions of this type, breakage costs, gross-up for withholding, compensation for increased costs and compliance with capital adequacy and other regulatory restrictions.

**Conditions Precedent to Financial Closing:** Certain conditions to Financial Closing as are customary for this type of transaction, including the following:

- 1) The Loan Documents shall have been executed and be in full force and effect;
- 2) The Borrower shall have provided evidence that all Project Equity shall have been contributed to the Borrower or, alternatively, shall be supported by binding commitments with respect thereto from the Sponsor, the credit of which shall be satisfactory to the Lender in its sole discretion (or alternative arrangements as to such equity funds such as a letter of credit shall have been received) and, in each case, on terms and conditions satisfactory to the Lender; it being understood that no Loans shall be made available to the Borrower prior to full contribution and utilization of Project Equity (except in the case of tax equity, in which case, such deferred contributions shall be bridged by cash equity contributions and the timing and other terms and conditions of such tax equity

- contributions shall be acceptable to the Lender in its sole discretion);
- 3) Delivery of the Project Construction Budget;
  - 4) The Project Documents in forms acceptable to Lender shall have been executed and be in full force and effect, with no defaults or events of default thereunder and all conditions precedent satisfied by each of the parties thereto. "**Project Documents**" to include, without limitation, real estate acquisition/lease arrangements, a fixed-price EPC agreement (or alternatively, fixed-price equipment purchase orders together with a fixed-price balance of plant contract) (in each case containing satisfactory warranties); RMNCA and/or other applicable revenue agreements and any NY Sun PON arrangements, operations, maintenance and administration agreement(s);
  - 5) A Coordinated Electric System Interconnection Review ("**CESIR**") has been completed and all necessary agreements shall be in place with the interconnecting utility and the interconnection costs shall be in the Project Construction Budget;
  - 6) Third-party consents to collateral assignment with respect to the Project Documents in forms acceptable to Lender shall have been executed and be in full force and effect;
  - 7) The Project Company shall have acquired all necessary real property rights to the satisfaction of the Lender;
  - 8) Receipt of satisfactory expert studies of the Project from the IE's and the Insurance Consultant:
    - a) The IE's report shall evaluate, including, but not limited to, (i) the technical aspects of the Project including a review of the Base Case Projections, (ii) the status of permits, (iii) a solar resource assessment that includes a final energy production analysis for the Project that is consistent with the Base Case Projections and an analysis of forecasts of overall power production during the life of the Project, and (iv) confirms that the Project as designed complies with the technical system requirements of the Project Documents, in form and substance satisfactory to Lender; and
    - b) The Insurance Consultant's report shall (i) assess the adequacy of the insurance requirements in the Project Documents; (ii) recommend the insurance requirements to be included in the Loan Documents; and (iii) provide a certificate that the insurance package, as a whole, is appropriate to protect the Project and the insurance required in the Financing and Project Documents is in place or can be commercially obtained;
  - 9) The [EPC Contractor] [BOP Contractor] shall have provided (i) the [construction security] and (ii) additional financial security [in a form to be agreed upon];
  - 10) All applicable material governmental permits and approvals listed in Part I of the Permitting Schedule are in place, including FERC QF self-certification and SEQRA finding as to no significant adverse environmental impact;
  - 11) The necessary lien searches performed and filings and recordings made to perfect the first-priority security interests, including the mortgage and delivery of all original membership interest certificates as contemplated by the equity pledge agreement(s);

- 12) A certificate of the Borrower that all representations and warranties made by the Borrower in the Loan Documents shall be true and correct in all material respects;
- 13) A certificate of the Insurance Consultant in favor of the Lender stating that all required insurance policies obtainable at that time are in full force and effect, the premiums due thereon have been paid, such insurance shall not be subject to cancellation without prior notice to the Lender and that such policies otherwise conform with the requirements specified in the Loan Documents;
- 14) No Default or Event of Default shall have occurred and be continuing under the Loan Documents;
- 15) No action, suit or proceeding or investigation shall have been instituted or threatened by a person or governmental entity with respect to the Project;
- 16) A financial model demonstrating projected compliance during the term of the loan with the Minimum DSCR, based on technical and other assumptions confirmed as reasonable by the IE (the "Base Case Projections");
- 17) Audited annual financial statements for each of the Sponsor, Parent, Borrower, Project Company, RNMCA Counterparty, EPC Contractor and most recent pro forma balance sheet of Borrower;
- 18) Legal opinions shall have been received as to the following matters as to the Borrower and Project Company:
  - a) Duly organized and validly existing in good standing under the laws of the State of [TBD] and is authorized to do business in New York;
  - b) Has the power and authority to execute and deliver and to perform its obligations under the Financing Document and Project Documents to which it is intended to be a party;
  - c) The execution and delivery of the Loan Documents and Project Documents to which it is intended to be a party have been duly authorized by all necessary action on its part;
  - d) The Loan Documents and Project Documents to which such parties are intended to be a party constitute the legal, valid and binding obligation thereof, enforceable against them in accordance with their terms, subject to exceptions for bankruptcy and equitable principles;
  - e) No governmental approvals are required for the execution and delivery by it of the Loan Documents and Project Documents to which such parties are intended to be a party, other than those that have been obtained;
  - f) All environmental permits necessary for the construction and operation of the Project have been obtained, such permits are in full force and effect, and all applicable appeal periods have expired;
  - g) The execution and delivery, and the performance by such parties of their obligations under, the Loan Documents and Project Documents do not violate its [certificate of incorporation], or violate [Delaware General Corporation Law or laws of the State of New York];
  - h) Is not an investment company required to register under the Investment Borrower Act of 1940, as amended;
  - i) Each security document is effective to create a security interest under the Uniform Commercial Code in the right, title and interest of each such party in, to and under the personal property of each such party purported to be subject to the lien

of such security document in which a security interest may be created under the Uniform Commercial Code, as collateral security for the secured obligations specified in such security document;

- j) The Mortgage is in sufficient form for recording in the State of New York, or any political subdivision thereof, and upon such recording shall constitute a perfected security interest in the interests described therein;
  - k) There are no proceedings pending or overtly threatened in writing against either such party other than as specified; and
  - l) No governmental approval or other authorization under the laws of the State of New York, or any political subdivision thereof, is required in connection with the execution, delivery, filing, recording or enforcement of the Mortgage or the indebtedness secured thereby.
- 19) No state or local mortgage tax, stamp duty or similar fee, tax or other governmental charge (other than customary nominal per page or per document filing and recording fees imposed by law) is required to be paid in the State of New York in connection with the execution, delivery, filing, recording or enforcement of the Mortgage;
  - 20) Customary incumbency certificates, good standing certificates, resolutions and formation documents of the Borrower, Sponsor, the Project Company and Parent shall have been received;
  - 21) All required Accounts shall have been established and be subject to the lien under the Loan Documents for the benefit of the Lender, and the Borrower shall have funded the Debt Service Reserve Account and the O&M Reserve Account each with the required initial balances;
  - 22) An ALTA survey shall have been provided with respect to the Project Site and all related easements and rights-of-way;
  - 23) ALTA 2006 form extended coverage policy of title insurance shall have been received, together with such endorsements and reinsurance as required by Lender, in the amount of the Loan and issued by the Title Company;
  - 24) Unless otherwise waived by the Lender, confirmation that the Project is entitled to a property tax exemption and is not located in a jurisdiction in which there is a solar moratorium;
  - 25) A detailed construction schedule of the Project in form and substance satisfactory to the Lender;
  - 26) Copies of any required "life of loan" Federal Emergency Management Agency Standard Flood Hazard Determination (FEMA Form 81-93) for each parcel which constitutes a portion of the Site. If any improvement to the Site is located in a special flood hazard area, a notification to the Borrower ("Flood Notice") shall be delivered and (if applicable) the Flood Notice shall include notification to the Borrower that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community does not participate in the NFIP;
  - 27) Documentation requested by Lender in connection with Patriot Act compliance;
  - 28) There shall not have been any Material Adverse Effect;
  - 29) If the Project is considered a public work covered by Article 8 of the NY Labor Law or a building service agreement covered by Article 9 thereof by reason of the involvement of a public entity as host or RMNCA Counterparty, then Borrower, Project Company

and Sponsor will, during the construction of the Project, comply (and cause each contractor and subcontractor to comply), and will certify compliance, with all State of New York prevailing wage and hours laws and regulations; and

- 30) There shall not have occurred any material adverse change in the Project Budget, the Project Schedule or the Base Case Projections for the Project, in the economics or feasibility of constructing or operating the Project, or in the financial condition, business or property of any third-party project participant.

**Material Adverse Effect:** The definition of “**Material Adverse Effect**” in the Loan Documents shall mean the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, has a material adverse effect (a) (i) on the business, operations, properties, prospects or condition (financial or otherwise) of the Borrower, the Parent, the Project Company or any equity investor, (ii) on the value of the collateral, (iii) on the enforceability of any Loan Document, or (iv) on the validity or priority of the Lender’s security interests in any collateral; (b) on the ability of the Borrower, the Parent, the Project Company or any equity investor to perform its obligations under the Loan Documents or equity contribution arrangements; or (c) on the ability of the Lender to enforce or collect on any payment obligations or to realize upon the collateral.

**Funding Conditions under the Loan Facility:** Upon satisfaction of the conditions specified below (collectively, the “**Funding Conditions**”), upon the requisition of the Borrower, Lender shall fund the Loan in a single draw into the “Construction Account” as established under the Depositary Agreement:

- 1) Financial Closing shall have occurred;
- 2) All Withdrawal Conditions shall have been satisfied;
- 3) Lender shall have received the schedule for completion by the applicable interconnection utility of the upgrades, such upgrades to demonstrate interconnection points necessary to handle the total output of the Project consistent with the Project Schedule;
- 4) All deposits required to be made to the applicable interconnection utility in respect of interconnection costs or otherwise shall have been made in their entirety and evidenced to Lender;
- 5) All Project Equity shall have been contributed and used for the payment of Project Costs,<sup>14</sup> and
- 6) Lender shall have received a copy of the full “Notice to Proceed” (as defined in the BOP Contract, EPC Contract or equipment supply contracts, as applicable) issued to the BOP Contractor, EPC Contractor and equipment suppliers under the applicable contract.

**Withdrawal Conditions:** Funds on deposit in the “Construction Account” may be withdrawn by the Borrower for contribution to the Project Company for payment of project

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<sup>14</sup> Applicant to bridge any committed but unfunded tax equity contributions with cash equity.

costs, no more than once each calendar month, upon receipt of a Withdrawal Certificate and upon satisfaction of the following (the “**Withdrawal Conditions**”):

- 1) Each representation and warranty of Parent, Borrower and Project Company set forth in in the Loan Documents shall be true and correct in all material respects (or if such representation and warranty relates solely as of an earlier date, as of such earlier date);
- 2) No Default or Event of Default shall have occurred and be continuing under the Loan Documents;
- 3) All applicable material permits and governmental approvals required or reasonably necessary to have been obtained as of such date given the state of construction of the Project shall have been obtained, are in full force and effect and not subject to appeal;
- 4) The Project Documents (including any NYSEERDA agreement) and third-party consents to assignment shall each remain in full force and effect, with Borrower in compliance with the terms and conditions thereof and no defaults or events of default thereunder;
- 5) No action, suit or proceeding or investigation shall have been instituted or threatened by any person or governmental entity with respect to the Project;
- 6) There shall not have been any Material Adverse Effect;
- 7) Borrower shall have demonstrated to the satisfaction of the Lender (in consultation with the IE) that sufficient funds remain available to the Project Company to complete construction on or prior to the Date Certain;
- 8) No change in tax law impacting the tax equity investors forward contribution commitments;
- 9) Borrower shall have certified that (A) all applicable milestones have been met in accordance with the Project Schedule; (B) all work done on the Project is being built in a good and workmanlike manner in accordance with the Project Plan, Project Construction Budget, the BOP or EPC Contract (as applicable) and the IE Report, (C) bring down of all representations and warranties; and (D) Project will achieve Commercial Operation no later than the Date Certain;
- 10) IE Certificate as to matters in clauses 7 and 9 above;
- 11) Lender shall have received copies of executed lien releases and there has not been filed against, or served upon Borrower or the Project (or any part thereof) notice of or application for any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released, other than Permitted Liens (to be agreed);
- 12) All Lenders fees and costs have been paid; and
- 13) Other standard conditions precedent to a withdrawal.

**Final Withdrawal  
Conditions; Final  
Withdrawal Date:**

Borrower’s final withdrawal of funds on deposit in the “Construction Account” shall be subject to satisfaction of the following conditions (“**Final Withdrawal Conditions**”):

- 1) All Withdrawal Conditions shall have been satisfied;
- 2) The date of such final withdrawal shall be on or before the Date Certain;
- 3) Funding of any and all tax equity contributions with respect to such Project;
- 4) All required project accounts shall have been established and be subject to the lien under the Loan Documents for the benefit of the Lender, and the Borrower shall have funded the Debt Service Reserve Account, the O&M Reserve Account, the Inverter Replacement Reserve Account and, if applicable, the Buyout Reserve Account, each with the required initial balances;
- 5) Borrower certification (as confirmed by the IE) as to the achievement of Substantial Completion and Commercial Operation and list of Punch List Items necessary to achieve Final Completion;
- 6) Evidence that the Project is capable of operating safely and in compliance with the technical requirements of the material Applicable Permits and Prudent Utility Practice (as confirmed by the IE);
- 7) All warranties under the BOP/EPC Agreement and warranties covering the modules and inverters, are in full force and effect on the date of Substantial Completion, subject to the warranty periods and other terms and conditions of each such warranty, and have been assigned to the Project Company;
- 8) A completion account has been fully funded in the amount equal to 150% of the Punch List amount;
- 9) No material claims or disputes between the Project Company (or its affiliates) and the EPC/BOP Contractor and/or equipment supplier and any of their respective subcontractors shall be pending;
- 10) Written confirmation by the Insurance Consultant as to such matter as requested by the Lender, including that all then-required insurance policies are in full force and effect;
- 11) As Built Survey and bring down of title insurance report; and
- 12) Updated Base Case Projections to reflect any material changes to operating expenses and cash flow for the Project (after giving effect the actual operating capacities of the Project and any material changes to the projected operating performance of the Project), which updated Base Case Projections shall indicate projected compliance by the Borrower with the Minimum DSCR during the term of the loan.

The date upon which all Final Withdrawal Conditions are satisfied, as determined by the Lender, shall be referred to herein as the “**Final Withdrawal Date**”

**Representations and Warranties:**

The Borrower shall make the following representations and warranties as to itself and the Project Company on the Closing Date, Loan Funding and on each Withdrawal Date (subject to qualifications and thresholds to be agreed):

- 1) Is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization and is in good standing in its jurisdiction of organization and in New York;
- 2) Has full power and authority to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under the Loan and Project Documents to which it is a party;
- 3) All necessary action required to authorize the execution, delivery and performance of the Loan and Project Documents has been duly and effectively taken;
- 4) Each of the Loan and Project Documents has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Borrower and the Project Company, enforceable against such party in the State of New York in accordance with the terms thereof;
- 5) Except as disclosed, the Borrower, the Project Company and the Project are in material compliance with any governmental rule (including any environmental law) applicable to the Borrower, the Project Company or the Project, and with the material terms of all other governmental approvals obtained by it;
- 6) No action or other proceeding is pending or, to the Borrower's actual knowledge, threatened against or affecting, the Project Company or the Project or any material part thereof, which, if adversely determined, would have a Material Adverse Effect;
- 7) The Project Company has a [valid leasehold interest in the Project Site], valid fee title in all other elements of the Project and good title in all other property it purports to own free and clear of liens, subject to permitted liens and the permitted encumbrances;
- 8) Neither party has engaged in any business other than the ownership, construction, operation of and financing for the Project and the activities related or incident thereto, and neither party has any obligations or liabilities other than those directly related to the conduct of such business;
- 9) The Borrower, the Project Company and the Project are, and have been, in material compliance with environmental laws; there are no past, pending or, to the Borrower's actual knowledge, threatened environmental claims against the Borrower, the Project Company or the Project that could be expected to result in a Material Adverse Effect, and neither the Borrower nor, to the Borrower's actual knowledge, any other Person, has used, released or discharged, generated or stored any hazardous material at the Project Site, and to the Borrower's actual knowledge, there are no hazardous materials used or present at the Project Site except, in either case, in compliance with applicable environmental laws;
- 10) Except as disclosed, no governmental approval is required to be obtained by either such party in connection with:
  - a) The execution and delivery of, and performance by either such party of its respective obligations, and the exercise of its rights, under Project and Loan Documents to which it is a party, or
  - b) The validity and enforceability the Project Documents;
- 11) All material governmental approvals required to construct, own, and operate the Project are set forth on the permitting schedule attached to the Loan Agreement ("Permitting Schedule"). Governmental approvals set forth in Part I of the Permitting Schedule have been validly issued and are in full force and effect,

- are final and, if applicable laws or regulations specify a period for bringing administrative appeals, all such appeals periods have expired; Governmental approvals set forth in Part II of the Permitting Schedule are not required given the stage of development of the Project, and Borrower reasonably expects such governmental approvals to be obtained when required in due course on commercially reasonable terms;
- 12) All insurance required to be maintained by the Borrower and the Project Company under the Loan or Project Documents has been obtained and is in full force and effect, other than insurance not reasonably required at such stage of the Project. All premiums due with respect thereto have been paid;
  - 13) Financial statements of the Borrower and Project Company:
    - a) Such latest financial statements, have (other than the pro forma statement provided on the Closing Date) been prepared in conformity with generally accepted accounting principles (“GAAP”) and present fairly, in all material respects, the financial condition of such party as of the date thereof,
    - b) All material liabilities, direct and contingent, of either such party are either disclosed in such balance sheets or have been disclosed in writing by the Borrower prior to the execution and delivery of the Loan Documents;
    - c) There are no undisclosed material liabilities, direct or contingent, of the Borrower or the Project Company, which have accrued since the date of such financial statements or such disclosure; and
    - d) Since the date of the balance sheet included with the most recent financial statements of the Borrower and the Project Company referred to in this clause, no event has occurred, and no condition exists, that has had, or could be expected to have, a Material Adverse Effect;
  - 14) The Base Case Projections discloses all material assumptions and was prepared in good faith and represents in the opinion of the Borrower reasonable projections at the time made of future performance (it being understood that projections contain significant uncertainty and actual results may differ significantly from projections);
  - 15) As of the Closing Date, the Parent owns 100% of the equity interest in the Borrower free and clear of all liens;
  - 16) As of the Closing Date, the Borrower is the managing member of the Project Company and owns [ ]% of the equity interest in the Project Company free and clear of all liens;
  - 17) The Borrower has timely filed or caused to be filed all income tax returns and all other tax returns which are required to be filed by it and has paid or caused to be paid all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower, except such taxes, if any, as are being contested;
  - 18) No Default or Event of Default has occurred and is continuing under the Loan Documents;
  - 19) No ERISA Event (to be defined) has occurred or is reasonably be expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect;
  - 20) None of the execution, delivery or performance by either such party of each of the Loan and Project Documents to which it is a

party violates or constitutes a default or requires consent by any other Person under any material governmental rule applicable to such person or the Project or any other material contractual obligation to which the Borrower is a party. None of the execution, delivery or performance of the Loan Documents to which either such party is a party results in, or requires, the creation or imposition of any lien on any of the Collateral or any other properties or revenues of the Borrower or the Project Company except for Permitted Liens;

- 21) Neither such party has filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation;
- 22) Upon the execution and delivery thereof the Mortgage, security agreement, pledge agreements and other security documents will be effective to create legally valid and enforceable liens on the Collateral, and all necessary recordings and filings will be recorded and filed on or prior to the closing date such that they will constitute first-priority, perfected security interests in the Collateral, subject only to permitted liens; and
- 23) All material Project Documents entered into as of the Closing Date have been set forth on a schedule to the financing agreement; and
- 24) Borrower and/or Project Company owns all intellectual property necessary to construct and operate the Project in the manner contemplated by the Loan Documents and the Project Documents.

**Affirmative Covenants:**

Usual and customary affirmative covenants for transactions of this type (including customary exceptions and materiality thresholds), to be agreed to by Borrower on behalf of itself and the Project Company, including, without limitation, covenants as to use of proceeds, reporting (environmental, energy, operational, engineering, economic development, etc.), notice requirements, compliance with laws, payment of taxes, maintenance of insurance, financial statements, audit rights, preservation of corporate existence, maintenance of properties and licenses, operation of project, energy regulation, annual operating budget, separateness, environmental compliance, maintenance of all accounts (including reserve accounts), preparation of debt service coverage ratio, application of proceeds following casualty or condemnation, further assurances and such other covenants deemed appropriate by the Lender as a result of Lender's due diligence.

**Negative Covenants:**

Usual and customary for a transaction of this type (including customary exceptions and materiality thresholds), to be agreed to by Borrower on behalf of its and the Project Company, including without limitation covenants as to Contingent liabilities, limitation on liens, indebtedness, tax equity matters, changes in business, distributions, permitted investments, transactions with affiliates, transfers of equity interests, disposition of assets, amendments to project documents, change orders and completion, offsite storage, subsidiaries, accounts, accounting changes, capital expenditures, employees, project expansion, regulation of parties, ERISA, hazardous materials, abandonment of Project, assignments of rights or

obligations under Project Documents, use of Project site, name and location of Borrower, dissolution, partnerships, additional project documents and such other covenants deemed appropriate by the Lender as a result of Lender's due diligence review.

**Events of Default:** Usual and customary defaults for a transaction of this type (including customary cure rights), including, without limitation, default provisions relating to failure to make payments, judgments, misstatements, bankruptcy/insolvency, cross-default, ERISA, breach of Project Documents, covenant breach by Borrower, invalidity of Loan Documents, loss of QF status, default in construction or schedule, security, loss of applicable permits, loss of collateral, destruction of the Project, change of control, repudiation of Parent obligations, loss of key man, achievement of commercial operation.

**Mandatory Prepayments:** Mandatory repayment of all or a portion of the outstanding principal balance will be required:

- 1) When the Borrower receives insurance or condemnation proceeds and such proceeds are not used to replace or rebuild the Project with the terms and conditions of such utilization to be set forth in the Loan Documents;
- 2) With any proceeds from the any sale of assets (other than subject to certain permitted exclusions) or ownership interests in the Borrower or the Project Company;
- 3) If any Project Agreement is terminated early and a termination fee is received by the Borrower;
- 4) To the extent of funds on deposit in the Distribution Account, in the event that Distribution Conditions fail to be satisfied on two consecutive quarterly dates;
- 5) On any quarterly date, to the extent necessary, and solely to the extent of available cash at level **Fifth** of the Borrower Waterfall and on deposit in the Distribution Account, to cause the Borrower to achieve the Minimum DSCR; and
- 6) In the event that the Final Withdrawal Conditions fail to be achieved on or prior to the Date Certain.

**Voluntary Prepayment:** Borrower may prepay the balance of the Loan together with all unpaid and accrued interest in whole or in part at any time. Any voluntary prepayment made prior to the second anniversary of the Final Withdrawal Date shall require payment, at the time of prepayment, of a prepayment premium in an amount equal to 2% of the amount prepaid.

**Indemnification:** The Borrower shall indemnify the Collateral Agent, the Depositary Agent and the Lender and their respective officers, directors, agents, consultants and employees, from and against any and all losses, liabilities, expenses, claims, and damages arising from or relating to the Loan Documents, the

project documents and the Project and the release or presence of hazardous substances at the project site of the Project, except to the extent resulting from the gross negligence or willful misconduct of any person seeking indemnification as determined by a final, non-appealable judgment of a court of competent jurisdiction.

**Costs & Expenses:**

Sponsor shall be responsible for payment of all reasonable and documented costs and expenses of the Lender and its consultants and advisors incurred by such parties in connection with the negotiation and execution of the Loan Documents, regardless of whether the Borrower satisfies the conditions precedent for the closing date and/or the funding date. Lender will make good faith efforts to streamline transaction costs. From and after the Closing Date, the Borrower will be liable for certain out-of-pocket costs incurred by the Collateral Agent, the Depositary Agent and the Lender, provided that such costs are incurred in accordance with the terms of the Loan Documents.

**Consultants:**

Lender's' Counsel:	TBD
Lender's Independent Engineer ("IE"):	TBD
Insurance Consultant:	TBD
Title Insurer:	TBD

**Governing Law:**

State of New York.

**Waiver of Jury Trial;  
Venue:**

Each party waives its right to a jury trial in respect of any dispute arising from this term sheet, a commitment letter or any of Credit Facility document. Any legal action or proceeding with respect to this term sheet, a commitment letter or any Credit Facility documents shall be brought exclusively in the state courts of the State of New York in accordance with NY CLS CPLR §505.

**Publicity:**

Lender or any of its affiliates may (i) disclose a general description of transactions arising under the loan documents for advertising, marketing, regulatory or other similar purposes and (ii) use Borrower's or Sponsor's name, logo or other indicia germane to such party in connection with such advertising, marketing or other similar purposes. Sponsor will be presented for its review with a preliminary draft of the transaction profile that Lender is required to post publicly in accordance with its regulatory requirements, and, subject to Borrower's approval, not to be unreasonably withheld, Lender may post the transaction profile, once finalized, on its website and in its publicly-filed metrics reports.

## RFP 7 -- Attachment E

### Summary of Indicative Financing Terms for [NAME] Portfolio

Portfolio - Senior Secured Construction Financing,  
Back Leveraged Aggregation Financing and Term Loan

This term sheet is for discussion purposes only and has not been approved by New York Green Bank (“**NY Green Bank**”), a division of the New York State Energy Research & Development Authority (“**NYSERDA**”). Subject to NY Green Bank’s obligations under the New York Freedom of Information Law (see NY Public Officers Law, Article 6) or any regulatory request or legal obligation, this document and the contents herein are confidential and shall not be revealed to any party that does not have a need to know the contents for the purpose of negotiating and approving a potential financing involving NY Green Bank. This term sheet does not constitute an offer or agreement by NY Green Bank or commitment by NY Green Bank to enter into a financing agreement. The terms set forth herein, including indicative pricing terms, are not the complete terms and conditions of any financing agreement and are subject to withdrawal and change at any time. The final approval and completion of the proposed financing facility described in this term sheet will be dependent upon, among other things, the completion of satisfactory due diligence and document review by the NY Green Bank and the execution of definitive documentation agreeable to NY Green Bank, the terms of which may differ substantially from the terms set forth herein. The parties recognize that, neither party shall have any liability or obligation to the other as a result of this term sheet (other than in respect of the parties’ confidentiality obligation as provided above), it being understood that only such provisions as shall be set forth in any definitive documents shall have any legal effect.

**Borrower; Parent:** [NAME], [ORGANIZATIONAL INFORMATION], a special purpose entity established solely to manage and own equity in each of the Project Companies described below (the “**Borrower**”).<sup>15</sup> Borrower is 100% owned by [NAME] (the “**Parent**”).

**Project Companies:** [LIST NAMES], [ORGANIZATIONAL INFORMATION], each a special purpose entity established solely for the development, construction, financing, ownership, operation and maintenance of the Projects described below. Each Project Company will be governed by a limited liability company operating agreement that shall provide as follows: [DESCRIBE OWNERSHIP INCLUDING ANY TAX EQUITY ARRANGEMENTS, BUYOUTS, FLIPS, MANAGEMENT ARRANGEMENTS, ETC.]. Each such Project Company shall guaranty the obligations of the Borrower under the Loan Documents, which guaranty shall be secured by all assets of such Project Company as further described below (the “**Project Level Security and Guaranty Arrangements**”). If required by tax equity investors in any Project Company, the Lender shall release the Project Level Security Package and Guaranty Arrangements provided by such Project Company upon the Final Withdrawal

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<sup>15</sup> Note that Applicant may request that structure include an intermediate holding company interposed between Borrower and the Project Companies, in which case conforming changes, satisfactory to the Lender, may be made to this term sheet.

Date and the making of an Aggregation Loan with respect to such Project Company.

**Sponsor:** [NAME] (“**Sponsor**”). Sponsor owns [100%] of the equity interests in Parent.

**Projects and Portfolio Description:** The Sponsor is developing a series of [#] solar photovoltaic (“**PV**”) generating facilities (each a “Project” and, collectively, the “**Portfolio**”) each of which to be located in New York State with an aggregate expected nameplate capacity of approximately [SPECIFY SIZE] and expected aggregate total annual production of [TBD] MWh/year. Power will be sold by each Project Company under a net metering contract (“**RNMCA**”) with a single RNMCA Counterparty satisfying the RNMCA Counterparty Criteria (as defined below). Total aggregate Project Costs (defined below) are expected to be approximately \$[TBD]. Detailed information with respect to each Project is as follows:

	Project Name	
	<u>[Project 1]</u>	<u>[Project 2]</u>
MW <sup>16</sup>		
Estimated Project Costs		
RNMCA Counterparty		
Location		
Expected COD		

Projects may be removed from the Portfolio by the Applicant with the consent of the Lender, in its sole discretion. Applicant may substitute an alternative Project into the Portfolio, provided such alternative Project satisfies all of the terms and conditions as set forth herein and in the Loan Documents, provided the Lender’s costs and expenses related to such substitution are fully compensated by the Sponsor and the Lender’s various loan commitment shall be reduced if the Minimum DSCR or other debt sizing parameters set forth below fail to be achieved, it being understood that Lender shall not be obligated to increase its Total Construction Loan Facility Commitment (as defined below) in connection with any Project substitution.

**Lenders:** New York Green Bank, a division of the NYS Energy Research & Development Authority, together with any additional lenders party to the financing agreement from time to time.

**Collateral Agent:** [TDB]

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<sup>16</sup> Each Project in the Portfolio must be between 500kw-2MW.

**Depository Agent:** [TBD]

**Documentation:** The terms and conditions applicable to the Credit Facilities (defined below), including financial terms, representations and warranties, covenants, conditions, events of default and remedies will be contained in a financing agreement, upstream guaranties from each Project Company, promissory note and other customary transaction documentation, including security agreements, mortgages, equity pledge agreements, depository agreement, UCC financing statements and third-party consents to assignment (collectively, the “**Loan Documents**”) and legal opinions and an agreed-upon base case financial model. All such documentation shall be in form and substance satisfactory to the Borrower and the Lender.

**Credit Facilities; Use of Funds:** Credit Facilities to consist of the following:

**Construction Loan Facility:**

An up to \$[TBD] aggregate construction loan facility with final sizing based upon the assumptions contained herein (as modified by the results of the Lender’s due diligence) (the “**Total Construction Loan Facility Commitment**”). Individual sub-limits of the Total Construction Loan Facility Commitment will be established with respect to each Project in the Portfolio. Proceeds of the Construction Loans shall be used for the sole purpose of funding a portion of Project Costs for each Project. The Construction Loan Facility shall be secured by both the Borrower Security Package and each Project’s Project Level Security Package and Guaranty Arrangements.

**Aggregation Loan Facility:**

An up to \$[TBD] aggregate aggregation loan facility with final sizing based upon the assumptions contained herein (as modified by the results of the Lender’s due diligence). Proceeds of each Aggregation Loan shall be used for the sole purpose of refunding the Construction Loan made in respect of a Project upon the Final Withdrawal Date for such Project and subject to the terms and conditions specified herein and in the Loan Documentation. The Aggregation Loan Facility shall be secured by the Borrower Security Package and, subject to the requirements of any tax equity investor, each Project’s Project Level Security Package and Guaranty Arrangements.

**Term Loan Facility:**

An up to \$[TBD] aggregate term loan facility with final sizing based upon the assumptions contained herein (as modified by the results of the Lender’s due diligence). Proceeds of the Term Loan shall be used for the sole purpose of

refunding all Aggregation Loans, subject to the terms and conditions specified herein and in the Loan Documentation, upon the Final Withdrawal Date with respect to the last Project to achieve commercial operation within the Portfolio (the “**Last Final Withdrawal Date**”). The Term Loan Facility shall be secured by the Borrower Security Package and, subject to the requirements of any tax equity investor, each Project’s Project Level Security Package and Guaranty Arrangements.

**Availability Period:** The Lender’s commitment to make a Construction Loan and/or Aggregation Loan available to Borrower in respect of a Project to be included in the Portfolio, as applicable, will terminate on such Project’s “Construction Loan Outside Date (subject to certain Force Majeure events to be described in the Loan Documents) and “Date Certain,” respectively, set forth below:

<u>Project Name</u>	<u>Construction Loan Outside Date</u>	<u>Date Certain</u>
[Project 1]		
[Project 2]		

The Lender’s commitment to make the Term Loan shall terminate upon the latest Date Certain set forth above.

**Date Certain:** The “**Date Certain**” with respect to a Project to be determined by the Lender by reference to such Project’s construction schedule, budgeted capitalized interest and any relevant milestone dates in underlying project contracts and licenses.

**Project Costs; Project Construction Budget:** Project Costs associated with a Project, shall mean the reasonable development costs, land acquisition costs, cost of construction of such Project, capitalized interest, a reasonable development fee, funding of such Project’s allocable portion of the Debt Service Reserve Account and such Project’s allocable portion of the O&M Reserve Account required to be funded on or prior to such Project’s Final Withdrawal Date and transactional fees and expenses, in each case, in accordance with a construction budget for such Project, which shall include appropriate contingency amounts and such Project’s draw schedule, submitted to and approved by Lender, as updated or as otherwise amended from time to time, in each case with the prior written consent of Lender.

<b>Final Maturity of Term Loan:</b>	[TBD] years from Last Final Withdrawal Date (as defined below). <sup>17</sup>
<b>Project Equity:</b>	The Sponsor's aggregate equity contribution obligation <sup>18</sup> with respect to the Portfolio shall be the greater of: <ol style="list-style-type: none"> <li>1) An amount equal to the total estimated Project Costs as of the Closing Date for all Projects included in the Portfolio less the sum of the Lender's Total Construction Loan Facility; and</li> <li>2) [30]% of the total estimated Project Costs, as of the Closing Date, for all Projects in the Portfolio.<sup>19</sup></li> </ol>
<b>Debt Sizing; Minimum DSCR:</b>	The Total Construction Loan Facility shall be sized, as of the Closing Date, as not to exceed the lesser of: <ol style="list-style-type: none"> <li>1) An amount, assuming full amortization of the Term Loan one year prior to the weighted average of the scheduled contract terms of the RNMCA's, which would yield a minimum annual Projected Debt Service Coverage Ratio not less than [1.35x P50] production and 1.15x 1 year P90 production (the "<b>Minimum DSCR</b>") as determined by a third-party consultant satisfactory to the Lender, and</li> <li>2) [70]% of total estimated Project Costs for all Projects in the Portfolio.</li> </ol>
<b>Net Borrower Revenues; Borrower Revenues:</b>	With respect to any specified period, the difference between (A) Net Aggregate Project Company Revenues paid to or projected to be paid, as applicable, to the Borrower from all of the Project Company during such period (" <b>Borrower Revenues</b> ") and (B) all reasonable costs and administrative expenses paid or projected to be paid, as applicable, by the Borrower during such period. All revenue and expense assumptions used at Financial Closing shall be determined in consultation with third-party consultants satisfactory to the Lender.
<b>Net Aggregate Project Company Revenues; Aggregate Project Company Revenues:</b>	With respect to any specified period, the difference between (A) all cash flow paid or projected to be paid, as applicable, to all Project Companies during such period under the Projects' RNMCA's, assuming, in each case, a P90 production level and under any NY SUN PON incentive program involving the

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<sup>17</sup> Scheduled maturity of Term Loan required at least one year prior to the scheduled termination of the RNMCA included in the Portfolio with the shortest duration but no later than ten (10) years from the Last Final Withdrawal Date (as hereinafter defined).

<sup>18</sup> NYSERDA Incentive Payments expected to be received by a Project during construction may be considered as "Project Equity" with respect to such Project, provided that Applicant shall be required to utilize cash equity as a bridge to actual receipt of such expected funds from NYSERDA.

<sup>19</sup> To the extent that the Applicant expects to incorporate tax equity into the Portfolio or any Project's capitalization structure, Applicant should suggest requisite changes to the Term Sheet, including revisions to the ownership structure, debt/equity ratios and proposed forbearance terms, for the Lender's review and approval. Applicant shall be required to utilize cash equity as a bridge to any tax equity funding. Lender reserves all rights to revise proposed term sheet to further address any proposed tax equity structure.

Projects (“**Aggregate Project Company Revenues**”) and (B) all approved operation and maintenance expenses, approved administrative expenses, any ordinary course cash payments due to the tax equity investor by each of the Project Companies prior to the expected Buyout Date (as defined below) and the funding of any Project Company reserves, in each case as contemplated by the applicable Project Company Limited Liability Company Agreement and paid or projected to be payable, as applicable, by the Project Companies during such period. Notwithstanding the foregoing, on and after the Last Final Withdrawal Date, the projected cash flow with respect to any specified period for purposes of clause (A) above, shall be the lesser of (i) Aggregate Project Company Revenues and (ii) all cash flow projected to be paid to the Project Companies assuming P90 production level and energy payments based upon a forward curve of metered rates multiplied by [ ]%<sup>20</sup> and under any NY SUN PON incentive program. All revenue and expense assumptions used at Financial Closing shall be determined in consultation with third-party consultants satisfactory to the Lender.

**Historic Debt Service Coverage Ratio;  
Projected Debt Service Coverage Ratio:**

With respect to any specified period, the ratio of (A) Net Aggregate Borrower Revenues paid or projected to be paid, as applicable, to Borrower during such period to (B) Borrower’s scheduled amortization payments, interest and fees paid or projected to be paid, as applicable, to the Lender by the Borrower in respect of the Term Loan Facility during such period. For purposes of calculating the Minimum DSCR, Historic Debt Service Coverage Ratio or the Projected Debt Service Coverage Ratio, Net Aggregate Project Company Revenues and Net Aggregate Borrower Revenues shall exclude any (a) revenues generated from casualty insurance, condemnation proceeds or asset sales; (b) warranty payments or (c) payments from any affiliates of any Project Company (including any tax equity investors) that are gifts, loans, equity or capital contributions.

**RNMCA Counterparty Criteria:**

Threshold criteria, including but not limited to:

- 1) No less than [ ]% of the RNMCA Counterparty’s load is represented by the RNMCA;
- 2) If RNMCA Counterparty is not rated or rated below investment grade, including, but not limited to:
  - a) No bankruptcy;
  - b) Proof of no late payments by such entity to utility;
  - c) In business or in operation for more than five years;
  - d) To provide the last three years of financial statements and IRS filings;
  - e) D&B minimum credit score; and

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<sup>20</sup> The forward curve methodology to project future metered rates to be agreed upon and to be utilized for the relevant zone and utility service territory, equitable to all Project Sponsors

- f) Major rating agency service utilized to provide a counterparty credit score.
- 3) If RNMCA Counterparty is a governmental entity or a non-profit, the Lender shall evaluate on a case-by-case basis, with rated governments contractual agreements being evaluated on the basis of that governmental entity's legal ability to appropriate.

Upon the Construction Loan Funding Date for a Project, Applicant shall be required to demonstrate at least five potential replacement RNMCA Counterparties for such Project that each use at least [3]x such Project's expected production and otherwise satisfy the requisite criteria (subject to availability).

**Mandatory Amortization:**

Each Aggregation Loan will amortize commencing upon the applicable Project's Final Withdrawal Date through and including the Last Final Withdrawal Date, quarterly with payments of the required principal repayment amount set forth on the amortization schedule to be attached to the Loan Documents.

The Term Loan will amortize, commencing upon the Last Final Withdrawal Date through and including the Final Maturity of the Term Loan Facility, quarterly with payments of the required principal repayment amount set forth on the amortization schedule to be attached to the Loan Documents.<sup>21</sup>

**Interest Rate:**

Loans under the Credit Facilities shall each bear interest at a rate equal to [TBD]%<sup>22</sup>.

Interest rate on the Term Loan will increase by 2.00% per annum starting on the fifth anniversary of the Last Final Withdrawal Date.

With respect to each Construction Loan, interest will be capitalized during the applicable construction period until such Project's Final Withdrawal Date, but not later than the Date Certain applicable to such Project. Except as set forth in the prior sentence, interest on all Loans will be payable in arrears quarterly, upon any refunding, prepayment, including due to acceleration, and at final maturity.

Upon the occurrence of a default under the Loan Documents, interest shall increase by 2.00%.

**Fees:**

**Closing Fee:** [1.50]% of the Total Construction Loan Facility Commitment, which shall be payable to the Lender upon Financial Closing.

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<sup>21</sup> Applicant to proposed quarterly amortization amounts.

<sup>22</sup> Interest Rate to be determined by the Lender. Such rate may vary by Applicant based upon the Lender's review of the credit quality of the Sponsor and the RNMCA Counterparties, among other factors.

**Agency Fee:** [\$5,000 for each Project] at Financial Closing and thereafter, annually in advance, payable to the Lender.

**Commitment Fee:** [TBD]% of the undrawn portion of the Total Construction Loan Facility Commitment, which shall be payable to the Lender on a quarterly basis.

**Borrower Security Package:**

Customary back leveraged finance security package to be provided at Financial Closing including, but not limited to, a first-priority security interest in the following collateral:

- 1) All membership interests in the Borrower held by the Parent (including all economic, voting and managerial rights related thereto);
- 2) All membership interests in each Project Company held by the Borrower (including all economic, voting and managerial rights related thereto);
- 3) The contract rights, accounts receivable, bank accounts, general intangibles and all other assets of the Borrower;
- 4) All agreements entered into by the Borrower;
- 5) All insurance policies and proceeds thereof as well as condemnation proceeds received by the Borrower;
- 6) All revenue, accounts with respect to the Portfolio payable to the Borrower, collateral accounts and any cash therein held by the Borrower (including all undisbursed loan proceeds on deposit in the Construction Account);
- 7) All accounts receivable and general intangibles of the Borrower;
- 8) All rights the Borrower, the Parent and the Sponsor have in any equity capital contribution agreement; and
- 9) All other real or personal property of the Borrower (including cash and financial instruments).

**Project Level Security Package and Guaranty Arrangements:**

On the Construction Loan Funding Date for a Project, the applicable Project Company will be required to provide a secured guaranty of all of the Borrower's obligations under the Loan Documents (subject to customary fraudulent conveyance savings provisions). Such Guaranty to be secured by a customary project finance security package including, but not limited to, a first-priority security interest in the following collateral:

- 1) The real property rights and all inventory, machinery and equipment comprising the Project;
- 2) The contract rights, accounts receivable, bank accounts, general intangibles and all other assets of the Project Company;
- 3) All agreements entered into by the Project Company;
- 4) All governmental approvals for the Project, to the extent assignable as collateral;
- 5) All insurance policies and proceeds thereof payable in respect of the Project as well as condemnation proceeds;

- 6) All revenue, accounts with respect to the Project, collateral accounts and any cash therein held by the Project Company (including all undisbursed loan proceeds on deposit in the Construction Account);
- 7) All accounts receivable and general intangibles of the Project Company;
- 8) All rights the Project Company may have in any equity capital contribution agreement; and
- 9) All other real or personal property of the Project Company (including cash and financial instruments).

Upon the making of an Aggregation Loan to Borrower in respect of a Project, if required by tax equity investors in such Project, Lender shall be required to release such Project Company from its Guaranty and terminate such Project's Project Level Security Package.

**Reserve Accounts:**

**Debt Service Reserve Account:**

Equal to the maximum aggregate amount of Debt Service over any [9]-month period within the tenor of the Term Loan Facility. "Debt Service" is defined as the sum of fees, interest and principal due in such period as set forth in the amortization schedule. The Debt Service Reserve Account shall be considered a Project Cost to be funded upon the Final Withdrawal Date utilizing both loan proceeds and equity, in proportion to the overall Debt/Equity ratio. Equity to support its proportionate funding obligation on the Construction Loan Funding Date applicable to each Project in respect of such Project's allocable portion of the reserve requirement in the form of cash or provision of a letter of credit or guarantee, in each case, satisfactory to the Lender in its sole discretion.

**O&M Reserve Account:**

Equal to the maximum aggregate amount of O&M expenses over any [12] month period within the tenor of the Term Loan Facility, to be funded as provided above in the case of the Debt Service Reserve Account.

**Inverter Replacement Reserve Account:**

Inverter Replacement Reserve Account to be determined based on diligence review (including inverter warranty terms) and IE (as defined below) input, which account shall be funded following each Project's Final Withdrawal Date with Borrower Revenues in accordance with the Borrower Waterfall. The Inverter Replacement Reserve Account will be sized and funded so as to be fully funded in advance of the end of the expected life of the inverters.

**Buyout Reserve Account:**

In the event that the Borrower may or shall be required to buyout the equity held by a tax equity investor in any Project Company following the recapture

period with respect to such Project Company, such acquisition date, the “**Buyout Date**”) and provided that such Buyout Reserve Account is required by the Lender in its sole discretion, such account shall be funded to required levels following each Project’s Final Withdrawal Date with Borrower Revenues in accordance with the Borrower Waterfall. The Buyout Reserve Account will be sized and funded so as to be fully funded in advance of the period specified for such buyout in the applicable Project Company’s Limited Liability Company Agreement.

**Accounts; Depositary Agreement:**

Each Project Company, the Borrower, the Lender and the Depositary Agent shall be party to a Depositary Agreement that shall perfect the Lender’s security interests over the various accounts established and maintained thereunder. Terms and conditions of withdrawals from such Accounts to be customary, including provision of requisite certifications by the Borrower.

**Borrower Waterfall:**

Borrower Revenues (which, pursuant to the depositary agreement, shall be required to be deposited directly into a controlled account) shall be applied as follows:

**First**, on a monthly basis, to the payment of fees, indemnities and other expenses due and payable to the Lender, the Depositary Agent and the Collateral Agent under any Credit Facility;

**Second**, quarterly, to the payment of interest due and payable to the Lender under any Credit Facility;

**Third**, quarterly, to the payment of principal under any Loan Facility in the amount of the Mandatory Amortization for such period;

**Fourth**, quarterly, to the funding of all Reserve Accounts up to the reserve requirements then in effect;

**Fifth**, quarterly, to the prepayment of principal under the Term Loan Facility solely to extent necessary to cause the Projected Debt Service Coverage Ratio as calculated on such quarterly date with respect to the balance of the term of the Term Loan to equal the Minimum DSCR; and

**Sixth**, quarterly, as a cash distribution to the Parent, so long as the below Distribution Conditions are satisfied.

**Distribution  
Conditions:**

Distributions to Parent (including repayment of affiliate loans or similar payments to be described in the Loan Documents) shall be permitted to be made by the Borrower on a quarterly basis provided:

- 1) The Term Loan shall have been made to Borrower;
- 2) No Default or Event of Default outstanding;
- 3) No Material Adverse Effect has occurred;
- 4) Reserve Accounts are fully funded to then-required levels;
- 5) The Borrower's Historic Debt Service Coverage Ratio as determined as of such quarterly date with respect to the prior 12-month period shall be at least [1.35:1:00]; and
- 6) The Borrower's Projected Debt Service Coverage Ratio as determined as of such quarterly date with respect to the following 12-month period shall be at least [1.35:1:00].

Notwithstanding the foregoing, provided that no Default or Event of Default exists and is continuing, cash receipts by the Borrower constituting tax equity contributions and/or NYSERDA incentive payments specifically bridged by cash equity contributions (or the subject of acceptable credit support therefore previously provided by, or on behalf of, the Sponsor) may be distributed.

**Funding Protection:**

Customary for transactions of this type, breakage costs, gross-up for withholding, compensation for increased costs and compliance with capital adequacy and other regulatory restrictions.

**Conditions Precedent  
to Financial Closing:**

Certain conditions to Financial Closing as are customary for this type of transaction, including the following:

- 1) The Loan Documents shall have been executed and be in full force and effect;
- 2) The Borrower shall have provided evidence that all Project Equity for the Portfolio shall have been contributed to the Borrower or, alternatively, shall be supported by binding commitments with respect thereto from the Sponsor, the credit of which shall be satisfactory to the Lender in its sole discretion (or alternative arrangements as to such equity funds such as a letter of credit shall have been received) and, in each case, on terms and conditions satisfactory to the Lender; it being understood that in any event no Construction Loans shall be made available to the Borrower with respect to any Project prior to full contribution and utilization of Project Equity allocable to such Project (except in the case of tax equity, in which case, such deferred contributions shall be bridged by cash equity contributions and the timing and other terms and conditions of such tax equity contributions shall be acceptable to the Lender in its sole discretion);
- 3) Delivery of each Project's draft Project Construction Budget and a rolled-up version of the same;
- 4) All Project Documents, in respect of each Project, shall be in form acceptable to Lender and shall have either been executed or meet

certain threshold requirements as defined in the Request for Proposal Eligibility Requirements. **“Project Documents”** to include, without limitation, real estate acquisition/lease arrangements, a fixed-price EPC agreement (or alternatively, fixed-price equipment purchase orders together with a fixed-price balance of plant contract)(in each case containing satisfactory warranties); RMNCA and/or other applicable revenue agreements and long term, NYSun PON arrangements, operations, maintenance and administration agreement(s);

- 5) For each Project, a Coordinated Electric System Interconnection Review (**“CESIR”**) has been completed and all necessary agreements shall be in place with the interconnecting utility and the interconnection costs shall be in the Project Construction Budget;
- 6) Each such Project Company shall have acquired all necessary real property rights to the satisfaction of the Lender, or shall have demonstrated to the satisfaction of the Lender a binding option agreement with respect to such real property rights;
- 7) For each Project evidence that Borrower shall have completed and submitted an application to the NY-Sun Incentive Program, unless Borrower shall have certified as to any Project that Borrower will not be applying under the NY-Sun program for such Project;
- 8) For the Borrower and Parent, the necessary lien searches performed and filings and recordings made to perfect the first-priority security interests, including the delivery of all original membership interest certificates as contemplated by the equity pledge agreement(s);
- 9) For each Project, unless otherwise waived by the Lender, confirmation that each such Project is entitled to a property tax exemption and is not located in a jurisdiction in which there is a solar moratorium;
- 10) A certificate of the Borrower that all representations and warranties made by the Borrower in the Loan Documents shall be true and correct in all material respects;
- 11) A certificate of the Insurance Consultant in favor of the Lender stating that all required insurance policies obtainable at that time in respect of the Borrower are in full force and effect, the premiums due thereon have been paid, such insurance shall not be subject to cancellation without prior notice to the Lender and that such policies otherwise conform with the requirements specified in the Loan Documents;
- 12) No Default or Event of Default shall have occurred and be continuing under the Loan Documents;
- 13) No action, suit or proceeding or investigation shall have been instituted or threatened by a person or governmental entity with respect to the Borrower;
- 14) A financial model demonstrating projected compliance by the Portfolio during the term of the Term Loan with the Minimum DSCR, based on technical and other assumptions confirmed as reasonable by the IE (the **“Base Case Projections”**);
- 15) Audited annual financial statements for each of the Sponsor, Parent, Borrower and each expected RNMCA Counterparty and most recent pro forma balance sheet of Borrower;
- 16) Legal opinions shall have been received as to the following matters as to the Borrower and Parent:
  - a) Duly organized and validly existing in good standing under the laws of the State of [TBD] and is authorized to do business in New York;

- b) Has the power and authority to execute and deliver and to perform its obligations under the Financing Document and Project Documents to which it is intended to be a party;
  - c) The execution and delivery of the Loan Documents and Project Documents to which it is intended to be a party have been duly authorized by all necessary action on its part;
  - d) The Loan Documents and Project Documents to which such parties are intended to be a party constitute the legal, valid and binding obligation thereof, enforceable against them in accordance with their terms subject to exceptions for bankruptcy and equitable principles;
  - e) No governmental approvals are required for the execution and delivery by it of the Loan Documents and Project Documents to which such parties are intended to be a party, other than those that have been obtained;
  - f) The execution and delivery, and the performance by such parties of their obligations under, the Loan Documents and Project Documents do not violate its [certificate of incorporation], or violate [Delaware General Corporation Law or laws of the State of New York];
  - g) Is not an investment company required to register under the Investment Borrower Act of 1940, as amended;
  - h) Each security document is effective to create a security interest under the Uniform Commercial Code in the right, title and interest of each such party in, to and under the personal property of each such party purported to be subject to the lien of such security document in which a security interest may be created under the Uniform Commercial Code, as collateral security for the secured obligations specified in such security document; and
  - i) There are no proceedings pending or overtly threatened in writing against either such party other than as specified;
- 17) Customary incumbency certificates, good standing certificates, resolutions and formation documents of the Borrower and Parent shall have been received;
- 18) All required Accounts shall have been established and be subject to the lien under the Loan Documents for the benefit of the Lender;
- 19) At least one Project in the Portfolio shall have satisfied its Funding Conditions and Withdrawal Conditions;
- 20) Documentation requested by Lender in connection with Patriot Act compliance; and
- 21) For each Project, a detailed construction schedule of the Project in form and substance satisfactory to the Lender.

**Material Adverse Effect:**

The definition of “Material Adverse Effect” in the Loan Documents shall mean the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, has a material adverse effect (a) (i) on the business, operations, properties, prospects or condition (financial or otherwise) of the Borrower, the Parent, each Project Company or any equity investor, (ii) on the value of the collateral, (iii) on the enforceability of any Loan Document, or (iv) on the validity or priority of the Lender’s security interests in any collateral; (b) on the ability of the Borrower, the Parent, each Project Company or any equity investor to perform its obligations under the Loan Documents or equity contribution arrangements; or (c) on the ability of the

Lender to enforce or collect on any payment obligations or to realize upon the collateral.

**Funding Conditions under the Construction Loan Facility for each Project:**

Upon satisfaction of the conditions specified below (collectively, the “**Funding Conditions**”) with respect to a Project (such Project’s “**Construction Loan Funding Date**”), upon the requisition of the Borrower, Lender shall fund a Construction Loan for such Project in a single draw into the “Construction Account” as established for such Project under the Depositary Agreement:

- 1) Financial Closing shall have occurred;
- 2) All Withdrawal Conditions shall have been satisfied;
- 3) The Project Level Security Package and Guaranty with respect to such Project shall have been executed and be in full force and effect;
- 4) For each Project, third-party consents to collateral assignment with respect to the Project Documents in forms acceptable to Lender shall have been executed and be in full force and effect;
- 5) All Project Documents, in respect of such Project, shall be in form acceptable to Lender shall have been executed and be in full force and effect, with no defaults or events of default thereunder and all conditions precedent satisfied by each of the parties thereto;
- 6) For such Project, unless otherwise approved by the Lender,<sup>23</sup> receipt of satisfactory expert studies of the Project from the IE and the Insurance Consultant:
  - a) The IE’s report shall evaluate, including, but not limited to, (i) the technical aspects of the Project including a review of the Base Case Projections, (ii) the status of permits, (iii) a solar resource assessment that includes a final energy production analysis for the Project that is consistent with the Base Case Projections and an analysis of forecasts of overall power production during the life of the Project, and (iv) confirms that the Project as designed complies with the technical system requirements of the Project Documents, in form and substance satisfactory to Lender; and
  - b) The Insurance Consultant’s report shall (i) assess the adequacy of the insurance requirements in the Project Documents; (ii) recommend the insurance requirements to be included in the Loan Documents; and (iii) provide a certificate that the insurance package, as a whole, is appropriate to protect the Project and the insurance required in the Financing and Project Documents is in place or can be commercially obtained;
- 7) For such Project, the [EPC Contractor] [BOP Contractor] shall have provided (i) the [construction security] and (ii) additional financial security [in a form to be agreed upon];
- 8) No state or local mortgage tax, stamp duty or similar fee, tax or other governmental charge (other than customary nominal per page or per document filing and recording fees imposed by law) is required to be paid in the State of New York in connection with the execution, delivery, filing, recording or enforcement of the Mortgage executed by such Project Company;
- 9) Legal opinions shall have been received as to the following matters as to such Project Company:

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<sup>23</sup> In the case of a portfolio with multiple similar Projects, “representative” consultant reports may be acceptable.

- a) Duly organized and validly existing in good standing under the laws of the State of [TBD] and is authorized to do business in New York;
  - b) Has the power and authority to execute and deliver and to perform its obligations under the Financing Document and Project Documents to which it is a party;
  - c) The execution and delivery of the Loan Documents and Project Documents to which it is a party have been duly authorized by all necessary action on its part;
  - d) The Loan Documents and Project Documents to which such Project Company is intended to be a party constitute the legal, valid and binding obligation thereof, enforceable against it in accordance with their terms subject to exceptions for bankruptcy and equitable principles;
  - e) No governmental approvals are required for the execution and delivery by it of the Loan Documents and Project Documents to which such Project Company is a party, other than those that have been obtained;
  - f) All environmental permits necessary for the construction and operation of such Project have been obtained, such permits are in full force and effect, and all applicable appeal periods have expired;
  - g) The execution and delivery, and the performance by such Project Company of its obligations under, the Loan Documents and Project Documents do not violate its [certificate of incorporation], or violate [Delaware General Corporation Law or laws of the State of New York];
  - h) Is not an investment company required to register under the Investment Borrower Act of 1940, as amended;
  - i) Each security document is effective to create a security interest under the Uniform Commercial Code in the right, title and interest of such Project Company in, to and under the personal property of such Project Company purported to be subject to the lien of such security document in which a security interest may be created under the Uniform Commercial Code, as collateral security for the secured obligations specified in such security document;
  - j) Each Mortgage is in sufficient form for recording in the State of New York, or any political subdivision thereof, and upon such recording shall constitute a perfected security interest in the interests described therein;
  - k) There are no proceedings pending or overtly threatened in writing against either such Project Company other than as specified; and
  - l) No governmental approval or other authorization under the laws of the State of New York, or any political subdivision thereof, is required in connection with the execution, delivery, filing, recording or enforcement of the Mortgage or the indebtedness secured thereby;
- 10) No state or local mortgage tax, stamp duty or similar fee, tax or other governmental charge (other than customary nominal per page or per document filing and recording fees imposed by law) is required to be paid in the State of New York in connection with the execution, delivery, filing, recording or enforcement of such Project's Mortgage;
- 11) No action, suit or proceeding or investigation shall have been instituted or threatened by a person or governmental entity with respect to such Project;

- 12) All required Accounts with respect to such Project Company shall have been established and be subject to the lien under the Loan Documents for the benefit of the Lender, and the Borrower shall have funded the portion of the Debt Service Reserve Account and the O&M Reserve Account allocable to such Project to the required initial balances (or provided liquid security therefore satisfactory to the Lender);
- 13) There shall not have been any Material Adverse Effect;
- 14) For such Project, all applicable material governmental permits and approvals listed in Part I of the Permitting Schedule of the Loan Agreement are in place and non-appealable, including FERC QF self-certification, and a SEQRA finding as to no significant adverse environmental impact;
- 15) For such Project, the necessary lien searches performed and filings and recordings made to perfect the first-priority security interests, including the mortgage and delivery of all original membership interest certificates as contemplated by the equity pledge agreement(s);
- 16) A certificate of the Borrower that all representations and warranties made by the Borrower in the Loan Documents as relates to such Project Company shall be true and correct in all material respects;
- 17) A certificate of the Insurance Consultant in favor of the Lender stating that all required insurance policies obtainable at that time are in full force and effect with respect to such Project Company, the premiums due thereon have been paid, such insurance shall not be subject to cancellation without prior notice to the Lender and that such policies otherwise conform with the requirements specified in the Loan Documents;
- 18) If such Project is considered a public work covered by Article 8 of the NY Labor Law or a building service agreement covered by Article 9 thereof by reason of the involvement of a public entity as host or RMNCA Counterparty, then Borrower, Project Company and Sponsor will, during the construction of such Project, comply (and cause each contractor and subcontractor to comply), and will certify compliance, with all State of New York prevailing wage and hours laws and regulations;
- 19) Audited annual financial statements for such Project Company, RNMCA Counterparty, EPC Contractor and most recent pro forma balance sheet of Borrower;
- 20) Copies of any required "life of loan" Federal Emergency Management Agency Standard Flood Hazard Determination (FEMA Form 81-93) for each parcel which constitutes a portion of the Site. If any improvement to the Site is located in a special flood hazard area, a notification to the Borrower ("Flood Notice") shall be delivered and (if applicable) the Flood Notice shall include notification to the Borrower that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community does not participate in the NFIP;
- 21) An ALTA survey shall have been provided with respect to the Project Site and all related easements and rights-of-way;
- 22) An ALTA 2006 form extended coverage policy of title insurance shall have been received, together with such endorsements and reinsurance as required by Lender, in the amount of the Loan and issued by the Title Company;
- 23) Lender shall have received the schedule for completion for such Project by the applicable interconnection utility of the upgrades, such

- upgrades to demonstrate interconnection points necessary to handle the total output of such Project consistent with the Project Schedule;
- 24) All deposits required to be made to the applicable interconnection utility in respect of interconnection costs or otherwise shall have been made in their entirety and evidenced to Lender;
  - 25) All Project Equity shall have been contributed and used for the payment of Project Costs;<sup>24</sup>
  - 26) Lender shall have received a copy of the full "Notice to Proceed" (as defined in the BOP Contract, EPC Contract and/or equipment supply contract, as applicable) issued to the BOP Contractor, EPC Contractor and/or equipment supplier under the applicable contract;
  - 27) Customary incumbency certificates, good standing certificates, resolutions and formation documents of such Project Company shall have been received; and
  - 28) There shall not have occurred any material adverse change in such Project Budget, the Project Schedule or the Base Case Projections for such Project, in the economics or feasibility of constructing or operating such Project, or in the financial condition, business or property of any applicable third-party project participant.

**Withdrawal  
Conditions:**

Funds on deposit in a Project's "Construction Account" may be withdrawn by the Borrower for contribution to the applicable Project Company for payment of Project Costs, no more than once each calendar month, upon receipt of a Withdrawal Certificate and upon satisfaction of the following (the "**Withdrawal Conditions**"):

- 1) Each representation and warranty of Parent, Borrower and the applicable Project Company with respect to such Project set forth in the Loan Documents shall be true and correct in all material respects (or if such representation and warranty relates solely as of an earlier date, as of such earlier date);
- 2) No Default or Event of Default shall have occurred and be continuing under the Loan Documents;
- 3) All applicable material permits and governmental approvals required or reasonably necessary to have been obtained as of such date given the state of construction of the Project shall have been obtained, are in full force and effect and not subject to appeal;
- 4) The Project Documents (including any NYSERDA agreement) and third-party consents to assignment with respect to such Project shall each remain in full force and effect, with Borrower in compliance with the terms and conditions thereof and no defaults or events of default thereunder;
- 5) No action, suit or proceeding or investigation shall have been instituted or threatened by any person or governmental entity with respect to such Project;
- 6) There shall not have been any Material Adverse Effect;
- 7) Borrower shall have demonstrated to the satisfaction of the Lender (in consultation with the IE) that sufficient funds remain available to such Project Company to complete construction on or prior to the Date Certain with respect to such Project;

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<sup>24</sup> Applicant to bridge any committed but unfunded tax equity contributions with cash equity.

- 8) No change in tax law impacting any tax equity investors' forward contribution commitments;
- 9) Borrower shall have certified, with respect to such Project, that (A) all applicable milestones have been met in accordance with the Project Schedule; (B) all work done on such Project is being built in a good and workmanlike manner in accordance with the Project Plan, Project Construction Budget, the BOP or EPC Contract (as applicable) and the IE Report, (C) bring down of all representations and warranties with respect to such Project; (D) Project will achieve Commercial Operation no later than the Date Certain with respect to such Project;
- 10) IE Certificate as to matters in clauses 7 and 9 above;
- 11) Lender shall have received copies of executed lien releases and there has not been filed against, or served upon Borrower or such Project (or any part thereof) notice of or application for any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released, other than Permitted Liens (to be agreed);
- 12) If such Project is considered a public work covered by Article 8 of the NY Labor Law or a building service agreement covered by Article 9 thereof, then Borrower by reason of the involvement of a public entity as host or RMNCA Counterparty, such Project Company and Sponsor will, during the construction of such Project, comply (and cause each contractor and subcontractor to comply), and will certify compliance, with all State of New York prevailing wage and hours laws and regulations;
- 13) All Lenders fees and costs have been paid; and
- 14) Other standard conditions precedent to a withdrawal.

**Conditions to Final  
Withdrawal; Final  
Withdrawal Date and  
Funding of  
Aggregation Loans:**

Borrower's final withdrawal of funds on deposit in a Project's "Construction Account" and the making of an Aggregation Loan with respect to such Project shall be subject to satisfaction of the following conditions with respect to such Project ("**Final Withdrawal Conditions**"):

- 1) All Withdrawal Conditions shall have been satisfied;
- 2) The date of such final withdrawal shall be on or before such Project's Date Certain;
- 3) Funding of any and all tax equity contributions with respect to such Project;
- 4) All required project accounts shall have been established and be subject to the lien under the Loan Documents for the benefit of the Lender, and the Borrower shall have funded an allocable portion of the Debt Service Reserve Account, the O&M Reserve Account, the Inverter Replacement Reserve Account and, if applicable, the Buyout Reserve Account, each with the required initial balances;
- 5) Borrower certification (as confirmed by the IE) as to the achievement of Substantial Completion and Commercial Operation and list of Punch List Items necessary for such Project to achieve Final Completion;
- 6) Evidence that such Project is capable of operating safely and in compliance with the technical requirements of the material Applicable Permits and Prudent Utility Practice (as confirmed by the IE);

- 7) All warranties under the BOP/EPC Agreement and warranties covering the modules and inverters, are in full force and effect on the date of Substantial Completion, subject to the warranty periods and other terms and conditions of each such warranty, and have been assigned to the applicable Project Company;
- 8) A completion account has been fully funded in the amount equal to 150% of the Punch List amount;
- 9) No material claims or disputes between the applicable Project Company (or its affiliates) and the EPC/BOP Contractor and/or any equipment supplier or any of their respective subcontractors shall be pending;
- 10) Written confirmation by the Insurance Consultant as to such matter as requested by the Lender, including that all then required insurance policies are in full force and effect;
- 11) As Built Survey and bring down of title insurance report; and
- 12) With respect to the Last Final Withdrawal Date only, updated Base Case Projections to reflect any material changes to operating expenses and cash flow for such Project (after giving effect the actual operating capacities of the Project and any material changes to the projected operating performance of the Project), which updated Base Case Projections shall indicate projected compliance by the Borrower with the Minimum DSCR during the term of the Term Loan.

The date upon which all Final Withdrawal Conditions are satisfied with respect to a Project, as determined by the Lender, shall be referred to herein as such Project's "**Final Withdrawal Date**"

**Conditions to Term Loan:**

The making of the Term Loan by the Lender shall be subject to satisfaction of the following conditions with respect to such Project ("**Term Loan Conditions**"):

- 1) All Final Withdrawal Conditions for each of the Projects shall have been satisfied;
- 2) Each representation and warranty of Parent and Borrower set forth in the Loan Documents shall be true and correct in all material respects (or if such representation and warranty relates solely as of an earlier date, as of such earlier date);
- 3) There shall not have been any Material Adverse Effect;
- 4) No Default or Event of Default shall have occurred and be continuing under the Loan Documents; and
- 5) Updated Base Case Projections to reflect any material changes to operating expenses and Portfolio Revenues, which updated Base Case Projections shall indicate projected compliance by the Borrower with the Revenues Test during the term of the Term Loan.

**Representations and Warranties as to Borrower:**

The Borrower shall make the following representations and warranties as to itself on the Closing Date, each Construction Loan Funding Date, each Withdrawal Date and the Term Loan funding date (subject to qualifications and thresholds to be agreed):

- 1) Is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization and is in good standing in its jurisdiction of organization and in New York;
- 2) Has full power and authority to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under the Loan and Project Documents to which it is a party;
- 3) All necessary action required to authorize the execution, delivery and performance of the Loan and Project Documents has been duly and effectively taken;
- 4) Each of the Loan and Project Documents has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Borrower, enforceable against such party in the State of New York in accordance with the terms thereof;
- 5) Except as disclosed, the Borrower is in material compliance with any governmental rule (including any environmental law) applicable to the Borrower, and with the material terms of all other governmental approvals obtained by it;
- 6) Borrower has not engaged in any business other than the ownership, construction, operation of and financing of the Portfolio and the activities related or incident thereto, and neither party has any obligations or liabilities other than those directly related to the conduct of such business;
- 7) The Borrower, has been, in material compliance with environmental laws; there are no past, pending or, to the Borrower's actual knowledge, threatened environmental claims against the Borrower, that could be expected to result in a Material Adverse Effect, and neither the Borrower nor, to the Borrower's actual knowledge, any other Person, has used, released or discharged, generated or stored any hazardous material at any Project Site, and to the Borrower's actual knowledge, there are no hazardous materials used or present at any Project Site except, in either case, in compliance with applicable environmental laws;
- 8) Except as disclosed, no governmental approval is required to be obtained by any such party in connection with:
  - a) the execution and delivery of, and performance by any such party of its respective obligations, and the exercise of its rights, under Project and Loan Documents to which it is a party; or
  - b) the validity and enforceability the Project Documents;
- 9) All insurance required to be maintained by the Borrower under the Loan or Project Documents has been obtained and is in full force and effect, other than insurance not reasonably required at such stage of the Project. All premiums due with respect thereto have been paid;
- 10) Financial statements of the Borrower and each Project Company:
  - a) Such latest financial statements, have (other than the pro forma statement provided on the Closing Date) been prepared in conformity with generally accepted accounting principles ("**GAAP**") and present fairly, in all material respects, the financial condition of such party as of the date thereof,
  - b) All material liabilities, direct and contingent, of any such party are either disclosed in such balance sheets or have been disclosed in writing by the Borrower prior to the execution and delivery of the Loan Documents, and

- c) There are no undisclosed material liabilities, direct or contingent, of the Borrower or any Project Company, which have accrued since the date of such financial statements or such disclosure;
  - d) Since the date of the balance sheet included with the most recent financial statements of the Borrower and each Project Company referred to in this clause, no event has occurred, and no condition exists, that has had, or could be expected to have, a Material Adverse Effect;
- 11) The Base Case Projections disclose all material assumptions and was prepared in good faith and represents in the opinion of the Borrower reasonable projections at the time made of future performance (it being understood that projections contain significant uncertainty and actual results may differ significantly from projections);
  - 12) As of the Closing Date, the Parent owns 100% of the equity interest in the Borrower free and clear of all liens;
  - 13) As of the Closing Date, the Borrower is the managing member of each Project Company and owns [ ]% of the equity interest in each such Project Company free and clear of all liens;
  - 14) The Borrower has timely filed or caused to be filed all income tax returns and all other tax returns which are required to be filed by it and has paid or caused to be paid all taxes due pursuant to such returns or pursuant to any assessment received by the Borrower, except such taxes, if any, as are being contested;
  - 15) No Default or Event of Default has occurred and is continuing under the Loan Documents;
  - 16) No ERISA Event (to be defined) has occurred or is reasonably be expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect;
  - 17) None of the execution, delivery or performance by Borrower of each of the Loan and Project Documents to which it is a party violates or constitutes a default or requires consent by any other Person under any material governmental rule applicable to such person or the Project or any other material contractual obligation to which the Borrower is a party. None of the execution, delivery or performance of the Loan Documents to which either such party is a party results in, or requires, the creation or imposition of any lien on any of the Collateral or any other properties or revenues of the Borrower;
  - 18) Borrower has not filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation;
  - 19) Upon the execution and delivery of all collateral documents security agreements, pledge agreements, such documents will be effective to create legally valid and enforceable liens on the Collateral, and all necessary recordings and filings will be recorded and filed on or prior to the closing date such that they will constitute first-priority, perfected security interests in the Collateral, subject only to permitted liens; and
  - 20) All material Project Documents entered into as of the Closing Date have been set forth on a schedule to the financing agreement.

**Representations and Warranties as to each Project Company:**

The Borrower shall make the following representations and warranties as to itself and the applicable Project Company, on such Project's Construction Loan Funding, each Withdrawal Date applicable to such Project Company and

the Term Loan funding date (subject to qualifications and thresholds to be agreed):

- 1) Is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization and is in good standing in its jurisdiction of organization and in New York;
- 2) Has full power and authority to conduct its business as now conducted and as proposed to be conducted by it and to execute, deliver and perform its obligations under the Loan and Project Documents to which it is a party;
- 3) All necessary action required to authorize the execution, delivery and performance of the Loan and Project Documents has been duly and effectively taken;
- 4) Each of the Loan and Project Documents has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Borrower and such Project Company, enforceable against such party in the State of New York in accordance with the terms thereof;
- 5) Except as disclosed, the Borrower, such Project Company and such Project are in material compliance with any governmental rule (including any environmental law) applicable to the Borrower, each such Project Company or each such Project, and with the material terms of all other governmental approvals obtained by it;
- 6) No action or other proceeding is pending or, to the Borrower's actual knowledge, threatened against or affecting, such Project Company or any Project or any material part thereof, which, if adversely determined, would have a Material Adverse Effect;
- 7) Such Project Company has a [valid leasehold interest in the Project Site,] valid fee title in all other elements of such Project and good title in all other property it purports to own free and clear of liens, subject to permitted liens and the permitted encumbrances;
- 8) No such party has engaged in any business other than the ownership, construction, operation of and financing for such Project and the activities related or incident thereto, and neither party has any obligations or liabilities other than those directly related to the conduct of such business;
- 9) The Borrower, such Project Company and such Project are, and have been, in material compliance with environmental laws; there are no past, pending or, to the Borrower's actual knowledge, threatened environmental claims against the Borrower, such Project Company or such Project that could be expected to result in a Material Adverse Effect, and neither the Borrower nor, to the Borrower's actual knowledge, any other Person, has used, released or discharged, generated or stored any hazardous material at any Project Site, and to the Borrower's actual knowledge, there are no hazardous materials used or present at such Project Site except, in either case, in compliance with applicable environmental laws;
- 10) Except as disclosed, no governmental approval is required to be obtained by any such party in connection with:
  - a) the execution and delivery of, and performance by any such party of its respective obligations, and the exercise of its rights, under Project and Loan Documents to which it is a party, or
  - b) the validity and enforceability the Project Documents;

- 11) All material governmental approvals required to construct, own, and operate such Project are set forth on the permitting schedule attached to the Loan Agreement ("Permitting Schedule"). Governmental approvals set forth in Part I of the Permitting Schedule have been validly issued and are in full force and effect, are final and, if applicable laws or regulations specify a period for bringing administrative appeals, all such appeals periods have expired; Governmental approvals set forth in Part II of the Permitting Schedule are not required given the stage of development of such Project, and Borrower reasonably expects such governmental approvals to be obtained when required in due course on commercially reasonable terms;
- 12) All insurance required to be maintained by the Borrower and such Project Company under the Loan or Project Documents has been obtained and is in full force and effect, other than insurance not reasonably required at such stage of the Project. All premiums due with respect thereto have been paid;
- 13) Financial statements of the Borrower and such Project Company:
  - a) Such latest financial statements, have (other than the pro forma statement provided on the Closing Date) been prepared in conformity with generally accepted accounting principles ("GAAP") and present fairly, in all material respects, the financial condition of such party as of the date thereof;
  - b) All material liabilities, direct and contingent, of any such party are either disclosed in such balance sheets or have been disclosed in writing by the Borrower prior to the execution and delivery of the Loan Documents;
  - c) There are no undisclosed material liabilities, direct or contingent, of the Borrower or such Project Company, which have accrued since the date of such financial statements or such disclosure; and
  - d) Since the date of the balance sheet included with the most recent financial statements of the Borrower and such Project Company referred to in this clause, no event has occurred, and no condition exists, that has had, or could be expected to have, a Material Adverse Effect;
- 14) The Base Case Projections disclose all material assumptions and was prepared in good faith and represents in the opinion of the Borrower reasonable projections at the time made of future performance (it being understood that projections contain significant uncertainty and actual results may differ significantly from projections);
- 15) The Borrower is the managing member of such Project Company and owns [ ]% of the equity interest in such Project Company free and clear of all liens;
- 16) No Default or Event of Default has occurred and is continuing under the Loan Documents;
- 17) No ERISA Event (to be defined) has occurred or is reasonably be expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect;
- 18) None of the execution, delivery or performance by any such party of each of the Loan and Project Documents to which it is a party violates or constitutes a default or requires consent by any other Person under any material governmental rule applicable to such person or such Project or any other material contractual obligation to which the Borrower is a party. None of the execution, delivery or performance

of the Loan Documents to which either such party is a party results in, or requires, the creation or imposition of any lien on any of the Collateral or any other properties or revenues of the Borrower or such Project Company except for Permitted Liens;

- 19) No such party has filed an election pursuant to Treasury Regulation 301.7701-3(c) to be treated as an association taxable as a corporation;
- 20) Upon the execution and delivery of all collateral documents, including the Mortgages, security agreements, pledge agreements, such documents will be effective to create legally valid and enforceable liens on the Collateral, and all necessary recordings and filings will be recorded and filed on or prior to the closing date such that they will constitute first-priority, perfected security interests in the Collateral, subject only to permitted liens;
- 21) All material Project Documents entered into as a Project's Construction Loan Funding Date have been set forth on a schedule to the financing agreement; and
- 22) Borrower and/or such Project Company owns all intellectual property necessary to construct and operate such Project in the manner contemplated by the Loan Documents and the Project Documents.

**Affirmative Covenants:** Usual and customary affirmative covenants for transactions of this type (including customary exceptions and materiality thresholds), to be agreed to by Borrower on behalf of its and each Project Company, including, without limitation, covenants as to use of proceeds, reporting (environmental, energy, operational, engineering, economic development, etc.), notice requirements, compliance with laws, payment of taxes, maintenance of insurance, financial statements, audit rights, preservation of corporate existence, maintenance of properties and licenses, operation of project, energy regulation, annual operating budget, separateness, environmental compliance, maintenance of all accounts (including reserve accounts), preparation of debt service coverage ratio, application of proceeds following casualty or condemnation, further assurances and such other covenants deemed appropriate by the Lender as a result of Lender's due diligence.

**Negative Covenants:** Usual and customary for a transaction of this type (including customary exceptions and materiality thresholds), to be agreed to by Borrower on behalf of itself and each Project Company, including without limitation covenants as to Contingent liabilities, limitation on liens, indebtedness, tax equity matters, changes in business, distributions, permitted investments, transactions with affiliates, transfers of equity interests, disposition of assets, amendments to project documents, change orders and completion, offsite storage, subsidiaries, accounts, accounting changes, capital expenditures, employees, project expansion, regulation of parties, ERISA, hazardous materials, abandonment of Project, assignments of rights or obligations under Project Documents, use of Project site, name and location of Borrower, dissolution, partnerships, additional project documents and such other covenants deemed appropriate by the Lender as a result of Lender's due diligence review.

**Events of Default:** Usual and customary defaults for a transaction of this type (including customary cure rights), including, without limitation, default provisions relating to failure to make payments, judgments, misstatements, bankruptcy/insolvency, cross-default, ERISA, breach of Project Documents, covenant breach by Borrower, invalidity of Loan Documents, loss of QF status, default in construction or schedule, security, loss of applicable permits, loss of collateral, destruction of the Project, change of control, repudiation of Parent obligations, loss of key man, achievement of commercial operation.

**Borrower Selective Cure Rights:** In addition to customary cures available to Borrower, subject to certain to be agreed-upon limitations, Borrower may cure certain specified Defaults or Events of Default caused by a single Project by repaying the debt associated with such Project.

**Mandatory Prepayments:** Mandatory repayment of all or a portion of the outstanding principal balance will be required:

- 1) When the Borrower receives insurance or condemnation proceeds and such proceeds are not used to replace or rebuild the affected Project with the terms and conditions of such utilization to be set forth in the Loan Documents;
- 2) With any proceeds from the any sale of assets (other than subject to certain permitted exclusions) or ownership interests in the Borrower or any Project Company;
- 3) If any Project Agreement is terminated early and a termination fee is received by the Borrower;
- 4) To the extent of funds on deposit in the Distribution Account, in the event that Distribution Conditions fail to be satisfied on two consecutive quarterly dates;
- 5) On any quarterly date, to the extent necessary, and solely to the extent of available cash at level **Fifth** of the Borrower Waterfall and on deposit in the Distribution Account, to cause the Borrower to achieve the Minimum; and
- 6) With respect to any Project, in the event that the Final Withdrawal Conditions with respect to such Project, fail to be achieved on or prior to such Project's Date Certain.

**Voluntary Prepayment:** Borrower may prepay the balance of the Loan together with all unpaid and accrued interest in whole or in part at any time. Any voluntary prepayment made prior to the second anniversary of the Final Withdrawal Date shall require payment, at the time of prepayment, of a prepayment premium in an amount equal to 2% of the amount prepaid.

**Indemnification:** The Borrower shall indemnify the Collateral Agent, the Depositary Agent and the Lender and their respective officers, directors, agents, consultants and employees, from and against any and all losses, liabilities, expenses, claims, and damages arising from or relating to the Loan Documents, the project

documents and the Project and the release or presence of hazardous substances at the project site of the Project, except to the extent resulting from the gross negligence or willful misconduct of any person seeking indemnification as determined by a final, non-appealable judgment of a court of competent jurisdiction.

**Costs & Expenses:** Sponsor shall be responsible for payment of all reasonable and documented costs and expenses of the Lender and its consultants and advisors incurred by such parties in connection with the negotiation and execution of the Loan Documents, regardless of whether the Borrower satisfies the conditions precedent for the closing date and/or any funding date. Lender will make good faith efforts to streamline transaction costs. From and after the Closing Date, the Borrower will be liable for certain out-of-pocket costs incurred by the Collateral Agent, the Depository Agent and the Lender, provided that such costs are incurred in accordance with the terms of the Loan Documents.

<b>Consultants:</b>	Lender's Counsel	TBD
	Lender's Independent Engineer ("IE")	TBD
	Insurance Consultant:	TBD
	Title Insurer	TBD

**Governing Law:** State of New York.

**Waiver of Jury Trial; Venue** Each party waives its right to a jury trial in respect of any dispute arising from this term sheet, a commitment letter or any of Loan Document. Any legal action or proceeding with respect to this term sheet, a commitment letter or any Credit Facility documents shall be brought exclusively in the state courts of the State of New York in accordance with NY CLS CPLR §505.

**Publicity:** Lender or any of its affiliates may (i) disclose a general description of transactions arising under the loan documents for advertising, marketing, regulatory or other similar purposes and (ii) use Borrower's or Sponsor's name, logo or other indicia germane to such party in connection with such advertising, marketing or other similar purposes. Sponsor will be presented for its review with a preliminary draft of the transaction profile that Lender is required to post publicly in accordance with its regulatory requirements, and, subject to Borrower's approval, not to be unreasonably withheld, Lender may post the transaction profile, once finalized, on its website and in its publicly-filed metrics reports.

**RFP 7 -- Attachment F**  
**NYGB Pro forma Data Input Sheet**