



## RFP No. 1 - Indicative Term Sheet

### Summary of Indicative Terms and Conditions [Type of Facility]<sup>1</sup> Facility

This Term Sheet is for discussion purposes only and has not been approved by NY 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 facility described in this Term Sheet will be dependent upon, among other things, the completion of satisfactory due diligence and document review by NY Green Bank and the execution of definitive documentation acceptable to NY Green Bank, the terms of which may differ substantially from the terms set forth herein. The parties recognize that, except as set forth in Sections [ ] and [ ]<sup>2</sup>, neither party shall have any liability or obligation to the other as a result of this Term Sheet, it being understood that only such provisions as shall be set forth in any executed definitive documents shall have any legal effect.

Terms	Description
<b>I. Parties</b>	
<b>(a) Lender</b>	NY Green Bank, a division of NYSERDA (“ <b>Lender</b> ”).
<b>(b) Sponsor</b>	[Name of Sponsor], a [State of Incorporation/Formation] [Type of Entity] <sup>3</sup> (“ <b>Sponsor</b> ”).
<b>(c) Borrower</b>	[Name of Borrower], a [State of Incorporation/Formation] [Type of Entity] (“ <b>Borrower</b> ”). Borrower will be a bankruptcy remote, special-purpose vehicle wholly-owned by Sponsor. Borrower’s sole business purpose will be to [hold an equity interest in the Project Company (defined below) and] [to act as the manager of the Project Company].
<b>(d) Project Company</b>	[Name of Project Company], a [State of Incorporation/Formation] [Type of Entity] (“ <b>Project Company</b> ”). Project Company will be a bankruptcy remote, special-purpose vehicle wholly-owned by [Borrower and Tax Equity Investor] and managed by Borrower. Borrower’s sole business purpose will be to operate and service Eligible Projects (defined below) [originated by, and] acquired from, Sponsor. [The Project Company will have a “partnership flip” structure.]
<b>(e) [Tax Equity Investor]</b>	[Name of Tax Equity Investor], a [State of Incorporation/Formation] [Type of Entity] (“ <b>Tax Equity Investor</b> ”).
<b>(f) Guarantor(s)</b>	TBD
<b>(g) Borrower Parties</b>	Sponsor, Borrower and [Project Company] [HoldCo etc.]

<sup>1</sup> For example, Term Loan, Revolving Loan, etc.

<sup>2</sup> For example, Expenses, Governing Law, Jury Trial Waiver, Confidentiality, Exclusivity, etc.

<sup>3</sup> For example, Corporation, Limited Liability Company, Limited Partnership, etc.

<b>II. Credit Facility</b>	
<b>(a) Credit Facility</b>	A [\$[ ] Million] (the “ <b>Facility Amount</b> ”) [senior secured], [single/multi draw, term loan/revolving loan] facility (the “ <b>Facility</b> ”).
<b>(b) Use of Proceeds</b>	The proceeds of the Facility will be used by Borrower [(i) to fund its required equity contributions to Project Company for the purpose of acquiring Eligible Projects (defined below) in the State of New York; (ii) the establishment of the Reserve Account (as defined below); and (iii) the payment of fees, expenses and other transaction costs.]
<b>(c) Eligible Projects</b>	[Residential/Commercial] [Photovoltaic Solar Systems/Wind Turbine Energy Systems/Energy Efficiency Services Projects/Others?] projects that satisfy the following criteria: <ul style="list-style-type: none"> <li>i. Located in the State of New York;</li> <li>ii. [ ];</li> <li>iii. [ ];</li> <li>iv. Additional customary criteria to be agreed upon.</li> </ul>
<b>(d) Closing Date</b>	The execution of definitive Facility documentation, will occur on or before [ ] [ ], 201[ ].
<b>(e) Availability Period</b>	[Draws may be made on the Facility for a period (the “ <b>Availability Period</b> ”) commencing on the Closing Date and terminating [ ] months from the Closing Date.]
<b>(f) Final Maturity Date</b>	The Facility will terminate and all amounts outstanding thereunder shall be due and payable on the date that is [ ] months after the [Closing Date/last day of the Availability Period].
<b>(g) [Borrowing Base]</b>	[TBD – if applicable]
<b>(h) [Advance Rate]</b>	[ ]%
<b>(i) [Portfolio Value]</b>	[Portfolio Value will be determined based on the present value of cash flows from the applicable Eligible Projects that have been placed in service (based on an agreed cash flow model) discounted at the Discount Rate (Defined below).]
<b>(j) [Discount Rate]</b>	[The greater of (i) [ ]% and (ii) the [ ]-year LIBOR swap rate (consistent with WAL analysis) plus [ ] bps.]
<b>(k) Security</b>	NY Green Bank will receive at closing the following valid and perfected [first] priority pledges, liens and security interests at closing (collectively, the “ <b>Security</b> ”): [TBD]  The Security shall secure all of Borrower’s obligations in respect of the Facility and the obligations of the Sponsor under the Pledge Agreement (defined below).
<b>(l) Pledge Agreement</b>	The Sponsor and Lender will enter into a pledge agreement (“ <b>Pledge Agreement</b> ”) under which Sponsor will: <ul style="list-style-type: none"> <li>i. Pledge (or cause to be pledged) to Lender 100% of its direct and indirect equity interests in Borrower;</li> <li>ii. Make certain representations and covenants, including a covenant that it will not (A) take any step, directly or indirectly, to commence voluntary/insolvency proceedings with respect to the Borrower; (B) collude with a creditor to cause the commencement of involuntary bankruptcy/insolvency proceedings with respect to the Borrower; or (C) cause an unauthorized change of control of the Borrower; and</li> <li>iii. Indemnify the Lender against any losses arising from the Sponsor’s (A) willful misrepresentation with respect to a Borrower or the collateral; or</li> </ul>

	(B) acts of fraud, misappropriation of funds, theft, willful misconduct or gross negligence. Sponsor will also agree not to sell or otherwise encumber any Borrower Equity, or cause or permit Borrower to issue additional equity other than the Borrower Equity.
<b>(m) Interest Rate</b>	As set forth in <u>Exhibit A</u> attached to this Term Sheet.
<b>(n) Pricing and Fees</b>	As set forth in <u>Exhibit A</u> attached to this Term Sheet.
<b>(o) Default Interest Rate</b>	During the pendency of an event of default, the interest rate for the Facility will be increased by [ ] bps.
<b>(p) Business Day</b>	A “ <b>Business Day</b> ” for purposes of the Facility documentation will mean the hours between 9:00 a.m. – 4:00 p.m., Eastern time, Monday through Friday, other than the following days: New Year’s Day, Dr. Martin Luther King, Jr. Day, Lincoln’s Birthday, Washington’s Birthday (celebrated on President’s Day), Memorial Day, the day before and Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving day plus the day before and after that day, Christmas Eve and Christmas Day and New Year’s Eve and any other day on which banks are required or authorized by law to close in New York State. For purposes hereof, if any day listed above as a day on which Lender is closed falls on a Sunday, such day is celebrated on the following Monday.
<b>(q) Principal Repayment</b>	Principal is repaid in accordance with [an agreed upon amortization schedule].
<b>(r) Payment Date</b>	Interest shall be due and payable [quarterly] in arrears no later than the [fifth] Business Day of each calendar [quarter], for the immediately preceding calendar [quarter] (“ <b>Payment Date</b> ”). Interest will be calculated on an actual/360-day basis. Interest will be calculated based on principal balance outstanding. Payments to Lender on each Payment Date will be equal to (i) accrued interest plus (ii) [principal then due and owing], Mandatory Prepayments notwithstanding.
<b>(s) Draws under the Facility</b>	Advances may be drawn under the Facility: [TBD]
<b>(t) Frequency of Draws</b>	No more than once per month.
<b>(u) Minimum Amount of Draws</b>	No draw shall be less than \$100,000.
<b>(v) [Re-Borrowing]</b>	[Amounts drawn under the Facility and repaid may be re-borrowed until the end of the Drawing Availability Period.]
<b>(w) Optional Prepayment</b>	The Borrower may prepay the Facility in whole or in part at any time without premium or penalty, subject to make-whole payments.
<b>(x) Mandatory Prepayments</b>	Including, but not limited to 100% of proceeds from asset sales, insurance proceeds, debt issuances and others to be agreed.
<b>(y) Interest Reserve</b>	A reserve account (the “ <b>Interest Reserve</b> ”) in the amount of \$[ ] <sup>4</sup> will be established for the Borrower on the Closing Date [from Borrower equity]. The Interest Reserve will be available to be drawn upon in the event that Borrower fails to make an interest payment under the Facility. Upon any drawdown, the drawn amount will be restored by Borrower to the Interest Reserve within [ ] days.

<sup>4</sup> The maximum scheduled interest payments due on the outstanding amounts in any [ ] ( ) month] period as though the entire Facility Amount were outstanding.

<p><b>(z) Make-Whole</b></p>	<p>In the case of any prepayment of the Facility, including any prepayment as a result of the acceleration of the obligations under the Facility following a bankruptcy filing, an amount equal to the excess, if any, of (i) the present value, as of the date of the relevant prepayment, of the respective installments of principal of and interest on the Facility that, but for such prepayment or purchase, would have been payable thereunder after such prepayment over (ii) the principal amount of the Facility then being prepaid. Such present value shall be determined using a discount rate equal to the [Treasury Rate plus [50 bps per annum]].</p>
<p><b>III. Other Provisions</b></p>	
<p><b>(a) Conditions Precedent to Closing and Facility Funding</b></p>	<p>Closing and funding under the Facility will be subject to satisfaction of the conditions precedent deemed appropriate by Lender including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>i. Establishment of the Borrower as a bankruptcy-remote entity with constitutive documents satisfactory to the Lender, including but not limited to appointment of an independent manager.</li> <li>ii. Negotiation, execution and delivery of definitive documentation with respect to the Facility satisfactory to the Lender.</li> <li>iii. Completion of all legal, technical and financial due diligence to Lender's satisfaction.</li> <li>iv. All filings, recordations and searches necessary or desirable in connection with the liens and security interests on the Security shall have been duly made, all filing and recording fees and taxes shall have been duly paid, and all required government approvals have been obtained.</li> <li>v. Lender shall have received (A) satisfactory opinions of counsel to the Borrower (which shall cover, among other things, authority, legality, validity, binding effect and enforceability of the documents for the Facility, valid perfection of all security interests[, true sale and non-consolidation]) and such corporate resolutions, certificates and other documents as the Lender shall reasonably require; and (B) satisfactory evidence that the Lender shall have a valid and perfected first priority (subject to certain exceptions to be set forth in the Facility documentation) lien and security interest in the Security.</li> <li>vi. There shall not have occurred since [ ] [ ], [201_]<sup>5</sup> any event or condition that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect. <b>"Material Adverse Effect"</b> means (A) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or financial condition of any of the Borrower Parties; (B) a material impairment of the rights and remedies of Lender under any Facility-related documentation, or of the ability of any of the Borrower Parties to perform its obligations under any Facility-related documentation to which it is a party; or (C) a material adverse effect upon the legality, validity, binding effect or enforceability against any of the Borrower Parties of any Facility-related documentation to which it is a party.</li> <li>vii. All of the Borrower Parties shall have disclosed to Lender all information material to any Borrower Parties' ability to perform under the Facility-related documentation or relevant to Lender's due diligence request, and all of the information provided by any of the Borrower Parties to Lender, including any projections, shall be complete and correct in all material respects, and no changes or developments shall have occurred, and no new or additional information, shall have been received or discovered by</li> </ul>

<sup>5</sup> Date of Borrower's most recent audited financial statements.

	<p>Lender regarding any of the Borrower Parties or the transactions contemplated hereby after the date of this term sheet that (A) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; or (B) purports to adversely affect the Facility or any other aspect of the transactions contemplated hereby, and nothing shall have come to the attention of the Lender to lead it to believe that (x) any such information was or has become misleading, incorrect or incomplete in any material respect; or (y) the transactions contemplated hereby will have a Material Adverse Effect.</p> <ul style="list-style-type: none"> <li>viii. All representations and warranties contained in the Facility-related documentation will be true and correct.</li> <li>ix. All accrued fees and expenses of Lender (including the fees and expenses of counsel for Lender, as set forth in the Engagement Letter, dated [ ] [ ], 20[ ] (the “<b>Engagement Letter</b>”) between Borrower and Lender) shall have been paid.</li> <li>x. [Execution and delivery of all documents related to the investment of the Tax Equity Investor.]</li> <li>xi. Lender and Borrower will have agreed on the Data Delivery Requirements and Reporting Requirements.</li> <li>xii. No Material Adverse Effect has occurred and no actual or inchoate Event of Default has occurred and is continuing.</li> <li>xiii. [Any required Tax Equity Investor consent will have been obtained.]</li> <li>xiv. [No actual or inchoate default under the Tax Equity Investor documents will have occurred and be continuing.]</li> <li>xv. Borrower will comply with the provisions required under the State Environmental Quality Review Act (SEQRA).</li> </ul>
<p><b>(b) Covenants</b></p>	<p>Usual and customary for transactions of this type deemed appropriate by Lender, applicable to Borrower and relevant Borrower Parties, including, without limitation, the following (in each case with baskets and exceptions as may be agreed upon in the definitive Facility-related documentation):</p> <ul style="list-style-type: none"> <li>i. Affirmative Covenants - (A) delivery of financial statements, budgets and forecasts; (B) delivery of certificates and other information; (C) delivery of notices (of any default, material adverse condition or ERISA event); (D) payment of material obligations; (E) preservation of existence; (F) maintenance of properties; (G) maintenance of insurance; (H) compliance with laws; (I) maintenance of books and records; (J) Lender’s inspection rights; (K) use of proceeds; (L) covenant to guarantee obligations, give security; (M) maintenance of administrative and legal separateness from Sponsor; and (N) further assurances.</li> <li>ii. Negative Covenants - Restrictions on (A) liens; (B) indebtedness (including guarantees and other contingent obligations); (C) investments (including loans and advances); (D) mergers and other fundamental changes; (E) sales and other dispositions of property or assets; (F) payments of dividends and other distributions; (G) changes in the nature of business; (H) transactions with affiliates; (I) burdensome agreements; and (J) use of proceeds.</li> </ul>
<p><b>(c) Financial Covenants</b></p>	<p>TBD</p>
<p><b>(d) Representations and Warranties</b></p>	<p>Usual and customary for transactions of this type deemed appropriate by Lender, applicable to Borrower and relevant Borrower Parties, including, without limitation, the following: (i) legal existence, qualification and power; (ii) due authorization and no contravention of law, contracts or organizational documents; (iii) governmental and third party approvals and consents; (iv) enforceability; (v) accuracy and completeness of specified financial statements and other</p>

	<p>information and no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; (vi) no material litigation; (vii) no default; (viii) ownership of property (including disclosure of liens, properties, leases and investments); (ix) intellectual property; (x) insurance matters; (xi) tax matters; (xii) ERISA compliance; (xiii) identification of subsidiaries, equity interests and loan parties; (xiv) use of proceeds and not engaging in business of purchasing/carrying margin stock; (xv) status under Investment Company Act; (xvi) accuracy of disclosure; (xvii) compliance with laws; (xviii) collateral documents; (xix) perfection and priority of security interests; (xx) the amounts in any required accounts; and (xxi) solvency.</p>
<p><b>(e) Events of Default</b></p>	<p>Usual and customary in transactions of this type, including, without limitation, the following (with thresholds and grace periods as may be agreed in the definitive Facility documentation): (i) nonpayment of principal, interest, fees or other amounts; (ii) failure to perform or observe covenants set forth in the Facility-related documentation within a specified period of time, where customary and appropriate, after such failure; (iii) any representation or warranty proving to have been incorrect when made or confirmed; (iv) cross-default to other indebtedness in an amount to be agreed; (v) bankruptcy and insolvency defaults (with an agreed upon grace period for involuntary proceedings); (vi) inability to pay debts; (vii) monetary judgment defaults in an amount to be agreed and material nonmonetary judgment defaults; (viii) customary ERISA defaults; (ix) actual or asserted invalidity or impairment of any Facility-related documentation; (x) change of control; (xi) an event of default under the agreements for [ ] of the Eligible Projects or any major project document<sup>6</sup>; (xii) the departure of any “key man”; (xiii) a change of control of either Borrower, Sponsor [or Service Company]; and (xiv) an event of default under any of the agreements relating to the Tax Equity Investor’s investment.</p> <p>An Event of Default will trigger traditional rights and remedies of the Lender over the Borrower and Sponsor, including acceleration and foreclosure.</p>
<p><b>(f) Assignment and Participation Rights</b></p>	<p>Lender may, without Borrower’s consent, assign its rights under the Facility, and grant participation interests, to any financial institution with assets valued at not less than [\$100,000,000].</p>
<p><b>(g) Reporting Requirements</b></p>	<p>Usual and customary reporting requirements including monthly servicer reports, annual audited financial statements, and quarterly unaudited financial statements.</p>
<p><b>(h) Data Delivery Requirements</b></p>	<p>The Facility documents will include impact-related data delivery requirements (e.g., energy, environmental and economic development-related data) as determined by Lender and the Borrower, to be delivered no less frequently than quarterly and within 30 days from the end of each quarter.</p>
<p><b>(i) Indemnity</b></p>	<p>Lender and NYSERDA (and its officers, directors, employees, advisors and agents) will have no liability for, and will be indemnified and held harmless against, any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the Borrower’s use of Facility proceeds, including, but not limited to, reasonable attorneys’ fees (including the allocated cost of internal counsel) and settlement costs. This indemnification shall survive and continue for the benefit of all such persons or entities.</p>
<p><b>(j) Confidentiality</b></p>	<p>Subject to the New York Freedom of Information Law, as set forth in NY Public Officers Law, Article 6 and 21 NYCRR Part 501, each of the parties hereto agree that it will not disclose the terms of this Term Sheet to any third party, other than its respective affiliates, partners, representatives and advisors on a need to know basis (and then only pursuant to undertakings of the recipient to comply with these confidentiality provisions) or as required by applicable law, without the</p>

<sup>6</sup> To be defined depending on the circumstances of each Facility.

	other party's prior written consent, but with prior written notification of such intended disclosure(s) being given to Lender. This confidentiality obligation will survive any termination of negotiations regarding the proposed transaction together with any amendment or waiver thereof, whether or not the transactions contemplated are consummated.
<b>(k) Publicity</b>	Notwithstanding any other provision set forth herein, Lender or any of its affiliates may (i) aggregate and anonymize data provided to Lender for use and public disclosure in reports or in accordance with Lender's regulatory requirements; (ii) disclose a general description of transactions arising under the Facility documentation for advertising, marketing, regulatory or other similar purposes; and (iii) use Borrower's name, logo or other indicia germane to such party in connection with such advertising, marketing or other similar purposes. Borrower 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 or delayed, Lender may post the transaction profile, once finalized, on its website and in its publicly-filed metrics reports.
<b>(l) Exclusivity</b>	Borrower will offer each prospective financing of Eligible Projects exclusively to NY Green Bank. Should NY Green Bank decline to finance such project, NY Green Bank may, in its sole discretion, permit such project to be financed by any other financing source.
<b>(m) Governing Law</b>	New York
<b>(n) Waiver of Jury Trial and Submission to Jurisdiction</b>	Each party waives its right to a jury trial in respect of any dispute arising from this Term Sheet, a commitment letter or any Facility-related document. Any legal action or proceeding with respect to this Term Sheet, a commitment letter or any Facility documents shall be brought exclusively in the state courts of the State of New York in accordance with NY CLS CPLR §505.

## EXHIBIT A

### Interest and Certain Fees

- Interest Rate:** [A fixed rate of interest equal to [ ]% per annum][During the Availability Period, ]LIBOR plus \_\_\_\_%. [After the Availability Period, fixed at a rate equal to WAL LIBOR swap plus \_\_\_\_%, to be set at Closing Date].<sup>7</sup>
- [In connection with the Facility, Borrower will enter into interest rate hedge arrangements, including interest rate caps, as are agreed by Borrower and Lender and as are in form and substance acceptable to Lender.]
- Interest Rate Step-Up:** [ ]
- Closing Fee:** On the Closing Date, Borrower shall pay Lender a closing fee in the amount of [( ]%) of the Facility Amount.
- Administrative Fee** On the Closing Date, and on each anniversary thereof Borrower shall pay Lender an administrative fee in the amount of [( ]%) of the Facility Amount.
- Structuring Fee:** On the Closing Date, Borrower shall pay Lender a structuring fee in the amount of [( ]%) of the Facility Amount.<sup>8</sup>
- Fee on Undrawn Funds** Borrower will pay a fee on undrawn portions of the Facility equal to [( ]%)[X.XX] percent of the average daily undrawn balance of the Facility in the prior year (calculated on a 365-day basis), due and owed [quarterly][annually].
- Cost and Yield Protection** Customary for transactions and facilities of this type, including, without limitation, LIBOR breakage, changes in capital adequacy and capital requirements or their interpretation, illegality, unavailability, reserves without proration or offset and payments free and clear of withholding or other taxes.
- Expenses:** Borrower and/or Sponsor shall pay all reasonable costs and expenses of Lender associated with the preparation, due diligence, development, and administration of all Facility-related documentation (including the fees, disbursements and other charges of outside counsel to Lender, independent engineers, background investigators, or other consultants, as described in the engagement letter to be executed between Sponsor and Lender), regardless of whether or not the Facility is closed. Borrower will also pay third-party fees and expenses incurred by Lender in connection with the administration, amendment, waiver, modification or enforcement of any of the Facility-related documentation.
- Fees for Waivers and Amendment:** In addition to reimbursing Lender's third-party expenses as set forth above, Lender may charge Borrower a fee in connection with each request for a waiver, amendment or modification in connection with the Facility. Such fee will be determined by the Lender, in its discretion, and will be commensurate to the effort required by Lender to consider such request and execute the necessary documentation (in the event such request is granted, in Lender's sole discretion).

<sup>7</sup> Select applicable rate structure.

<sup>8</sup> Note: To be determined in a separately-negotiated engagement letter, NY Green Bank may also require Sponsor to pay the Structuring Fee in the event the parties fail to consummate the contemplated transaction and Sponsor proceeds with a third-party financing transaction utilizing a similar structure within one year from execution of the engagement letter.