



Cost Stabilization Facility for a Portfolio of Nuclear Energy Projects: A Model Term Sheet

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About Pillsbury Winthrop Shaw Pittman LLP

Pillsbury Winthrop Shaw Pittman LLP is an international law firm focused on the energy, financial, technology & life sciences, and real estate & construction sectors. Recognized by *Financial Times* as the most innovative law firm in the energy transition for both 2023 and 2024, and as one of the top firms for client service by BTI Consulting, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines, and their practical commercial awareness.



About the EFI Foundation

The EFI Foundation advances technically grounded solutions to climate change through evidence-based analysis, thought leadership, and coalition-building. Under the leadership of Ernest J. Moniz, the 13th U.S. Secretary of Energy, the EFI Foundation conducts rigorous research to accelerate the transition to a low-carbon economy through innovation in technology, policy, and business models. The EFI Foundation maintains editorial independence from its public and private sponsors.



About the Energy Futures Finance Forum

The Energy Futures Finance Forum (EF³) is a program within the EFI Foundation that examines barriers to the flow of private capital to clean energy and industrial decarbonization opportunities. By reflecting the investor perspective, its primary focus is enhancing the bankability of projects and business models essential for the energy transition. Through rigorous analysis, thought leadership, stakeholder convening, and public education, EF³ develops actionable policy and financial sector recommendations to address challenges and drive at-scale capital deployment.

Report Sponsors

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Introduction

The United States faces the critical challenge of ensuring energy security, driving economic growth, and fostering innovation to meet the demands of a rapidly growing energy market. Nuclear energy offers a unique opportunity to address these priorities while delivering clean, reliable, and scalable power to meet surging electricity demand. With the U.S. electric grid poised for continued massive load growth over the coming decades, the need for clean, firm power is more urgent than ever. The U.S. Department of Energy (DOE) highlights the scale of this challenge: doubling the current fleet by building more than 200 gigawatts (GW) of new nuclear capacity within 20 years. Achieving this vision will require a combination of proven large-scale projects, like the recently completed Vogtle units, and next-generation technologies, including Gen III+, Gen IV, small modular reactors (SMRs), and micro modular reactors (MMRs).

However, cost and cost uncertainty remain key challenges to obtaining sponsor commitments to new nuclear builds and making them bankable investments. The dual barriers of cost magnitude and cost uncertainty are the most salient impediments to new nuclear deployment. The two concepts are interrelated. For large scale nuclear power plants, despite the success of bringing Vogtle 3 and 4 into commercial operation, the history of cost escalation is a key concern to would-be follow-on sponsors. For SMRs and MMRs, despite their smaller size and modularity of certain standardized components and simpler design, these reactors are still capital intensive across Gen III+ and Gen IV designs. At this stage, they are advanced concepts and prototypes on the cusp of commercialization.

Given the on-again, off-again history of new nuclear construction in the U.S. leading to little stability in construction and an inability to validate cost estimates, sponsors and lenders are wary of the economic viability of SMRs and MMRs. Any lender, whether private or public (including the federal government through the Loan Programs Office (LPO) of the U.S. Department of Energy (DOE)), is likely to require that project funding plans include some form of large and readily available financing reserves (e.g., cash, letters of credit, or funding availability) to cover unplanned costs. This contingency adds meaningfully to the overall capital commitment. Even with such project cost buffers, there remains some probability that costs will exceed committed financing.

The Energy Futures Finance Forum (EF³) — a program within the EFI Foundation — recently published a policy framework for a publicly funded cost stabilization facility (CSF) to address the risk of potential cost overruns to sponsors for early-stage projects, with the intent to mitigate a key hurdle to new nuclear energy projects.¹ In this paper, in collaboration with the law firm Pillsbury Winthrop Shaw Pittman LLP, we extend that framework by providing a model term sheet for the CSF to clarify how we believe this concept can be implemented under existing statutory authority. The CSF would provide a loan guaranteed by the DOE to cover cost overruns from a portfolio of projects.

¹ A Cost Stabilization Facility for Kickstarting the Commercialization of Small Modular Reactors, EFI Foundation, October 2023, <https://efifoundation.org/foundation-reports/a-cost-stabilization-facility-for-kickstarting-the-commercialization-of-small-modular-reactors/>.



Consistent with the original concept, the CSF, which in the term sheet is defined as the “Loan Facility,” would be available to groups of at least three projects (builds) using the same technology. These multiple-project “order books” are expected to result in learning between projects and improve the development of supply chains for the new technologies, leading to reduced costs (as well as cost and schedule uncertainties) with successive builds.

In addition to the explicit requirements established in the term sheet, there are several provisions that the project sponsors and the DOE should consider in extending a guaranteed loan under this model. While the model term sheet requires an order book of at least three projects, it does not specify the relationship between the projects. A “first of a kind” project is inevitably burdened by many unique costs associated with the development of new designs and the implementation of those designs in construction. To the extent that there is a group of potential sponsors who all want to enable the development of new technology, but none of whom is willing to absorb the burden of being first, an agreement to share the costs on an equitable basis (for example, per unit of output) among all the projects, regardless of which is first, could enable all the projects to move forward. An agreement to share the costs eliminates the first mover disadvantage so all project sponsors pay the “average” cost for each build in the order book. The original policy framework proposed that all the projects be organized in a single special purpose vehicle (SPV), which would help facilitate such cost sharing agreements. Doing so would also make joint oversight implicit. The term sheet permits individual SPVs to be implemented for the separate projects, but sponsors may wish to consider a single SPV.

The risk of cost overruns is greatest for the earliest projects, and later projects will benefit from identifying the issues encountered in prior projects and how to avoid or mitigate them. Thus, the sponsors should agree to share the repayment of the CSF, again on an equitable basis. In addition, in recognition that the first projects may face the greatest challenges, the model term sheet does not specifically allocate the CSF, so the first project could potentially absorb all of the capacity, unless the sponsors choose to specify an allocation.

Since each project in the order book will be liable for its project costs, the sponsors should also explicitly agree to an oversight process that involves all sponsors in key decisions as each project is deployed (which will be implicit if the projects are included in a single SPV).² Joint oversight is simple in concept, but the execution will inevitably require complex negotiations. The shared responsibility across projects is likely to encourage choosing the same contractors for major roles across the projects, another area in which negotiations among the sponsors will be required.

Finally, the CSF will need to be supported by the revenues anticipated from the projects. The project sponsors, and any additional parties committing to offtake from the projects, can support the deployment of these projects, which are likely to be critical to their own strategic objectives, through premium offtake commitments, both in terms of price and tenor. In establishing coverage requirements for the CSF, DOE's LPO should recognize the decreased risk for repayment provided by the project portfolio. In addition, LPO should consider the tenor of offtake commitments and the long economic life of nuclear projects in the repayment requirements for the CSF, including considering bullet amortization if the project economics support a reasonable likelihood of refinancing the principal beyond LPO's thirty-year limitation.

Of course, the following model term sheet is by its nature only a starting point, and eventual agreements for a cost overrun facility of this type may differ in various ways from the model described here. However, we believe that this model can provide the required conceptual approach needed in order to share the risks of cost overruns across multiple projects and over an extended payback period, thereby substantially mitigating such risks and enabling stakeholders to accelerate commitments to future nuclear energy projects and achieve fundamental national policy objectives.

² The term sheet provides for joint and several liability among the special-purpose vehicles that are the borrowers under the CSF. The sponsors remain liable only for the required equity contributions, including contributions required to support the equity component of any cost overruns, as would be typical for non-recourse loans, except that equity commitments may be called for any and all projects up to the commitment limit for each sponsor.

Outline of Model Term Sheet

The summary below is intended to facilitate review of the model term sheet. It is not a substitute for the term sheet. Capitalized terms appearing in this summary without definition have the respective meanings given to such terms in the term sheet.

Relevant Sections	Description
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Purpose

Preface, 2.2(c), 2.4, 3.1, 3.2	The model term sheet outlines a Loan Facility, under which a Guaranteed Loan will be drawn (loan from the FFB supported by an unconditional DOE guarantee), to support potential cost overruns of advanced nuclear projects. The Loan Facility will be in addition to a loan or set of loans (“Construction Loan”) to cover the budgeted project costs (including a contingency, the “Base Project Costs”).
2.1 and 2.2(b)	The Loan Facility will only be available to groups of at least three projects using the same technology.

Availability of Loans

2.4	Project costs in excess of Base Project Costs are Overrun Project Costs
3.3	Disbursements of the Guaranteed Loan may be requested to pay the portion of the Overrun Project Costs that is not funded by the Overrun Equity Commitments (to be confirmed by the Independent Engineer).

Liability and Security

1.1	The Borrowers of the Guaranteed Loan will be special purpose vehicles.
1.1	The Borrowers will be jointly and severally liable for the obligations under the Loan Facility.
10.1	The obligations of the sponsors are limited to equity commitments.
3.9	The obligations of the Borrowers will be secured by all the project collateral. The Guaranteed Loan will only be subordinate to the Construction Loan.

Relevant Sections	Description
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Tenor, Amortization, and Coverage Requirements

2.5, 2.6, 3.5	Coverage requirements for and amortization of the Guaranteed Loan are left to be determined. <i>The term sheet intentionally leaves these open so that amortization can be tailored to defer the repayment of the Guaranteed Loan to the extent enabled by the offtake agreements. While not stated in the term sheet, coverage requirements should reflect the decreased risk for repayment resulting from the project portfolio.</i>
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Addressing Moral Hazard

2.4	The Base Project Costs (budget, including contingency) must be confirmed by the Independent Engineer.
2.4, 3.3, 5.1(o)	The Guaranteed Loan is only available to pay a portion (in addition to required Overrun Equity contributions) of costs above the estimated project costs (Overrun Project Costs), including contingency, that have been confirmed by the Independent Engineer.
5.2(h)	Disbursements of the Guaranteed Loan are subject to certification of construction progress by the Independent Engineer.

Preliminary Draft Term Sheet for Cost Stabilization Facility for a Portfolio of Advanced Nuclear Energy Projects

Prepared by



This Preliminary Draft Term Sheet for Cost Stabilization Facility for a Portfolio of Advanced Nuclear Energy Projects (this “**Term Sheet**”) is intended to outline the expected principal indicative terms and conditions for a contingent loan facility (the “**Loan Facility**” and the advances made thereunder collectively being referred to herein as the “**Guaranteed Loan**” as further described in Section 3.1 below) to support potential cost overruns for a fleet buildout of several similar advanced nuclear energy projects (the “**Advanced Nuclear Buildout Program**”). The Loan Facility would be in addition to the construction and permanent financing (collectively, as further described in Section 2.2 (c) below, the “**Construction Loan**” and the lenders in respect of the Construction Loan collectively being referred to as the “**Construction Lender**”) made available for the projects in the Advanced Nuclear Buildout Program. The Loan Facility is expected to be backed by a U.S. Department of Energy (“**DOE**”) loan guarantee that relates to the application of [●] [*Name(s) of Sponsor(s)*] pursuant to Title XVII of the Energy Policy Act of 2005, as amended from time to time (“**Title XVII**”).

This non-binding 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 Approved Projects described below.¹

¹ This draft Term Sheet has not been reviewed or endorsed by the DOE. This draft Term Sheet is intended for discussion purposes only and does not represent or imply legal advice that may be relied upon, nor does it establish an attorney-client relationship with Pillsbury Winthrop Shaw Pittman LLP. Further, this draft Term Sheet is not intended to cover every facet of what would be needed in a site- and party-specific agreement. For any specific Title XVII application, this draft Term Sheet will require specialty review including, but not limited to, review in the areas of tax, antitrust, international trade, nuclear energy and public utility regulation. All parties should consult with their own legal counsel regarding their specific situation.

1. Parties and Other Roles

<p>1.1 Borrower(s)</p>	<p>One or more [Delaware] limited liability companies [[●], [●], and [●]], each a special purpose entity formed solely for the purpose of developing, constructing, financing, owning, operating and managing its respective Approved Project (as defined below). Each Borrower will be jointly and severally liable for the obligations owed under the Loan Facility.</p>
<p>1.2 Sponsor(s)</p>	<p>Each approved sponsor participating in the Advanced Nuclear Buildout Program in developing one or more Approved Projects. Each Sponsor owns 100% of the equity interests of its related Borrower(s).² Each Sponsor will make its respective Overrun Equity Commitment (as defined below) available to the Borrowers in the aggregate on the terms and conditions set forth herein.</p>
<p>1.3 Eligible Lender</p>	<p>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.</p>
<p>1.4 Independent Engineer</p>	<p>[●], a licensed engineering firm (or its successor) selected by the DOE and FFB, and approved by the Borrowers (such approval not to be unreasonably withheld, conditioned or delayed), that is qualified to review the plans for developing, constructing and operating a U.S. advanced nuclear energy facility. The Independent Engineer will be an agent of the DOE and FFB.</p>

2. Approved Projects and Project Costs

<p>2.1 Approved Project</p>	<p>An Eligible Project (as defined below) that has been approved by the DOE and FFB to participate in the Loan Facility, subject to the terms and conditions hereof. At least three (3) Eligible Projects must be Approved Projects before the Loan Facility will go into effect.</p>
<p>2.2 Eligible Project</p>	<p>A Borrower’s nuclear energy facility (which may be a single unit of a facility) that is under development at a specified site located in the United States and that is expected to:</p> <p>(a) operate independently from other facilities (or units);</p>

² It would likely be preferable for there to be one common Sponsor and one common Construction Lender (each of which may consist of a consortium of different entities) for all of the Approved Projects. This would increase the chances that the Base Equity Commitment(s), the Construction Loan(s), the Overrun Equity Commitment(s), and the Loan Facility/Guaranteed Loan would be made available when and as needed for the funding of the Approved Projects as they are constructed, without any inter-Sponsor or inter-Construction Lender disputes as to disposition of available funds between Approved Projects.

<p>2.2 Eligible Project, continued</p>	<ul style="list-style-type: none"> (b) use the Specified Technology (as defined below); (c) have Sponsor equity commitments (such equity commitment as to each Sponsor, the “Base Equity Commitment”) and other committed sources of debt funding from investment grade financing providers (or other providers acceptable to the DOE and FFB) to finance the Base Project Costs (as defined below) (with such debt funding, including a construction financing that converts into long-term financing or a long-term refinancing of the original construction financing, collectively referred to as the “Construction Loan”); (d) have Sponsor equity commitments to finance, on a pari passu basis with the Guaranteed Loan, [●]% of the Guaranteed Loan Amount (each such term as defined below) (such equity commitment as to each Sponsor, the “Overrun Equity Commitment” and, as to all the Sponsors in the aggregate, the “Aggregate Overrun Equity Commitments”); (e) be bound by an Offtake Agreement (as defined below) with the applicable Sponsor (or other approved party) as the offtaker for 100% of the output of the facility; (f) have all contractual rights necessary to develop and construct the facility as intended, including EPC contracts, and to own and operate the facility as intended through the Term, including the Offtake Agreement, an operations and maintenance agreement with a qualified operator (such operator, the “Operator”), and all necessary fuel supply agreements; (g) have all regulatory permits and licenses (including a Combined License issued by the U.S. Nuclear Regulatory Commission (the “NRC”) pursuant to 10 CFR Part 52 or a construction license issued by the NRC pursuant to 10 CFR Part 50) necessary to have all regulatory permits and licenses (including a Combined License issued by the U.S. Nuclear Regulatory Commission (the “NRC”) pursuant to 10 CFR Part 52 or a construction license issued by the NRC pursuant to 10 CFR Part 50) necessary to develop, construct and own the facility as intended, including to procure fuel;³ (h) have, either on its own behalf or through a third-party Operator, all regulatory permits and licenses necessary to operate the facility as intended; and (i) have all necessary property rights (by lease or in fee simple, including easements and licenses) to develop, construct, own and operate the facility as intended.
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³ The full list of required material permits and licenses is outside the scope of this Term Sheet, but presumably the DOE will want all discretionary permits and licenses to have been obtained and, ideally, such permits and licenses would be final and not subject to appeal.

<p>2.3 Specified Technology</p>	<p>The nuclear technology (including reactor type) specified in Reference Combined License No. [●] issued by the U.S. Nuclear Regulatory Commission. The Specified Technology refers to the nuclear steam supply system and does not include the balance of the plant.</p>
<p>2.4 Project Costs</p>	<p>The Borrowers and the Sponsor(s) will provide detailed plans for financing all costs of each Approved Project that may be incurred from time to time in the development and construction of such Approved Project (the “Project Costs”), subject to confirmation by the Independent Engineer. The estimate of Project Costs for an Approved Project (including escalation and [●]% construction contingency), confirmed by the Independent Engineer, is referred to herein at the “Base Project Costs.” All Project Costs for an Approved Project in excess of the Base Project Costs for such Approved Project are referred to herein as “Overrun Project Costs.”⁴</p>
<p>2.5 Offtake Agreement</p>	<p>A long-term agreement between a Borrower for an Approved Project and the affiliated Sponsor (or other approved party) pursuant to which 100% of the related Approved Project’s energy output (electricity, steam or heat) is sold for the Term (the “Offtake Agreement”). The Offtake Agreements for the applicable Approved Projects should generate sufficient revenue to service principal and interest in full on the Construction Loan related thereto and to service principal and interest in full for the applicable Borrower’s allocable portion of the Guaranteed Loan Amount by the end of the Term with an average aggregate debt service coverage ratio of [●]x and a minimum aggregate debt service coverage ratio of [●]x, as confirmed by the Independent Engineer (the “DSCR Tests”).⁵</p>
<p>2.6 Term</p>	<p>With respect to each Approved Project, the period from the initial date on which such Approved Project is placed in service and commences commercial operations to the date that is the last business day of the fiscal quarter that is [●] years from such initial date.</p>

⁴ This Term Sheet assumes that all Project Costs for each Approved Project are eligible for financing/guarantees under Title XVII and does not distinguish those that are eligible from those that are not. Ineligible costs would be for the applicable Borrower’s or Sponsor’s account.

⁵ The debt service coverage ratio will be defined as the ratio of cash available for debt service over a period over scheduled debt service for the same period. Cash available for debt service will be measured as revenues over a period less operation and maintenance expenses for such period.

3. Loan and DOE Guarantees

<p>3.1 Guaranteed Loans</p>	<p>A loan from FFB (the “Guaranteed Loan”) in an aggregate principal amount (the “Guaranteed Loan Amount”) not to exceed an amount to be determined by DOE, FFB and the Borrowers, in consultation with the Independent Engineer. The Guaranteed Loan may be made in one or more Disbursements (as defined below).</p>
<p>3.2 DOE Guarantee</p>	<p>An unconditional guarantee by DOE (the “DOE Guarantee”) of 100% of the principal of and interest on the Guaranteed Loan in accordance with the following program requirements (the “Program Requirements”): (i) the provisions of Title XVII and 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”) and (ii) all DOE or FFB legal and financial requirements, policies and procedures applicable to the Title XVII program from time to time.</p>
<p>3.3 Availability</p>	<p>Subject to the terms of the FFB Funding Agreements (as defined below), disbursements of the Guaranteed Loan (each, a “Disbursement”) may be requested from time to time during the period (the “Guaranteed Loan Availability Period”) from the effective date of the Loan Facility until the earlier of [•] years from the effective date of the Loan Facility and the date on which the last of the Approved Projects has achieved commercial operation and been placed into service.</p> <p>The proceeds of Disbursements will be used solely to pay the portion of the Overrun Project Costs that is not funded by the Aggregate Overrun Equity Commitments, as confirmed by the Independent Engineer and subject to the satisfaction of the other conditions precedent set forth in the Principal Financing Documents (as defined below). If more than one Approved Project covered by the Loan Facility has Overrun Project Costs in excess of the Aggregate Overrun Equity Commitments available, the Sponsor(s) may direct how (and to which Approved Project(s)) Disbursements from the Loan Facility shall be applied in accordance with a methodology agreed among the Sponsor(s)/Borrowers, the DOE and FFB, in consultation with the Independent Engineer, as of the Closing Date and as otherwise agreed by such parties from time to time in light of changed circumstances following the Closing Date.⁶</p>

⁶ The methodology for determining which Approved Projects are eligible for support under the Loan Facility in this circumstance may be based on criteria proposed by the Sponsor(s) (for example, relative project output or economics under the applicable Offtake Agreements), but the criteria should be something other than individual project overruns.

<p>3.4 Interest</p>	<p>Subject to the terms of the FFB Funding Agreements, the interest rate on each Disbursement will be a rate per annum determined in accordance with the Program Requirements. All overdue amounts on the Guaranteed Loan will accrue interest at a default rate of interest 2% higher than the interest rate otherwise applicable in accordance with the FFB Funding Agreements. Interest will be payable quarterly in arrears. Accrued interest on the Guaranteed Loan during construction will be added to the principal of the Guaranteed Loan.</p>
<p>3.5 Principal Amortization</p>	<p>Principal amortization shall be as agreed among the DOE, FFB and the Borrowers, in consultation with the Independent Engineer. The outstanding Guaranteed Loan Amount will be due and payable in quarterly installments on the last business day of each fiscal quarter during the amortization/repayment period or as otherwise agreed among the DOE, FFB and the Borrowers, in consultation with the Independent Engineer. The principal amount payable in each quarter will be based on the Guaranteed Loan Amount outstanding at the beginning of the amortization/repayment period and compliance with the DSCR Tests or as otherwise agreed among the DOE, FFB and the Borrowers, in consultation with the Independent Engineer. The final maturity of the Guaranteed Loan will be [●].</p>
<p>3.6 Voluntary Prepayments</p>	<p>Permitted, in whole or in part, subject to [●] [<i>Specify conditions, including whether any premium would be required</i>]. Any amounts prepaid may not be re-borrowed.</p>
<p>3.7 Mandatory Prepayments</p>	<p>Mandatory prepayments are triggered by (a) a Borrower's receipt of (i) loss proceeds (not used to repair the facilities), (ii) damage payments under any EPC contract or Offtake Agreement and (iii) termination payments under interest rate hedges and (b) trapped distributions. These prepayments could be subject to prior or <i>pari passu</i> application to the Construction Loan. Any amounts prepaid may not be re-borrowed.</p>
<p>3.8 Costs and Fees</p>	<p>The Borrowers or the Sponsor(s) shall be responsible for the timely payment of all DOE costs and fees, including the application fee, facility fee, modification fee, administrative costs of the DOE Guarantee and the credit subsidy cost for the DOE Guarantee.</p>
<p>3.9 Collateral</p>	<p>The obligations of the Borrowers under the Guaranteed Loan and the DOE Guarantee will be secured by a perfected security interest in the following (collectively, subject to agreed exceptions, the "Collateral"):</p> <ul style="list-style-type: none"> (a) all equity interests in each Borrower and all subordinated debt payable by any Borrower to its related Sponsor; (b) all real property interests of each Borrower, including the project sites, all leasehold or other property interests relating thereto and all related fixtures, easements, rights-of-way and licenses;

<p>3.9 Collateral, continued</p>	<p>(c) all personal and other property of each Borrower, including without limitation:</p> <ul style="list-style-type: none"> (i) all equipment comprising each Approved Project; (ii) all inventory; (iii) all revenues, accounts receivable, equity contributions, commitments and bank accounts (and amounts on deposit therein) of or payable to any Borrower; (iv) all contract rights including rights to own and control the Approved Projects; (v) all intellectual property, licenses, general intangibles and goodwill; (vi) all governmental approvals and permits for the Approved Projects; and (vii) the proceeds of all insurance policies related to the Approved Projects or maintained by any Borrower; <p>(d) any other assets and other collateral as required under the Program Requirements; and</p> <p>(e) all proceeds of the foregoing.</p> <p>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, other than the Construction Loan to the extent provided in the Intercreditor Agreement referred to below. The DOE and FFB will be the beneficiaries of a second lien position, subject only to the lien securing the Construction Loan and customary permitted liens, on all assets of each Approved Project and all additional Collateral.</p>
<p>Termination</p>	<p>If no loans under the Loan Facility are outstanding as of the date on which the last of the Approved Projects has achieved commercial operation and been placed into service, the Loan Facility shall automatically terminate.</p>

4. Documentation

4.1 Principal Financing Documents	<p>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 "Principal Financing Documents"): </p> <ul style="list-style-type: none">(a) the Common Terms Agreement among the Borrowers, FFB and DOE, setting forth certain provisions common to the Loan Guarantee Agreement and the FFB Funding Agreements;(b) the Loan Guarantee Agreement among the Borrowers and DOE, setting forth certain reimbursement obligations and other provisions pursuant to the Program Requirements;(c) the DOE Guarantee;(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:<ul style="list-style-type: none">(i) the Program Financing Agreement between the DOE and FFB;(ii) the Note Purchase Agreement among the Borrowers, DOE and FFB;(iii) the promissory note evidencing the Guaranteed Loan issued by each 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 any Borrower to its related Sponsor;(f) (i) an equity contribution agreement from the Sponsors with respect to the Aggregate Overrun Equity Commitments available to the Borrowers and evidence that each Overrun Equity Commitment has been irrevocably committed as of the Financial Closing Date (as defined below), in the form of letters of credit or other mechanisms satisfactory to DOE in its sole discretion;(g) an agreement between each Sponsor and DOE providing for, among other items, (i) management and support obligations for the applicable Borrower and (ii) continuing ownership and control obligations of the related Borrower's equity;
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<p>4.1 Principal Financing Documents, continued</p>	<ul style="list-style-type: none"> (h) the Security Documents (as defined below); (i) the Intercreditor Agreement between the DOE and FFB, on the one hand, and the Construction Lender providing funding for the Construction Loan, on the other; and (j) such other documents as may be required under the Program Requirements.
<p>4.2 Security Documents</p>	<p>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 (collectively, the “Security Documents”):</p> <ul style="list-style-type: none"> (a) each Pledge Agreement with respect to the equity interests of each Borrower; (b) each Security Agreement with respect to each Borrower’s personal property, including equipment, goods, inventory, accounts, contract rights, intellectual property, governmental approvals, licenses and permits and other general intangibles; (c) each Mortgage (or Deed of Trust) with respect to the project site for each Approved Project; (d) Accounts Agreement (or Depositary Agreement); (e) Accounts Agreement (or Depositary Agreement); (f) Consents (or Direct Agreements) from counterparties to specific Project Documents; and (g) all other agreements and instruments necessary to create a first-priority perfected security interest under applicable law in the Collateral. <p>The Borrowers 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.</p>
<p>4.3 Project Documents</p>	<p>The Borrowers will enter into all agreements necessary for the consummation of the Approved Projects (the “Project Documents”), each of which must be in form and substance satisfactory to DOE, including without limitation the following:</p> <ul style="list-style-type: none"> (a) Offtake Agreement for each Approved Project, the term of which is no shorter than the Term; (b) EPC contracts for each Approved Project;

<p>4.3 Project Documents, continued</p>	<p>(c) Operations and Maintenance Agreements, as required, for each Approved Project, the term of which is no shorter than the Term;</p> <p>(d) Fuel Supply Agreement(s) for each Approved Project, for the Term; and</p> <p>(e) such other agreements as are specified in the Principal Financing Documents.</p>
<p>4.4 Transaction Documents</p>	<p>The Project Documents and the Principal Financing Documents are referred to herein as the “Transaction Documents.”</p>

5. Conditions Precedent

<p>5.1 Conditions to Closing</p>	<p>The financial closing of the Guaranteed Loan is subject to closing conditions as are usual and customary for non-recourse financings, 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, each of which must be to the satisfaction of DOE in its sole discretion:</p> <p>(a) <u>Due Diligence Review</u>. DOE shall have completed its due diligence review of the Approved Projects and all other matters related thereto, and the results thereof shall be satisfactory to DOE and the Approved Projects shall have been expressly approved by the DOE;</p> <p>(b) <u>Organization of Project Parties</u>. Delivery of organizational documents in form and substance satisfactory to DOE for each Borrower and each other participant in the Loan Facility or the Approved Projects;</p> <p>(c) <u>Company Certificates</u>. Delivery of customary closing certificates, secretary’s certificates, resolutions and good standing certificates in form and substance satisfactory to DOE;</p> <p>(d) <u>Legal Opinions and Similar Documents</u>. Delivery of such legal opinions, reliance letters and similar documents as DOE may request;</p> <p>(e) <u>Transaction Documents</u>. Execution and delivery of all Transaction Documents, in form and substance satisfactory to DOE, together with evidence that such Transaction Documents are in full force and effect;</p>
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<p>5.1 Conditions to Closing, continued</p>	<ul style="list-style-type: none"> (f) <u>Debt Repayment</u>. Repayment of any existing indebtedness and other obligations of any Borrower (excluding the Construction Loans) and release of associated liens encumbering any Collateral, other than customary permitted liens; (g) <u>Security Interests</u>. Evidence of perfection of all requisite security interests in the Collateral; (h) <u>Overrun Equity</u>. Satisfactory evidence that (i) the Borrowers will have the amount of the Aggregate Overrun Equity Commitments required for the construction period and (ii) that all payments made in respect of Aggregate Overrun Equity Commitments will be applied towards Overrun Project Costs for the Borrowers; (i) <u>Environmental Review</u>. 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) <u>Permits</u>. All material governmental approvals, permits or consents then required for construction or operation of each Approved Project shall be in place and not subject to waiting periods or appeal; (k) <u>Real Estate</u>. Acquisition of all real estate rights (including easements) then required for each Approved Project and delivery of related ALTA surveys, title insurance policies, purchase agreements and related documents; (l) <u>Financial Statements</u>. 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) <u>Project Plans</u>. Delivery of detailed project plans for the design, development, financing, construction, implementation, operation and management of each Approved Project, certified by the Independent Engineer as being satisfactory; (n) <u>Projections</u>. Delivery of projections with respect to the Borrowers, including all assumption used therein, demonstrating required average and minimum coverage ratios, certified by the Independent Engineer as being satisfactory; (o) <u>Construction Budget</u>. Delivery of a construction budget and schedule for each Approved Project, certified by the Independent Engineer as being satisfactory; (p) <u>Notice to Proceed</u>. Delivery of evidence that each Borrower has issued a notice to commence construction under the EPC contract for each Approved Project;
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<p>5.1 Conditions to Closing, continued</p>	<ul style="list-style-type: none"> (q) <u>Independent Engineer’s Report</u>. Delivery of a report and associated closing certificate from the Independent Engineer with respect to all engineering and construction aspects of the Approved Projects, including an analysis of the roles and capabilities of the participants therein; (r) <u>Insurance</u>. Receipt of satisfactory evidence, including without limitation a report and associated closing certificate from the Borrowers’ insurance advisor that the Borrowers have obtained the insurance required under the Principal Financing Documents; (s) <u>Credit Rating</u>. Delivery of credit ratings from a nationally recognized rating agency dated no earlier than 30 days prior to the Financial Closing Date reflecting the proposed financings (Construction Loans and this Loan Facility) as if the financings do not have a federal guarantee; (t) <u>Intellectual Property</u>. Evidence that the Borrowers and the Sponsor(s) have all intellectual property rights necessary for each Approved Project; (u) <u>Availability of Funds</u>. Evidence that the Guaranteed Loan Amount, when combined with other funds committed to the Approved Projects, including the Construction Loan, the Aggregate Overrun Equity Commitments and other contingency funds, will be available and sufficient to carry out the Approved Projects; (v) <u>Collateral Description; Appraisal</u>. Delivery of a description of assets associated, or to be associated, with the Approved Projects 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; (w) <u>Credit Subsidy</u>. OMB review and approval of DOE’s calculation of the credit subsidy cost of the DOE Guarantee as of the Financial Closing Date; and (x) <u>Payment of DOE Costs and Fees</u>. Payment in full of all DOE Costs and Fees and other fees and expenses payable to DOE, its counsel and its advisors that are due as of due as of the Financial Closing Date in connection with the Approved Projects.
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<p>5.2 Conditions to Disbursements</p>	<p>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:</p> <ul style="list-style-type: none"> (a) <u>Disbursement Request and Invoices</u>. Receipt of a disbursement request from a Borrower, in sufficient detail and including wire transfer instructions and copies of invoices, which requests a Disbursement Date within the Guaranteed Loan Availability Period; (b) <u>Representations and Warranties; No Default</u>. All representations and warranties shall be true and correct, and no default or event of default shall have occurred and be continuing; (c) <u>Overrun Equity</u>. Not later than the Disbursement Date, the Aggregate Overrun Equity Commitments made shall equal or exceed [●]% of the proceeds of the total eligible Overrun Project Costs previously funded or to be funded with the current Disbursement; (d) <u>No Material Adverse Change</u>. No event shall have occurred or could reasonably be expected to occur with respect to any Approved Project or any material participant therein that could reasonably be expected to have a material adverse effect on such Approved Project; (e) <u>Interest Rate Hedges</u>. Unless the interest rate on the Guaranteed Loan is fixed, evidence that the applicable Borrower has entered into interest rate swaps or hedges to adequately mitigate the risk of interest rate fluctuations; (f) <u>Disbursement Proceeds</u>. Evidence that the proceeds of all Disbursements to be made will be needed to pay 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; (g) <u>Development Costs Audit</u>. Receipt of all information with respect to development costs previously incurred and specifying the portion of such development costs that constitute eligible Project Costs, all certified as being satisfactory in a development costs audit prepared by the Independent Engineer; (h) <u>Construction Progress</u>. A construction progress report detailing achievement of specified construction milestones, as certified by the Independent Engineer;
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<p>5.2 Conditions to Disbursements, continued</p>	<ul style="list-style-type: none"> (i) <u>Cost Overruns; Funds Available to Complete Approved Projects.</u> A certification by the Independent Engineer that the funds available to the applicable Borrower are sufficient to pay all remaining Project Costs for such Borrower's Applicable Project, including without limitation identified Overrun Project Costs and other potential Overrun Project Costs for such Applicable Project, up to the remaining available funds under the Loan Facility; (j) <u>No Litigation.</u> No legal or arbitral proceedings are pending or threatened against any material participant in any Approved Project that could reasonably be expected to have a material adverse effect on such Approved Project; (k) <u>No Change in Law.</u> No change in law has occurred that could reasonably be expected to have a material adverse effect on any Approved Project; (l) <u>Lien Waivers.</u> 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; (m) <u>Certificates.</u> Receipt of all necessary certifications and delivery of officer's certificates and other customary certificates; (n) <u>Legal Opinions.</u> Delivery of such legal opinions, reliance letters and similar documents as DOE may request; (o) <u>Governmental Requirements.</u> 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; (p) <u>Permits.</u> Copies of all material governmental approvals, permits or consents not previously delivered required for construction or operation of the Approved Projects and such other governmental approvals, permits or consents as DOE may reasonably request or as may be required under the Transaction Documents; (q) <u>DOE Costs and Fees.</u> Payment in full of all DOE Costs and 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 Approved Projects; and (r) <u>Additional Documents.</u> Such other documents, certifications or consents relating to any Approved Project or the matters contemplated by the Transaction Documents as DOE may reasonably request.
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6. Representations and Warranties

6.1 Representations and Warranties	<p>The Principal Financing Documents will contain such representations and warranties regarding each Borrower and each Sponsor (to the extent applicable) as are usual and customary for non-recourse financings or as are otherwise deemed appropriate by DOE for this transaction (with customary qualifications and exceptions), including without limitation:</p> <ul style="list-style-type: none">(a) due organization and valid existence;(b) good standing;(c) power and authority; execution and delivery;(d) single-purpose nature of each Borrower; no prior business activity other than related to the Approved Projects;(e) no subsidiaries of any 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;
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<p>6.1 Representations and Warranties, continued</p>	<ul style="list-style-type: none"> (s) projections and plans; (t) title to properties; (u) no liens; (v) operation of business; (w) Borrower ownership and sufficiency of assets; (x) existing agreements; (y) availability and adequacy of utility 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 Documents; (jj) no event having a material adverse effect; (kk) sanctions and export controls; (ll) beneficial ownership; (mm) full disclosure; and (nn) such other representations and warranties as are agreed among the parties in the Principal Financing Documents.
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7. Affirmative Covenants

7.1 Affirmative Covenants	<p>The Principal Financing Documents will contain such affirmative covenants as are usual and customary for non-recourse financings or as are otherwise deemed appropriate by DOE for this transaction (with customary qualifications and exceptions) from each Borrower and, if applicable, each Sponsor, including without limitation regarding:</p> <ul style="list-style-type: none">(a) use of proceeds;(b) conduct substantially in accordance with the approved plans;(c) maintenance of corporate existence and separateness of each Borrower, its related Sponsor and other affiliates;(d) construction, operation and maintenance of each Approved Project;(e) maintenance of security interests;(f) performance of Transaction Documents to which it is party and material agreements to which each is party;(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, material Project Documents;(i) provision of construction budgets and construction progress reports, including monthly reports on costs incurred versus budget;(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 Approved Projects;(m) compliance with law and Program Requirements in connection with the Approved Projects;⁷
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⁷ Program Requirements include paying prevailing wages under the Davis-Bacon Act, U.S.-flag transport under the Cargo Preference Act and Buy America requirements under the Infrastructure Investment and Jobs Act.

<p>7.1 Affirmative Covenants, continued</p>	<ul style="list-style-type: none"> (n) environmental and safety matters, including without limitation with respect to compliance with the National Environmental Policy Act of 1969 (NEPA);⁸ (o) maintenance of insurance required under the Principal Financing Documents and application of proceeds thereof; (p) payment of taxes, fees and other charges; (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 each Approved Project as required by the Program Requirements; (t) maintenance of properties and title thereto; (u) maintenance of intellectual property; (v) provision to DOE and its representatives and advisors, including the Independent Engineer, of access to the project sites and ancillary facilities at reasonable times in order to monitor the performance of the Approved Projects; (w) disclosure and management of construction cost overruns; (x) change orders; (y) beneficial ownership; (z) compliance with sanctions and export controls; (aa) further assurances; and (bb) such other affirmative covenants as are agreed among the parties in the Principal Financing Documents.
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⁸ NEPA requirements would typically require an Environmental Impact Statement and Record of Decision.

8. Negative Covenants

8.1 Negative Covenants	<p>The Principal Financing Documents will contain such negative covenants as are usual and customary for non-recourse financings or as are otherwise deemed appropriate by DOE for this transaction (with customary qualifications and exceptions), from each Borrower including without limitation regarding:</p> <ul style="list-style-type: none">(a) no material change to the Approved Projects or engaging in other lines of business;(b) no incurrence of additional debt or guarantees(c) no amendment to Construction Loan without DOE consent;(d) no granting of additional liens;(e) no distributions or other restricted payments;(f) no acquisitions or dispositions of assets or capital expenditures;(g) no merger, consolidation or similar action;(h) no lease transactions;(i) no investments;(j) no formation of subsidiaries;(k) no changes to charter or organization documents;(l) no issuance of equity;(m) no changes to capital structure (including the issuance of any options, warrants or other rights with respect thereto);(n) no termination, amendment or waiver of any Project Documents;(o) no entering into transactions with affiliates, other than pursuant to Transaction Documents on an arm's length basis;(p) no entering into new material agreements;(q) no hedging transactions, other than as specifically permitted or required;
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<p>8.1 Negative Covenants, continued</p>	<ul style="list-style-type: none"> (r) no material modifications of the approved plans or budget without the prior written consent of the DOE in consultation with the Independent Engineer; (s) no unapproved hazardous materials; (t) no changes to fiscal year; and (u) such other negative covenants as are agreed among the parties in the Principal Financing Documents.
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9. Events of Default and Remedies

<p>9.1 Events of Default</p>	<p>The Principal Financing Documents will include such events of default as are usual and customary for non-recourse financings or as are otherwise deemed appropriate by DOE for this transaction (with customary materiality qualifications, exceptions and grace periods), including without limitation:</p> <ul style="list-style-type: none"> (a) failure to make payments when due; (b) default under the Construction Loan or any other indebtedness of any Borrower (other than the Guaranteed Loan); (c) breach of representations and warranties under any Principal Financing Document; (d) breach of covenants under any Principal Financing Document; (e) failure to fund when required or other default with respect to any Base Equity Commitment or any Overrun Equity Commitment; (f) breach or termination of any Project Document, including a material default by any counterparty thereunder; (g) loss or impairment of government permits or approvals by any material participant that could reasonably be expected to have a material adverse effect on any Approved Project; (h) bankruptcy, insolvency and dissolution of (x) any Borrower, the Sponsor or the Operator or (y) to the extent it could reasonably be expected to have a material adverse effect on any Approved Project, any other material participant; (i) judgments against any material participant that could reasonably be expected to have a material adverse effect on any Approved Project; (j) certain ERISA events;
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<p>9.1 Events of Default</p>	<ul style="list-style-type: none"> (k) occurrence of specified force majeure events and continuation thereof for [●] days; (l) impairment of security interests in Collateral; (m) invalidity or unenforceability of Transaction Documents; (n) material suspension of construction or operations or abandonment of any Approved Project; (o) physical destruction of any project facilities that could reasonably be expected to have a material adverse effect on any Approved Project and that has not been repaired with the proceeds of insurance within [●] days; (p) acceleration under any other indebtedness of the Sponsor in excess of a specified threshold; (q) if at any time the aggregate Project Costs for the Approved Projects to be funded from the Loan Facility are projected to exceed the sum of the principal amounts of the Base Equity Commitment(s), the Construction Loan, the Aggregate Overrun Equity Commitments and the Guaranteed Loan Amount;⁹ and (r) such other events of default as are agreed among the parties in the Principal Financing Documents.
<p>9.2 Remedies</p>	<p>Upon the occurrence of an Event of Default, the Principal Financing Documents will include usual and customary remedies for a non-recourse financing as well as such other rights as may be required under the Program Requirements to allow DOE to complete, own, operate, maintain or otherwise dispose of any Approved Project or any Collateral or otherwise protect the interests of the United States or the public interest. The exercise of remedies against the Collateral will be subject to compliance with the NRC's change of control regulations. The exercise of remedies will be subject to the terms of the Intercreditor Agreement.</p>

⁹ In lieu of the proposed Event of Default, the Sponsor(s) may wish to consider whether an additional equity commitment for cost overruns beyond those covered by the Loan Facility would be acceptable. An adjustment may also need to be made with respect to the plans for completion of construction of all of the Approved Projects, provided that appropriate concomitant changes are made with respect to the applicable DSCR Tests. Put differently, if four Approved Projects are to be funded by the Construction Loan and the Loan Facility, it may be required to re-direct funds so that only three such Approved Projects are constructed, with appropriate adjustments made (including in equity contributions, amortization schedules, and/or PPA revenue changes) so as to ensure continued sufficient lender protection afforded by the DSCR Tests.

10. Additional Considerations

10.1 Limited Recourse	Each Sponsor’s obligation with respect to the Loan Facility is limited to its respective Overrun Equity Commitment and its obligations, if any, under the Offtake Agreement(s) for its Approved Project(s) and any credit support required in connection with the foregoing.
10.2 EPC Best Practices	<p>Each Borrower shall adhere to, and shall contractually require its prime contractor under the EPC contracts to adhere to, EPC Best Practices (as defined below).</p> <p>“EPC Best Practices” constitutes means and methods, including where appropriate integrated project delivery (IPD), that seek the efficiency and involvement of all participants (people, systems, business structures and practices) through all phases of design, fabrication and construction or other means and methods as appropriate to enhance performance and quality.</p>
10.3 Information Sharing	If there are different prime contractors under the EPC contracts for the Approved Projects, each Sponsor and each Borrower shall share with each prime contractor and, to the extent permitted under applicable law, cause each prime contractor to share with each other prime contractor, lessons learned in the development and construction of each Approved Project. In addition, to the extent permitted under applicable law, each Sponsor and each Borrower agree to share such lessons with each other Sponsor.



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