

---

## **Footnote 74**

**From:** Frantz, David  
**Sent:** Friday, March 06, 2009 9:32 AM  
**To:** Isakowitz, Steve  
**Subject:** RE: CALL ME PLEASE

Steve,

This is fine with the note that we are presently planning the credit committee for Mar. 12th and the CRB for Mar. 17th.

Dave

**David G. Frantz**  
US Department of Energy  
Director, Loan Guarantee Office, CF-1.3

---

**From:** Isakowitz, Steve  
**Sent:** Thursday, March 05, 2009 7:04 PM  
**To:** Frantz, David  
**Subject:** CALL ME PLEASE

Dave,

Please call me regarding Solyndra. How did the negotiations end?

Assuming we can get to a handshake, I need to send to Rod O'Connor the significance of the event so he can send to the WH. Please review my text below for accuracy.

Thx,  
Steve

=====

- DOE has a handshake agreement for a "conditional commitment" with an applicant for a solar manufacturing plant

- Before we can announce the "conditional commitment" the following items must happen:

- (1) The applicants Board must approve it on Monday

- (2) The DOE loan office will receive and review an independent marketing study that will need to support the applicant's business plan

- (3) DOE will submit the conditional commitment to its Credit Review Board for approval. DOE expects to have the CRB meeting by March 16.

- If the applicant and DOE Boards approve the conditional commitment, DOE is at liberty to announce the result.

- However, the applicant must fulfill the conditions before the actual loan is released. The most critical condition will be the applicant raising the outstanding equity.

---

**Footnote 76.**

---

**From:** [REDACTED]  
**Sent:** Friday, March 6, 2009 10:00 PM (GMT)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: First Draft of Solyndra Market Report

---

[REDACTED] – on first reading the report looks very good. One favor – can you send a word version, to facilitate using some of your charts in our credit paper?

Thanks, and have a good weekend.

Best regards,

[REDACTED]  
Loan Guarantee Program  
Department of Energy  
[REDACTED]

Original Message  
**From:** [REDACTED]  
**Sent:** Friday, March 06, 2009 3:33 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]

---

**Subject:** First Draft of Solyndra Market Report

Attached is the first draft of our Independent Market Consultant's Report with respect to the Solyndra Fab 2 manufacturing Facility. We look forward to your questions and comments.

[REDACTED]  
Principal  
R. W. Beck

[REDACTED]  
Mediatech Corporate Center, West Wing  
350 Cochituate Road, Framingham, MA 01701

R. W. Beck Mind Powered: Insight with Impact.  
This communication and any related verbal communication are provided under the terms of R. W. Beck's contract with its client, and are not intended to be used or relied upon by any third party other than advisors or consultants to the client. Any use of such communication by any other third party is the responsibility of such third party, and R. W. Beck accepts no responsibility for any damages incurred by any third party as a result of decisions or actions based on such communication. Any guidance or opinions provided herein should only be read and relied upon by client within the limitations and context of any prior guidance provided by R. W. Beck in any prior work products relating to the subject matter of such communication.

---

**Footnote 77**

[REDACTED]

**From:** Isakowitz, Steve  
**Sent:** Saturday, March 07, 2009 10:34 PM  
**To:** Frantz, David  
**Subject:** Fw: LGPO & Solyndra Debt/Equity Ration Negotiation

----- Original Message -----

**From:** Chris Gronet [REDACTED]  
**To:** Isakowitz, Steve  
**Sent:** Sat Mar 07 22:07:21 2009  
**Subject:** FW: LGPO & Solyndra Debt/Equity Ration Negotiation

Hi Steve,

Please find attached a message from [REDACTED]. He was not too happy about the characterization of the meeting that was passed on from David Frantz. A corporate finance structure would never have worked or been approved by Solyndra. This was clearly understood by the LGPO team since it was discussed and dismissed months ago.

Also, please understand that we would not have given in to all of the remaining points, per our discussion, without confidence that the 80/20 ratio would be approved. Many of the final points are quite burdensome to the company and investors and detract from our ability to raise the equity portion of the project. I know the goal is to get the project started, not just sign a term sheet...but the equity markets continue to deteriorate.

[REDACTED] have spent countless hours over the past few weeks explaining the remaining deal points to our investors. They were reluctant but seemed willing to accept them in light of the promise of the 80/20 split. [REDACTED]

I hope and trust that you are able to find a way to approve the 80/20 ratio very quickly.

I also hope that you can find a few minutes to examine our video and presentation. The story of Solyndra is in alignment with the objectives of the administration and would be a great example of how American innovation can help to provide jobs and help to solve our energy and global warming problems. We can and will make an impact.

Best regards,

Chris Gronet  
CEO  
Solyndra, Inc.  
47700 Kato Road  
Fremont, CA 94538.USA  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Saturday, March 07, 2009 1:49 PM

To: Chris Gronet  
Subject: LGPO & Solyndra Debt/Equity Ratio Negotiation

Chris:

You asked for a review of the discussion regarding the debt/equity ratio for Solyndra Fab 2 at the meeting with LGPO on March 5.

Attendees representing LGPO included: [REDACTED] (Morrison & Foerster outside counsel to LGPO). David Frantz did not attend the meeting and we did not see him otherwise on March 5.

We initiated the meeting by restating the importance of the 80/20 structure to Solyndra's ability to raise the required equity in a reasonably short timeframe. We did not elaborate since LGPO was well aware of the issues based on numerous prior discussions. We enquired as to whether or not if LGPO was open to further discussions that might get to agreement on 80/20.

[REDACTED] responded directly that LGPO's position had not changed, and that LGPO still required a 73/27 split. [REDACTED] restated LGPO's position that the 73/27 split was already high and that a lower ratio was preferable. [REDACTED] made it clear that there would be no further negotiation on this point.

[REDACTED] did state that a corporate finance structure as compared to the project finance structure of the deal (as we have currently structured it) might make a different debt/equity ratio possible. However, the idea was delivered in such a way that the Solyndra team interpreted it as a disingenuous comment, because, (a) all parties in the room knew that such a dramatic change in the structure of the deal would necessitate several weeks of additional negotiation since many major terms of the agreement would have to be revised, (b) the Loan Guarantee Program guidelines are designed to facilitate project finance structures, and (c) a corporate finance structure had been discussed and discarded by the parties many months ago. A corporate finance structure has many challenges and limitations.

Frankly, the proposal was also interpreted as a threat by the Solyndra team in the sense that it implied that we had to either accept the 73/27 deal or face the obviously unacceptable consequences of further delays to the Solyndra Fab 2 project.

The Solyndra team proceeded to make concessions to finalize other terms with the concept in mind that higher level decision makers would finalize the negotiation of the debt/equity ratio, although we never spoke of such a concept to LGPO.

Regards,



\*\*\*\*\*



VP - Business Development

SOLYNDRA, INC.

47700 Kato Road

Fremont, CA 94538



This e-mail and any accompanying attachments contain information that is confidential to Solyndra, Inc.<br>The information is intended solely for the use of the individual to whom it is addressed.<br>Any review, disclosure, copying, distribution, or use of this e-mail communication by others is strictly prohibited.<br>If you are not the intended recipient, please notify us immediately by returning this message to the sender and delete all copies.<br>Thank you for your cooperation.

---

**Footnote 79, 80**

[REDACTED]

---

From: Rogers, Matt  
Sent: Tuesday, March 10, 2009 9:06 AM  
To: Isakowitz, Steve; Frantz, David  
Subject: Re: Update: Solyndra

Talked to them yesterday and they are excited for potus to do the event. Regards, m

Matt Rogers  
Senior Advisor to the Secretary for ARRA  
[REDACTED]

----- Original Message -----

---

From: Isakowitz, Steve  
To: Rogers, Matt; Frantz, David  
Sent: Tue Mar 10 08:39:24 2009  
Subject: Re: Update: Solyndra

Matt - do we know if this is still a potus event? Last time I spoke w Rod he was not sure.

Steve

----- Original Message -----

From: Rogers, Matt  
To: Isakowitz, Steve; Frantz, David  
Cc: [REDACTED]; Barwell, Owen; Seward, Lachlan  
Sent: Tue Mar 10 05:41:41 2009  
Subject: Re: Update: Solyndra

Great result well negotiated. [REDACTED] can you also work w [REDACTED] this am to prepare a short memo for the whitehouse folks on what an announcement could look like on the 19th. We will want to try to get to crb on friday to make sure that we have enough time for the wh folks. Solyndra will be happy they blinked when potus arrives. Great work. Regards, m

Matt Rogers  
Senior Advisor to the Secretary for ARRA  
[REDACTED]

----- Original Message -----

From: Isakowitz, Steve  
To: Frantz, David  
Cc: [REDACTED]; Barwell, Owen; Rogers, Matt; Seward, Lachlan  
Sent: Tue Mar 10 00:28:36 2009  
Subject: Update: Solyndra

Gang,

Just spoke with Chris. Solyndra blinked. Congrats !

Bill, pls followup with [REDACTED] so we can expeditiously move forward to the Credit Committee and CRB.

Well done !  
Steve

---

---

## **Footnote 81**

**From:** Isakowitz, Steve  
**Sent:** Tuesday, March 10, 2009 8:38 AM  
**To:** OConnor, Rod  
**Cc:** Rogers, Matt  
**Subject:** Loan announcement?

Rod

Is there still an interest in a loan announcement March 19th?

I ask because we successfully wrapped up intense negotiations yesterday for a conditional commitment with Solyndra. There's still much paperwork to complete and wanted to check how hard we need to press.

Steve

---

**Footnote 82, 83**

[REDACTED]

**From:** Frantz, David  
**Sent:** Tuesday, March 10, 2009 1:04 PM  
**To:** Isakowitz, Steve  
**Subject:** RE: Loan announcement?

Steve,

I met with Matt and Rod 30 minutes ago and in the meantime have confirmed for them that Solyndra has no activity in SoCal. Both were comfortable with the schedule of credit committee and CRB early next week. We need to permit sufficient time to pick up any comments from the credit committee and then permit sufficient time to get board books out for members review. In addition, Kelly and I felt it would be judicious to brief OMB before the CRB which we have tentatively scheduled for Friday. Therefore I recommend we adhere to the original schedule since any need to accelerate has been removed.

We can discuss.

David G. Frantz  
US Department of Energy  
Director, Loan Guarantee Office, CF-1.3  
[REDACTED]

-----Original Message-----

**From:** Isakowitz, Steve  
**Sent:** Tuesday, March 10, 2009 10:15 AM  
**To:** Frantz, David  
**Subject:** FW: Loan announcement?

Dave - FYI.

-----Original Message-----

**From:** Isakowitz, Steve  
**Sent:** Tuesday, March 10, 2009 10:14 AM  
**To:** OConnor, Rod  
**Subject:** RE: Loan announcement?

OK. Originally, the CRB was planned for next Tuesday, but per our earlier discussion, we will move it up to this Friday now that I know there is still great interest.

Yes, I'm delighted the deal came through. Yesterday we were on the verge of collapse but we drew a hard line and they ultimately agreed (I got the call at midnight last night).

So we will scramble to mop up the details, get it to the Credit Committee this Thursday and then present to Credit Review Board on Friday.

Steve

-----Original Message-----

**From:** OConnor, Rod  
**Sent:** Tuesday, March 10, 2009 9:15 AM  
**To:** Isakowitz, Steve  
**Subject:** RE: Loan announcement?

. There is still strong interest...that is great news and great work. When does the CRB meet?

E

E

E

---

## **Footnote 84-91**

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 3:27 PM  
**To:** Rogers, Matt  
**Subject:** RE: Potential announcements for energy 3/19 in la

**Matt:**

[REDACTED]

-----Original Message-----

**From:** Rogers, Matt  
**Sent:** Tuesday, March 10, 2009 2:37 PM  
**To:** [REDACTED]  
**Subject:** Fw: Potential announcements for energy 3/19 in la

[REDACTED]  
Matt Rogers  
Senior Advisor to the Secretary for ARRA  
[REDACTED]

----- Original Message -----

**From:** Klain, Ronald A. [REDACTED]  
**To:** Rogers, Matt  
**Cc:** OConnor, Rod; Owens, Missy  
**Sent:** Tue Mar 10 14:19:17 2009  
**Subject:** RE: Potential announcements for energy 3/19 in la

[REDACTED]

---

**From:** Rogers, Matt [REDACTED]  
**Sent:** Tuesday, March 10, 2009 2:17 PM  
**To:** Klain, Ronald A.  
**Cc:** OConnor, Rod; Owens, Missy  
**Subject:** Re: Potential announcements for energy 3/19 in la

[REDACTED]  
Regards, mr

Matt Rogers  
Senior Advisor to the Secretary for ARRA  
[REDACTED]

----- Original Message -----

From: Klain, Ronald A. [REDACTED]  
To: Rogers, Matt  
Cc: OConnor, Rod; Owens, Missy  
Sent: Tue Mar 10 14:10:40 2009  
Subject: RE: Potential announcements for energy 3/19 in la

Matt / Rod / Missy,

[REDACTED]  
Thanks,

Ron

-----Original Message-----

From: Rogers, Matt [REDACTED]  
Sent: Tuesday, March 10, 2009 1:02 PM  
To: Klain, Ronald A.  
Cc: OConnor, Rod; Owens, Missy  
Subject: Potential announcements for energy 3/19 in la

Working backward for a 3/19 los angeles event, we could do the following:

[REDACTED]

2. solar: we could have the solar co leadership come down to la to sign the conditional loan guarantee funding \$500mm out of the \$700mm project cost for building their flat panel solar mfg facility, the first doe loan, but we would not have a visual, other than pictures of their facility and leadership signing

[REDACTED]

[REDACTED]

Regards, mr

Matt Rogers  
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000  
Independence Avenue, 7th Floor

-----Original Message-----

From: Klain, Ronald A. [REDACTED]  
Sent: Tuesday, March 10, 2009 10:42 AM  
To: Rogers, Matt  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

Just talked to Rod. Let's work backwards. The President wants do to an event in LA on 3/19 that relates to Recovery Act, and our clean energy future. It can be about electric cars generally -- or smart grid -- or solar. We just need to link clean energy future, jobs, and Recovery Act.

Thanks!

Ron

-----Original Message-----

From: Rogers, Matt [REDACTED]  
Sent: Tuesday, March 10, 2009 10:41 AM  
To: Klain, Ronald A.  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

Got it

Matt Rogers  
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000  
Independence Avenue, 7th Floor

-----Original Message-----

From: Klain, Ronald A. [REDACTED]  
Sent: Tuesday, March 10, 2009 10:34 AM  
To: Rogers, Matt  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

Then we have no energy events for this trip.

-----Original Message-----

From: Rogers, Matt [REDACTED]  
Sent: Tuesday, March 10, 2009 10:33 AM  
To: Klain, Ronald A.  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

My fault. I thought he was doing both northern and southern cal. I will connect with the tesla team this am to see where they stand, but they were not optimistic they could get there in time. Regards, mr

Matt Rogers  
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000  
Independence Avenue, 7th Floor  
[REDACTED]

-----Original Message-----

From: Klain, Ronald A. [REDACTED]  
Sent: Tuesday, March 10, 2009 10:30 AM  
To: Rogers, Matt  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california  
Importance: High

This is what I asked you guys on Friday when we talked. I specifically said that this is Fremont, no cal, and you said, they have a facility in So Cal. The President is not traveling to Fremont. He is going to So Cal.

-----Original Message-----

From: Rogers, Matt [REDACTED]  
Sent: Tuesday, March 10, 2009 10:11 AM  
To: Klain, Ronald A.  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

No this is northern california--fremont.  
I had switched in my mind the mfg facilities for tesla (in los angeles) with those for solyndra in northern california--my bad. Regards, mr

Matt Rogers  
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000  
Independence Avenue, 7th Floor  
[REDACTED]

-----Original Message-----

From: Klain, Ronald A. [REDACTED]  
Sent: Tuesday, March 10, 2009 10:06 AM  
To: Rogers, Matt  
Cc: OConnor, Rod  
Subject: RE: Solar co loan announcement in northern california

And this is in LOS ANGELES, right, NOT NORTHERN CALIFORNIA

-----Original Message-----

From: Rogers, Matt [REDACTED]  
Sent: Tuesday, March 10, 2009 10:04 AM  
To: Klain, Ronald A.  
Cc: OConnor, Rod  
Subject: Solar co loan announcement in northern california

Ron,

The solar co board approved the terms of the loan guarantee last night, setting us up for the first loan guarantee conditional commitment for the president's visit to california on the 19th. We still need to do internal credit committee and credit review board internally this week, but all is on track for this announcement in northern california (I mixed tesla's so cal mfg facility and the norther california solar mfg facility). The team is putting together a two page briefing memo for you this morning on the visit. Three highlights:

First loan guarantee from the department of energy--delivered in 60 days from inauguration (the prior administration could not get it done in four years). This illustrates the pace at which the department is moving to address the urgent challenges in the economy.

This loan is for an advanced technology solar manufacturing facility with strong global markets--this company will serve the US market (thanks to the strong tax policies from the recovery act) and will make significant exports to europe.(US mfg jobs to serve the global market).

This deal is designed to bring private capital off the sidelines. The sponsors now need to go out and raise \$200mm in equity, but the combination of tax policy and the loan guarantee makes this an attractive business for private capital again. Doe taking this action should help unfreeze the credit markets.

Regards, mr

---

Matt Rogers  
Senior Advisor to the Secretary of Energy for Recovery Act Spending Department of Energy 1000  
Independence Avenue, 7th Floor  
[REDACTED]

## **Footnote 93**

**Footnote 118, 119**

**From:** [REDACTED]  
**Sent:** Monday, January 12, 2009 11:28 PM  
**To:** [REDACTED]  
**Subject:** FW: FFB Language / Fw: Marked Term Sheet  
**Attachments:** DOE Term Sheet (Solyndra Comments (01.12.09).doc)

---

**From:** [REDACTED]  
**Sent:** Monday, January 12, 2009 11:27 PM  
**To:** Burner, Gary; [REDACTED]  
**Subject:** FW: FFB Language / Fw: Marked Term Sheet

All-  
This is still a fluid process, but attached is the most recent Solyndra term sheet. There is still some back-and-forth going on as we speak. See FFB-related questions and my responses below.

---

**From:** [REDACTED]  
**Sent:** Monday, January 12, 2009 11:21 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: FFB Language / Fw: Marked Term Sheet

[REDACTED] et.al:  
Paragraphs 13 and 28 generally reflect the requirements of FFB. I would add the following to the end of paragraph 13 to satisfy FFB's own auditor requirements:

The proceeds of Disbursements will be used to pay Eligible Base Project Costs in accordance with a construction budget to be submitted by the Borrower, and certified by the Independent Engineer, at least [ ] days prior to the applicable fiscal quarter (the "Quarterly Approved Budget") and satisfaction of the other Conditions Precedent set forth in Section 28. FFB will make Disbursements to or as directed by the Borrower to pay Eligible Base Project Costs due and payable, or reasonably expected to become due and payable within the next 30 days as contemplated by the Approved Budget, as soon as commercially practicable, and in any event within 5 business days following receipt of a disbursement requisition from the Borrower (including back-up invoices) [and disbursement approval notice executed by DOE].

For paragraph 14, the interest rate language needs to be reworked. Below is my first cut at a narrative:  
Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement (the "Interest Rate") will be a rate per annum equal to the sum of (x) the single equivalent rate of the Disbursement repayment stream determined from Treasury's "Constant Maturity Treasury" curve, taking into consideration the shortest maturity Treasury bill being currently auctioned up through the 7-year Constant Treasury Maturity rate plus (y) a spread of to be calculated as of the closing date and in a range of spreads to be determined in accordance with FFB policy guidelines. As of the date hereof, the 7 year Constant Treasury Maturity yield is [1.95%] as published by the Federal Reserve Bank of the United States. Historically, the FFB funding spread for the most recent [ 60 ] months for FFB loans with maturities equivalent to the Disbursements have been in a range of [12.5] bps to [35] bps with terms substantially similar to the Disbursements.

**From:** [REDACTED]  
**Sent:** Monday, January 12, 2009 5:02 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FFB Language / FW: Marked Term Sheet  
**Importance:** High

[REDACTED] Attached is the revised term sheet that was distributed to the group moments ago. Could you please review the the FFB specific language to make sure it reflects your guidance from our conversation this morning: we have included FFB pricing methodology in item 14 (treasury CMT curve and spread) and FFB disbursement language in items 13 and 28.  
Best regards,

[REDACTED]  
Goldman, Sachs & Co.  
[REDACTED]

---

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** Bill Stover  
**Sent:** Mon Jan 12 16:12:40 2009  
**Subject:** Marked Term Sheet  
All,

Attached is Solyndra's mark-up of the term sheet, which reflects the discussion this morning.

Thanks.

\*\*\*\*\* Important Notice \*\*\*\*\*

This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

E-mail messages may contain computer viruses or other defects, may not be accurately replicated on other systems, or may be intercepted, deleted or interfered with without the knowledge of the sender or the intended recipient. If you are not comfortable with the risks associated with e-mail messages, you may decide not to use e-mail to communicate with Goldman Sachs.

Goldman Sachs reserves the right, to the extent and under circumstances permitted by applicable law, to retain, monitor and intercept e-mail messages to and from its systems.

This e-mail and any accompanying attachments contain information that is confidential to Solyndra, Inc. The information is intended solely for the use of the individual to whom it is addressed. Any review, disclosure, copying, distribution, or use of this e-mail communication by others is strictly prohibited. If you are not the intended recipient, please notify us immediately by returning this message to the sender and delete all copies. Thank you for your cooperation.

[M&F Draft SOLYNDRA COMMENTS: 01-1208-09]

This working draft is for discussion purposes only  
and has not been approved by DOE or FFB.  
This working draft does not constitute an agreement by DOE or FFB or a commitment by  
DOE or FFB to enter into an agreement and is subject to review and change.

January \_\_, 2009

Solyndra, Inc.  
Solyndra Fab 2 LLC  
47700 Kato Road  
Fremont, CA 94538

Re: Loan Guarantee Application of Solyndra, Inc. (the "Application")  
LGPO Loan Number: 1013

Ladies and Gentlemen:

This term sheet (this "Term Sheet") outlines the principal indicative terms and conditions for a potential U.S. Department of Energy ("DOE") loan guarantee that relates to the Application of Solyndra, Inc. (the "Applicant") pursuant to Title XVII of the Energy Policy Act of 2005 ("Title XVII").

Capitalized terms used but not defined in this Term Sheet have the meanings given to such terms in the final regulations located at 10 CFR Part 609 and any other applicable regulations from time to time promulgated by DOE to implement Title XVII (the "Applicable Regulations").

All provisions of this Term Sheet are subject to the following (the "Program Requirements"): (i) the provisions of Title XVII and the Applicable Regulations, and (ii) all DOE or FFB legal and financial requirements, policies, and procedures applicable to the Title XVII program from time to time.

This Term Sheet is for discussion purposes only and does not contain any representation or warranty of any kind on the part of DOE or any other party and does not constitute an offer or commitment by DOE or any other party to extend financing to the Project.

Set forth below in Part A hereof are the detailed terms and conditions under which DOE may enter into a Term Sheet with the Applicant.

Set forth below in Part B hereof are provisions for acceptance of this Term Sheet and certain additional provisions relating to this Term Sheet.

dc-546258

002303

**A. Detailed Terms and Conditions for Loan Guarantee**

The terms and conditions set forth herein are subject to change, amendment and revision. DOE reserves the right to propose further terms and conditions as it deems necessary, in its sole discretion, in the course of further due diligence and review by DOE and its counsel. This Term Sheet does not include additional terms and conditions as may be required by the lenders to the Project, including the Federal Financing Bank.

The Transaction Documents will contain the terms and conditions set forth in this Term Sheet, in addition to other standard provisions and such other terms and conditions as are agreed to between the parties. However, DOE reserves the right to propose to expand or consolidate the terms and conditions set forth in this Term Sheet as a condition to DOE's involvement in the proposed financing.

**Parties**

**1. Borrower**

Solyndra Fab 2 LLC, a Delaware limited liability company (the "Borrower") that is a special purpose entity formed solely for the purpose of developing, constructing, financing, owning operating and managing the Project.

**2. Sponsor**

Solyndra, Inc. (the "Sponsor"), which owns 100% of the equity interests in the Borrower.

**3. Eligible Lender**

Federal Financing Bank ("FFB"), an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of Treasury.

**Project and Project Costs**

**4. Fab 2 Facility**

The Fab 2 Facility (the "Fab 2 Facility") will be an approximately 420 MW thin-film omnifacial solar photovoltaic manufacturing facility located in Fremont, California, which is expected to be constructed in two phases.

**5. Phase I: Phase II**

Phase I of the Fab 2 Facility will consist of three production lines and is expected to have a capacity of approximately 210 MW ("Phase I").

Phase II of the Fab 2 Facility is expected to consist of an additional three production lines and to have a capacity of approximately 210 MW ("Phase II"), and does not constitute part of the Project. ~~Phase II will be contained in a separate part of the same building from Phase I.~~

The loan guarantee contemplated under this Term Sheet relates to Phase I only and associated facilities used in the operation of Phase I. DOE acknowledges that the Sponsor intends to construct Phase II through a separate subsidiary of the Sponsor and finance such construction through separate third-party financing. The Sponsor will provide such information as DOE may request in connection with the proposed financing of Phase II in order for DOE to determine whether such financing can be consummated without adversely affecting DOE and FFB's rights under the Loan Guarantee Documents and can be achieved in a manner consistent with the Program Requirements.

6. Shared Facilities

The Borrower expects to share certain facilities necessary for the operation of Phase I with Phase II and the existing "Fab 1" facility (the "Shared Facilities"). Accordingly, the Loan Guarantee Documents shall not prohibit the sharing of such Shared Facilities as long as DOE is satisfied that the first priority security interest in the Collateral and other terms and conditions necessary to protect FFB's and DOE's respective interests in the Project, including the Shared Facilities, is not adversely affected and the sharing arrangements are otherwise consistent with the Program Requirements.

7. Project: Project Plans

The Borrower and Sponsor will provide detailed project plans for the design, development, financing, construction, implementation, operation and management of Phase I of the Fab 2 Facility and the Shared Facilities (the "Project"), which will include the information described in Attachment B (Application Guidance) to the Instructions for Application for Loan Guarantee, including without limitation the Engineering and Construction Plans, the Operating and Maintenance Plans, and the Management Plan described therein (collectively, the "Project Plans").

8. Project Costs

The Borrower and Sponsor will provide detailed plans for financing all costs of the Project that may be incurred from time to time ("Total Project Costs").

The Borrower will apply Guaranteed Loan proceeds solely to pay those portions of Total Project Costs that are eligible for funding as "Project Costs" as defined in the Applicable Regulations ("Eligible Project Costs").

The Borrower and Sponsor estimate as of the date of this Term Sheet, ~~as outlined in the financial plan attached hereto as Exhibit A,~~ that Total Project Costs will be an aggregate amount of \$ \_\_\_\_\_ ("Base Project Costs"), consisting of:

Formatted: Font: Italic

(i) Eligible Project Costs in the aggregate amount of \$7421,000,000 ("Eligible Base Project Costs") (which for avoidance of doubt, includes approximately \$62,000,000 of budgeted contingency funds), and

(ii) Ineligible Project Costs in the aggregate amount of \$ \_\_\_\_\_ ("Ineligible Base Project Costs").

All Total Project Costs in excess of Base Project Costs are "Overrun Project Costs".

All Total Project Costs that are not Eligible Project Costs, including Ineligible Base Project Costs and Overrun Project Costs, are "Ineligible Project Costs" that must be financed by the Sponsor or from other sources other than the Guaranteed Loan.

9. Base Equity Commitment

The Sponsor will commit to provide equity to the Borrower ("Base Equity"), on terms and conditions satisfactory to DOE, in an amount (the "Base Equity Commitment") equal to the difference between (x) Base Project Costs, and (y) the Guaranteed Loan Amount.

The Sponsor will fund the Base Equity Commitment through (x) the contribution of real property and other assets to the Borrower, in an amount up to 10% of the ~~Base Equity Commitment Total Project Costs, subject to limitations on the amount of non-cash contributions of [ \$ ]~~ and DOE's review and valuation of such assets (which in no event shall exceed the lesser of (i) the purchase price paid in cash by the Sponsor for such asset, or (ii) the fair market value of the assets as of the Financial Closing Date (as defined below)), (y) the contribution of cash as a common equity investment in the Borrower, and (z) the contribution of cash from the proceeds of unsecured subordinated loans made to the Borrower on subordination terms satisfactory to DOE in its sole discretion on the following schedule:

- (a) the Sponsor will fund a portion of the Base Equity Commitment in an amount to be determined prior to the initial Disbursement of the Guaranteed Loan;
- (b) thereafter, Eligible Base Project Costs will be funded 100% with proceeds of the Guaranteed Loan until aggregate Eligible Base Project Costs to date have been funded so that at least ~~25~~30% of such Eligible Base Project Costs are funded with proceeds of the Base Equity Commitment and the remainder with proceeds of the Guaranteed Loan; and
- (c) thereafter, Eligible Base Project Costs will be funded so that at least ~~25~~30% of such Eligible Base Project Costs are funded with proceeds of the Base Equity Commitment and the remainder with proceeds of the Guaranteed Loan; and
- (d) Ineligible Base Project Costs will be funded 100% with proceeds of the Base Equity Commitment.

The Sponsor will fund its required contributions of Base Equity ~~quarterly~~ monthly in advance such that the proceeds of the Guaranteed Loan shall at no time exceed ~~75~~70% of the Eligible Base Project Costs incurred prior to or concurrently with the disbursement of such proceeds.

10. Overrun Equity Commitment

The Sponsor will commit to fund 100% of any Overrun Project Costs ~~and ongoing funding needs of the Borrower~~ (the "Overrun Equity Commitment").

Loan and DOE Guarantee

11. Guaranteed Loan

A loan from FFB (the "Guaranteed Loan") in the original principal amount (the "Guaranteed Loan Amount") of not more than 705% of Eligible Base Project Costs, up to a limit of the lesser of (x) 80% of Eligible Base Project Costs, and (y) \$535,000,000.

12. DOE Guarantee

An unconditional guarantee by DOE (the "DOE Guarantee") of 100% of the principal of and interest on the Guaranteed Loan (the "Guaranteed Obligations") in accordance with the Program Requirements.

13. Availability

Subject to the terms of the FFB Funding Agreements, disbursements of the Guaranteed Loan (each a "Disbursement")

(i) may be requested from time to time during the period (the "Guaranteed Loan Availability Period") from (x) the Financial Closing Date (as hereinafter defined), to (y) the date 36 months following the Financial Closing Date; and

The proceeds of Disbursements will be used to pay Eligible Base Project Costs in accordance with a construction budget to be submitted by the Borrower, and certified by the Independent Engineer, at least [ ] days prior to the applicable fiscal quarter (the "Quarterly Approved Budget") and satisfaction of the other Conditions Precedent set forth in Section 28. FFB will make Disbursements to or as directed by the Borrower to pay Eligible Base Project Costs due and payable, or reasonably expected to become due and payable within the next 30 days as contemplated by the Approved Budget, as soon as commercially practicable, and in any event within 5 business days following receipt of a disbursement requisition from the Borrower (including back-up invoices). (ii) will be made, subject to satisfaction of the Conditions Precedent and in accordance with Program Requirements, only to pay a pro rata portion of Eligible Base Project Costs that have previously been incurred or are then due and payable.

Formatted: Font: Italic

14. Interest Rate

Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement (the "Interest Rate") will be a rate per annum equal to the sum of (x) the 7 year Constant Treasury Maturity rate from time to time plus (y) a spread of to be calculated as of the closing date and in a range of spreads to be determined in accordance with FFB policy guidelines. As of the date hereof, the 7 year Constant Treasury Maturity yield is [1.95%] as published by the Federal Reserve Bank of the United States. Historically, the FFB funding spread for the most recent [ ] months for FFB loans with maturities equivalent to the Disbursements have been in a range of [12.5] bps to [37.5] bps with terms substantially similar to the Disbursements expressed as the sum of (x) an underlying index [Can the index be defined?], plus (y) a funding spread, each as determined by FFB.

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

All overdue amounts on the Guaranteed Loan will accrue interest at a default rate of interest to be determined, and be payable by the Borrower, in accordance with the FFB Funding Agreements.

15. Interest Payments

Interest will accrue from the first Disbursement and be due and payable in cash in arrears on each quarterly payment date thereafter as specified in the FFB Funding Agreements (a "Quarterly Payment Date").

16. Principal Amortization and Maturity

The outstanding principal amount of the Guaranteed Loan will be payable in equal quarterly installments commencing on the first Quarterly Payment Date occurring thirty-six months following the Financial Closing Date (the "First Principal Payment Date").

The final maturity of the Guaranteed Loan will be the ~~fourth (4<sup>th</sup>)~~ <sup>seventh (7<sup>th</sup>)</sup> anniversary of the ~~First Principal Payment Date~~ Financial Closing Date.

Formatted: Superscript

17. Prepayments of the Guaranteed Loan

(a) Voluntary Prepayments. Subject to clause (c) below, borrowings under the Guaranteed Loan may be prepaid in whole or in part at any time ~~after the end of the Guaranteed Loan Availability Period~~.

(b) Mandatory Prepayments. Subject to clause (c) below, the Borrower will make mandatory prepayments of borrowings under the Guaranteed Loan with insurance proceeds or condemnation proceeds in accordance with criteria and conditions to be contained in the Loan Guarantee Documents.

(c) All Prepayments. All prepayments of the Guaranteed Loan

(i) are subject to the terms of the FFB Funding Agreements; and

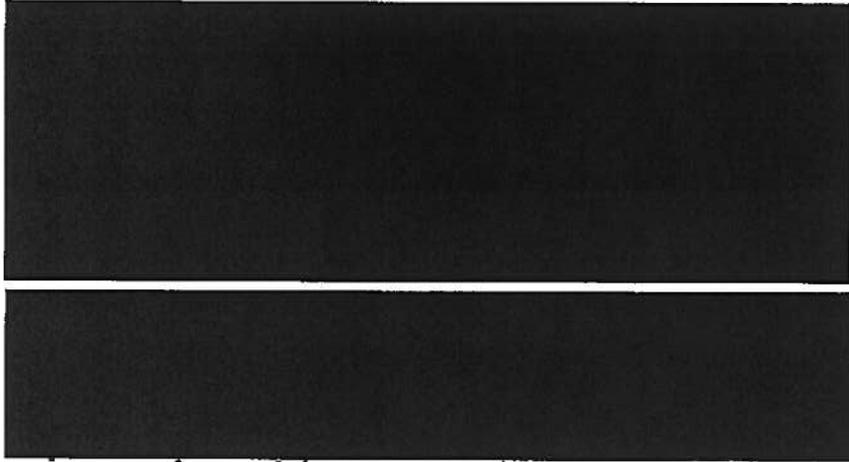
(ii) will be applied to remaining scheduled amortization payments as set forth in the FFB Funding Agreements.

Any Guaranteed Loan amounts prepaid may not be re-borrowed.

18. DOE Fees

The Sponsor or the Borrower will pay the following fees to DOE (collectively, the "DOE Fees") in addition to any fees payable to FFB or any other party:





19. *Credit Subsidy Cost*

The credit subsidy cost for the DOE Guarantee is the "cost of a loan guarantee", as set forth in section 502(5)(C) of the Federal Credit Reform Act of 1990 (the "Credit Subsidy Cost"). The final Credit Subsidy Cost amount will be determined by DOE in its sole discretion, subject to review and approval by the Office of Management and Budget ("OMB") prior to the Financial Closing Date.

In connection with changes to the terms of the transaction requested by Borrower that constitute "modifications" as set forth in OMB Circular A-11 of the Project that are required in connection with certain technical, financial, legal or other events, an increase of the Credit Subsidy Cost may be required to be paid by the Borrower.

Except if explicitly authorized by an Act of Congress, neither the Sponsor nor the Borrower shall use any funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, to pay for Credit Subsidy Cost, administrative fees, or other fees charged by or paid to DOB pursuant to the Program Requirements.

20. *Collateral*

The Borrower's obligations under the Guaranteed Loan and the DOE Guarantee will be secured by a first-priority perfected security interest in the following (collectively, the "Collateral"):  
*[Relevant Project assets will be in the Borrower]*

Formatted: Font: Italic

- (a) all equity interests in the Borrower and all subordinated debt payable by the Borrower;
- (b) all real property interests of the Borrower, and, to the extent useful or necessary for the operation of the Project, of the Sponsor or any of its affiliates (the "Solyndra Affiliates"),

including without limitation the Fab 2 Facility site and buildings, the Shared Facilities, all leasehold or other property interests relating to front-end or back-end facilities, and all related fixtures, easements, rights-of-way and licenses;

(c) all personal and other property of the Borrower, ~~and, to the extent reasonably necessary for the operation of the Project, of the Sponsor or the Solyndra Affiliates, including without limitation:~~

(i) all equipment comprising the Project, including all equipment located at the Fab 2 Facility or otherwise reasonably necessary for the continued operation of the Project and production and sales and products from the Project;

(ii) all inventory, including raw materials, works-in-progress and finished goods;

(iii) all revenues, accounts receivable, equity contributions, commitments and bank accounts of or payable to the Borrower, including without limitation the Project Accounts and all amounts therein;

(iv) all rights under the Intercompany Agreements and the other Project Documents, including rights to own and control the Shared Facilities as required pursuant to the Program Requirements;

(v) all intellectual property, licenses, general intangibles and goodwill;

(vi) all governmental approvals and permits for the Project; and

(vii) the proceeds of all insurance policies related to the Project or maintained by the Borrower;

~~(d) any other Project assets and other collateral or surety, including non Project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations or the operation of the Project or that may otherwise be required under the Program Requirements; and [What would this cover that is not in clause (c)].~~

Formatted: Font: Italic

(e) all proceeds of the foregoing.

The security grants in the Collateral will be made in favor of DOE or FFB (as applicable) or agents designated by them to act. The Guaranteed Loan will not be subordinate to any loan or other debt obligation and the DOE will be in a first lien position, subject to permitted liens, on all assets of the Project and all additional Collateral, including in connection with a sale of all or a portion of the Collateral in a foreclosure sale or a transfer in lieu of foreclosure.

#### 21. Servicing Duties.

Servicing duties with respect to the Guaranteed Loan will be performed in accordance with the Loan Guarantee Documents.

Transaction Documents

22. Loan Guarantee Documents

The agreements to be entered into with DOE and FFB in connection with the Guaranteed Loan shall be subject to FFB's separate requirements and are expected to also include the following, each of which must be satisfactory to DOE in form and substance (collectively, the "Loan Guarantee Documents"):

- (a) a Common Terms Agreement among the Borrower, FFB and DOE, setting forth certain provisions common to the Loan Guarantee Agreement and the FFB Funding Agreements;
- (b) the Loan Guarantee Agreement between the Borrower and DOE, setting forth certain reimbursement obligations and other provisions pursuant to the Program Requirements, including those specified in Exhibit C;
- (c) the DOE Guarantee, the execution of which shall be subject to (x) provision of statutory authority sufficient under FCRA and Title XVII; (y) consultation as necessary with the Department of the Treasury as to the terms and conditions thereof; and (z) receipt by DOE in an appropriations act of timely, unexpired and sufficient authority;
- (d) all documents and agreements necessary or desirable in connection with the making by FFB of the Guaranteed Loan (the "FFB Funding Agreements"), including without limitation:
  - (i) the Program Financing Agreement between the DOE and FFB;
  - (ii) the Note Purchase Agreement among the Borrower, DOE and FFB;
  - (iii) the promissory note evidencing the Guaranteed Loan issued by the Borrower and payable to FFB; and
  - (iv) any other agreements required in connection with the funding of the Guaranteed Loan by FFB;
- (e) subordination agreements with respect to payments from the Borrower to any Solyndra Affiliate;
- (f) an equity contribution agreement and evidence that (i) the Base Equity Commitment has been fully funded or irrevocably committed as of the Financial Closing Date, ~~and (ii) the Overrun Equity Commitment has been fully funded or that sufficient credit support for the obligations of the Sponsor and of the Sponsor's investors exists with respect thereto, in the form of letters of credit or other mechanisms satisfactory to DOE in its sole discretion;~~
- (g) an agreement between the Sponsor and DOE providing for (i) management and support obligations for the Borrower; and (ii) continuing ownership and control obligations of the Borrower's equity; ~~(iii) direct payment of all Third-Party Sales Contract amounts to the Revenue Account (which amounts shall be released in accordance with step First of the Cash Flow Waterfall); and (iv) guaranteeing repayment of the Guaranteed Loan upon the Borrower's breach of certain obligations under the Loan Guarantee Documents with respect to (x) payment restrictions, and (y) restrictions concerning affiliate compensation and creation of subsidiaries; and~~

(h) such other documents and agreements as may be required under the Program Requirements.

23. Security Documents

The Security Documents to be entered into in connection with the Guaranteed Loan are expected to include the following, each of which must be satisfactory to each of DOE in form and substance and include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted Project (collectively, the "Security Documents"):

- (a) a stock pledge agreement with respect to the equity of the Borrower;
- (b) a mortgage on the real property of the Borrower, and, to the extent any such property is reasonably necessary for the operation of the Project, of the Sponsor or the Solyndra Affiliates, including a mortgage on the Shared Facilities;
- (c) agreements pledging the Project Accounts;
- (d) agreements pledging the Intercompany Agreements and the other Project Documents and any agreements evidencing rights in any Shared Facilities;
- (e) consents from third parties (including any Major Project Participants (as hereinafter defined) or any applicable governmental authorities) with respect to the collateral assignment to DOE and FFB (as applicable) of any Project Documents with third parties, ~~the payment of proceeds under the Third Party Sales Agreements into the Revenue Account,~~ governmental approvals and licenses and the transfer thereof following an event of default;
- (f) agreements pledging all intellectual property of Borrower, including without limitation all licenses, general intangibles and goodwill;
- (g) agreements pledging all governmental approvals, licenses and permits for the Project;
- (h) agreements pledging all insurance policies maintained by the Borrower or related to the Project; and
- (i) all other agreements and instruments necessary to create a first-priority perfected security interest under applicable law in the Collateral.

The Borrower, Sponsor or Solyndra Affiliate, as applicable, will pay all costs in connection with the pledge, perfection and maintenance of the Collateral and the Security Documents, including without limitation, registration, notarization, and filing fees and charges.

24. Project Documents

The Borrower will enter into all agreements necessary for the consummation of the Project (the "Project Documents"), each of which must be in form and substance satisfactory to DOE, including without limitation the following:

- (a) Sales Agreements. An agreement between the Sponsor and the Borrower pursuant to which the Sponsor will purchase all output of the Project (the "Project Sales Agreement"). It is anticipated that the price per unit of output during each calendar fiscal month will be equal to the average sales price per unit received by the Sponsor during such month for the highest 75% (by unit sale price) of its sales of comparable units during the relevant period under arms-length sales by the Sponsor to third parties (the "Third-Party Sales Agreements"). The Project Sales Agreement will provide for sufficient revenue to satisfy the Borrower's payment obligations under the Loan Guarantee Documents; appropriate remedies for failure of the Sponsor to accept output, and appropriate Sponsor performance security and guarantees. ~~To the extent that any Third-Party Sales Agreement is inconsistent with the requirements of this Term Sheet, the Sponsor will use commercially reasonable efforts to amend such Third-Party Sales Agreement as may be requested by DOE.~~
- (b) Materials Supply Agreements. An agreement between the Sponsor and the Borrower pursuant to which the Sponsor will supply to the Borrower all raw materials, commodities and other supplies required to operate the Project to the Borrower (the "Project Materials Supply Agreement") on non-discriminatory terms with a pass-through of the pricing under arms-length purchases by the Sponsor without any administrative markup of such materials, commodities and supplies from third parties (the "Third-Party Materials Supply Agreements"). The Project Materials Supply Agreement will provide for customary inspection and testing procedures, predetermined quantity, quality and scheduling of deliveries, and mitigation of input risks (including due to increase in commodity prices, unavailability of supply, and supplier credit risk). ~~To the extent that any Third-Party Materials Supply Agreement is inconsistent with the requirements of this Term Sheet, the Sponsor will use commercially reasonable efforts to amend such Third-Party Materials Supply Agreement as may be requested by DOE.~~
- (c) Operations and Maintenance Agreement. An agreement between [Solyndra Operations, LLC] (the "Operator"), a wholly-owned subsidiary of the Sponsor, and the Borrower pursuant to which the Operator will provide certain operation and maintenance services to the Project (the "O&M Agreement"). The O&M Agreement will provide for a detailed scope of services, provision of adequate staffing and expertise, payment of a fixed annual fee and reimbursement only of reasonable and documented expenses, customary operator performance standards ~~(including liquidated damages, as appropriate)~~, [and assumption by the Operator of certain elements of operation risk] *[Discuss]*.
- (d) Intellectual Property License. A license from the Sponsor to the Borrower providing an irrevocable, non-exclusive, fully paid-up license or sub-license allowing the Borrower to utilize all intellectual property rights owned or licensed by the Sponsor as required to construct, operate and use the Project (the "Project IP License Agreement"). The Project IP License Agreement will provide for protection, maintenance and enforcement of rights to licensed technology (including all patents, patent applications, related know-how and trade secrets, related copyrights and any other related intellectual property rights) in favor of the Borrower, ~~including without limitation a license to the Borrower,~~

~~appropriate rights to sublicense, appropriate rights to modify and combine the licensed technology, appropriate rights with respect to ownership of improvements, and appropriate Sponsor representations and warranties (including right to grant the license, no pending challenges and no infringement issues). [Leave these items for negotiation in the definitive agreement].~~

- (e) Equipment Supply Agreement. An agreement between the Sponsor and the Borrower providing for the supply of the production equipment for the Fab 2 Facility at an agreed fixed price for equipment supplied by the Sponsor and at pass-through pricing for equipment supplied by third parties (the "Project Equipment Supply Agreement"). The Project Equipment Supply Agreement will provide for a detailed scope of work (including services and spare parts), appropriate provisions regarding ownership and risk of loss, appropriate performance standards ~~(including liquidated damages, as appropriate)~~ [covered by cost-override guarantee], Borrower and DOE testing and inspection rights, and delivery milestones and guarantees.
- (f) Engineering and Architectural Services Agreement. A contract for construction engineering and architectural services between the Sponsor (which will be assigned to the Borrower) and CH2M Hill, including subcontracts with Studios Architecture, Degenkolb Engineers, Kier Wright and any other subcontracts thereunder (the "Engineering and Architectural Services Agreement"). The Engineering and Architectural Services Agreement will provide for customary milestones, deliverables, incentives and penalties and contain such other provisions as are deemed by DOE's independent engineering advisor (the "Independent Engineer") to be necessary or desirable for the Project. To the extent that the Engineering and Architectural Services Agreement is inconsistent with the requirements of this Term Sheet, the Sponsor will use commercially reasonable efforts to amend the Engineering and Architectural Services Agreement as may be requested by DOE.
- (g) Construction Contract. A construction contract for the Fab 2 Facility between the Sponsor (assigned to Borrower) and [Rudolph and Sletten] [Hathaway Dinwiddie], including any subcontracts thereunder (the "Construction Contract"). The Construction Contract will provide for customary milestones, deliverables, incentives and penalties and contain such other provisions as are deemed by the Independent Engineer to be reasonably necessary or desirable for the Project.
- ~~(h) All additional agreements necessary or desirable for the sales and marketing of the output of the Project. [Covered by Sales Agreement]~~
- ~~(h) All additional agreements reasonably necessary or desirable for the transportation of raw materials, commodities and other supplies required to operate the Project and of the output of the Project.~~
- ~~(i) All agreements with parties other than the Sponsor that are reasonably necessary or desirable for the joint development of equipment used for the Project.~~
- ~~(i) All agreements regarding the Shared Facilities that are reasonably necessary.~~

Formatted: Bullets and Numbering

~~(b)(k)~~ Confirmation of existence of ~~v~~Valid and binding non-disclosure and assignment of invention agreements with all employees of the Borrower and the Sponsor.

~~(m)(l)~~ Other Agreements as may be identified by DOE's further due diligence.

The Loan Guarantee Documents, the Security Documents, and the Project Documents are collectively referred to as the "Transaction Documents".

Without limiting any of the requirements set forth above, each agreement between the Borrower and the Sponsor or any Solyndra Affiliates, including without limitation the Project Sales Agreement, the Project Materials Supply Agreement, the O&M Agreement, the Project IP License Agreement, and the Project Equipment Supply Agreement (the "Intercompany Agreements"), will contain the following provisions:

- (i) a term no shorter than twelve months after the term of the Guaranteed Loan;
- (ii) payment terms no less favorable to the Borrower than the applicable Solyndra Affiliate would extend to an unaffiliated third party;
- (iii) liquidated damages provisions ~~where appropriate for late or failed payment of performance by the Solyndra Affiliate and other appropriate remedies in favor of the Borrower;~~  
*[Discuss]*

Formatted: Font: Italic

(iv) provisions assuring that the Solyndra Affiliate will provide (or purchase) the goods or services that are the subject of such Intercompany Agreement to the Borrower on a ~~priority non-discriminatory basis over any obligation to provide (or purchase) similar goods or services to Solyndra or any other Solyndra Affiliate;~~

(v) DOE right to receive notices of default and other material events and DOE cure rights for Borrower breach;

(vi) appropriate force majeure provisions protecting the Borrower;

(vii) limited termination rights in favor of the Solyndra Affiliate;

(viii) DOE step-in rights, consent rights and termination rights following the occurrence of an event of default;

(viii) pass-through to the Borrower of warranties;

(ix) indemnification by the Solyndra Affiliate of the Borrower and DOE;

(x) collateral assignment to DOE and DOE step-in rights;

(xi) provisions protecting the Borrower's interests in any intellectual property necessary or desirable for the Project;

- (xii) customary insurance naming the Borrower and DOE as loss payees or additional insureds;
- (xiii) waiver of set-off;
- (xiv) calculation of pricing and allocation of any reimbursable costs based on actual third-party amounts without any administrative markup or additional fees; and
- (xv) such other provisions as DOE determines are reasonably necessary to protect the Borrower's and DOE's interests.

25. Development Costs: No Development Fees

At least 60 days prior to the Financial Closing Date, the Borrower shall provide to DOE evidence satisfactory to each of them of the development costs for the Project (not including technology development costs, general administrative and overhead costs or other Ineligible Project Costs) incurred to date and paid by the Borrower or the Sponsor in respect of which the Borrower seeks credit as Base Equity.

The Borrower shall not pay, and Eligible Project Costs shall not include, any commission or fee to any Solyndra Affiliate (x) for furnishing guarantees, counter-guarantees or similar credit support for any obligations undertaken in connection with the Project, or (y) with respect to or in connection with the development, construction, financing or operation of the Project.

26. Subordination

All fees, dividends, debt service, and any other amounts payable by the Borrower to any Solyndra Affiliate other than (i) scheduled payments under the O&M Agreement, (ii) payments in the ordinary course of business under the Project Materials Supply Agreement and the Project Equipment Supply Agreement, and (iii) proceeds of Third-Party Sales Agreements received by Borrower on account of sales of equipment attributable to Solyndra or another Solyndra Affiliate shall be subordinated upon the occurrence of an event of default to the payment of all amounts due in respect of the Guaranteed Loan. All subordination arrangements shall be in form and substance satisfactory to DOE.

Any additional indebtedness incurred by the Borrower (to the extent permitted under the Loan Guarantee Documents) will be subordinated to the full repayment of the Guaranteed Loan, subject to customary exceptions.

Financial Closing, Loan Disbursements and Conditions Precedent

27. Conditions Precedent to Financial Closing Date

The financial closing of the Guaranteed Loan is subject to closing conditions as are usual and customary for financings of this type, as are required under the Program Requirements or as are otherwise deemed appropriate by DOE for this transaction in particular, including without limitation satisfaction as of the date of such financial closing (the "Financial Closing Date") of the following conditions precedent (with respect to such Financial Closing Date, the "Initial Conditions Precedent"), each of which must be to the satisfaction of DOE in its sole discretion:

- (a) Due Diligence Review. DOE shall have completed its due diligence review of the Project and all other matters related thereto, and the results thereof shall be satisfactory to DOE, including that no material issues exist with respect to the Project under the laws of the State of California or any subdivision or local jurisdiction thereof;
- (b) Organization of Project Parties. Delivery of organizational documents in form and substance satisfactory to DOE for each of the Borrower, the Sponsor, the Operator, any provider of intellectual property, and any party to the Construction Contract or any subcontract thereof, ~~any Third-Party Sales Agreement, or any Third-Party Materials Supply Agreement~~ designated by DOE as being material to the success of the Project (the "Major Project Participants");
- (c) Company Certificates. Delivery of secretary's certificates, resolutions and good standing certificates in form and substance satisfactory to DOE;
- (d) Transaction Documents. Execution and delivery of all Transaction Documents, in form and substance satisfactory to DOE, together with evidence that such Transaction Documents contain (i) all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States and (ii) are in full force and effect;
- (e) Debt Repayment. Repayment of any existing indebtedness and other obligations of the Borrower and release of associated liens;
- (f) Security Interests. Evidence of perfection of all requisite security interests in the Collateral;
- (g) Base Equity. ~~Satisfactory Evidence, including an independent accountant's certificate,~~ that (i) the Borrower has received, or will have, the amount of Base Equity required for the term on the Guaranteed Loan; and (ii) that all Base Equity was, or will be, applied towards Eligible Base Project Costs;
- (h) Legal Opinions and Comfort Letters. Delivery of such legal opinions ~~and comfort letters~~ as DOE may request;
- (i) Environmental Review. Delivery of environmental site assessments and associated reliance letters and satisfaction of any additional environmental requirements (including required mitigations) in accordance with DOE policy from time to time;
- (j) Permits. All environmental, regulatory and other permits and approvals then required for the Project shall be in place and not subject to waiting periods or appeal;
- (k) Real Estate. Acquisition of all real estate rights (including easements) then required for the Project and delivery of related ALTA surveys, title insurance policies, purchase agreements and related documents;
- (l) Financial Statements. Delivery of any financial statements then required to be delivered, not later than fifteen (15) business days prior to the Financial Closing Date;
- (m) Project Plans. Delivery of updated Project Plans, certified by the Independent Engineer as being satisfactory;

- (n) Earthquake Risk Report. Delivery of an earthquake risk report for the areas on which the Fab 2 Facility and any other Project facilities will be built, prepared by an independent geologist satisfactory to DOE;
- (o) Base Case Projections. Delivery of base case projections with respect to the Borrower and the Sponsor, including all assumption used therein, demonstrating required minimum coverage ratios, certified by the Independent Engineer as being satisfactory;
- (p) Development Costs Audit. Receipt of all information with respect to development costs previously incurred and credited to Base Equity and specifying the portion of such development costs that constitute Eligible Base Project Costs, all certified as being satisfactory in a development costs audit prepared by the Independent Engineer;
- (q) Construction Budget. Delivery of a construction budget and schedule, certified by the Independent Engineer as being satisfactory;
- (r) Notice to Proceed. Delivery of evidence that the Borrower has issued a notice to commence construction under the Construction Contract;
- (s) ~~Borrower's Engineering Report. Delivery of an updated engineering report with respect to the Project from the Borrower's engineer (CH2M Hill), including information with respect to the Shared Facilities; [No update was commissioned]~~
- (t) Independent Engineer's Report. Delivery of a report and associated closing certificate from the Independent Engineer with respect to all engineering and construction aspects of the Project and the Shared Facilities, including an analysis of the roles and capabilities of all Major Project Participants;
- (u) Insurance. Receipt of satisfactory evidence, including without limitation a report and associated closing certificate from the Borrower's insurance advisor that the Borrower has obtained the Required Insurance (as defined below);
- (v) Market Studies. Delivery of a report from the Borrower's marketing advisors and, if applicable, DOE's marketing advisors, including (i) a forecast of the U.S. and global markets for photovoltaic panels for the period 2009 to 2016, taking into account the effect of low-cost energy alternatives, (ii) an analysis of the market for any product to be produced by the Project and relevant economics justifying such analysis, and (iii) an analysis of the effects on sales and gross margins of any reduction or elimination of tax and other economic incentives currently available for the products of the Project;
- (w) Credit Rating. Delivery of a credit rating from a nationally recognized rating agency dated no earlier than 30 days prior to the Financial Closing Date reflecting the revised Term Sheet as if the Project does not have a Federal guarantee;
- (x) Intellectual Property. Evidence that the Borrower and the Sponsor have all intellectual property rights ~~reasonably necessary or desirable~~ for the Project, ~~including without limitation with respect to the acquisition of proprietary processes; the possession of all rights to proprietary processes; the protection of proprietary processes; rights to use and exploit third-party processes, software and products, including any right to transfer technology to third parties; absence of any third party right to use or resell processes~~

~~jointly developed with the Borrower or the Sponsor, assignment to the Borrower of all patents required for the Project. [Leave to definitive documents.]~~

- (y) Supply Agreements. Evidence of sufficient availability and reasonable pricing of consumables and materials supply to the Project, including the existence of multiple alternative suppliers;
- ~~(e) Exchange Risk~~. Evidence that the Sponsor has entered into a commercially reasonable hedging strategy with respect to foreign exchange risk under the Third Party Sales Contracts. [Average sales price per unit is denominated in dollars]
- ~~(aa)(z) Availability of Funds~~. Evidence that the Guaranteed Loan Amount, when combined with other funds committed to the Project, including the Overrun Equity Commitment and other contingency funds, will be available and sufficient to carry out the Project. [Clarify]
- ~~(bb)(aa) Possession of Collateral~~. Delivery of an updated listing and description of assets associated, or to be associated, with the Project and any other asset that will serve as Collateral, including appropriate data as to the value of the assets and the useful life of any physical assets (which for the avoidance of doubt, for the real estate will be evidenced by the purchase price paid for such real estate), ~~including with respect to real property assets listed, delivery of an appraisal that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers;~~
- ~~(ee)(bb) Review of Credit Subsidy~~. OMB review and approval of DOE's calculation of the Credit Subsidy Cost of the DOE Guarantee as of the Financial Closing Date;
- ~~(dd)(cc) Payment of Credit Subsidy~~. Payment by the Sponsor in full of the Credit Subsidy Cost;
- ~~(ee)(dd) Payment of DOE Fees~~. Payment of all DOE Fees due as of the Financial Closing Date; and
- ~~(ff)(ee) Financial Information~~. No less than 30 days prior to the Financial Closing Date, the Borrower shall provide updated project financing information if the terms and conditions of the financing arrangements changed between the date of execution of the Term Sheet and the Financial Closing Date, and the parties hereto shall amend this Term Sheet to reflect the revised terms and conditions in the event such revisions occur.

Formatted: Bullets and Numbering

28. Conditions Precedent to Each Disbursement-Date Quarterly Approved Budget  
~~The approval of Each Disbursement-Quarterly Approved Budget of the Guaranteed Loan, including the initial Disbursement, is subject to the satisfaction of the following conditions precedent closing conditions as are usual and customary for financings of this type or as are otherwise deemed appropriate by DOE for this transaction in particular, including without limitation satisfaction as of the date of such Disbursement (the "Disbursement Date") of the following conditions precedent (with respect to such Disbursement Date, the "Quarterly Conditions Precedent"), each of which must be to the satisfaction of DOE in its sole discretion;~~

Formatted: Font: Italic

- (a) Representations and Warranties. All representations and warranties shall be true and correct and no default or event of default shall have occurred and be continuing;
- ~~(b) No Material Adverse Change. No event having a material adverse effect shall have occurred or can be reasonably expected to occur with respect to the Project or any Major Project Participant;~~
- ~~(c)(b) Performance Metrics. Satisfactory evidence, including without limitation confirmation by the Independent Engineer, that the Sponsor has achieved and maintained specified efficiency, yield levels, and other performance metrics for the existing thin-film omnifacial solar photovoltaic manufacturing facility referred to as "Fab 1";~~
- ~~(d)(c) Disbursement Proceeds. Evidence that the proceeds of the Disbursement will be needed for Eligible Project Costs that have been incurred, together with a description in sufficient detail of such Eligible Project Costs, as certified by the Independent Engineer;~~
- ~~(e)(d) Construction Progress. A construction progress report detailing achievement of specified construction milestones, as certified by the Independent Engineer; *[Clarify]*~~
- ~~(f)(e) Cost Overruns; Funds Available to Complete the Project. A certification by the Independent Engineer that the funds available to the Borrower are sufficient to pay all remaining Total Project Costs, including without limitation identified Overrun Project Costs;~~
- ~~(g) No Litigation. No legal or arbitral proceedings are pending or threatened against any Major Project Participant;~~
- ~~(h)(f) No Change in Law. No change in law has occurred that could have a material adverse effect on the Project;~~
- ~~(i)(g) Lien Waivers. Demonstration that (i) any unpaid balances or unsettled claims with contractors or suppliers, if any, have been adequately paid and that those being contested or negotiated in good faith are provisioned to the reasonable satisfaction of DOE, and (ii) all mechanics or other liens of such contractors or suppliers have been released to the reasonable satisfaction of DOE; *[Clarify]*~~
- ~~(j)(h) Closing Certificates. Receipt of all necessary certifications and delivery of officer's closing certificates and other customary closing certificates in connection with such Disbursement;~~
- ~~(k) Legal Opinions and Comfort Letters. Delivery of such legal opinions and comfort letters as DOE may request in connection with such Disbursement;~~
- ~~(l)(i) DOE Fees. Payment of all DOE Fees and other fees and expenses payable to DOE, its counsel, and its advisors that are due as of such Disbursement Date in connection with the Project;~~
- ~~(m)(j) Base Equity. Immediately following such Disbursement Date, the aggregate amount of Base Equity shall equal or exceed 25% of the proceeds of the total Eligible Base Project Costs previously funded or to be funded with the current Disbursement;~~

Formatted: Bullets and Numbering

- (k) DOE Requirements. Satisfaction of all other statutory ~~or regulatory or other~~ requirements in connection with such Disbursement, including without limitation all requirements and approvals pursuant to the Program Requirements;
- (l) Governmental Approvals. Copies of all governmental approvals, permits or consents ~~not previously delivered~~ required for construction or operation of the Project and such other governmental approvals, permits or consents as DOE may reasonably request or as may be required under the Transaction Documents; and
- (m) Additional Documents. Such other documents, certifications or consents relating to the Project or the matters contemplated by the Transaction Documents as DOE may reasonably request.

28A. Conditions Precedent to Each Disbursement Date

Each Disbursement of a Guaranteed Loan, including the initial Disbursement, is subject to the satisfaction as of the date of such Disbursement (the "Disbursement Date") of the following conditions precedent, which must be to the satisfaction of DOE in its sole discretion:

- (a) Quarterly Conditions Precedent. The Quarterly Conditions Precedent shall have been satisfied as of the end of the fiscal quarter most recently ended.
- (b) Disbursement Request and Invoices. Receipt of a disbursement request from the Borrower, including back-up invoices.

Formatted: Underline

Formatted: No underline

Project Accounts

29. Project Accounts in General

The Borrower will establish and maintain such bank accounts as required by DOE for the management of Project-related funds and security (collectively, the "Project Accounts").

All Project Accounts will be established with, and subject to the control of DOE or agents designated by them to act.

The Borrower will pay all related fees associated with the establishment and maintenance of the Project Accounts, including those related to the compensation of any account management agents as may be required by DOE in its sole discretion.

30. Construction Account

Subject to the requirements of the FFB Funding Agreements, the proceeds of borrowings under the Guaranteed Loan, the cash proceeds of the Base Equity Commitment and the Overrun Equity Commitment will be deposited into a construction account (the "Construction Account"). Funds on deposit in the Construction Account and the proceeds of borrowings under the Guaranteed Loan will be used to pay Eligible Project Costs in accordance with the approved construction budget, subject to customary conditions on such payments.

31. Revenue Account

The Borrower will establish a revenue account (the "Revenue Account"). All amounts payable under ~~the any Third-Party Project Sales Agreement~~ or any other revenues and other amounts received by the Borrower (other than Mandatory Prepayments as described above) will be deposited in the Revenue Account.

32. Debt Service Reserve Account

The Borrower will establish for the Guaranteed Loan and DOE Guarantee a debt service reserve account (the "Debt Service Reserve Account") and fund such Debt Service Reserve Account from the Construction Account in an amount equal to at least the succeeding six months (the "Debt Service Reserve Requirement") of scheduled principal, interest and fees under all indebtedness and similar obligations of the Borrower, including principal, interest and fees scheduled to be due with respect to the Guaranteed Loan and otherwise due to DOE or FFB ("Debt Service").

Borrower may substitute a letter of credit or other alternative form of security in form and substance satisfactory to DOE to replace the Debt Service Reserve Account.

Funds in the Debt Service Reserve Account will be used to pay Debt Service if funds are not available in the Revenue Account to make such payments.

33. Cash Flow Waterfall

Amounts in the Revenue Account will be applied as follows (the "Cash Flow Waterfall"):

- ~~(1) First, promptly after receipt of any payments under any Third-Party Sales Agreement, after deduction of the portion thereof due to the Borrower under the Project Sales Agreement, net of any amounts due to the Sponsor under the Project Materials Supply Agreement, the amount certified by the Borrower as received in respect of sales of the Sponsor or any Solyntra Affiliate (other than the Borrower) will be transferred to the party entitled thereto;~~
- ~~(2) Second~~<sup>First</sup>, once each month an amount sufficient to pay budgeted operations and maintenance costs due or reasonably expected to become due within the next month, including without limitation all applicable taxes, payments under the O&M Agreement and the Project Materials Supply Agreement;
- ~~(3) Third~~<sup>Second</sup>, as required under the Loan Guarantee Documents, amounts sufficient to pay all amounts payable to FFB and DOE under the Loan Guarantee Documents, will be transferred to a debt service payment account established (the "Debt Service Payment Account") for payment of all accrued interest and principal of borrowing on the Guaranteed Loan, and all other costs, fees and expenses arising under the Loan Guarantee Documents, when due and payable;

(72) ~~Fourth Third~~, once each quarter an amount sufficient to replenish the Debt Service Reserve Account up to the Debt Service Reserve Requirement will be transferred to the Debt Service Reserve Account; and

(84) ~~Fifth Fourth~~, once each quarter commencing on the first anniversary of the First Principal Payment Date, any remaining amounts in the Revenue Account will be transferred to a distribution suspense account (the "Distribution Suspense Account") and available for distribution to or as directed by the Borrower subject to the conditions described below with respect to Restricted Payments.

34. Restricted Payments [Discuss ability of Borrower to distribute excess cash.]

The Borrower will not be permitted to pay any dividends, management or any other fee, interest on subordinated debt, or any other payment or distribution to its equity holders or other similar payments ("Restricted Payments") other than from funds on deposit in the Distribution Suspense Account on ten (10) business days prior written notice to DOE, and then only if the following conditions set forth in either Option A or Option B (as set forth below) are satisfied:

Formatted: Font: Italic

Option A

- (1) ~~the Project Completion Date~~ Physical Completion and Operational Completion (as defined in Exhibit B) ~~has~~ occurred;
- (2) no default or event of default under the Loan Guarantee Documents exists or would exist after giving effect to any such dividend or distribution;
- (3) ~~the First Principal Payment Date has occurred; and the Borrower has made four scheduled principal payments under the FFB Funding Agreements;~~
- (4) the Debt Service Reserve Account is funded to an amount not less than the Debt Service Reserve Requirement; and
- (5) the historical 12-month Debt Service Coverage Ratio (as defined below) is at least 1.50 to 1 and the projected 12-month Debt Service Coverage Ratio is at least 1.50 to 1.

Formatted: Font: Italic

Option B

- (1) ~~the Physical Completion and Operational Completion (as defined in Exhibit B) have~~ occurred;
- (2) ~~no default or event of default under the Loan Guarantee Documents exists or would exist after giving effect to any such dividend or distribution; and~~
- (3) ~~Borrower has accumulated in the Debt Service Reserve Account and in available cash in the Borrower an amount equal to 150% of the Debt Service Reserve Requirement.~~

Formatted: Font: Not Bold

Representations, Covenants and Defaults

35. Representations and Warranties

The Loan Guarantee Documents will contain such customary and appropriate representations and warranties regarding the Borrower and the Sponsor (to the extent applicable) as are usual and customary for financings of this kind or are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions), including without limitation:

- (a) due organization and valid existence
- (b) good standing;
- (c) power and authority;
- (d) single-purpose nature of Borrower; no prior business activity (other than Project-related);
- (e) no subsidiaries of Borrower;
- (f) capitalization, ownership and organization;
- (g) solvency;
- (h) enforceability of Transaction Documents;
- (i) no conflicts;
- (j) material agreements;
- (k) no litigation;
- (l) debt;
- (m) no judgments or orders;
- (n) no force majeure;
- (o) no defaults;
- (p) compliance with law and Program Requirements;
- (q) regulatory matters;
- (r) no corrupt or prohibited practices;
- (s) disclosure and projections, Project Plans;
- (t) title to properties
- (u) no liens;
- (v) operation of business;
- (w) sufficiency of Project assets and necessary assignments;
- (x) existing agreements;
- (y) availability and adequacy of utility and technology rights and other services;

dc-546258

- (z) rights to intellectual property;
- (aa) perfection and priority of security interests;
- (bb) taxes;
- (cc) creditor consents and government permits and approvals;
- (dd) financial statements;
- (ee) environmental and safety matters;
- (ff) labor matters and employment agreements;
- (gg) ERISA matters;
- (hh) accuracy of representations and warranties in other Project Documents;
- (ii) Project contracts;
- (jj) no event having a material adverse effect; and
- (kk) full disclosure.

36. Financial Covenants

The Loan Guarantee Documents will contain covenants regarding maintenance at all times of the following financial ratios, as shown on any of the Borrower's or Sponsors, as applicable, audited or unaudited financial statements:

- (i) ~~the ratio of the Borrower's current assets to current liabilities must be not less than 1.20 to 1;~~ Formatted: Font: Italic
- (ii) ~~the ratio of the Borrower's Cash Flow Available for Debt Service to Debt Service ("Debt Service Coverage Ratio"), must be not less than 1.20 to 1, it being agreed that as used herein "Cash Flow Available for Debt Service" means, for any period, net income plus depreciation and amortization plus/minus changes in working capital plus interest and fees paid, minus capital expenditures;~~ Formatted: Font: Italic
- (iii) ~~the ratio of the Borrower's senior indebtedness and similar obligations to equity must be not greater than 3.00 to 1; and [Agreed to 70/30 split in Section 9]~~ Formatted: Font: Italic
- (iv) ~~appropriate financial ratios regarding the Sponsor.~~

37. Affirmative Covenants

In addition to the other covenants described herein, the Loan Guarantee Documents will contain such affirmative covenants as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions) from the Borrower and, as appropriate, the Sponsor, including without limitation regarding:

- (a) use of proceeds;
- (b) conduct of the Project substantially in accordance with the Project Plans;

dc-546258

- (c) maintenance of corporate existence and separateness;
- (d) construction, operation and maintenance of the Project;
- (e) maintenance of security interests;
- (f) performance of Transaction Documents and material agreements;
- (g) provision of financial statements and financial reporting and customary compliance certificates;
- (h) provision of a description of any material changes to any existing, and copies of any new, Third-Party Sales Agreement or Third-Party Materials Supply Agreement;
- (i) provision of construction budgets and construction progress reports;
- (j) provision of periodic operating budgets and reports;
- (k) provision of default notices and other material events and information;
- (l) maintenance of and compliance with permits, licenses, approvals and consents;
- (m) compliance with laws and Program Requirements;
- (n) environmental and safety matters, including without limitation with respect to compliance with the National Environmental Policy Act of 1969 (NEPA);
- (o) maintenance of Required Insurance and application of proceeds thereof;
- (p) payment of taxes, fees, etc.;
- (q) maintenance of adequate accounting, management information and cost control systems;
- (r) maintenance of independent auditors acceptable to DOE;
- (s) maintenance of books and records and inspection thereof, including such records as are necessary to facilitate an effective and accurate audit and performance evaluation of the Project as required by the Program Requirements;
- (t) maintenance of properties and title thereto;
- (u) maintenance of intellectual property;
- (v) maintenance of Project Accounts;
- (w) compliance with debarment regulations;
- (x) provision to DOE and its representatives and advisors of access to the project site and ancillary facilities at all reasonable times in order to monitor the performance of the Project;
- (y) disclosure and management of construction cost overruns;
- (z) change orders; and
- (aa) further assurances.

38. Negative Covenants

In addition to the other covenants described herein, the Loan Guarantee Documents will contain

such negative covenants as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions), from the Borrower and, as appropriate, the Spenser, including without limitation regarding:

- (a) no material change to the Project or engaging in other lines of business;
- (b) no incurrence of additional debt or guarantees;
- (c) no granting of additional liens;
- (d) no dividends and other restricted payments;
- (e) no acquisitions and dispositions of assets or capital expenditures;
- (f) no merger, consolidation, or similar action;
- (g) no lease transactions;
- (h) no investments;
- (i) no formation of subsidiaries;
- (j) no changes to charter or organization documents;
- (k) no issuance of equity;
- (l) no changes to capital structure (including the issuance of any options, warrants, or other rights with respect thereto);
- (m) no termination, amendment or waiver any provision of any Project Documents;
- (n) no entering into transactions with affiliates, other than pursuant to Transaction Documents on an arm's length basis;

~~(o) no entering into new Third Party Sales Agreements or Third Party Materials Supply Agreements without DOE's consent;~~

Formatted: Bullets and Numbering

~~(p)(q) no entering into new material agreements;~~

~~(q)(p) no hedging transactions, other than as specifically permitted or required;~~

~~(r) no budget modifications;~~

~~(e)(q) no material modifications of the Project Plans or budget without the prior written consent of the DOE in consultation with the Independent Engineer;~~

~~(t)(r) no hazardous materials; and~~

~~(u)(s) no changes in fiscal year.~~

39. Events of Default

The Loan Guarantee Documents will include such events of default as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary materiality, qualifications, exceptions and grace periods), including without limitation

- (a) failure to make payments when due;
- (b) default under any other indebtedness of the Borrower (other than the Guaranteed Loan) or the Sponsor;
- (c) breach of representations and warranties under any Loan Guarantee Documents;
- (d) breach of covenants under any Loan Guarantee Documents;
- ~~(e)~~ cross-defaults to other indebtedness; *[See (b)]*
- ~~(f)~~ (e) failure to fund when required or other default with respect to the Base Equity Commitment or the Overrun Equity Commitment;
- ~~(g)~~ (f) failure of the Project Completion Date to occur by First Principal Payment Date; *[Conflicts with definition of Financial Completion]*
- ~~(h)~~ (g) breach or termination of material agreements or licenses Project Documents, including without limitation with respect to intellectual property;
- ~~(i)~~ (h) loss or impairment of government permits or approvals by any Major Project Participant;
- (i) bankruptcy, insolvency and dissolution of any Major Project Participant;
- ~~(j)~~ (i) judgments against any Major Project Participant;
- ~~(k)~~ (j) certain ERISA events;
- ~~(l)~~ (k) occurrence of certain force majeure events with respect to any Major Project Participant;
- ~~(m)~~ (l) impairment of security interests in Collateral;
- ~~(n)~~ (m) invalidity or unenforceability of Transaction Documents;
- ~~(o)~~ (n) material suspension of construction or operations or abandonment of the Project;
- ~~(p)~~ (o) physical destruction of any of the Project facilities so as to have a material adverse effect on the Project's operations;
- ~~(q)~~ (p) death or resignation of specified key personnel without adequate replacement of services;
- ~~(r)~~ (q) other events having a material adverse effect on the Project, the market for the output of the Project, or any Major Project Participant;
- ~~(s)~~ (r) breach by the Sponsor of any material obligation under a Third Party Sales Agreement or Third Party Materials Supply Agreement or offer by the Sponsor of a sales price for products from the Project below, or purchase of materials for the Project above, an specified threshold;
- ~~(t)~~ (s) any material change in materials supply practices; and
- ~~(u)~~ (t) failure to maintain financial ratios; and
- ~~(v)~~ (u) failure of the Sponsor to own and control 100% of the equity interests in the Borrower.

Formatted: Bullets and Numbering

40. Remedies

Upon the occurrence of an event of default, the Loan Guarantee Documents will include usual and customary remedies as well as such additional subrogation or other rights as may be required under the Program Requirements to allow DOE to complete, maintain, operate, lease or otherwise dispose of the Project or any Collateral or otherwise protect the interests of the United States or the public interest.

Additional Provisions of Loan Guarantee Documents

41. Required Insurance

The Borrower will maintain or cause to be maintained in full force and effect at all times the following insurance (the "Required Insurance") with financially sound insurers and reinsurers as is customarily required by lenders to project financings, as approved by DOE :

- (i) appropriate coverage of all properties and business required for the Project, including the Shared Facilities, against loss or damage;
- (ii) appropriate liability coverage;
- (iii) appropriate delayed start-up and business interruption coverages;
- ~~(iv) appropriate life insurance with respect to key personnel; and~~
- ~~(v) appropriate reinsurance of the foregoing.~~

Each such policy (other than liability policies) will name DOE as loss payee to the extent of the aggregate amounts outstanding of the Guaranteed Loan. Each insurance policy will provide for 30 days' written notice to DOE prior to termination or expiration of any coverage and such other endorsements as DOE may reasonably require.

42. Governing Law and Jurisdiction

All Loan Guarantee Documents and Security Documents (other than any Security Documents required to be governed by local law) will be governed by the federal laws of the United States of America and not the law of the several states. All Loan Guarantee Documents and Security Documents will provide that the Borrower and the Sponsor will submit to the non-exclusive jurisdiction and venue of the [\_\_\_\_], shall appoint an agent for service of process, and shall waive any right to trial by jury.

**B. Procedure for Acceptance of Term Sheet and Additional Provisions**

**1. Expiration of Term Sheet**

This Term Sheet and the terms offered herein will expire on [April 15], 2009, unless the Contracting Officer agrees in writing to extend the expiration date. Such extension may be subject, at DOE's sole discretion, to modification of the terms hereof.

**2. Acceptance of Term Sheet and Payment**

Please express your agreement with the terms and conditions contained in this Term Sheet no later than the expiration date set forth above by signing this Term Sheet in the signature block below and returning to DOE an executed counterpart of this Term Sheet.



U.S. Treasury Department  
ABA No. 0210-3000-4 TREASNYC/CTR/BNF=D89000001  
OBI-LGPO Loan No. 1013 – Facility Fee

**3. Conditional Commitment**

When this Term Sheet has been executed and delivered by all parties it will constitute a conditional commitment in accordance with §609.8(b) of the Applicable Regulations.

**4. Indemnity**

The Borrower and the Sponsor, jointly and severally, shall indemnify and hold harmless DOE and each of DOE's directors, officers and employees and agents (each, an "Indemnified Person") in connection with any losses, claims, damages, liabilities or other expenses to which such Indemnified Person may become subject arising out of or relating to (i) this Term Sheet, the provision of the financing and DOE Guarantee contemplated hereby or the use or intended use of the proceeds thereof, or (ii) any claim at any time with respect to the Sponsor or any of its directors, officers and employees and agents with respect to misappropriation of trade secrets, infringement of intellectual property rights, or any other business activities of the Sponsor; provided, however, that such indemnity shall not apply to the extent the loss, claim, damage, liability or other expense results from the gross negligence or willful misconduct of the Indemnified Person. This indemnity obligation shall survive the execution of the Loan Guarantee Documents and the expiration or other termination of the Guaranteed Loan.

**5. Independent Consultants and Outside Legal Counsel**

The Borrower and the Sponsor each reaffirm that

- (i) They are responsible for paying the fees and expenses of DOE's independent consultants and outside legal counsel in connection with the Project under all circumstances, without recourse to DOE by the consultant, counsel, the Sponsor, or the Borrower;

- (ii) DOE shall not be financially liable to such independent consultant or outside legal counsel for any services rendered or expenses incurred in connection with the Project under any circumstances whatsoever, including whether a closing occurs or under circumstances in which the Sponsor or the Borrower fails to pay such fees and expenses;
- (iii) The Sponsor and the Borrower will acknowledge and pay all fees and expenses represented by periodic invoices for services rendered to DOE with respect to the Project upon their periodic presentation thereof by DOE's independent consultants and outside legal counsel, including prior to or at closing (if any);
- (iv) If the Sponsor or the Borrower fails to pay such fees and expenses for any services rendered or expenses incurred in connection with the Project or to otherwise comply with the provisions of an agreement with such independent consultant or outside legal counsel, DOE may discontinue work on the Application and the Project (whether or not a Conditional Commitment exists);
- (v) While such services shall be rendered for the benefit of DOE in connection with the Project, the invoices of DOE's independent consultants and outside legal counsel working on the Project will be the sole responsibility of the Borrower and the Sponsor, notwithstanding that DOE is the client of such independent consultants and outside legal counsel; and
- (vi) Each of the Borrower and the Sponsor specifically disclaims any inference of confidential, fiduciary or other client relationship (including an attorney-client relationship) between the Borrower or the Sponsor and such independent consultant or outside legal counsel as a result of this arrangement and shall not interfere with DOE's relationship (including any attorney-client relationship) with such independent consultants or outside legal counsel, including DOE's ability to terminate.

6. Reimbursement of Expenses

Without limiting the generality of the immediately preceding Section, and in addition to any obligations of the Borrower and the Sponsor under (i) the letter agreement with RW Beck, engineering advisor to DOE, dated \_\_\_\_\_, 2008, and (ii) the fee letter with Morrison & Foerster LLP, outside legal counsel to DOE, dated December 11, 2008, each of which is incorporated herein by reference and remains in full force and effect, the Borrower and Sponsor, jointly and severally, shall be liable to pay or reimburse DOE for all reasonable expenses incurred by DOE in connection with this Term Sheet and the negotiation, execution and implementation of the financing contemplated by this Term Sheet, including without limitation fees and expenses for outside legal counsel, business advisers and consultants, notarization costs, travel expenses, post-closing costs of reproducing and binding document sets, and other such out-of-pocket expenses incurred by DOE, including any costs of collecting any amount due hereunder. Such payment or reimbursement shall be due and payable upon the Borrower's or Sponsor's receipt of DOE's request therefor from time to time and upon the extension or termination of this Term Sheet or execution of the Loan Guarantee Documents. Such payment or reimbursement shall be due whether or not this Term Sheet expires without renewal or is

canceled or the Loan Guarantee Documents are executed or any Disbursement of the Guaranteed Loan is made thereunder.

7. Cooperation

The Borrower and the Sponsor will cooperate fully with DOE and its representatives and advisors with respect to its due diligence investigation of the Project, including without limitation providing prompt and complete access to employees, engineers, accountants, facilities, books and records and contracts of the Borrower and the Sponsors, as well as such other information as may be requested by DOE or its representatives or advisors.

8. Reporting Requirements

The Borrower will provide the following documents and information to DOE beginning upon DOE Credit Review Board approval:

- ~~(a) Monthly Project and construction progress reports comparing actual Total Project Costs and milestone completion against the budgeted Base Project Costs and milestone schedule (and if applicable any Overrun Project Costs), and explaining the reasons for any significant variances and the likely impact thereof on the Project;~~
- ~~(b) Within 45 days after the end of each fiscal quarter, quarterly unaudited, and within 90 days after the end of each fiscal year, annual audited financial statements of each of the Borrower and the Sponsor, prepared in accordance with U.S. GAAP, together with appropriate compliance certificates, all certified as true and correct in all material respects by an officer of the Borrower or the Sponsor, as applicable;~~
- ~~(c) At all times, notice of (i) any material default by any party to a Transaction Document, and (ii) any event or condition that has had, or could reasonably be expected to have, a material adverse effect on the Project, any Major Project Participant, or any Major Project Participant's ability to perform its obligations under the Transaction Documents;~~
- (d) Within three (3) business days of the Borrower obtaining knowledge of such change, notice of any previously unreported material change to the information contained in the Borrower's application for the DOE Guarantee, including without limitation, any material change in (i) the descriptions relating to the construction and operation of the Project and related plans and contractors; (ii) the conclusions of the Borrower's engineer's report; (iii) the status of Project related applications or approvals for governmental permits and authorizations; and (iv) the potential environmental impact of the Project; and
- (e) At all times, any other information regarding the Borrower or the Project reasonably requested by DOE.

9. Binding Nature: Survival

This provisions of Part B of this Term Sheet are binding on the parties hereto and, other than Sections 1, 2, 3, 7 and 8, shall survive any termination or expiration of this Term Sheet.

10. Governing Law

This Term Sheet shall be governed by the federal laws of the United States of America and not the law of the several states. In connection with any dispute under this Term Sheet, the Borrower and the Sponsor hereby submit to the non-exclusive jurisdiction and venue of [\_\_\_\_], and waive any right to trial by jury.

11. Counterparts

This Term Sheet may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Such executed counterparts may be delivered electronically, with the original to be delivered promptly thereafter.

[Signatures Appear on Next Page]

Very truly yours,

**U.S. DEPARTMENT OF ENERGY**

By: \_\_\_\_\_  
[Name], [Contracting Officer]

**ACCEPTED AND AGREED TO**  
as of the date of this Term Sheet:

**SOLYNDRA, INC.**

By: \_\_\_\_\_  
Christian M. Gronet, Chief Executive Officer

**SOLYNDRA FAB 2 LLC**

By: \_\_\_\_\_  
Christian M. Gronet, Chief Executive Officer

**Exhibit A**  
to Term Sheet

**Solyndra – Base Project Costs and Financial Plan**

[To come] *(Please provide description of deliverable)*

Formatted: Font: Italic

### Definition of Project Completion Date

The "Project Completion Date" shall be deemed to have occurred as of the date set forth in a notice from DOE to the Borrower and the Sponsor stating that all of the following have been achieved to DOE's satisfaction:

- (a) **Physical Completion.** All facilities and equipment necessary for the Project to operate as contemplated under the Project Plans (i) shall have been completely constructed, installed, completed, tested, and commissioned, all utilizing first-class standards of workmanship and materials and in accordance with the Project Plans and the terms of applicable construction agreements, (ii) shall be operating in accordance with applicable guidelines, (iii) shall have been accepted and paid for, as evidenced by the Borrower having issued final acceptance certificates relating to each of the major engineering, procurement and construction contracts, and (iv) are being properly operated and maintained in all respects;
- (b) **Operational Completion.** During a specified test period, the Project shall pass a continuous operational reliability test and other performance tests specified by DOE in consultation with the Independent Engineer;
- (c) **Financial Completion.** During a specified period, the Borrower shall have generated specified minimum sales revenue, net income and Cash Flow Available for Debt Service, and shall have made at least one principal payment on the Guaranteed Loan;
- (d) **Legal Conditions.** the Borrower shall have met all of its financial and other contractual obligations through the Project Completion Date, all Transaction Documents shall be in full force and effect and not in default, all representations and warranties in each Loan Guarantee Document shall be true and correct no event of default or potential shall then exist under any Loan Guarantee Document, and DOE shall have received satisfactory opinions from the Borrower's legal counsel, and from DOE's legal counsel, with respect to certain matters.

**Loan Guarantee Agreement Requirements**  
**(from Applicable Regulations)**

The DOE Loan Guarantee Agreement shall include the following requirements and conditions:

- (1) The Project qualifies as an "Eligible Project" under the Act and is not a research, development, or demonstration project or a project that employs Commercial Technologies in service in the United States;
- (2) The Project will be constructed and operated in the United States, the employment of the new or significantly improved technology in the Project has the potential to be replicated in other commercial projects in the United States, and this technology is or is likely to be available in the United States for further commercial application;
- (3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs.
- (4) (i) Where DOE guarantees 100 percent of the Guaranteed Obligation, the Guaranteed Loan shall be funded by FFB;
  - (ii) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or "stripped" from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market;
  - (iii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or "stripped" from the non-guaranteed portion of the Guaranteed Obligation, if the Guaranteed Loan is participated, syndicated or otherwise resold in the secondary debt market;
- (5) The Borrower and other principals involved in the Project have made or will make a significant equity investment in the Project;
- (6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other Project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion;
- (7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

- (8) The amount of the DOE Guarantee, when combined with other funds committed to the Project, will be sufficient to carry out the Project, including adequate contingency funds;
- (9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other Project debt;
- (10) The Borrower has pledged Project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;
- (11) The DOE Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;
- (12) The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government;
- (13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the Project and all additional collateral pledged as security for the Guaranteed Obligations and other Project debt;
- (14) There is satisfactory evidence that Borrower and FFB or other Holders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the DOE Loan Guarantee Agreement, and will diligently pursue the Project;
- (15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing the DOE Guarantee for the construction and operational phases of the Project (Third Fee);
- (16) FFB, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;
- (17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;
- (18) DOE or its representatives have access to the Project site at all reasonable times in order to monitor the performance of the Project;
- (19) DOE, FFB, or other Holder and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The DOE Loan Guarantee Agreement contains such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; and

(23)(i) The Lender is an "Eligible Lender", as defined in §609.2 of the Applicable Regulations, and meets DOE's lender eligibility and performance requirement contained in §§609.11 (a) and (b) of the Applicable Regulations; and

(ii) The servicer meets the servicing performance requirements of §609.11(c) of the Applicable Regulations.

(e) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the DOE Loan Guarantee Agreement or Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when debt is funded through the Federal Financing Bank, DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in §609.15 of the Applicable Regulations.

(3) FFB or any other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) FFB or any other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in §609.17 of the Applicable Regulations.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, FFB or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, FFB or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in §609.17 of the Applicable Regulations.

(g) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must contain provisions providing that (1) FFB or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of §609.11 of the Applicable Regulations. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, monitoring, and reporting requirements contained in the DOE Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was performing these functions and transfer such functions to the new Eligible Lender. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

(2) The Secretary of Energy, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the DOE Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

PHASE I OF SOLYNDRA FAB 2 FACILITY

Summary of Terms and Conditions for DOE Loan Guarantee

Table of Contents

A. DETAILED TERMS AND CONDITIONS FOR LOAN GUARANTEE .....2

1. Borrower .....2

2. Sponsor.....2

3. Eligible Lender.....2

4. Fab 2 Facility.....2

5. Phase I; Phase II.....2

6. Shared Facilities.....3

7. Project; Project Plans.....3

8. Project Costs.....3

9. Base Equity Commitment.....4

10. Overrun Equity Commitment.....4

11. Guaranteed Loan.....5

12. DOE Guarantee.....5

13. Availability.....5

14. Interest Rate.....5

15. Interest Payments.....6

16. Principal Amortization and Maturity.....6

17. Prepayments of the Guaranteed Loan.....6

18. DOE Fees.....6

19. Credit Subsidy Cost.....7

20. Collateral.....7

21. Servicing Duties.....8

22. Loan Guarantee Documents.....9

23. Security Documents.....10

24. Project Documents.....10

25. Development Costs; No Development Fees.....14

26. Subordination.....14

27. Conditions Precedent to Financial Closing Date.....14

28. Conditions Precedent to Each Disbursement Date.....17

29. Project Accounts in General.....19

30. Construction Account.....19

31. Revenue Account.....20

32. Debt Service Reserve Account.....20

33. Cash Flow Waterfall.....20

34. Restricted Payments.....21

35. Representations and Warranties.....22

36. Financial Covenants.....23

37. Affirmative Covenants.....23

38. Negative Covenants.....24

39. Events of Default.....25

40. Remedies.....27

41. Required Insurance.....27

42. Governing Law and Jurisdiction.....27

B. PROCEDURE FOR ACCEPTANCE OF TERM SHEET AND ADDITIONAL PROVISIONS .....28

1. Expiration of Term Sheet.....28

2. Acceptance of Term Sheet and Payment.....28

3. Conditional Commitment.....28

4. Indemnity.....28

5. Independent Consultants and Outside Counsel.....28

6.	<i>Reimbursement of Expenses</i> .....	29
7.	<i>Cooperation</i> .....	30
8.	<i>Reporting Requirements</i> .....	30
9.	<i>Binding Nature; Survival</i> .....	30
10.	<i>Governing Law</i> .....	31
11.	<i>Counterparts</i> .....	31

**Footnote 120, 123**

**From:** [REDACTED]  
**To:** Burner, Gary  
**Subject:** Re: DOE LGP  
**Date:** Tuesday, March 10, 2009 10:04:19 AM

---

It does. [REDACTED] dropped by assuming perfunctory processing of the FFB/DOE PFA. Solyndra caved away the 80/20 at midnight to Isakowitz so I think it's now 73/27. Goldman Sachs will have to raise the equity.

From what I overhear, I think credit committee will meet sometime in next couple of days. CRB will meet no later than next Tuesday. Talking points to be prepared for POTUS.

----- Original Message -----

**From:** Burner, Gary  
**To:** [REDACTED]  
**Sent:** Tue Mar 10 09:48:51 2009  
**Subject:** RE: DOE LGP

I wonder if the deal involves FFB financing.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 9:22 AM  
**To:** Burner, Gary  
**Subject:** Fw: DOE LGP  
**Importance:** High

FYI. You may find this dialogue interesting. DOE apparently negotiated a deal with Solyndra last night. [REDACTED] is going to DOE's press people to give them the news. Rumor is that POTUS is going to California next week. I have not seen the deal at all.

----- Original Message -----

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** Frantz, David [REDACTED]  
**Sent:** Mon Mar 09 17:21:52 2009  
**Subject:** RE: DOE LGP

Thanks. Give our best to [REDACTED]

[REDACTED]  
Loan Guarantee Program  
Department of Energy  
[REDACTED]

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Monday, March 09, 2009 5:11 PM  
**To:** [REDACTED]  
**Cc:** Frantz, David; [REDACTED]  
**Subject:** RE: DOE LGP

Hi [REDACTED]

We [REDACTED] from FFB and I) will be meeting with [REDACTED] at noon tomorrow at one of the restaurants near FFB offices. [REDACTED] mentioned that he may bring someone else along, but I don't know yet who that other person is.

I'm actually going to be at DOE tomorrow (for auto loan stuff) so can fill you in.

[REDACTED]

-----Original Message-----

From: [REDACTED]  
Sent: Monday, March 09, 2009 5:02 PM  
To: [REDACTED]  
Cc: Frantz, David; [REDACTED]  
Subject: RE: DOE LGP

[REDACTED] -- Thanks for the info. Do you know what time, where, who else, etc.??

At least some of us might be interested in seeing [REDACTED] while he's here.

Thanks,

[REDACTED]

[REDACTED]  
Loan Guarantee Program  
Department of Energy

-----Original Message-----

From: [REDACTED]  
Sent: Monday, March 09, 2009 10:54 AM  
To: [REDACTED]  
Cc: Frantz, David  
Subject: FW: DOE LGP

[REDACTED]  
FYI. I think we (FFB) will be meeting with [REDACTED] from Goldman Sachs on Tuesday.

[REDACTED]

---

From: [REDACTED]  
Sent: Sunday, March 08, 2009 12:05 AM  
To: [REDACTED]  
Subject: RE: DOE LGP

[REDACTED] Thanks for your note. Sorry to miss your call last week. I will actually be in DC this week and would welcome the opportunity to get together if your schedule allows. Are you available for lunch on Tuesday perhaps? Best regards,

[REDACTED]  
Goldman, Sachs & Co.  
[REDACTED]

---

From: [REDACTED]  
Sent: Tuesday, March 03, 2009 11:52 AM  
To: [REDACTED]  
Subject: Re: DOE LGP

[REDACTED]  
I'm stuck in meetings this afternoon. If there's no rush, can I give you a call early tomorrow morning?

Take care,  
[REDACTED]

---

From: [REDACTED]  
To: [REDACTED]  
Sent: Tue Mar 03 11:48:00 2009  
Subject: DOE LGP

[REDACTED] - Hope all is well. Do you have a few minutes to catch up today? Rgds,

[REDACTED]  
Goldman, Sachs & Co.  
[REDACTED]

---

From: [REDACTED]  
Sent: Monday, January 12, 2009 10:21 PM  
To: [REDACTED]  
Cc: [REDACTED]

Subject: RE: FFB Language / Fw: Marked Term Sheet

[REDACTED], et.al:

Paragraphs 13 and 28 generally reflect the requirements of FFB. I would add the following to the end of paragraph 13 to satisfy FFB's own auditor requirements:

The proceeds of Disbursements will be used to pay Eligible Base Project Costs in accordance with a construction budget to be submitted by the Borrower, and certified by the Independent Engineer, at least [ ] days prior to the applicable fiscal quarter (the "Quarterly Approved Budget") and satisfaction of the other Conditions Precedent set forth in Section 28. FFB will make Disbursements to or as directed by the Borrower to pay Eligible Base Project Costs due and payable, or reasonably expected to become due and payable within the next 30 days as contemplated by the Approved Budget, as soon as commercially practicable, and in any event within 5 business days following receipt of a disbursement requisition from the Borrower (including back-up invoices) [and disbursement approval notice executed by DOE].

For paragraph 14, the interest rate language needs to be reworked. Below is my first cut at a narrative:

Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement (the "Interest Rate") will be a rate per annum equal to the sum of (x) the single equivalent rate of the Disbursement repayment stream determined from Treasury's "Constant Maturity Treasury" curve, taking into consideration the shortest maturity Treasury bill being currently auctioned up through the 7-year Constant Treasury Maturity rate plus (y) a spread of to be calculated as of the closing date and in a range of spreads to be determined in accordance with FFB policy guidelines. As of the date hereof, the 7 year Constant Treasury Maturity yield is [1.95%] as published by the Federal Reserve Bank of the United States. Historically, the FFB funding spread for the most recent [60] months for FFB loans with maturities equivalent to the Disbursements have been in a range of [12.5] bps to [35] bps with terms substantially similar to the Disbursements.



\*\*\*\*\* Important Notice  
\*\*\*\*\*

This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

E-mail messages may contain computer viruses or other defects, may not be accurately replicated on other systems, or may be intercepted, deleted or interfered with without the knowledge of the sender or the intended recipient. If you are not comfortable with the risks associated with e-mail messages, you may decide not to use e-mail to communicate with Goldman Sachs.

Goldman Sachs reserves the right, to the extent and under circumstances permitted by applicable law, to retain, monitor and intercept e-mail messages to and from its systems.

\*\*\*\*\*  
\*\*\*\*\*

\*\*\*\*\* Important Notice  
\*\*\*\*\*

This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

E-mail messages may contain computer viruses or other defects, may not be accurately replicated on other systems, or may be intercepted, deleted or interfered with without the knowledge of the sender or the intended recipient. If you are not comfortable with the risks associated with e-mail messages, you may decide not to use e-mail to communicate with Goldman Sachs.

Goldman Sachs reserves the right, to the extent and under circumstances permitted by applicable law, to retain, monitor and intercept e-mail messages to and from its systems.

\*\*\*\*\*  
\*\*\*\*\*

## **Footnote 124**

**From:** Burner, Gary  
**To:** [REDACTED]  
**Subject:** RE: DOE LGP  
**Date:** Tuesday, March 10, 2009 11:22:23 AM

---

There was supposed to be some form of Treasury consultation too.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 11:21 AM  
**To:** Burner, Gary  
**Subject:** Re: DOE LGP

So much for the common wisdom that the ATV program had leap-frogged the Title XVII program.

----- Original Message -----

**From:** Burner, Gary  
**To:** [REDACTED]  
**Sent:** Tue Mar 10 10:29:03 2009  
**Subject:** FW: DOE LGP

FYI

[REDACTED]

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 10:04 AM Eastern Standard Time  
**To:** Burner, Gary  
**Subject:** Re: DOE LGP

It does. [REDACTED] dropped by assuming perfunctory processing of the FFB/DOE PFA. Solyndra caved away the 80/20 at midnight to Isakowitz so I think it's now 73/27. Goldman Sachs will have to raise the equity.

From what I overhear, I think credit committee will meet sometime in next couple of days. CRB will meet no later than next Tuesday. Talking points to be prepared for POTUS.

----- Original Message -----

**From:** Burner, Gary  
**To:** [REDACTED]  
**Sent:** Tue Mar 10 09:48:51 2009  
**Subject:** RE: DOE LGP

I wonder if the deal involves FFB financing.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 9:22 AM  
**To:** Burner, Gary  
**Subject:** Fw: DOE LGP  
**Importance:** High

FYI. You may find this dialogue interesting. DOE apparently negotiated a deal with Solyndra last night.

██████████ is going to DOE's press people to give them the news. Rumor is that POTUS is going to California next week. I have not seen the deal at all.

----- Original Message -----

From: ██████████  
To: Buenvendida, Pearl  
Cc: Frantz, David ██████████

Sent: Mon Mar 09 17:21:52 2009  
Subject: RE: DOE LGP

Thanks. Give our best to ██████████

██████████  
Loan Guarantee Program  
Department of Energy  
██████████

-----Original Message-----

From: ██████████  
Sent: Monday, March 09, 2009 5:11 PM  
To: ██████████  
Cc: Frantz, David ██████████  
Subject: RE: DOE LGP

Hi ██████████  
We (██████████ from FFB and I) will be meeting with ██████████ at noon tomorrow at one of the restaurants near FFB offices. ██████████ mentioned that he may bring someone else along, but I don't know yet who that other person is.

I'm actually going to be at DOE tomorrow (for auto loan stuff) so can fill you in.

██████████

-----Original Message-----

From: ██████████  
Sent: Monday, March 09, 2009 5:02 PM  
To: ██████████  
Cc: Frantz, David; ██████████  
Subject: RE: DOE LGP

██████████ Thanks for the info. Do you know what time, where, who else, etc.??

At least some of us might be interested in seeing ██████████ while he's here.

Thanks,

██████████  
William G. Miller  
Loan Guarantee Program  
Department of Energy  
██████████

-----Original Message-----

From: [REDACTED]  
Sent: Monday, March 09, 2009 10:54 AM  
To: [REDACTED]  
Cc: Frantz, David  
Subject: FW: DOE LGP

[REDACTED]  
FYI. I think we (FFB) will be meeting with [REDACTED] from Goldman Sachs on Tuesday.

---

From: [REDACTED]  
Sent: Sunday, March 08, 2009 12:05 AM  
To: [REDACTED]  
Subject: RE: DOE LGP

[REDACTED] Thanks for your note. Sorry to miss your call last week. I will actually be in DC this week and would welcome the opportunity to get together if your schedule allows. Are you available for lunch on Tuesday perhaps? Best regards,

[REDACTED]  
Goldman, Sachs & Co.  
[REDACTED]

---

From: [REDACTED]  
Sent: Tuesday, March 03, 2009 11:52 AM  
To: [REDACTED]  
Subject: Re: DOE LGP

[REDACTED]  
I'm stuck in meetings this afternoon. If there's no rush, can I give you a call early tomorrow morning?

Take care,  
[REDACTED]

---

From: [REDACTED]  
To: [REDACTED]  
Sent: Tue Mar 03 11:48:00 2009  
Subject: DOE LGP

[REDACTED] Hope all is well. Do you have a few minutes to catch up today? Rgds,

[REDACTED]  
Goldman, Sachs & Co.  
[REDACTED]

---

From: [REDACTED]

Sent: Monday, January 12, 2009 10:21 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: FFB Language / Fw: Marked Term Sheet

[REDACTED], et.al:

Paragraphs 13 and 28 generally reflect the requirements of FFB. I would add the following to the end of paragraph 13 to satisfy FFB's own auditor requirements:

The proceeds of Disbursements will be used to pay Eligible Base Project Costs in accordance with a construction budget to be submitted by the Borrower, and certified by the Independent Engineer, at least [ ] days prior to the applicable fiscal quarter (the "Quarterly Approved Budget") and satisfaction of the other Conditions Precedent set forth in Section 28. FFB will make Disbursements to or as directed by the Borrower to pay Eligible Base Project Costs due and payable, or reasonably expected to become due and payable within the next 30 days as contemplated by the Approved Budget, as soon as commercially practicable, and in any event within 5 business days following receipt of a disbursement requisition from the Borrower (including back-up invoices) [and disbursement approval notice executed by DOE].

For paragraph 14, the interest rate language needs to be reworked. Below is my first cut at a narrative:

Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement (the "Interest Rate") will be a rate per annum equal to the sum of (x) the single equivalent rate of the Disbursement repayment stream determined from Treasury's "Constant Maturity Treasury" curve, taking into consideration the shortest maturity Treasury bill being currently auctioned up through the 7-year Constant Treasury Maturity rate plus (y) a spread of to be calculated as of the closing date and in a range of spreads to be determined in accordance with FFB policy guidelines. As of the date hereof, the 7 year Constant Treasury Maturity yield is [1.95%] as published by the Federal Reserve Bank of

the United States. Historically, the FFB funding spread for the most recent [60] months for FFB loans with maturities equivalent to the Disbursements have been in a range of [12.5] bps to [35] bps with terms substantially similar to the Disbursements.



\*\*\*\*\* Important Notice  
\*\*\*\*\*

This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

E-mail messages may contain computer viruses or other defects, may not be accurately replicated on other systems, or may be intercepted, deleted or interfered with without the knowledge of the sender or the intended recipient. If you are not comfortable with the risks associated with e-mail messages, you may decide not to use e-mail to communicate with Goldman Sachs.

Goldman Sachs reserves the right, to the extent and under circumstances permitted by applicable law, to retain, monitor and intercept e-mail messages to and from its systems.

\*\*\*\*\*  
\*\*\*\*\*

\*\*\*\*\* Important Notice  
\*\*\*\*\*

This e-mail may contain information that is confidential, privileged or otherwise protected from disclosure. If you are not an intended recipient of this e-mail, do not duplicate or redistribute it by any means. Please delete it and any attachments and notify the sender that you have received it in error. Unintended recipients are prohibited from taking action on the basis of information in this e-mail.

E-mail messages may contain computer viruses or other defects, may not be accurately replicated on other systems, or may be intercepted, deleted or interfered with without the knowledge of the sender or the intended recipient. If you are not comfortable with the risks associated with e-mail messages, you may decide not to use e-mail to communicate with Goldman Sachs.

Goldman Sachs reserves the right, to the extent and under circumstances permitted by applicable law, to retain, monitor and intercept e-mail messages to and from its systems.

\*\*\*\*\*  
\*\*\*\*\*



## **Footnote 125**

**From:** Frantz, David [REDACTED]  
**Sent:** Tuesday, March 10, 2009 1:13 PM  
**To:** Burner, Gary  
**Subject:** FW: tem sheet  
**Attachments:** Term Sheet03-05-09 - 2.DOC

Gary,

Final draft Solyndra term sheet. Call when convenient.

**David G. Frantz**  
US Department of Energy  
Director, Loan Guarantee Office, CF-1.3  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, March 10, 2009 12:32 PM  
**To:** Frantz, David  
**Subject:** tem sheet

Dave -- as requested, the term sheet (final terms, but not yet cleaned up for signature).

[REDACTED]  
Loan Guarantee Program  
Department of Energy  
[REDACTED]

[M&F Draft: 03-05-09]

This working draft is for discussion purposes only  
and has not been approved by DOE or FFB.  
This working draft does not constitute an agreement by DOE or FFB or a commitment by  
DOE or FFB to enter into an agreement and is subject to review and change.

March \_\_, 2009

Solyndra, Inc.  
Solyndra Fab 2 LLC  
47700 Kato Road  
Fremont, CA 94538

Re: Loan Guarantee Application of Solyndra, Inc. (the "**Application**")  
LGPO Loan Number: 1013

Ladies and Gentlemen:

This term sheet (this "**Term Sheet**") outlines the principal indicative terms and conditions for a potential U.S. Department of Energy ("**DOE**") loan guarantee that relates to the Application of Solyndra, Inc. (the "**Applicant**") pursuant to Title XVII of the Energy Policy Act of 2005 ("**Title XVII**").

Capitalized terms used but not defined in this Term Sheet have the meanings given to such terms in the final regulations located at 10 CFR Part 609 and any other applicable regulations from time to time promulgated by DOE to implement Title XVII (the "**Applicable Regulations**").

All provisions of this Term Sheet are subject to the following (the "**Program Requirements**"): (i) the provisions of Title XVII and the Applicable Regulations, and (ii) all DOE or FFB legal and financial requirements, policies, and procedures applicable to the Title XVII program from time to time.

This Term Sheet is for discussion purposes only and does not contain any representation or warranty of any kind on the part of DOE or any other party and does not constitute an offer or commitment by DOE or any other party to extend financing to the Project.

Set forth below in Part A hereof are the detailed terms and conditions under which DOE may enter into a Term Sheet with the Applicant.

Set forth below in Part B hereof are provisions for acceptance of this Term Sheet and certain additional provisions relating to this Term Sheet.

**A. DETAILED TERMS AND CONDITIONS FOR LOAN GUARANTEE**

The terms and conditions set forth herein are subject to change, amendment and revision. DOE reserves the right to propose further terms and conditions as it deems necessary, in its sole discretion, in the course of further due diligence and review by DOE and its counsel. This Term Sheet does not include additional terms and conditions as may be required by the lenders to the Project, including the Federal Financing Bank.

The Transaction Documents will contain the terms and conditions set forth in this Term Sheet, in addition to other standard provisions and such other terms and conditions as are agreed to between the parties. However, DOE reserves the right to propose to expand or consolidate the terms and conditions set forth in this Term Sheet as a condition to DOE's involvement in the proposed financing.

Parties

1. Borrower

Solyndra Fab 2 LLC, a Delaware limited liability company (the "**Borrower**") that is a special purpose entity formed solely for the purpose of developing, constructing, financing, owning operating and managing the Project.

2. Sponsor

Solyndra, Inc. (the "**Sponsor**"), which owns 100% of the equity interests in the Borrower.

3. Eligible Lender

Federal Financing Bank ("**FFB**"), an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of Treasury.

Project and Project Costs

4. Fab 2 Facility

The Fab 2 Facility (the "**Fab 2 Facility**") will be an approximately 420 MW thin-film omnifacial solar photovoltaic manufacturing facility located in Fremont, California, which is expected to be constructed in two phases.

5. Phase I; Phase II

Phase I of the Fab 2 Facility will consist of three production lines and is expected to have a capacity of approximately 210 MW ("**Phase I**").

Phase II of the Fab 2 Facility is expected to consist of an additional three production lines and to have a capacity of approximately 210 MW ("**Phase II**"), and does not constitute part of the Project.

The loan guarantee contemplated under this Term Sheet relates to Phase I only and associated facilities used in the operation of Phase I. DOE acknowledges that the Sponsor intends to construct Phase II through a separate subsidiary of the Sponsor and finance such construction through separate third-party financing.

6. Shared Facilities

The Borrower expects to share certain facilities necessary for the operation of Phase I with Phase II (the "**Shared Facilities**"). Accordingly, the Loan Guarantee Documents shall not prohibit the sharing of such Shared Facilities as long as DOE is satisfied that such sharing arrangements (i) do not adversely affect DOE's first priority security interest in the Collateral, (ii) otherwise satisfy the terms and conditions of the Loan Guarantee Documents that are intended to protect FFB's and DOE's respective interests in the Project, (iii) does not interfere with DOE's ability to complete the Project in case of default, and (iv) are otherwise consistent with the Program Requirements. In connection with such proposed sharing arrangements, the Sponsor will provide such information as DOE may request in connection with the proposed financing of Phase II in order for DOE to confirm the requirements of this Section.

7. Project; Project Plans

The Borrower and the Sponsor will provide detailed project plans for the design, development, financing, construction, implementation, operation and management of Phase I of the Fab 2 Facility and the Shared Facilities (the "**Project**"), which will include the information described in Attachment B (Application Guidance) to the Instructions for Application for Loan Guarantee, including without limitation the Engineering and Construction Plans, the Operating and Maintenance Plans, and the Management Plan described therein (collectively, the "**Project Plans**").

8. Project Costs

The Borrower and the Sponsor will provide detailed plans for financing all costs of the Project that may be incurred from time to time ("**Total Project Costs**").

The Borrower will apply Guaranteed Loan proceeds solely to pay those portions of Total Project Costs that are eligible for funding as "Project Costs" as defined in the Applicable Regulations ("**Eligible Project Costs**").

The Borrower and the Sponsor estimate as of the date of this Term Sheet that Total Project Costs will be an aggregate amount of \$733,000,000 ("**Base Project Costs**"), consisting of:

(i) Eligible Project Costs in the aggregate amount of \$733,000,000 ("**Eligible Base Project Costs**") (which for avoidance of doubt, includes approximately \$62,000,000 of budgeted contingency funds), and

(ii) Ineligible Project Costs, currently estimated at zero ("**Ineligible Base Project Costs**").

All Total Project Costs in excess of Base Project Costs are "**Overrun Project Costs**".

All Total Project Costs that are not Eligible Project Costs, including Ineligible Base Project Costs and Overrun Project Costs, are "Ineligible Project Costs" that must be financed by the Sponsor or from other sources other than the Guaranteed Loan.

9. Base Equity Commitment

The Sponsor will commit to provide equity to the Borrower ("Base Equity"), on terms and conditions satisfactory to DOE, in an amount (the "Base Equity Commitment") equal to the difference between (x) Base Project Costs, and (y) the Guaranteed Loan Amount.

The Sponsor will fund the Base Equity Commitment through a combination of one or more of the following (x) the contribution of real property and other assets to the Borrower, in an amount up to 10% of Eligible Base Project Costs, subject to DOE's review and valuation of such assets, (y) the contribution of cash as a common equity investment in the Borrower, and (z) the contribution of cash from the proceeds of unsecured subordinated loans made to the Borrower on subordination terms satisfactory to DOE in its sole discretion on the following schedule:

- (a) the Sponsor will fund a portion of the Base Equity Commitment in an amount to be determined prior to the initial Disbursement of the Guaranteed Loan;
- (b) thereafter, Eligible Base Project Costs will be funded 100% with proceeds of the Guaranteed Loan until aggregate Eligible Base Project Costs to date have been funded so that at least 27% of such Eligible Base Project Costs are funded with proceeds of the Base Equity Commitment and the remainder with proceeds of the Guaranteed Loan; and
- (c) thereafter, Eligible Base Project Costs will be funded so that at least 27% of such Eligible Base Project Costs are funded with proceeds of the Base Equity Commitment and the remainder with proceeds of the Guaranteed Loan; and
- (d) Ineligible Base Project Costs will be funded 100% with proceeds of the Base Equity Commitment.

The Sponsor will fund its required contributions of Base Equity monthly in advance such that the proceeds of the Guaranteed Loan shall at no time exceed 73% of the Eligible Base Project Costs incurred prior to or concurrently with the disbursement of such proceeds.

10. Overrun Equity Commitment

The Sponsor will commit to fund 100% of any Overrun Project Costs (the "Overrun Equity Commitment"). Sponsor will fund into a reserve account \$30,000,000 of the Overrun Equity Commitment, in six (6) consecutive monthly payments of \$5,000,000 each, beginning in the 15th month after the Financial Closing Date (as defined below). Upon Project Completion (as defined in Exhibit A), any remaining funded portion of the Overrun Equity Commitment will be released to the Sponsor.

Loan and DOE Guarantee

11. Guaranteed Loan

A loan from FFB (the "Guaranteed Loan") in the original principal amount (the "Guaranteed Loan Amount") of not more than 73% of Eligible Base Project Costs, up to a limit of the lesser of (x) 80% of Eligible Base Project Costs, and (y) \$535,000,000.

12. DOE Guarantee

An unconditional guarantee by DOE (the "DOE Guarantee") of 100% of the principal of and interest on the Guaranteed Loan (the "Guaranteed Obligations") in accordance with the Program Requirements.

13. Availability

Subject to the terms of the FFB Funding Agreements, disbursements of the Guaranteed Loan (each a "Disbursement") may be requested from time to time during the period (the "Guaranteed Loan Availability Period") from (x) the Financial Closing Date (as hereinafter defined), to (y) the date 32 months following the Financial Closing Date.

The proceeds of Disbursements will be used to pay Eligible Base Project Costs in accordance with a construction budget to be submitted by the Borrower, as certified by the Independent Engineer, a specified number of days prior to the applicable fiscal quarter (the "Periodic Approved Budget") and satisfaction of the other conditions precedent set forth in the Loan Guarantee Documents. Subject to the terms of the FFB Funding Agreements, FFB will make Disbursements to or as directed by the Borrower to pay Eligible Base Project Costs then due and payable, or reasonably expected to become due and payable within the next 30 days as contemplated by the Periodic Approved Budget, as soon as commercially practicable, and in any event within five business days following receipt of (i) a disbursement request from the Borrower, in sufficient detail and including wire transfer instructions and copies of invoices, and (ii) a disbursement approval notice from DOE.

14. Interest Rate

Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement (the "Interest Rate") will be a rate per annum equal to the sum of (x) the single equivalent rate of the Disbursement repayment stream determined from Treasury's "Constant Maturity Treasury" curve, taking into consideration the shortest maturity Treasury bill being currently auctioned, up through the Constant Treasury Maturity rate corresponding to the period from the date of such Disbursement to the final maturity of the Guaranteed Loan, plus (y) a spread to be calculated as of the Disbursement date within a range of spreads to be determined in accordance with FFB policy guidelines.

For informational purposes, note that (x) as of March 3, 2009, the 7-year Constant Treasury Maturity yield as published by the Federal Reserve Bank of the United States was 2.58%, and (y) historically, the FFB funding spread for the most recent 60 months for FFB loans with maturities equivalent to the Disbursements and terms substantially similar to the Disbursements

contemplated for the Guaranteed Loan have been in a range of 12.5 basis points to 35 basis points.

All overdue amounts on the Guaranteed Loan will accrue interest at a default rate of interest to be determined, and be payable by the Borrower, in accordance with the FFB Funding Agreements.

15. Interest Payments

Interest will accrue from the first Disbursement and be due and payable in cash in arrears on each quarterly payment date thereafter as specified in the FFB Funding Agreements (a "Quarterly Payment Date").

16. Principal Amortization and Maturity

The outstanding principal amount of the Guaranteed Loan will be payable in equal quarterly installments commencing on the first Quarterly Payment Date occurring not less than 32 months following the Financial Closing Date (the "First Principal Payment Date").

The final maturity of the Guaranteed Loan will be the seventh (7<sup>th</sup>) anniversary of the Financial Closing Date.

17. Prepayments of the Guaranteed Loan

(a) Voluntary Prepayments. Subject to clause (c) below, borrowings under the Guaranteed Loan may be prepaid in whole or in part at any time.

(b) Mandatory Prepayments. Subject to clause (c) below, the Borrower will make mandatory prepayments of borrowings under the Guaranteed Loan with insurance proceeds or condemnation proceeds in accordance with criteria and conditions to be contained in the Loan Guarantee Documents.

(c) All Prepayments. All prepayments of the Guaranteed Loan

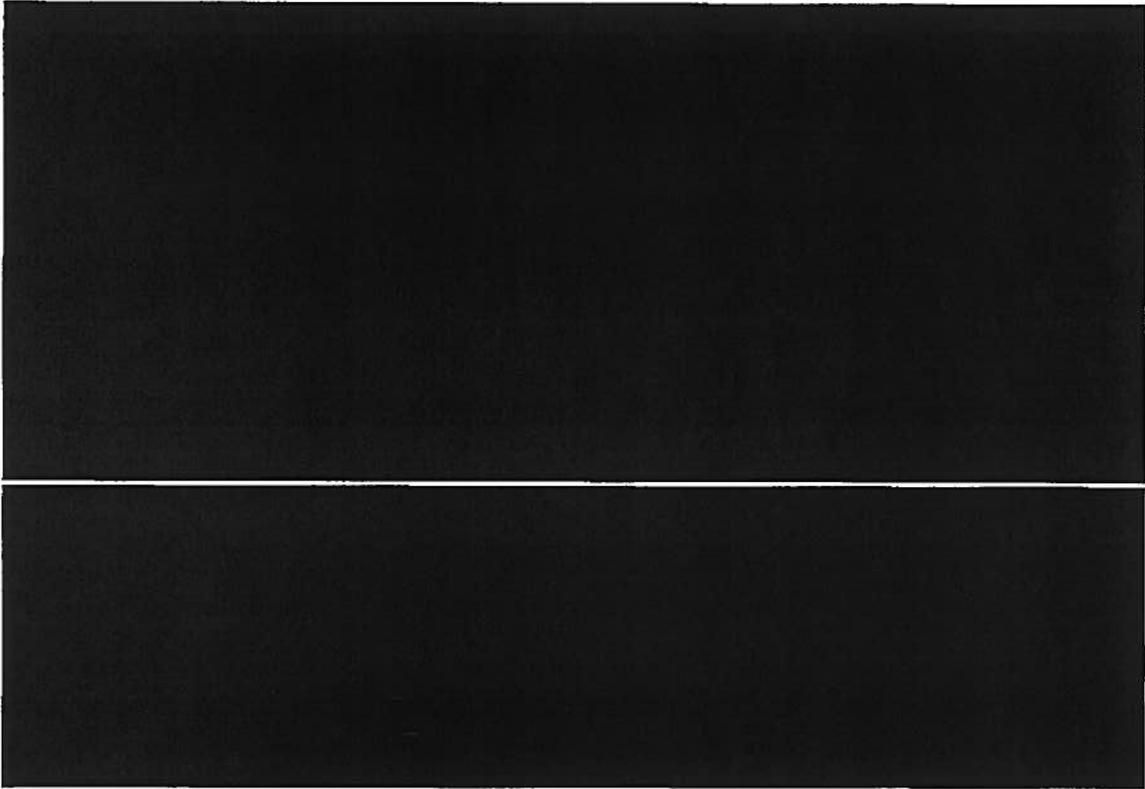
(i) are subject to the terms of the FFB Funding Agreements; and

(ii) will be applied to remaining scheduled amortization payments as set forth in the FFB Funding Agreements.

Any Guaranteed Loan amounts prepaid may not be re-borrowed, and after any prepayment no further Disbursements shall be made.

18. DOE Fees





19. Credit Subsidy Cost

The credit subsidy cost for the DOE Guarantee is the "cost of a loan guarantee", as set forth in section 502(5)(C) of the Federal Credit Reform Act of 1990 (the "Credit Subsidy Cost"). The final Credit Subsidy Cost amount will be determined by DOE in its sole discretion, subject to review and approval by the Office of Management and Budget ("OMB") prior to the Financial Closing Date.

In connection with changes to the terms of the transaction requested by the Borrower that constitute "modifications" as set forth in OMB Circular A-11, an increase of the Credit Subsidy Cost may be required to be paid by the Borrower.

Except if explicitly authorized by an Act of Congress, neither the Sponsor nor the Borrower shall use any funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, to pay for Credit Subsidy Cost, administrative fees, or other fees charged by or paid to DOE pursuant to the Program Requirements.

20. Collateral

The Borrower's obligations under the Guaranteed Loan and the DOE Guarantee will be secured by a first-priority perfected security interest in the following (collectively, the "Collateral"):

- (a) all equity interests in the Borrower and all subordinated debt payable by the Borrower;

- (b) all real property interests of the Borrower, including without limitation the Fab 2 Facility site and buildings, the Shared Facilities, all leasehold or other property interests relating to front-end or back-end facilities, and all related fixtures, easements, rights-of-way and licenses;
- (c) all personal and other property of the Borrower, including without limitation:
  - (i) all equipment comprising the Project, including all equipment located at the Fab 2 Facility or otherwise reasonably necessary for the continued operation of the Project and production and sales and products from the Project;
  - (ii) all inventory, including raw materials, works-in-progress and finished goods;
  - (iii) all revenues, accounts receivable, equity contributions, commitments and bank accounts of or payable to the Borrower, including without limitation the Project Accounts and all amounts therein;
  - (iv) all rights under the Intercompany Agreements and the other Project Documents, including rights to own and control the Shared Facilities as required pursuant to the Program Requirements;
  - (v) all intellectual property, licenses, general intangibles and goodwill;
  - (vi) all governmental approvals and permits for the Project; and
  - (vii) the proceeds of all insurance policies related to the Project or maintained by the Borrower;
- (d) any other assets and other collateral as required under the Program Requirements; and
- (e) all proceeds of the foregoing.

The security grants in the Collateral will be made in favor of DOE or FFB (as applicable) or agents designated by them to act. The Guaranteed Loan will not be subordinate to any loan or other debt obligation and the DOE will be in a first lien position, subject only to customary permitted liens, on all assets of the Project and all additional Collateral, including in connection with a sale of all or a portion of the Collateral in a foreclosure sale or a transfer in lieu of foreclosure.

21. Servicing Duties.

Servicing duties with respect to the Guaranteed Loan will be performed in accordance with the Loan Guarantee Documents.

Transaction Documents

22. Loan Guarantee Documents

The agreements to be entered into with DOE and FFB in connection with the Guaranteed Loan shall be subject to FFB's separate requirements and are expected to also include the following, each of which must be satisfactory to DOE in form and substance (collectively, the "Loan Guarantee Documents"):

- (a) a Common Terms Agreement among the Borrower, FFB and DOE, setting forth certain provisions common to the Loan Guarantee Agreement and the FFB Funding Agreements;
- (b) the Loan Guarantee Agreement between the Borrower and DOE, setting forth certain reimbursement obligations and other provisions pursuant to the Program Requirements, including those specified in Exhibit B;
- (c) the DOE Guarantee, the execution of which shall be subject to (x) provision of statutory authority sufficient under FCRA and Title XVII; (y) consultation as necessary with the Department of the Treasury as to the terms and conditions thereof; and (z) receipt by DOE in an appropriations act of timely, unexpired and sufficient authority;
- (d) all documents and agreements necessary or desirable in connection with the making by FFB of the Guaranteed Loan (the "FFB Funding Agreements"), including without limitation:
  - (i) the Program Financing Agreement between the DOE and FFB;
  - (ii) the Note Purchase Agreement among the Borrower, DOE and FFB;
  - (iii) the promissory note evidencing the Guaranteed Loan issued by the Borrower and payable to FFB; and
  - (iv) any other agreements required in connection with the funding of the Guaranteed Loan by FFB;
- (e) subordination agreements with respect to payments from the Borrower to the Sponsor or any of its affiliates (the "Solyndra Affiliates");
- (f) an equity contribution agreement and evidence that the Base Equity Commitment has been fully funded or irrevocably committed as of the Financial Closing Date, in the form of letters of credit or other mechanisms satisfactory to DOE in its sole discretion;
- (g) an agreement between the Sponsor and DOE providing for (i) management and support obligations for the Borrower; (ii) continuing ownership and control obligations of the Borrower's equity; (iii) direct payment of all Third-Party Sales Contract amounts to a Sponsor account (the "Master Revenue Account") subject to a first-priority security interest in favor of the Borrower securing payment of amounts due under the Project Sales Agreement (net of any payment due to the Borrower under the Materials Revenue Account) for the benefit of DOE and FFB; and (iv) assuring repayment to the Borrower of amounts paid by the Borrower to any Solyndra Affiliate in contravention of any term of the Loan Guarantee Documents;
- (h) the Security Documents (as defined below); and

- (i) such other documents and agreements as may be required under the Program Requirements.

23. Security Documents

The Security Documents to be entered into in connection with the Guaranteed Loan are expected to include the following, each of which must be satisfactory to each of DOE in form and substance and include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted Project (collectively, the "Security Documents"):

- (a) a stock pledge agreement with respect to the equity of the Borrower;
- (b) a mortgage on all real property of the Borrower and all real property reasonably necessary for the operation of the Project, including without limitation the Shared Facilities;
- (c) agreements pledging the Project Accounts;
- (d) agreements pledging the Intercompany Agreements and the other Project Documents and any agreements evidencing rights in any Shared Facilities;
- (e) consents from counterparties to specified Project Documents, including the Sponsor, the Operator, any provider of key intellectual property, and any party to the Construction Contract or any major subcontract thereof, each as designated by DOE as being material to the success of the Project (together with the Borrower, parties to key Third-Party Sales Agreements, and parties to key Third-Party Materials Supply Agreements, each as designated by DOE, the "Major Project Participants") and from any applicable governmental authorities, as appropriate, with respect to the collateral assignment to DOE and FFB (as applicable) of any Project Documents, governmental approvals and licenses and the transfer thereof following an event of default;
- (f) agreements pledging all intellectual property rights of the Borrower, including without limitation all licenses, general intangibles and goodwill;
- (g) agreements pledging all governmental approvals, licenses and permits for the Project;
- (h) agreements pledging all insurance policies maintained by the Borrower or related to the Project; and
- (i) all other agreements and instruments necessary to create a first-priority perfected security interest under applicable law in the Collateral.

The Borrower will pay all costs in connection with the pledge, perfection and maintenance of the Collateral and the Security Documents, including without limitation, registration, notarization, and filing fees and charges.

24. Project Documents

The Borrower will enter into all agreements necessary for the consummation of the Project (the "Project Documents"), each of which must be in form and substance satisfactory to DOE,

including without limitation the following:

- (a) Sales Agreements. An agreement between the Sponsor and the Borrower pursuant to which the Sponsor will purchase all output of the Project (the "**Project Sales Agreement**"). It is anticipated that the price per unit of output during each fiscal month will be equal to the average sales price per unit received by the Sponsor during such month of its sales of comparable units during the relevant period under arms-length sales by the Sponsor to third parties (the "**Third-Party Sales Agreements**"). The Project Sales Agreement will provide for the sales and marketing of the output of the Project, and appropriate remedies for failure of the Sponsor to accept output.
- (b) Materials Supply Agreements. An agreement between the Sponsor and the Borrower pursuant to which the Sponsor will supply to the Borrower all raw materials, commodities and other supplies required to operate the Project to the Borrower (the "**Project Materials Supply Agreement**") on non-discriminatory terms with a pass-through of the pricing under arms-length purchases by the Sponsor without any administrative markup of such materials, commodities and supplies from third parties (the "**Third-Party Materials Supply Agreements**"). The Project Materials Supply Agreement will provide for customary inspection and testing procedures, predetermined quantity, quality and scheduling of deliveries, and mitigation of input risks (including due to increase in commodity prices, unavailability of supply, and supplier credit risk). The Sponsor will use commercially reasonable efforts to seek from the counterparties to material Third-Party Materials Supply Agreements an agreement to give to DOE notice of, and opportunity to cure, any Sponsor payment default thereunder.
- (c) Operations and Maintenance Agreement. An agreement between the Borrower and an entity to be formed (the "**Operator**") that is a wholly-owned subsidiary of the Sponsor, pursuant to which the Operator will provide certain operation and maintenance services to the Project (the "**O&M Agreement**"). The O&M Agreement will provide for a detailed scope of services, provision of adequate staffing and expertise, payment of a fixed annual fee and reimbursement only of reasonable and documented expenses, customary operator performance standards and payments with respect to breaches thereof, subject to customary limits, and guarantee by the Sponsor of all obligations of the Operator.
- (d) Intellectual Property License. A license from the Sponsor to the Borrower providing an irrevocable, non-exclusive, fully paid-up license or sub-license allowing the Borrower to utilize all intellectual property rights owned or licensed by the Sponsor as required to construct, operate and use the Project (the "**Project IP License Agreement**"). The Project IP License Agreement will provide for appropriate protection, maintenance and enforcement of rights in favor of the Borrower to licensed technology (including all patents, patent applications, related know-how and trade secrets, related copyrights and any other related intellectual property rights) owned or licensed by the Sponsor, and will include without limitation (i) a license to the Borrower, (ii) appropriate rights to sublicense the licensed technology, (iii) appropriate rights to modify and combine the licensed technology, and (iv) appropriate rights with respect to ownership of

improvements. The rights and licenses set forth in the preceding sentence shall be limited in each case to the construction, operation and use of the Project. Appropriate rights for item (iv) above shall be limited to a license to the Borrower for any improvements developed by the Borrower, on the same terms and conditions as the other licensed technology.

- (e) Equipment Supply Agreement. An agreement between the Sponsor and the Borrower providing for the supply of the production equipment for the Fab 2 Facility at an agreed fixed price for equipment supplied by the Sponsor and at pass-through pricing for equipment supplied by third parties (the "**Project Equipment Supply Agreement**"). The Project Equipment Supply Agreement will provide for a detailed scope of work (including services and spare parts), appropriate provisions regarding ownership and risk of loss, appropriate performance standards and remedies for default, the Borrower and DOE testing and inspection rights, and delivery milestones.
- (f) Engineering and Architectural Services Agreement. A contract for construction engineering and architectural services between the Sponsor (which will be assigned to the Borrower) and CH2M Hill, including subcontracts with Studios Architecture, Degenkolb Engineers, Kier Wright and any other subcontracts thereunder (the "**Engineering and Architectural Services Agreement**"). The Engineering and Architectural Services Agreement will provide for customary milestones, deliverables, incentives and penalties and contain such other provisions as are deemed by DOE's independent engineering advisor (the "**Independent Engineer**") to be necessary or desirable for the Project. To the extent that the Engineering and Architectural Services Agreement is inconsistent with the requirements of this Term Sheet, the Sponsor will use commercially reasonable efforts to amend the Engineering and Architectural Services Agreement as may be requested by DOE.
- (g) Construction Contract. A construction contract for the Fab 2 Facility between the Sponsor (assigned to the Borrower) and a construction contractor anticipated to be Rudolph and Sletten, including any subcontracts thereunder (the "**Construction Contract**"). The Construction Contract will provide for customary milestones, deliverables, incentives and penalties and contain such other provisions as are deemed by the Independent Engineer to be reasonably necessary for the Project.
- (h) All additional agreements reasonably necessary for the transportation of raw materials, commodities and other supplies required to operate the Project and of the output of the Project.
- (i) All agreements with parties other than the Sponsor that are reasonably necessary for the joint development of equipment used for the Project.
- (j) All agreements regarding the Shared Facilities that are necessary for the consummation of the Project.
- (k) Confirmation of existence of valid and binding non-disclosure and assignment of invention agreements with all employees of the Borrower and the Sponsor.

(l) Other Agreements as may be identified by DOE's further due diligence.

The Loan Guarantee Documents, the Security Documents, and the Project Documents are collectively referred to as the "Transaction Documents".

Without limiting any of the requirements set forth above, each agreement between the Borrower and the Sponsor or any Solyndra Affiliates, including without limitation the Project Sales Agreement, the Project Materials Supply Agreement, the O&M Agreement, the Project IP License Agreement, and the Project Equipment Supply Agreement (the "Intercompany Agreements"), will contain the following provisions:

- (i) a term no shorter than twelve months after the term of the Guaranteed Loan;
- (ii) payment terms no less favorable to the Borrower than the applicable Solyndra Affiliate would extend to an unaffiliated third party;
- (iii) provisions assuring that the Solyndra Affiliate will provide (or purchase) the goods or services that are the subject of such Intercompany Agreement to the Borrower on a non-discriminatory basis, subject to customary reconciliation and true-up provisions;
- (iv) calculation of pricing and allocation of any reimbursable costs based on actual third-party amounts without any administrative markup or additional fees;
- (v) DOE right to receive notices of default and other material events and DOE cure rights for Borrower breach;
- (vi) appropriate force majeure provisions protecting the Borrower;
- (vii) limited termination rights in favor of the Solyndra Affiliate;
- (viii) DOE step-in rights, consent rights and termination rights following the occurrence of an event of default;
- (ix) pass-through to the Borrower of warranties;
- (x) indemnification by the Solyndra Affiliate of the Borrower and DOE;
- (xi) collateral assignment to DOE and DOE step-in rights;
- (xii) provisions protecting the Borrower's interests in any intellectual property necessary or desirable for the Project;
- (xiii) customary insurance naming the Borrower and DOE as loss payees or additional insureds;
- (xiv) waiver of set-off; and

(xiv) such other provisions as DOE determines are reasonably necessary to protect the Borrower's and DOE's interests.

25. Development Costs; No Development Fees.

At least 60 days prior to the Financial Closing Date, the Borrower shall provide to DOE evidence satisfactory to each of them of the development costs for the Project (not including technology development costs, general administrative and overhead costs or other Ineligible Project Costs) incurred to date and paid by the Borrower or the Sponsor in respect of which the Borrower seeks credit as Base Equity.

The Borrower shall not pay, and Eligible Project Costs shall not include, any commission or fee to any Solyndra Affiliate (x) for furnishing guarantees, counter-guarantees or similar credit support for any obligations undertaken in connection with the Project, or (y) with respect to or in connection with the development, construction, financing or operation of the Project.

26. Subordination

All fees, dividends, debt service, and any other amounts payable by the Borrower to any Solyndra Affiliate other than (i) scheduled payments under the O&M Agreement, (ii) payments in the ordinary course of business under the Project Materials Supply Agreement and the Project Equipment Supply Agreement, and (iii) proceeds of Third-Party Sales Agreements received by the Borrower on account of sales of equipment attributable to Solyndra or another Solyndra Affiliate shall be subordinated upon the occurrence of an event of default to the payment of all amounts due in respect of the Guaranteed Loan. All subordination arrangements shall be in form and substance satisfactory to DOE.

Any additional indebtedness incurred by the Borrower (to the extent permitted under the Loan Guarantee Documents) will be subordinated to the full repayment of the Guaranteed Loan, subject to customary exceptions.

Financial Closing, Loan Disbursements and Conditions Precedent

27. Conditions Precedent to Financial Closing Date

The financial closing of the Guaranteed Loan is subject to closing conditions as are usual and customary for financings of this type, as are required under the Program Requirements or as are otherwise deemed appropriate by DOE for this transaction in particular, including without limitation satisfaction as of the date of such financial closing (the "Financial Closing Date") of the following conditions precedent (with respect to such Financial Closing Date, the "Initial Conditions Precedent"), each of which must be to the satisfaction of DOE in its sole discretion:

- (a) Due Diligence Review. DOE shall have completed its due diligence review of the Project and all other matters related thereto, and the results thereof shall be satisfactory to DOE, including that no material issues exist with respect to the Project under the laws of the State of California or any subdivision or local jurisdiction thereof;
- (b) Organization of Project Parties. Delivery of organizational documents in form and substance satisfactory to DOE for each of the Borrower, the Sponsor, the Operator and other Major Project Participants as may be requested by DOE;

- (c) Company Certificates. Delivery of secretary's certificates, resolutions and good standing certificates in form and substance satisfactory to DOE;
- (d) Transaction Documents. Execution and delivery of all Transaction Documents, in form and substance satisfactory to DOE, together with evidence that such Transaction Documents contain (i) all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States and (ii) are in full force and effect;
- (e) Debt Repayment. Repayment of any existing indebtedness and other obligations of the Borrower and release of associated liens encumbering any Collateral, other than customary permitted liens;
- (f) Security Interests. Evidence of perfection of all requisite security interests in the Collateral;
- (g) Base Equity. Satisfactory evidence that (i) the Borrower has received, or will have, the amount of Base Equity required for the term on the Guaranteed Loan; and (ii) that all Base Equity was, or will be, applied towards Eligible Base Project Costs;
- (h) Legal Opinions and Similar Documents. Delivery of such legal opinions, reliance letters, and similar documents as DOE may request;
- (i) Environmental Review. Delivery of environmental site assessments and associated reliance letters and satisfaction of any additional environmental requirements (including required mitigations) in accordance with DOE policy from time to time;
- (j) Permits. All environmental, regulatory and other permits and approvals then required for the Project shall be in place and not subject to waiting periods or appeal;
- (k) Real Estate. Acquisition of all real estate rights (including easements) then required for the Project and delivery of related ALTA surveys, title insurance policies, purchase agreements and related documents;
- (l) Financial Statements. Delivery of any financial statements and compliance certificates then required to be delivered, not later than fifteen (15) business days prior to the Financial Closing Date;
- (m) Project Plans. Delivery of updated Project Plans, certified by the Independent Engineer as being satisfactory;
- (n) Earthquake Risk Report. Delivery of an earthquake risk report for the areas on which the Fab 2 Facility and any other Project facilities will be built, prepared by an independent geologist satisfactory to DOE;
- (o) Base Case Projections. Delivery of base case projections with respect to the Borrower, including all assumption used therein, demonstrating required minimum coverage ratios, certified by the Independent Engineer as being satisfactory;
- (p) Development Costs Audit. Receipt of all information with respect to development costs previously incurred and credited to Base Equity and specifying the portion of such development costs that constitute Eligible Base Project Costs, all certified as being satisfactory in a development costs audit prepared by the Independent Engineer;

- (q) Construction Budget. Delivery of a construction budget and schedule, certified by the Independent Engineer as being satisfactory;
- (r) Notice to Proceed. Delivery of evidence that the Borrower has issued a notice to commence construction under the Construction Contract;
- (s) Independent Engineer's Report. Delivery of a report and associated closing certificate from the Independent Engineer with respect to all engineering and construction aspects of the Project and the Shared Facilities, including an analysis of the roles and capabilities of all Major Project Participants;
- (t) Insurance. Receipt of satisfactory evidence, including without limitation a report and associated closing certificate from the Borrower's insurance advisor that the Borrower has obtained the Required Insurance (as defined below);
- (u) Market Studies. Delivery of a report from the Borrower's marketing advisors and, if applicable, DOE's marketing advisors, including (i) a forecast of the U.S. and global markets for photovoltaic panels for the period 2009 to 2016, taking into account the effect of low-cost energy alternatives, (ii) an analysis of the market for any product to be produced by the Project and relevant economics justifying such analysis, and (iii) an analysis of the effects on sales and gross margins of any reduction or elimination of tax and other economic incentives currently available for the products of the Project;
- (v) Credit Rating. Delivery of a credit rating from a nationally recognized rating agency dated no earlier than 30 days prior to the Financial Closing Date reflecting the revised Term Sheet as if the Project does not have a Federal guarantee;
- (w) Intellectual Property. Evidence that the Borrower and the Sponsor have all intellectual property rights necessary for the Project;
- (x) Supply Agreements. Evidence of sufficient availability and reasonable pricing of consumables and materials supply to the Project, including the existence of multiple alternative suppliers;
- (y) Exchange Risk. Evidence that the Sponsor has a commercially reasonable strategy with respect to foreign exchange risk under the Third-Party Sales Contracts;
- (z) Availability of Funds. Evidence that the Guaranteed Loan Amount, when combined with other funds committed to the Project, including the Overrun Equity Commitment and other contingency funds, will be available and sufficient to carry out the Project;
- (aa) Possession of Collateral. Delivery of an updated listing and description of assets associated, or to be associated, with the Project and any other asset that will serve as Collateral, including appropriate data as to the value of the assets and the useful life of any physical assets, including with respect to real property assets listed, delivery of an appraisal that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers;
- (bb) Review of Credit Subsidy. OMB review and approval of DOE's calculation of the Credit Subsidy Cost of the DOE Guarantee as of the Financial Closing Date;

- (cc) Payment of Credit Subsidy: Payment in full of the Credit Subsidy Cost in accordance with the Applicable Regulations;
- (dd) Payment of DOE Fees. Payment of all DOE Fees due as of the Financial Closing Date; and
- (ee) Financial Information. No less than 30 days prior to the Financial Closing Date, the Borrower shall provide updated project financing information if the terms and conditions of the financing arrangements changed between the date of execution of the Term Sheet and the Financial Closing Date, and the parties hereto shall amend this Term Sheet to reflect the revised terms and conditions in the event such revisions occur.

28. Conditions Precedent to Each Periodic Approved Budget

The approval of each Periodic Approved Budget, is subject to the satisfaction of the following conditions precedent as are usual and customary for financings of this type or as are otherwise deemed appropriate by DOE for this transaction in particular, including without limitation of the following conditions precedent (the "Periodic Conditions Precedent"), each of which must be to the satisfaction of DOE in its sole discretion:

- (a) Representations and Warranties. All representations and warranties shall be true and correct and no default or event of default shall have occurred and be continuing;
- (b) No Material Adverse Change. No event shall have occurred or could reasonably be expected to occur with respect to the Project or any Major Project Participant that could reasonably be expected to have a material adverse effect on the Project;
- (c) Performance Metrics. Satisfactory evidence, including without limitation confirmation by the Independent Engineer, that the Sponsor has achieved and maintained specified efficiency, yield levels, and other performance metrics for the existing thin-film omnifacial solar photovoltaic manufacturing facility referred to as "Fab 1";
- (d) Disbursement Proceeds. Evidence that the proceeds of all Disbursements to be made with respect to such Periodic Approved Budget will be needed for Eligible Project Costs that have been or will be incurred, together with a description in sufficient detail of such Eligible Project Costs, as certified by the Independent Engineer;
- (e) Construction Progress. A construction progress report detailing achievement of specified construction milestones, as certified by the Independent Engineer;
- (f) Cost Overruns; Funds Available to Complete the Project. A certification by the Independent Engineer that the funds available to the Borrower are sufficient to pay all remaining Total Project Costs, including without limitation identified Overrun Project Costs;
- (g) No Litigation. No legal or arbitral proceedings are pending or threatened against any Major Project Participant that could reasonably be expected to have a material adverse effect on the Project;
- (h) No Change in Law. No change in law has occurred that could reasonably be expected to have a material adverse effect on the Project;

- (i) Lien Waivers. Demonstration that (i) any unpaid balances or unsettled claims with contractors or suppliers, if any, have been adequately paid and that those being contested or negotiated in good faith are provisioned to the reasonable satisfaction of DOE, and (ii) all mechanics liens or other liens of such contractors or suppliers have been released to the reasonable satisfaction of DOE;
- (j) Certificates. Receipt of all necessary certifications and delivery of officer's certificates and other customary certificates;
- (k) Legal Opinions. Delivery of such legal opinions, reliance letters, and similar documents as DOE may request;
- (l) DOE Fees. Payment of all DOE Fees and other fees and expenses payable to DOE, its counsel, and its advisors that are then due in connection with the Project;
- (m) Governmental Requirements. Satisfaction of (i) all requirements and approvals pursuant to the Program Requirements, and (ii) all other statutory, regulatory, or other governmental requirements of general applicability to Title XVII applicants;
- (n) Governmental Approvals. Copies of all material governmental approvals, permits or consents not previously delivered required for construction or operation of the Project and such other governmental approvals, permits or consents as DOE may reasonably request or as may be required under the Transaction Documents;
- (o) Prior Disbursements. Evidence that the proceeds of all Disbursements made with respect to the immediately preceding Periodic Approved Budget have been applied as set forth in such Periodic Approved Budget or as otherwise approved by DOE; and
- (p) Additional Documents. Such other documents, certifications or consents relating to the Project or the matters contemplated by the Transaction Documents as DOE may reasonably request.

29. Conditions Precedent to Each Disbursement Date

Each Disbursement of a Guaranteed Loan, including the initial Disbursement, is subject to the satisfaction as of the date of such Disbursement (the "Disbursement Date") of the following conditions precedent, which must be to the satisfaction of DOE in its sole discretion:

- (a) Disbursement Request and Invoices. Receipt of a disbursement request from the Borrower, in sufficient detail and including wire transfer instructions and copies of invoices, together with Borrower certification as to the satisfaction of conditions precedent;
- (b) Periodic Conditions Precedent. The Periodic Conditions Precedent shall have been satisfied and shall remain satisfied as of the Disbursement Date;
- (c) DOE Fees. Payment of all DOE Fees and other fees and expenses payable to DOE, its counsel, and its advisors that are due as of such Disbursement Date in connection with the Project; and
- (d) Base Equity. Immediately following such Disbursement Date, the aggregate amount of Base Equity shall equal or exceed 27% of the proceeds of the total Eligible Base Project Costs previously funded or to be funded with the current Disbursement.

Project Accounts

30. Project Accounts in General

The Borrower will establish and maintain such bank accounts as required by DOE for the management of Project-related funds and security (collectively, the "Project Accounts").

All Project Accounts will be established with, and subject to the control of DOE or agents designated by them to act.

The Borrower will pay all related fees associated with the establishment and maintenance of the Project Accounts, including those related to the compensation of any account management agents as may be required by DOE in its sole discretion.

31. Construction Account

Subject to the requirements of the FFB Funding Agreements, the proceeds of borrowings under the Guaranteed Loan, the cash proceeds of the Base Equity Commitment and the Overrun Equity Commitment will be deposited into a construction account (the "Construction Account"). Funds on deposit in the Construction Account and the proceeds of borrowings under the Guaranteed Loan will be used to pay Eligible Project Costs in accordance with the approved construction budget and the Periodic Approved Budget.

32. Project Revenue Account

The Borrower will establish a revenue account (the "Project Revenue Account"). All amounts payable under the Project Sales Agreement or any other revenues and other amounts received by the Borrower (other than Mandatory Prepayments as described above) will be deposited in the Project Revenue Account.

33. Debt Service Reserve Account

The Borrower will establish for the Guaranteed Loan and DOE Guarantee a debt service reserve account (the "Debt Service Reserve Account") and fund such Debt Service Reserve Account from the Construction Account in an amount (the "Debt Service Reserve Requirement") equal to the succeeding six months of scheduled principal, interest and fees under all indebtedness and similar obligations of the Borrower, including principal, interest and fees scheduled to be due with respect to the Guaranteed Loan and otherwise due to DOE or FFB ("Debt Service").

The Borrower may substitute a letter of credit or other alternative form of security in form and substance satisfactory to DOE to replace the Debt Service Reserve Account.

Funds in the Debt Service Reserve Account will be used to pay Debt Service if funds are not available in the Project Revenue Account to make such payments.

34. Cash Flow Waterfall

Amounts in the Project Revenue Account will be applied as follows (the "Cash Flow Waterfall"):

- (1) First, once each month an amount sufficient to pay budgeted operations and maintenance costs due or reasonably expected to become due within the next month, including without limitation all applicable taxes, payments under the O&M Agreement and the Project Materials Supply Agreement;
- (2) Second, as required under the Loan Guarantee Documents, amounts sufficient to pay all amounts payable to FFB and DOE under the Loan Guarantee Documents, will be transferred to a debt service payment account established (the "Debt Service Payment Account") for payment of all accrued interest and principal of borrowing on the Guaranteed Loan, and all other costs, fees and expenses arising under the Loan Guarantee Documents, when due and payable;
- (3) Third, once each quarter an amount sufficient to replenish the Debt Service Reserve Account up to the Debt Service Reserve Requirement will be transferred to the Debt Service Reserve Account; and
- (4) Fourth, once each quarter commencing on the date set forth in the Loan Guarantee Documents, any remaining amounts in the Project Revenue Account will be transferred to a distribution suspense account (the "Distribution Suspense Account") and available for distribution to or as directed by the Borrower subject to the conditions described below with respect to Restricted Payments.

35. Restricted Payments

The Borrower will not be permitted to pay any dividends, management or any other fee, interest on subordinated debt, or any other payment or distribution to its equity holders or other similar payments ("**Restricted Payments**") other than from funds on deposit in the Distribution Suspense Account on ten (10) business days prior written notice to DOE, but not more often than once each fiscal quarter, and then only if the following conditions are satisfied:

- (1) both Physical Completion and Operational Completion (as defined in Exhibit A) have occurred;
- (2) no default or event of default under the Loan Guarantee Documents exists or would exist after giving effect to any such Restricted Payment; and
- (3) the Debt Service Reserve Account is funded to an amount not less than the Debt Service Reserve Requirement; and either
  - (A) Each of the following conditions is satisfied ("**Option A**"):
    - (i) the Borrower has made at least one scheduled principal payment of the Guaranteed Loan; and
    - (ii) the historical 12-month Debt Service Coverage Ratio (as defined below) is at least 1.50 to 1 and the projected 12-month Debt Service Coverage Ratio is at least 1.50 to 1; or
  - (B) Each of the following conditions is satisfied ("**Option B**"):
    - (i) The Borrower has accumulated an amount in excess of, and immediately

after payment of such Restricted Payment will retain an amount not less than, an amount equal to the succeeding nine (9) months of Debt Service in (x) the Debt Service Reserve Account, and (y) the Distribution Suspense Account; and

- (ii) (ii) The Borrower at the same time applies an amount (the "Prepayment Amount") equal to the amount of such Restricted Payment to the voluntary prepayment of the Guaranteed Loan, with such Prepayment Amount allocated to the prepayment of principal in the maximum possible amount when taken together with any associated make-whole premiums or discounts (it being understood that (x) if there is an associated premium, the principal amount prepaid would be less than the Prepayment Amount, and (y) if there is an associated discount, the principal amount prepaid would be greater than the Prepayment Amount).

Representations, Covenants and Defaults

36. Representations and Warranties

The Loan Guarantee Documents will contain such customary and appropriate representations and warranties regarding the Borrower and the Sponsor (to the extent applicable) as are usual and customary for financings of this kind or are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions), including without limitation:

- (a) due organization and valid existence
- (b) good standing;
- (c) power and authority;
- (d) single-purpose nature of the Borrower; no prior business activity other than related to the Project;
- (e) no subsidiaries of the Borrower;
- (f) capitalization, ownership and organization;
- (g) solvency;
- (h) enforceability of Transaction Documents;
- (i) no conflicts;
- (j) material agreements;
- (k) no litigation;
- (l) debt;
- (m) no judgments or orders;
- (n) no force majeure;
- (o) no defaults;

- (p) compliance with law and Program Requirements;
- (q) regulatory matters;
- (r) no corrupt or prohibited practices;
- (s) disclosure and projections, Project Plans;
- (t) title to properties;
- (u) no liens;
- (v) operation of business;
- (w) Borrower ownership and sufficiency of Project assets and Shared Facility assets and necessary assignments;
- (x) existing agreements;
- (y) availability and adequacy of utility and technology rights and other services;
- (z) rights to intellectual property;
- (aa) perfection and priority of security interests;
- (bb) taxes;
- (cc) creditor consents and government permits and approvals;
- (dd) financial statements;
- (ee) environmental and safety matters;
- (ff) labor matters and employment agreements;
- (gg) ERISA matters;
- (hh) accuracy of representations and warranties in other Project Documents;
- (ii) Project contracts;
- (jj) no event having a material adverse effect; and
- (kk) full disclosure.

37. *Financial Covenants, Defaults and other Agreements*

The Loan Guarantee Documents will contain provisions regarding compliance at all times with the following financial tests, as calculated from the Borrower's or Sponsor's, as applicable, audited annual or unaudited quarterly financial statements:

- (i) a covenant that the ratio of the Borrower's Cash Flow Available for Debt Service to Debt Service ("**Debt Service Coverage Ratio**"), must be not less than 1.20 to 1, it being agreed that as used herein "**Cash Flow Available for Debt Service**" means, for any period, net income plus depreciation and amortization plus/minus changes in working capital plus interest and fees paid, minus capital expenditures;
- (ii) an agreement that

- (a) the following requirements (together, the "Sponsor Equity Requirements") must be satisfied: (x) prior to the occurrence of Project Completion, the ratio of Sponsor indebtedness to Sponsor tangible net worth must be less than 0.50 to 1, and (y) after the occurrence of Project Completion, Sponsor tangible net worth must be greater than \$175,000,000;
- (b) if at any time a Sponsor Equity Requirement is determined not to have been satisfied, the sole remedy will be that
  - (x) the Debt Service Reserve Requirement increases as of the date of such determination to an amount equal to the succeeding nine (9) months of Debt Service, and
  - (y) any deficiency in the Debt Service Reserve Account will be funded up to such increased Debt Service Reserve Requirement (A) by transfer immediately upon the date of such determination to the Debt Service Reserve Account from the Distribution Suspense Account of all amounts therein, up to the amount of such deficiency, and (B) by deposit within 30 days after the date of such determination into the Debt Service Reserve Account of additional amounts necessary to fund any remaining deficiency; and
- (c) the Debt Service Reserve Requirement shall remain at such increased level until the date thereafter on which the Sponsor Equity Requirements have been satisfied for four (4) consecutive Quarterly Payment Dates, whereupon the Debt Service Reserve Requirement decreases to an amount equal to the succeeding six (6) months of Debt Service;

it being agreed that for purposes of this Section 37(ii), (x) Sponsor indebtedness includes actual debt for borrowed money, capital leases and other indebtedness, and contingent obligations for any of the foregoing, but excludes obligations of the Sponsor with respect to this Project, and (y) Sponsor tangible net worth includes amounts classified as either common equity or preferred equity of the Sponsor; and

- (iii) a default that if any event shall have occurred or can be reasonably expected to occur with respect to the Sponsor that could reasonably be expected to have a material adverse effect on the ability of the Sponsor to perform its obligations under any Transaction Document to which it is party, subject to appropriate cure periods.

38. Affirmative Covenants

In addition to the other covenants described herein, the Loan Guarantee Documents will contain such affirmative covenants as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions) from the Borrower and, as indicated below by the designation "(both)" and as otherwise appropriate, the Sponsor, including without limitation regarding:

- (a) use of proceeds;
- (b) conduct of the Project substantially in accordance with the Project Plans;
- (c) maintenance of corporate existence and separateness of the Borrower, the Sponsor and the Operator; (both)
- (d) construction, operation and maintenance of the Project;
- (e) maintenance of security interests; (both)
- (f) performance of Transaction Documents to which it is party and material agreements to which each is party; (both)
- (g) provision of financial statements and financial reporting and customary compliance certificates; (both)
- (h) provision of a description of any material changes to any existing, and copies of any new, material Third-Party Sales Agreement or Third-Party Materials Supply Agreement; (both)
- (i) provision of construction budgets and construction progress reports;
- (j) provision of periodic operating budgets and reports;
- (k) provision of default notices and other material events and information;
- (l) maintenance of and compliance with permits, licenses, approvals and consents in connection with the Project; (both)
- (m) compliance with laws and Program Requirements in connection with the Project; (both)
- (n) environmental and safety matters, including without limitation with respect to compliance with the National Environmental Policy Act of 1969 (NEPA);
- (o) maintenance of Required Insurance and application of proceeds thereof; (both)
- (p) payment of taxes, fees, etc.; (both)
- (q) maintenance of adequate accounting, management information and cost control systems; (both)
- (r) maintenance of independent auditors acceptable to DOE; (both)
- (s) maintenance of books and records and inspection thereof, including such records as are necessary to facilitate an effective and accurate audit and performance evaluation of the Project as required by the Program Requirements; (both)
- (t) maintenance of properties and title thereto;
- (u) maintenance of intellectual property; (both)
- (v) maintenance of Project Accounts;
- (w) compliance with debarment regulations; (both)
- (x) provision to DOE and its representatives and advisors of access to the project site and ancillary facilities at all reasonable times in order to monitor the performance of the Project; (both)

- (y) disclosure and management of construction cost overruns;
- (z) change orders;
- (aa) further assurances (both); and
- (bb) a Sponsor covenant to cause the Borrower to perform its obligations (without implication that this covenant creates any guarantee or direct obligation of the Sponsor for such Borrower obligations).

39. Negative Covenants

In addition to the other covenants described herein, the Loan Guarantee Documents will contain such negative covenants as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary qualifications and exceptions), from the Borrower including without limitation regarding:

- (a) no material change to the Project or engaging in other lines of business;
- (b) no incurrence of additional debt or guarantees;
- (c) no granting of additional liens;
- (d) no dividends and other restricted payments;
- (e) no acquisitions and dispositions of assets or capital expenditures;
- (f) no merger, consolidation, or similar action;
- (g) no lease transactions;
- (h) no investments;
- (i) no formation of subsidiaries;
- (j) no changes to charter or organization documents;
- (k) no issuance of equity;
- (l) no changes to capital structure (including the issuance of any options, warrants, or other rights with respect thereto);
- (m) no termination, amendment or waiver any provision of any Project Documents to which it is party; (both)
- (n) no entering into transactions with affiliates, other than pursuant to Transaction Documents on an arm's length basis;
- (o) no entering into new material agreements;
- (p) no hedging transactions, other than as specifically permitted or required;
- (q) no material modifications of the Project Plans or budget without the prior written consent of the DOE in consultation with the Independent Engineer;
- (r) no hazardous materials;
- (s) no changes in fiscal year.

40. Events of Default

The Loan Guarantee Documents will include such events of default as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE for this transaction in particular (with customary materiality qualifications, exceptions and grace periods), including without limitation:

- (a) failure to make payments when due;
- (b) default under any other indebtedness of the Borrower (other than the Guaranteed Loan);
- (c) breach of representations and warranties under any Loan Guarantee Documents;
- (d) breach of covenants under any Loan Guarantee Documents;
- (e) failure to fund when required or other default with respect to the Base Equity Commitment or the Overrun Equity Commitment;
- (f) failure of the Project to achieve Physical Completion (as described on Exhibit A) by the First Principal Payment Date;
- (g) breach or termination of any Project Document, including without limitation the Project IP License Agreement;
- (h) loss or impairment of government permits or approvals by any Major Project Participant that could reasonably be expected to have a material adverse effect on the Project;
- (i) bankruptcy, insolvency and dissolution of (x) the Borrower, the Sponsor or the Operator, or (y) to the extent it could reasonably be expected to have a material adverse effect on the Project, any other Major Project Participant;
- (j) judgments against any Major Project Participant that could reasonably be expected to have a material adverse effect on the Project;
- (k) certain ERISA events;
- (l) occurrence of specified force majeure events and continuation thereof for 180 days;
- (m) impairment of security interests in Collateral;
- (n) invalidity or unenforceability of Transaction Documents;
- (o) material suspension of construction or operations or abandonment of the Project;
- (p) physical destruction of any of the Project facilities that could reasonably be expected to have a material adverse effect on the Project and that has not been repaired with the proceeds of insurance within a specified number of days;
- (q) acceleration under any other indebtedness of the Sponsor in excess of a specified threshold;
- (r) breach by the Sponsor of any material obligation under a Third-Party Sales Agreement or Third-Party Materials Supply Agreement to the extent such breach could reasonably be expected to have a material adverse effect on the Project;
- (s) failure to maintain financial ratios (as specified above);

- (t) failure of the Sponsor to own and control 100% of the equity interests in the Borrower; and
- (u) Without the prior written consent of DOE, a Change of Control of the Sponsor occurs, it being agreed that as used herein, "Change of Control" means (x) prior to a Sponsor IPO, a change such that the Sponsor stockholder group on the Financial Closing Date fails to own in excess of 50% of the outstanding voting stock of the Sponsor, and (y) after a Sponsor IPO, a change such that any person or group, other than pre-IPO stockholders, acquires in excess of 50% of the voting stock of the Sponsor.

41. Remedies

Upon the occurrence of an event of default, the Loan Guarantee Documents will include usual and customary remedies as well as such additional subrogation or other rights as may be required under the Program Requirements to allow DOE to complete, maintain, operate, lease or otherwise dispose of the Project or any Collateral or otherwise protect the interests of the United States or the public interest.

Additional Provisions of Loan Guarantee Documents

42. Required Insurance

The Borrower will maintain or cause to be maintained in full force and effect at all times the following insurance (the "**Required Insurance**") with financially sound insurers and reinsurers as is customarily required by lenders to project financings, as approved by DOE:

- (i) appropriate coverage of all properties and business required for the Project, including the Shared Facilities, against loss or damage;
- (ii) appropriate liability coverage;
- (iii) appropriate delayed start-up and business interruption coverages, to the extent available on commercially reasonable terms; and
- (iv) appropriate reinsurance of the foregoing.

Each such policy (other than liability policies) will name DOE as loss payee to the extent of the aggregate amounts outstanding of the Guaranteed Loan. Each insurance policy will provide for 30 days' written notice to DOE prior to termination or expiration of any coverage and such other endorsements as DOE may reasonably require.

43. Governing Law and Jurisdiction

All Loan Guarantee Documents and Security Documents (other than any Security Documents required to be governed by local law) will be governed by the federal laws of the United States of America and not the law of the several states.

**B. PROCEDURE FOR ACCEPTANCE OF TERM SHEET AND ADDITIONAL PROVISIONS**

1. Expiration of Term Sheet

This Term Sheet and the terms offered herein will expire on [\_\_\_\_\_, 2009] *[insert date 30 days after date on which signed Term Sheet is presented by DOE to Borrower and Sponsor]*, unless the Contracting Officer agrees in writing to extend the expiration date. Such extension may be subject, at DOE's sole discretion, to modification of the terms hereof.

2. Acceptance of Term Sheet and Payment

Please express your agreement with the terms and conditions contained in this Term Sheet no later than the expiration date set forth above by signing this Term Sheet in the signature block below and returning to DOE an executed counterpart of this Term Sheet.



U.S. Treasury Department  
ABA No. 0210-3000-4 TREASNYC/CTR/BNF=D89000001  
OBI=LGPO Loan No. 1013 – Facility Fee

3. Conditional Commitment

When this Term Sheet has been executed and delivered by all parties it will constitute a conditional commitment in accordance with §609.8(b) of the Applicable Regulations.

4. Indemnity

The Borrower and the Sponsor, jointly and severally, shall indemnify and hold harmless the United States, including DOE and FFB, and their respective designees, agents, and contractors, and all of their respective directors, officers and employees (each, an "Indemnified Person") in connection with any losses, claims, damages, liabilities or other expenses to which such Indemnified Person may become subject arising out of or relating to (i) this Term Sheet, the provision of the financing and DOE Guarantee contemplated hereby or the use or intended use of the proceeds thereof, or (ii) any claim at any time with respect to the Sponsor or any of its directors, officers and employees and agents with respect to misappropriation of trade secrets, infringement of intellectual property rights, or any other business activities of the Sponsor; provided, however, that such indemnity shall not apply to the extent the loss, claim, damage, liability or other expense results from the gross negligence or willful misconduct of the Indemnified Person. This indemnity obligation shall survive the execution of the Loan Guarantee Documents and the expiration or other termination of the Guaranteed Loan.

5. Independent Consultants and Outside Legal Counsel

The Borrower and the Sponsor each reaffirm that

- (i) They are responsible for paying the fees and expenses of DOE's independent consultants and outside legal counsel in connection with the Project under all circumstances, without recourse to DOE by the consultant, counsel, the Sponsor, or the Borrower;
- (ii) DOE shall not be financially liable to such independent consultant or outside legal counsel for any services rendered or expenses incurred in connection with the Project under any circumstances whatsoever, including whether a closing occurs or under circumstances in which the Sponsor or the Borrower fails to pay such fees and expenses;
- (iii) The Sponsor and the Borrower will acknowledge and pay all fees and expenses represented by periodic invoices for services rendered to DOE with respect to the Project upon their periodic presentation thereof by DOE's independent consultants and outside legal counsel, including prior to or at closing (if any);
- (iv) If the Sponsor or the Borrower fails to pay such fees and expenses for any services rendered or expenses incurred in connection with the Project or to otherwise comply with the provisions of an agreement with such independent consultant or outside legal counsel, DOE may discontinue work on the Application and the Project (whether or not a conditional commitment exists);
- (v) While such services shall be rendered for the benefit of DOE in connection with the Project, the invoices of DOE's independent consultants and outside legal counsel working on the Project will be the sole responsibility of the Borrower and the Sponsor, notwithstanding that DOE is the client of such independent consultants and outside legal counsel; and
- (vi) Each of the Borrower and the Sponsor specifically disclaims any inference of confidential, fiduciary or other client relationship (including an attorney-client relationship) between the Borrower or the Sponsor and such independent consultant or outside legal counsel as a result of this arrangement and shall not interfere with DOE's relationship (including any attorney-client relationship) with such independent consultants or outside legal counsel, including DOE's ability to terminate.

6. Reimbursement of Expenses

Without limiting the generality of the immediately preceding Section, and in addition to any obligations of the Borrower and the Sponsor under (i) the letter agreement with RW Beck, engineering advisor to DOE, dated \_\_\_\_\_, 2008, and (ii) the fee letter with Morrison & Foerster LLP, outside legal counsel to DOE, dated December 11, 2008, each of which is incorporated herein by reference and remains in full force and effect, the Borrower and the Sponsor, jointly and severally, shall be liable to pay or reimburse DOE for all reasonable expenses incurred by DOE in connection with this Term Sheet and the negotiation, execution and implementation of the financing contemplated by this Term Sheet, including without limitation fees and expenses for outside legal counsel, business advisers and consultants, notarization costs, travel expenses, post-closing costs of reproducing and binding document sets, and other such out-of-pocket expenses incurred by DOE, including any costs of collecting any amount due hereunder. Such payment or reimbursement shall be due and payable upon the

Borrower's or the Sponsor's receipt of DOE's request therefor from time to time and upon the extension or termination of this Term Sheet or execution of the Loan Guarantee Documents. Such payment or reimbursement shall be due whether or not this Term Sheet expires without renewal or is canceled or the Loan Guarantee Documents are executed or any Disbursement of the Guaranteed Loan is made thereunder.

7. Cooperation

The Borrower and the Sponsor will cooperate fully with DOE and its representatives and advisors with respect to its due diligence investigation of the Project, including without limitation providing prompt and complete access to employees, engineers, accountants, facilities, books and records and contracts of the Borrower and the Sponsors, as well as such other information as may be requested by DOE or its representatives or advisors.

8. Reporting Requirements

The Borrower will provide the following documents and information to DOE beginning on the date on which a conditional commitment exists:

- (a) Within three (3) business days of the Borrower obtaining knowledge of such change, notice of any previously unreported material change to the information contained in the Borrower's application for the DOE Guarantee, including without limitation, any material change in (i) the descriptions relating to the construction and operation of the Project and related plans and contractors; (ii) the conclusions of the Borrower's engineer's report; (iii) the status of Project related applications or approvals for governmental permits and authorizations; and (iv) the potential environmental impact of the Project; and
- (b) At all times, any other information regarding the Borrower or the Project reasonably requested by DOE.

9. Binding Nature; Survival

This provisions of Part B of this Term Sheet are binding on the parties hereto and shall survive any termination or expiration of this Term Sheet.

10. Governing Law

This Term Sheet shall be governed by the federal laws of the United States of America and not the law of the several states.

11. Counterparts

This Term Sheet may be executed in separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Such executed counterparts may be delivered electronically, with the original to be delivered promptly thereafter.

[Signatures Appear on Next Page]

Very truly yours,

**U.S. DEPARTMENT OF ENERGY**

By: \_\_\_\_\_  
[Name], [Contracting Officer]

**ACCEPTED AND AGREED TO**  
as of the date of this Term Sheet:

**SOLYNDRA, INC.**

By: \_\_\_\_\_  
Christian M. Gronet, Chief Executive Officer

**SOLYNDRA FAB 2 LLC**

By: Solyndra, Inc., its sole Member

By: \_\_\_\_\_  
Christian M. Gronet, Chief Executive Officer

### **Definition of Project Completion Date**

The "**Project Completion Date**" shall be deemed to have occurred as of the date set forth in a notice from DOE to the Borrower and the Sponsor stating that all of the following have been achieved to DOE's satisfaction:

- (a) **Physical Completion.** All facilities and equipment necessary for the Project to operate as contemplated under the Project Plans (i) shall have been completely constructed, installed, completed, tested, and commissioned, all utilizing first-class standards of workmanship and materials and in accordance with the Project Plans and the terms of applicable construction agreements, (ii) shall be operating in accordance with applicable guidelines, (iii) shall have been accepted and paid for, as evidenced by the Borrower having issued final acceptance certificates relating to each of the major engineering, procurement and construction contracts, and (iv) are being properly operated and maintained in all respects;
- (b) **Operational Completion.** During a specified test period, the Project shall pass a continuous operational reliability test and other performance tests specified by DOE in consultation with the Independent Engineer;
- (c) **Financial Completion.** During a specified period, the Borrower shall have generated specified minimum sales revenue, net income and Cash Flow Available for Debt Service, and shall have made at least one principal payment on the Guaranteed Loan;
- (d) **Legal Conditions.** The Borrower shall have met all of its financial and other contractual obligations through the Project Completion Date, all Transaction Documents shall be in full force and effect and not in default, all representations and warranties in each Loan Guarantee Document shall be true and correct no event of default or potential shall then exist under any Loan Guarantee Document, and DOE shall have received satisfactory opinions from the Borrower's legal counsel, and from DOE's legal counsel, with respect to certain matters.

**Loan Guarantee Agreement Requirements**  
**(from Applicable Regulations)**

The DOE Loan Guarantee Agreement shall include the following requirements and conditions:

- (1) The Project qualifies as an "Eligible Project" under the Act and is not a research, development, or demonstration project or a project that employs Commercial Technologies in service in the United States;
- (2) The Project will be constructed and operated in the United States, the employment of the new or significantly improved technology in the Project has the potential to be replicated in other commercial projects in the United States, and this technology is or is likely to be available in the United States for further commercial application;
- (3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs.
- (4) (i) Where DOE guarantees 100 percent of the Guaranteed Obligation, the Guaranteed Loan shall be funded by FFB;
  - (ii) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or "stripped" from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market;
  - (iii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or "stripped" from the non-guaranteed portion of the Guaranteed Obligation, if the Guaranteed Loan is participated, syndicated or otherwise resold in the secondary debt market;
- (5) The Borrower and other principals involved in the Project have made or will make a significant equity investment in the Project;
- (6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other Project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the Project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion;
- (7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

- (8) The amount of the DOE Guarantee, when combined with other funds committed to the Project, will be sufficient to carry out the Project, including adequate contingency funds;
- (9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other Project debt;
- (10) The Borrower has pledged Project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;
- (11) The DOE Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;
- (12) The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government;
- (13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the Project and all additional collateral pledged as security for the Guaranteed Obligations and other Project debt;
- (14) There is satisfactory evidence that Borrower and FFB or other Holders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the DOE Loan Guarantee Agreement, and will diligently pursue the Project;
- (15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing the DOE Guarantee for the construction and operational phases of the Project (Third Fee);
- (16) FFB, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;
- (17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;
- (18) DOE or its representatives have access to the Project site at all reasonable times in order to monitor the performance of the Project;
- (19) DOE, FFB, or other Holder and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the Project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The DOE Loan Guarantee Agreement contains such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; and

(23)(i) The Lender is an "Eligible Lender", as defined in §609.2 of the Applicable Regulations, and meets DOE's lender eligibility and performance requirement contained in §§609.11 (a) and (b) of the Applicable Regulations; and

(ii) The servicer meets the servicing performance requirements of §609.11(c) of the Applicable Regulations.

(e) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the DOE Loan Guarantee Agreement or Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when debt is funded through the Federal Financing Bank, DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in §609.15 of the Applicable Regulations.

(3) FFB or any other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) FFB or any other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in §609.17 of the Applicable Regulations.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, FFB or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, FFB or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in §609.17 of the Applicable Regulations.

(g) Pursuant to Section 6.09.10 of the Applicable Regulations, the DOE Loan Guarantee Agreement must contain provisions providing that (1) FFB or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of §609.11 of the Applicable Regulations. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, monitoring, and reporting requirements contained in the DOE Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was performing these functions and transfer such functions to the new Eligible Lender. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

(2) The Secretary of Energy, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the DOE Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

PHASE I OF SOLYNDRA FAB 2 FACILITY

Summary of Terms and Conditions for DOE Loan Guarantee

Table of Contents

A. DETAILED TERMS AND CONDITIONS FOR LOAN GUARANTEE ..... 2

1. Borrower ..... 2

2. Sponsor ..... 2

3. Eligible Lender ..... 2

4. Fab 2 Facility ..... 2

5. Phase I; Phase II ..... 2

6. Shared Facilities ..... 3

7. Project; Project Plans ..... 3

8. Project Costs ..... 3

9. Base Equity Commitment ..... 4

10. Overrun Equity Commitment ..... 4

11. Guaranteed Loan ..... 5

12. DOE Guarantee ..... 5

13. Availability ..... 5

14. Interest Rate ..... 5

15. Interest Payments ..... 6

16. Principal Amortization and Maturity ..... 6

17. Prepayments of the Guaranteed Loan ..... 6

18. DOE Fees ..... 6

19. Credit Subsidy Cost ..... 7

20. Collateral ..... 7

21. Servicing Duties ..... 8

22. Loan Guarantee Documents ..... 9

23. Security Documents ..... 9

24. Project Documents ..... 10

25. Development Costs; No Development Fees ..... 14

26. Subordination ..... 14

27. Conditions Precedent to Financial Closing Date ..... 14

28. Conditions Precedent to Each Periodic Approved Budget ..... 17

29. Conditions Precedent to Each Disbursement Date ..... 18

30. Project Accounts in General ..... 19

31. Construction Account ..... 19

32. Revenue Account ..... 19

33. Debt Service Reserve Account ..... 19

34. Cash Flow Waterfall ..... 19

35. Restricted Payments ..... 20

36. Representations and Warranties ..... 21

37. Financial Covenants and Defaults ..... 22

38. Affirmative Covenants ..... 23

39. Negative Covenants ..... 25

40. Events of Default ..... 26

41. Remedies ..... 27

42. Required Insurance ..... 27

43. Governing Law and Jurisdiction ..... 27

B. PROCEDURE FOR ACCEPTANCE OF TERM SHEET AND ADDITIONAL PROVISIONS ..... 28

1. Expiration of Term Sheet ..... 28

2. Acceptance of Term Sheet and Payment ..... 28

3. Conditional Commitment ..... 28

4. Indemnity ..... 28

5.	<i>Independent Consultants and Outside Legal Counsel</i> .....	28
6.	<i>Reimbursement of Expenses</i> .....	29
7.	<i>Cooperation</i> .....	30
8.	<i>Reporting Requirements</i> .....	30
9.	<i>Binding Nature; Survival</i> .....	30
10.	<i>Governing Law</i> .....	30
11.	<i>Counterparts</i> .....	30

## **Footnote 126**

**From:** Colyar, Kelly [REDACTED]  
**Sent:** Friday, March 13, 2009 11:21 AM  
**To:** [REDACTED]  
**Subject:** Draft Market Assessment  
**Attachments:** Solyndra\_JMC Rpt D1.pdf

Attached is the draft market assessment for Solyndra.

## **Footnote 128**



[Redacted]

**From:** Mertens, Richard A.  
**Sent:** Tuesday, March 10, 2009 3:47 PM  
**To:** [Redacted]  
**Subject:** RE: [Redacted]

Thanks.

**From:** [Redacted]  
**Sent:** Tuesday, March 10, 2009 3:43 PM  
**To:** Mertens, Richard A.  
**Cc:** Carroll, J. Kevin; [Redacted]  
**Subject:** [Redacted]

[Redacted] submitted a Title XVII loan guarantee application under the 2008 Solicitation [Redacted]  
[Redacted]

In other news, Treasury was apparently not very pleased to have Solyndra sprung on them today (consultation on terms and condition required by Title XVII) and let Matt Rogers know about it in no uncertain terms. Reportedly, Rogers is beginning to understand the need to pay attention to inter-agency concerns.

DO NOT COPY

## **Footnote 129**

**From:** [REDACTED]  
**To:** Carfine, KenDisabled  
**Subject:** FW: Could You Call Matt Rogers In Energy Secretary Chu's Office to Stop the Train on Term Sheet for 1st Title XVII Deal??  
**Date:** Tuesday, March 17, 2009 6:46:17 PM  
**Importance:** High

---

Ken,

I put in a call to Matt Rogers just to let him know that someone from Treasury might be contacting him to discuss this. Lee thought it was best handled by you as you deem appropriate. If you do not think any call to energy is needed, I will tell Matt never mind. Please just let me know.

Thanks,  
[REDACTED]

[REDACTED] - US Department of the Treasury - [REDACTED]

---

**From:** Farrell, Paula  
**Sent:** Tuesday, March 17, 2009 6:14 PM  
**To:** Ramanathan, Karthik; [REDACTED] Carfine, Ken  
**Cc:** Burner, Gary; [REDACTED]  
**Subject:** Could You Call Matt Rogers In Energy Secretary Chu's Office to Stop the Train on Term Sheet for 1st Title XVII Deal??  
**Importance:** High

Per OMB, the term sheet might be signed tonight by Secretary Chu.

Treasury had NOT had time to review and consult with Energy on the term sheet, which is a statutory requirement.

Could someone please call Matt Rogers per OMB's suggestion tonight to get us a day or so to go over this term sheet?

Matt Roger's direct phone number is [REDACTED]

---

**From:** [REDACTED]  
**Sent:** Tuesday, March 17, 2009 6:04 PM  
**To:** Farrell, Paula; [REDACTED]  
**Cc:** Ramanathan, Karthik; [REDACTED] Carfine, Ken; Burner, Gary; [REDACTED]  
**Subject:** RE: Proposed Energy Title XVII Loan Guarantee-- Treasury consultation on terms and conditons required by law

I don't have phone number - but I'd suggest Matt Rogers. The DOE Operator at [REDACTED] should be able to get you to him.

---

**From:** Paula.Farrell [REDACTED]  
**Sent:** Tuesday, March 17, 2009 6:03 PM

To: [REDACTED]  
Cc: Karthik.Ramanathan  
Ken.Carfine Gary.Burner [REDACTED]  
Subject: RE: Proposed Energy Title XVII Loan Guarantee-- Treasury consultation on terms and conditions required by law

[REDACTED] do you have a name and number for someone at Energy that we can call to stop the train on this? Treasury staff have not had time to review the terms and conditions.

---

From: [REDACTED]  
Sent: Tuesday, March 17, 2009 5:57 PM  
To: Farrell, Paula; [REDACTED]  
Cc: Ramanathan, Karthik; [REDACTED]; Carfine, Ken; Burner, Gary; [REDACTED]  
Subject: RE: Proposed Energy Title XVII Loan Guarantee-- Treasury consultation on terms and conditions required by law

I understand that DOE's CRB approved moving forward on the project today. **That means that Sec. Chu could sign the term sheet at any moment. I strongly urge Treasury to contact Secretary Chu's office if Treasury wants to weigh in on the Terms and Conditions.** (I note that there is a provision in the regulation that allows the Secretary to cancel at any time before closing without cause, but it's not clear to me that that would be used for disagreement over a term sheet.)

---

From: Paula.Farrell [REDACTED]  
Sent: Tuesday, March 17, 2009 4:27 PM  
To: [REDACTED]  
Cc: Karthik.Ramanathan  
Ken.Carfine Gary.Burner [REDACTED]  
Subject: Proposed Energy Title XVII Loan Guarantee-- Treasury consultation on terms and conditions required by law  
Importance: High

1. OMB and Treasury Government Financial Policy staff worked long and hard to get Federal credit policies and practices, to the greatest extent possible, reflected in the regs for this Title XVII loan guarantee program. (See attached Title XVII statute.) By statute, the Secretary of Energy is required to consult with the Secretary of the Treasury on the terms and conditions of any such guarantee before the guarantee is extended.
2. We/OGFP staff made very clear during the drafting of the regs that Treasury wanted to be involved in the development of the terms and conditions of any guarantee and not be brought in at the tail end when the terms of the deal had already been negotiated.
3. Unfortunately, we are being brought in at the tail end NOW.
4. Gary Burner at the FFB was just asked to review the almost-final terms and conditions of a proposed deal for the Treasury Department. However, neither Gary nor I have the authority to approve the terms and conditions on behalf of the Department. We need to bring in other staff and our senior officials before we agree to the terms and conditions. Note: We do typically view "consultation" as being more akin to "approval" so we can work effectively with OMB to protect the taxpayer from loss.
- 5. Request to OMB: Could OMB call for a meeting with Energy as soon as we can meet on the terms and conditions of this deal so we can make sure Treasury has a real opportunity to**

**review and evaluate the proposed deal and seek any needed changes? We believe OMB will have concerns with the proposed terms and conditions as do we.**