

CONDITIONAL COMMITMENT LETTER

by and between

UNITED STATES DEPARTMENT OF ENERGY

and

TESLA MOTORS, INC.

Dated as of June 23, 2009

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CONDITIONAL COMMITMENT LETTER

June 23, 2009

Tesla Motors, Inc.
1050 Bing Street
San Carlos, CA 94070

Re: Loan Application of Tesla Motors, Inc. (the "*Application*")
Loan Number: A1002

Ladies and Gentlemen:

Tesla Motors, Inc. ("you" or the "Applicant") has submitted an amended and restated application dated May 4, 2009 (the "Application") for term loans authorized and approved by the U.S. Department of Energy ("DOE") pursuant to DOE's Advanced Technology Vehicles Manufacturing Incentive Program (the "ATVM Program") authorized by section 136 of the Energy Independence and Security Act of 2007, as amended from time to time ("Section 136"), and made by and through the Federal Financing Bank, 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 the Treasury ("FFB").

This conditional commitment letter (together with all attachments hereto, including without limitation the Terms and Conditions for the Loans under the ATVM Program (the "Term Sheet") attached as Appendix A hereto, the "Conditional Commitment Letter") will confirm the understanding and agreement between DOE and the Applicant in connection with the proposed financing for the Projects (as defined in the Term Sheet). Capitalized terms used but not defined herein have the meanings given to such terms in (i) the Term Sheet or (ii) the final regulations located at 10 CFR Part 611 and any other applicable regulations from time to time promulgated by DOE to implement Section 136 (the "Applicable Regulations"; and together with Section 136, the "Program Requirements"). All provisions of this Conditional Commitment Letter are subject to the Program Requirements.

1. Facilities, etc.

You have advised us that you wish to obtain the direct loans described in the Term Sheet in an aggregate principal amount of up to Four Hundred Sixty-Five Million Forty-Seven Thousand and 00/100 Dollars (\$465,047,000) to finance Eligible Project Costs for the Projects (as defined below), as follows:

- (a) a term loan facility in an aggregate principal amount of up to One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars (\$101,186,000) (the “*Project P Loan*”); and
- (b) a term loan facility in an aggregate principal amount of up to Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars (\$363,861,000) (the “*Project S Loan*” and together with the Project P Loan, the “*Loans*”).

2. Conditional Commitment

In connection with the foregoing, we are pleased to advise you that, subject to the conditions set forth herein, DOE commits to (i) arrange the Loans, (ii) designate (x) the Applicant as a borrower under the Program Financing Agreement (as defined in the Term Sheet) with respect to the Project S Loan and (y) the Applicant as a borrower under the Program Financing Agreement with respect to the Project P Loan and (iii) cause FFB to enter into a Note Purchase Agreement (x) with the Applicant and DOE in connection with the Project S Loan and (y) with the Applicant and DOE in connection with the Project P Loan, each for the purchase of one or more Notes issued by the Applicant evidencing the Loans, as more particularly set out below. DOE’s commitment hereunder is subject to (a) the preparation, execution and delivery of Definitive Agreements (as defined in Section 7 hereof) incorporating the terms and conditions set forth in this Conditional Commitment Letter, satisfactory to DOE in its sole discretion; (b) the absence of a Material Adverse Effect (as defined in the Term Sheet) (c) DOE’s satisfaction, in its sole discretion, with all legal, tax and accounting matters with respect to the Applicant and its subsidiaries; (d) DOE’s satisfaction, in its sole discretion, with, and the absence of any material adverse changes in, the capital, corporate and organizational structure of the Applicant and its subsidiaries; (e) your receipt to DOE’s satisfaction, in its sole discretion, of all governmental, internal corporate, third party and any other consents necessary to permit the Loans and the borrowings thereunder; and (f) those conditions precedent specified in the Term Sheet.

As an inducement to DOE to enter into this Conditional Commitment Letter, the Applicant represents and warrants to and agrees with DOE that:

- (i) the Applicant intends, with the proceeds of the Project P Loan, to design and manufacture lithium-ion battery packs, electric motors and electric components and, with the proceeds of the Project S Loan, to complete the development of and assemble the Tesla Model S sedan, in each case using manufacturing facilities located in the United States, all as contemplated by the Application;
- (ii) the Applicant and its affiliates are not seeking (and will not seek prior to the earlier of the occurrence of the Financial Closing Date (as defined in the Term Sheet) or the expiration of the conditional commitments of DOE contemplated hereby pursuant to Section 13 of this Conditional Commitment Letter) alternative financing arrangements for the uses contemplated

for the Loans, it being understood that the Applicant may seek supplemental funding from states or other non-federal governmental entities in the United States in connection with any part of the Projects ("Supplemental Funding"), provided that such Supplemental Funding is permitted by the Program Requirements; and

(iii) The transactions contemplated hereby have been duly authorized by all corporate action required on the part of the Applicant (including all approvals of holders of any interests in the Applicant that may be necessary or desirable in order for the execution, delivery and performance of this Conditional Commitment Letter and the undertaking of the obligations set forth in Section 7 of this Conditional Commitment Letter with respect to the Definitive Agreements, including, without limitation, issuance of warrants and underlying stock, incurring the indebtedness under the Loans and undertaking the Projects, by the Applicant).

3. True and Complete Disclosure

The Applicant hereby certifies as follows:

- (i) The information, reports, financial statements, exhibits and schedules furnished by or on behalf of the Applicant or any subsidiary of the Applicant to DOE, FFB or their respective designees, agents or representatives in connection with the negotiation, preparation or delivery of this Conditional Commitment Letter, including, without limitation, the Application, the Information Certificate delivered by the Applicant on the date hereof (the "*Information Certificate*") and the Term Sheet, or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified).
- (ii) All information furnished after the date hereof by or on behalf of the Applicant or any subsidiary of the Applicant to DOE, FFB or their respective designees, agents or representatives in connection with the Conditional Commitment Letter, including, without limitation, the Information Certificate and the Term Sheet, or the Transaction Documents and the transactions contemplated hereby and thereby, when taken as a whole and together with all information furnished prior to the date hereof, will not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein, in light of the circumstances under which they were made, not misleading (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified).
- (iii) There is no fact known to the Applicant or any of its subsidiaries (other than facts generally known to the public that relate to changes in the automotive industry or to conditions in the U.S. or global economy or capital or financial markets generally or to changes in general legal, tax, regulatory, political or business conditions) that, after due inquiry, could reasonably be expected to have a Material Adverse Effect that has not been

disclosed herein or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to DOE or FFB for use in connection with the transactions contemplated hereby.

4. Indemnity

The Applicant hereby indemnifies and holds harmless the United States of America, including, without limitation, DOE and FFB, and each other governmental agency or instrumentality of the United States, their respective designees, agents, and contractors, and all of their respective directors, officers and employees (each, an "*Indemnified Person*") from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel, but not including the expenses incurred by DOE in connection with the preparation, negotiation, execution and delivery of this Conditional Commitment Letter, Term Sheet and any Transaction Documents) to which such Indemnified Person may become subject arising out of or relating to (i) the execution or delivery of this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the enforcement or preservation of any rights under this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument prepared in connection herewith or therewith, (iii) any Loan or the use or proposed use of the proceeds thereof, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Applicant or any of its affiliates or otherwise, and regardless of whether any Indemnified Person is a party thereto; *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 or a material breach of the Indemnified Person's obligations hereunder, in each case as determined by a court of competent jurisdiction in a final, non-appealable order. This indemnity obligation shall survive the execution of the Loan Documents and the expiration or other termination of the Loans.

5. Cooperation

The Applicant and its subsidiaries will cooperate fully with DOE and its representatives and advisors with respect to its due diligence investigation of the Projects and the Applicant and its subsidiaries, including without limitation providing prompt and complete access to employees, engineers, accountants, facilities, books and records and contracts of the Applicant and its subsidiaries, as well as such other information as may be requested by DOE or its representatives or advisors, subject to reasonable measures implemented to ensure confidentiality of the information provided (consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and any regulations promulgated thereunder, and other applicable law).

6. Reporting Requirements

The Applicant and its subsidiaries will provide the following documents and information to DOE beginning on the date on which a conditional commitment exists up to and including the Financial Closing Date (at which point the Applicant will comply with the various reporting requirements set forth in the Definitive Agreements) or, if this Conditional Commitment Letter is terminated as provided herein, through this Conditional Commitment Letter's termination date:

- (a) within three (3) business days of the Applicant or any of its subsidiaries obtaining knowledge of such change, notice of any previously unreported material change to the information contained in the Applicant's Application for the Loans or the Information Certificate, including without limitation, any material change in (i) the description of the Projects and related plans and contracts; (ii) the status of Project-related applications or approvals for governmental permits and authorizations; and (iii) the potential environmental impact of the Projects; and
- (b) at all times, any other information requested by DOE in its reasonable judgment regarding the Applicant, any of its subsidiaries or the Projects.

7. Definitive Agreements

As soon as practicable following the execution and delivery of this Conditional Commitment Letter, DOE and the Applicant will negotiate in good faith to enter into definitive Transaction Documents (the "*Definitive Agreements*") with respect to the transactions described in the Term Sheet to be on such terms and conditions as DOE and the Applicant mutually agree. The Definitive Agreements will include (i) the terms contained herein, including, but not limited to those terms set forth in the Applicable Regulations and Term Sheet, and (ii) such other terms and conditions as DOE and the Applicant mutually agree. Each of DOE and the Applicant will use its commercially reasonable best efforts to prepare such Definitive Agreements, and agree to take all such actions as may be required to consummate the transactions described in the Term Sheet on the terms and conditions set forth therein. However, the failure of DOE to execute and deliver Definitive Agreements will not affect the binding effect or enforceability of Sections 3, 4, 8, 11 and 12 of this Conditional Commitment Letter.

8. Assignment; Entire Agreement

This Conditional Commitment Letter shall not be assignable by the Applicant without the prior written consent of DOE (and any such purported assignment shall be void) and may not be amended or waived except by a written instrument signed by DOE and the Applicant. By executing this Conditional Commitment Letter, DOE and the Applicant acknowledge that this Conditional Commitment Letter, including the Term Sheet, is the only agreement between the

Applicant and DOE with respect to the Loans and sets forth the entire understanding of the parties with respect thereto. This Conditional Commitment Letter is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto.

9. *Binding Nature; Survival*

The provisions of this Conditional Commitment Letter are binding on the parties hereto, and Sections 3, 4, 8, 11 and 12 of this Conditional Commitment Letter shall survive any termination or expiration of this Conditional Commitment Letter.

10. *Counterparts*

This Conditional Commitment Letter 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.

11. *Public Statements*

Neither the Applicant nor any subsidiary of the Applicant, nor any director, officer, employee or other agent affiliated with the Applicant or any person affiliated with any of the foregoing, shall make any press announcements or public statement about the Projects or the Loans without the prior written approval of the Director of the ATVM program at DOE.

12. *Governing Law*

This Conditional Commitment Letter shall be governed by the federal laws of the United States of America and not the laws of the several states.

13. *Acceptance of Term Sheet; Expiration of Commitment*

If you are in agreement with the foregoing, please indicate your acceptance of the terms and conditions of this Conditional Commitment Letter, including the Term Sheet, by signing in the appropriate space below and returning to DOE (whether by way of manual or electronic delivery) an executed counterpart of this Conditional Commitment Letter not later than 5:00 p.m., Washington D.C. time, on June 23, 2009. DOE's commitment hereunder will expire at such time in the event DOE has not received such executed counterpart in accordance with the preceding sentence. In the event that the Financial Closing Date shall not have occurred on or

before October 31, 2009, then this Conditional Commitment Letter and DOE's commitments hereunder shall terminate unless the Secretary or his appointed designee agrees in writing to an extension. Such extension may be subject, at DOE's sole discretion, to modification of the terms hereof.

[Signatures Appear on Next Page]

Very truly yours,

U.S. DEPARTMENT OF ENERGY

By:

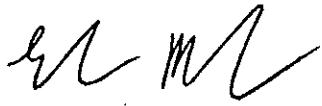

Steven Chu

Dr. Steven Chu, Secretary of Energy

[Signature Page to Conditional Commitment Letter]

ACCEPTED AND AGREED TO
as of the date of this Conditional Commitment Letter:

TESLA MOTORS, INC.

By: 

Name: ELON MUSK
Title: CEO

IN WITNESS WHEREOF, Applicant has executed this Information
Certificate as of June 23, 2009.

TESLA MOTORS, INC.

By:

Name: Deepak Ahuja

Title: CHIEF FINANCIAL OFFICER



APPENDIX A
to the Conditional Commitment Letter

TERMS AND CONDITIONS FOR THE LOANS UNDER THE ATVM PROGRAM

This Term Sheet outlines the material terms and conditions of the transactions contemplated herein, but is not intended to be a comprehensive list of all relevant terms and conditions. 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 DOE, in its sole discretion, may require. DOE reserves the right to propose such further terms and conditions as it deems necessary in the course of further due diligence and receipt of related approvals satisfactory to DOE, in its sole discretion, and any other approval procedures customary for a transaction of this nature.

Facility

1. *Facility*

Two multi-draw term loan facilities in an aggregate amount of up to Four Hundred Sixty-Five Million Forty-Seven Thousand and 00/100 Dollars (\$465,047,000) that are full recourse to the Obligors (as defined in Section 3 of this Term Sheet), consisting of the Project P Loan facility, in an aggregate principal amount of up to One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars (\$101,186,000), and the Project S Loan facility, in an aggregate principal amount of up to Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars (\$363,861,000).

The Loans will be secured by a first priority lien or security interest on all of the assets acquired with proceeds of the Loans and substantially all of the other assets of the Obligors as described in Section 16 of this Term Sheet.

2. *Borrower*

The borrower for each of the Project P Loan and the Project S Loan will be Tesla Motors, Inc., a corporation organized under the laws of Delaware ("Tesla" or the "Borrower").

3. *Obligors*

The Loans will be guaranteed by (i) all direct and indirect domestic subsidiaries of Tesla (collectively, the "*Domestic Guarantors*") and (ii) if and to the extent requested by DOE from time to time, any foreign subsidiaries of Tesla the value of which DOE determines at such time to be material to the interests of DOE and FFB as lender (collectively, the "*Foreign Guarantors*"; together with the Domestic Guarantors, the "*Guarantors*"; and the Guarantors together with Tesla, the "*Obligors*"). In determining whether to require a foreign subsidiary to

become a Guarantor at any time, DOE will consider in good faith whether it believes at such time that the incremental costs, including incremental tax costs, if any, of doing so are not likely to be excessive in relation to the value of the security to be afforded thereby.

Projects and Eligible Project Costs

4. Projects

The Projects consist of (a) the Advanced Powertrain Facility for the construction of a facility to design and manufacture lithium-ion battery packs, electric motors and electric components (“*Project P*”) and (b) the Advanced Technology Vehicle and Manufacturing Project to complete the development of the Tesla Model S sedan (the “*Model S*”) and construct its manufacturing facility (“*Project S*”); and together with Project P, the “*Projects*”), each as described in more detail in the Application.

5. Business Plans

Tesla will, no later than fifteen (15) business days prior to the Financial Closing Date (as defined in Section 22 of this Term Sheet), and at specified intervals during the terms of each Loan, provide to DOE an updated business plan containing, in each case, as may be acceptable to DOE in its sole discretion (unless set forth otherwise below), (i) a reasonably detailed list of construction, production, manufacturing and other milestones (collectively, the “*Milestones*”), in chronological order, that the Borrower will need to satisfy in order to fully complete the Project, together with the anticipated completion dates (each, a “*Milestone Completion Date*”) for each of the Milestones (including, without limitation, a committed outside date for substantial completion of each Project) and, to the extent they can be identified as of such date, the anticipated costs and expenses that the Borrower expects will be incurred in connection with, and upon the completion of, each of the Milestones, it being acknowledged that Borrower has submitted such Milestones to DOE as of the date hereof and it being understood that while the Business Plan may be periodically updated in accordance with the terms of this Term Sheet, the Milestones and the Milestone Completion Dates may only be updated or otherwise amended with the written consent of the DOE, acting in its sole discretion, (ii) current financial statements for Tesla and the other Obligors, together with a financial model presenting *pro forma* financial statements for Tesla (and other Obligors) for the proposed term of the obligations, including, *inter alia*, income statements, balance sheets and cash flow statements, (iii) a detailed description of the overall financing plan for each Project and all other cash needs of Tesla for the same period, including all sources and uses of funding, a detailed schedule of proposed Loan advances for each fiscal quarter and the Eligible Project Costs (as such term is defined in Section 6 of this Term Sheet) to be paid or reimbursed with such proceeds, (iv) prior to the Financial Closing Date, a budget for each Project (the “*Project P Budget*” or “*Project S Budget*”, as applicable, and, collectively, the “*Budget*”), including a detailed estimate and breakdown of the total costs of such Project (the total Project costs with respect to Project P, the “*Total Project P Costs*”; the total Project costs with respect to Project S, the “*Total Project S Costs*”), and thereafter an

updated forecast of costs showing for each Project the Paid or Committed Costs, the Remaining Uncommitted Costs, the Forecasted Total Costs and the Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable (each such term as defined in Section 9(a) of this Term Sheet) (as applicable, the “*Project P Forecast*” or the “*Project S Forecast*”), in each case, together with a description of the methodology and assumptions used to produce such estimates, and (v) such other information as may be required by DOE in its reasonable discretion (the items described in clauses (i) through (v), inclusive, as approved from time to time by DOE, the “*Business Plan*”).

6. Project Costs

(a) Projected Eligible Project Costs

Tesla estimates as of the date of this Term Sheet that:

- (i) Eligible Project P Costs will be an aggregate amount (the “*Projected Eligible Project P Cost*”) equal to One Hundred Fifty-Three Million Six Hundred Ninety-Six Thousand and 00/100 Dollars (\$153,696,000) (which, for the avoidance of doubt, includes approximately Nine Million One Hundred Ninety-Nine Thousand (\$9,199,000), of budgeted contingency funds); and
- (ii) Eligible Project S Costs will be an aggregate amount (the “*Projected Eligible Project S Cost*”) equal to Four Hundred Fifty-Four Million Eight Hundred Twenty-Six Thousand and 00/100 Dollars (\$454,826,000) (which, for the avoidance of doubt, includes approximately Thirty-Six Million One Hundred Thirty-Six Thousand Dollars \$36,136,000 of budgeted contingency funds).

(b) Application of Loan Proceeds

- (i) Tesla will apply Project P Loan proceeds solely to pay those portions of the Total Project P Costs (the “*Eligible Project P Costs*”) that are eligible for funding as “Eligible Costs” as defined in Section 611.102 of the Applicable Regulations (“*Eligible Costs*”), including, without limitation, but only to the extent provided in this Term Sheet, Excess Cost Overruns (as defined in Section 9(b)(i) of this Term Sheet).
- (ii) Tesla will apply Project S Loan proceeds solely to pay those portions of the Total Project S Costs that are eligible for funding as Eligible Costs (the “*Eligible Project S Costs*”, and together with the Eligible Project P Costs, the “*Eligible Project Costs*”), including, without limitation, but only to the extent provided in this Term Sheet, Excess Cost Overruns.

- (iii) For the avoidance of doubt, in no event will the proceeds of any Loan be applied towards any portion of the Total Project Costs incurred prior to December 15, 2008.
- (c) Tesla agrees and acknowledges that no costs or expenses relating to any Project shall constitute "Eligible Costs" as defined in the Applicable Regulations to the extent such costs or expenses were funded with proceeds obtained by Tesla from the United States or any instrumentality thereof (other than the Loans), including, without limitation, under the Troubled Asset Relief Program or any other grant or loan program.

7. *Applicant Commitment*

- (a) Tesla will commit to pay all costs and expenses incurred to complete Project P in excess of the amounts permitted to be advanced as of any date under the terms of the Project P Loan. Immediately prior to FFB making any Advance in connection with the Project P Loan, Tesla will make payments and/or provide evidence of payments made on account of Total Project P Costs (the "*Project P Applicant Payments*"), on terms and conditions set forth in the Loan Documents, in an aggregate amount (the "*Project P Applicant Commitment*") equal to (x) all Total Project P Costs incurred as of the date of such determination minus (y) the Project P Maximum Loan Amount (as such term is defined in Section 10(a) of this Term Sheet).
- (b) Tesla will commit to pay all costs and expenses incurred to complete Project S in excess of the amounts permitted to be advanced as of any date under the terms of the Project S Loan. Immediately prior to FFB making any Advance in connection with the Project S Loan, Tesla will make payments and/or provide evidence of payments made on account of Total Project S Costs (the "*Project S Applicant Payments*"), on terms and conditions set forth in the Loan Documents, in an aggregate amount (the "*Project S Applicant Commitment*"; and together with the Project P Applicant Commitment, the "*Applicant Commitments*") equal to (x) all Total Project S Costs incurred as of the date of such determination minus (y) an amount equal to the Project S Maximum Loan Amount (as defined in Section 10(b) of this Term Sheet).

8. *Cash Equity Condition*

Tesla shall certify to DOE in connection with each Advance that the "*Cash Equity Condition*" is then being satisfied, which shall mean that Tesla has and will for the remaining Loan Availability Period have an amount of available cash (taking into account current cash flows and cash on hand, and reasonable projections of future retained earnings, losses and expenditures during the Loan Availability Period, but specifically excluding loan proceeds and cash that Tesla is restricted from using for Total Project P Costs or Total Project S Costs by contract, legal requirement or otherwise) ("*Cash Equity*") not less than one hundred five percent (105%) of the

aggregate amounts required to fund the remaining Applicant Commitments through final completion of both Project P and Project S. If at any time the Cash Equity Condition is not being satisfied, then Tesla shall comply with the procedures set forth in Section 9(b) for submission and approval of a Corrective Plan (as defined therein).

9. Cost Overruns

(a) Testing of Excess Cost Overruns

(i) Definitions

“*Budgeted Project P Contingency Amount*” means the Project P Contingency Amount shown in the Project P Budget.

“*Budgeted Project S Contingency Amount*” means the Project S Contingency Amount shown in the Project S Budget.

“*Budgeted Total Costs*” means, as applicable, the Total Project P Costs or Total Project S Costs shown in the Project P Budget or Project S Budget, including the Budgeted Project P Contingency Amount or the Budgeted Project S Contingency Amount.

“*Forecasted Total Costs*” means, as of the applicable Measurement Date, the Paid or Committed Costs with respect to Project P or Project S, as applicable, plus the Remaining Uncommitted Costs for such Project, as shown in the most recent Project P Forecast or Project S Forecast, as applicable, approved by DOE.

“*Measurement Date*” means the last day of each fiscal quarter.

“*Net Budgeted Total Costs*” means the Budgeted Total Costs with respect to Project P or Project S, as applicable, excluding the Budgeted Project P Contingency Amount or the Budgeted Project S Contingency Amount.

“*Net Forecasted Total Costs*” means, as of the applicable Measurement Date, the Paid or Committed Costs with respect to Project P or Project S, as applicable, plus the Net Remaining Uncommitted Costs for such Project, as shown in the most recent Project P Forecast or Project S Forecast, as applicable, approved by DOE.

“*Net Remaining Uncommitted Costs*” means, as of the applicable Measurement Date, the costs required to complete Project P or Project S, as applicable, as shown in the most recent Project P Forecast or Project S Forecast approved by DOE, excluding the Remaining Project P Contingency Amount or the Remaining Project S Contingency Amount.

“Paid or Committed Costs” means, as applicable, Total Project P Costs or Total Project S Costs that either have been paid in full or otherwise committed pursuant to binding agreements with suppliers, contractors or other third parties delivering materials or services in connection with Project P or Project S.

“Remaining Project P Contingency Amount” means the Project P Contingency Amount shown in the most recent Project P Forecast approved by DOE.¹

“Remaining Project S Contingency Amount” means the Project S Contingency Amount shown in the most recent Project S Forecast approved by DOE.

“Remaining Uncommitted Costs” means, as of the applicable Measurement Date, the costs required to complete Project P or Project S, as applicable, as shown in the most recent Project P Forecast or Project S Forecast approved by DOE, including the Remaining Project P Contingency Amount or the Remaining Project S Contingency Amount.

(ii) Project P Excess Cost Overruns. On each Measurement Date (as reported fifteen business days after such Measurement Date), Tesla shall calculate the Remaining Project P Contingency Amount as a percentage of the Net Remaining Uncommitted Costs (such percentage, the “*Project P Contingency Percentage*”). In the event the Project P Contingency Percentage is:

(i) if fifty percent (50%) or less of the Net Forecasted Total Costs for Project P constitute Paid or Committed Costs, less than seven and one-half percent (7.5%); or

(ii) if more than fifty percent (50%) of the Net Forecasted Total Costs for Project P constitute Paid or Committed Costs, less than five percent (5.0%) (such percentage as determined pursuant to clause (i) or (ii) as applicable, the “*Project P Required Contingency Percentage*”);

then a “*Project P Excess Cost Overrun*” shall exist in an amount equal to the amount that would be required to be added to the Remaining Project P Contingency Amount such that the Project P Contingency Percentage would equal the Project P Required Contingency Percentage as of such Measurement Date, and the provisions of Section 9(b) shall apply. Such calculations shall be made in accordance with the spreadsheet attached hereto as Exhibit E.

(iii) Project S Excess Cost Overruns. On each Measurement Date (as reported fifteen business days after such Measurement Date), Tesla shall calculate the Remaining Project S Contingency Amount as a percentage of the Net Remaining Uncommitted Costs (such percentage, the “*Project S Contingency Percentage*”). In the event the Project S Contingency Percentage is:

(i) if fifty percent (50%) or less of the Net Forecasted Total Costs for Project S constitute Paid or Committed Costs, less than seven and one-half percent (7.5%); or

(ii) if more than fifty percent (50%) of the Net Forecasted Total Costs for Project S constitute Paid or Committed Costs, less than five percent (5.0%) (such percentage as determined pursuant to clause (i) or (ii) as applicable, the "*Project S Required Contingency Percentage*");

then a "*Project S Excess Cost Overrun*" shall exist in an amount equal to the amount that would be required to be added to the Remaining Project S Contingency Amount such that the Project S Contingency Percentage would equal the Project S Required Contingency Percentage as of such Measurement Date, and the provisions of Section 9(b) shall apply. Such calculations shall be made in accordance with the spreadsheet attached hereto as Exhibit E.

(b) Corrective Plan

- (i) In the event of a Project P Excess Cost Overrun or a Project S Excess Cost Overrun (each, an "*Excess Cost Overrun*"), the following terms and conditions shall apply:
 - (1) Tesla shall promptly notify DOE in writing of such Excess Cost Overrun, and within ten (10) Business Days shall deliver a proposed "*Action Plan*" demonstrating any projected cost savings and the amount required to be contributed by Tesla to satisfy the Excess Cost Overrun;
 - (2) If Tesla shall commit in writing in connection with the Action Plan to pay from Cash Equity the amount of the Excess Cost Overrun over the ensuing ninety (90) day period (or from time to time as and when the same becomes due) and provide evidence of the availability of Cash Equity for such payments satisfactory to DOE (the "*Correction by Commitment Condition*"), then DOE shall approve Advances in the amounts otherwise required under this Term Sheet as if there were no such Excess Cost Overrun, and Tesla shall provide cash to cover Excess Cost Overruns required to be paid with cash in respect of each Advance;
 - (3) If Tesla fails to meet the Correction by Commitment Condition in respect of an Excess Cost Overrun, or in the event at any time the Cash Equity Condition is not being satisfied, Tesla shall submit to DOE not later than thirty (30) days following the applicable date of determination a written plan of corrective action intended to satisfy such Excess Cost Overrun or the failure of the Cash Equity Condition, either through obtaining

additional equity investment, through retained net earnings, or achieving cost savings under other line items in the applicable Budget or otherwise (a “*Corrective Plan*”), together with such documentation supporting such Corrective Plan as may reasonably be required by DOE;

- (4) DOE shall either approve or disapprove, in its sole discretion, any Corrective Plan within thirty (30) days following the date upon which it receives such Corrective Plan from Tesla, together with any documentation supporting such Corrective Plan reasonably required by DOE; and
- (5) In the event DOE disapproves a Corrective Plan, the parties shall cooperate in good faith to develop a Corrective Plan satisfactory to DOE in its sole discretion.

- (ii) Adjustment of Remaining Contingency Amounts; Running Balance Calculation. The following calculations shall be made in accordance with the spreadsheet attached hereto as Exhibit E.

- (1) Permitted Overruns. Any amounts Tesla commits to pay with respect to a Project pursuant to a Correction by Commitment Condition or a Corrective Plan are “Permitted Overruns.” The initial Permitted Overrun is the “Initial Contribution”
 - (2) Permitted Corrections. After the Initial Contribution (and thereafter only assuming there is a positive balance in the Remaining Balance Calculation as set forth below), any amount by which the Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, exceeds the amount of contingency required as calculated using the applicable Required Contingency Percentage, once reviewed and approved by the DOE, are Permitted Corrections. In the event of a Permitted Correction, the parties shall adjust any prior Correction by Commitment Condition or Corrective Plan to their mutual satisfaction.
 - (3) Any Permitted Overruns shall be added to Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, in the subsequent Project P Forecast or Project S Forecast. Any Permitted Corrections shall be subtracted from Remaining Project P Contingency Amount or Remaining Project S Contingency Amount, as applicable, in the subsequent Project P Forecast or Project S Forecast.

- (4) Beginning on the first Measurement Date after Tesla has made the Initial Contribution, Tesla shall provide DOE with the Running Balance Calculation. The Running Balance Calculation shall be a running balance of all Permitted Overruns less all Permitted Corrections.
- (c) Consequence of Cost Overrun or Cash Equity Condition Event

In the event of an Excess Cost Overrun or the failure of the Cash Equity Condition that is continuing, DOE shall not be required to approve any further Advances, and Tesla shall be in default under the Loans, unless Tesla satisfies the Correction by Commitment Condition (solely with respect to an Excess Cost Overrun) or a Corrective Plan to remedy such Excess Cost Overrun or Cash Equity Condition is approved by DOE as provided above and Tesla thereafter complies with such Correction by Commitment Condition or such Corrective Plan, as applicable (it being understood that compliance with a Correction by Commitment Condition or Corrective Plan shall include making any payments required from time to time thereunder). In the event of an Excess Cost Overrun, any Advances approved by DOE shall be made contingent on Tesla paying any additional amounts required to be paid by Tesla in connection with the Correction by Commitment Condition or such approved Corrective Plan and, to the extent provided in the Correction by Commitment Condition or such approved Corrective Plan, the amount of each such Advance as otherwise determined in accordance with this Term Sheet shall be reduced by such additional amounts payable by Tesla.

Loans

10. The Loans

Loans are to be made by and through FFB, and authorized, approved and arranged by DOE pursuant to the terms and conditions of the ATVM Program, Section 136 and the Applicable Regulations, in an aggregate principal amount from time to time outstanding of not more than:

- (a) with respect to the Project P Loan, the lesser of (x) eighty percent (80%) of all Eligible Project P Costs (excluding Excess Cost Overruns unless and to the extent provided for in Section 9(b)(i)(2) or in an approved Corrective Plan) incurred as of any date of determination and (y) One Hundred One Million One Hundred Eighty-Six Thousand and 00/100 Dollars (\$101,186,000) (such lesser amount, the "*Project P Maximum Loan Amount*"); *provided, however,* that subject to the Project P Maximum Loan Amount and Section 10(c), Advances shall be in the following amounts (but only if, in each case, all applicable conditions have been met):
- (i) initially in an amount equal to one hundred percent (100%) of Eligible Project P Costs incurred on or after December 15, 2008;

(ii) reduced to an amount equal to eighty percent (80%) of Eligible Project P Costs incurred during the period beginning on February 1, 2010, in the event Borrower has not satisfied all conditions precedent to a Site-Dependent Advance (as defined in Section 24 of this Term Sheet) of the Project P Loan, and ending on the date that such conditions are satisfied; provided, however, that in no event shall DOE or FFB be required to make any Advances of the Project P Loan after June 1, 2010 unless all conditions precedent to a Site-Dependent Advance of the Project P Loan have been satisfied; and

(iii) after all conditions precedent to a Site-Dependent Advance of the Project P Loan have been satisfied, in an amount equal to one hundred percent (100%) of Eligible Project P Costs thereafter incurred.

In addition, subject to the Project P Maximum Loan Amount and Section 10(c) (and only if all applicable conditions have been met):

(x) upon the satisfaction of the conditions precedent to a Site-Dependent Advance of the Project P Loan, a single Advance shall be made in an amount equal to the excess, if any, of (1) one hundred percent (100%) of all Eligible Project P Costs incurred on or after December 15, 2008, as to which an Advance of less than one hundred percent (100%) was made pursuant to clause (ii) of this Section 10(a) over (2) the amount of such Advance actually made pursuant to such clause; and

(y) upon final completion of Project P, a single Advance shall be made in an amount equal to the excess, if any, of (1) the lesser of (A) eighty percent (80%) of all Eligible Project P Costs, (B) one hundred percent (100%) of all Eligible Project P Costs incurred on or after December 15, 2008, and (C) One Million One Hundred Eighty-Six Thousand and 00/100 Dollars (\$101,186,000) over (2) the aggregate amount of all Advances made with respect to Project P;

(b) with respect to the Project S Loan, the lesser of (x) eighty percent (80%) of all Eligible Project S Costs (excluding Excess Cost Overruns unless and to the extent provided for in Section 9(b)(i)(2) or in an approved Corrective Plan) incurred as of any date of determination and (y) Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars (\$363,861,000) (such lesser amount, the "*Project S Maximum Loan Amount*"); provided, however, that subject to the Project S Maximum Loan Amount and Section 10(c), Advances shall be in the following amounts (but only if, in each case, all applicable conditions have been met):

(i) initially in an amount equal to ninety-two percent (92%) of Eligible Project S Costs incurred on or after December 15, 2008;

(ii) reduced to an amount equal to seventy-two percent (72%) of Eligible Project S Costs incurred during the period beginning on April 1, 2010, in the event Borrower has not satisfied all conditions precedent to a Site-

Dependent Advance of the Project S Loan, and ending on the date that such conditions are satisfied; provided, however, that in no event shall DOE or FFB be required to make any Advances of the Project S Loan after August 1, 2010 unless all conditions precedent to a Site-Dependent Advance of the Project S Loan have been satisfied, and

(iii) after all conditions precedent to a Site-Dependent Advance of the Project S Loan have been satisfied, in an amount equal to ninety-two percent (92%) of Eligible Project S Costs thereafter incurred.

In addition, subject to the Project S Maximum Loan Amount and Section 10(c) (but only if all applicable conditions have been met):

(x) upon the satisfaction of the conditions precedent to a Site-Dependent Advance of the Project S Loan, a single Advance shall be made in an amount equal to the excess, if any, of (1) ninety-two percent (92%) of all Eligible Project S Costs incurred on or after December 15, 2008, as to which an Advance of less than ninety-two percent (92%) was made pursuant to clause (ii) of this Section 10(b) over (2) the amount of such Advance actually made pursuant to such clause; and

(y) upon final completion of Project S, a single Advance shall be made in an amount equal to the excess, if any, of (1) the lesser of (A) eighty percent (80%) of all Eligible Project S Costs, (B) one hundred percent (100%) of all Eligible Project S Costs incurred on or after December 15, 2008, and (C) Three Hundred Sixty-Three Million Eight Hundred Sixty-One Thousand and 00/100 Dollars (\$363,861,000) over (2) the aggregate amount of all Advances made with respect to Project S;

(c) Historical Costs

- (i) For purposes of determining the percentages contained in Sections 10(a)(i)-(iii) and 10(x) and 10(b)(i)-(iii) and 10(x), of this Term Sheet, the parties have assumed that the Historical Costs (as defined in clause (iii) below) on account of Project P consist of an amount equal to Fifty-Two Million Five Hundred Ten Thousand and 00/100 Dollars (\$52,510,000) and that the Historical Costs on account of Project S consist of an amount equal to Fifty-Seven Million Three Hundred Thirty-Two Thousand and 00/100 Dollars (\$57,332,000) (each such amount, an "*Historical Costs Assumption*").
- (ii) In the event DOE determines in its sole discretion that the Historical Costs Assumption with respect to either Project does not accurately reflect the actual Historical Costs incurred by Tesla with respect to such Project, (x) the percentages set forth in Sections 10(a)(i) - (iii) and 10(x), and 10(b)(i) - (iii) and

10(x), shall be modified in DOE's sole discretion to reflect the percentages which would have been applied had such Historical Costs Assumption accurately reflected the actual Historical Costs with respect to such Project, (y) the next Advance(s) shall be reduced in an amount equal to (1) the aggregate amount of Advances theretofore made (as determined in accordance with the incorrect Historical Costs Assumption) minus (2) the aggregate amount of such Advances that would have been made had they been determined in accordance with the actual Historical Costs, and (z) Tesla shall certify that the Cash Equity Condition is being satisfied notwithstanding the effects of the foregoing clauses (x) and (y).

- (iii) The term "*Historical Costs*" means those Total Project Costs incurred prior to December 15, 2008 that, if they had been incurred instead on or after December 15, 2008, would have been considered Eligible Project Costs.

11. Availability

- (a) Subject to the terms of the Funding Agreements (as defined in Section 19(b) below), disbursements of the Project P Loan (each, a "*Project P Advance*") and Project S Loan (each, a "*Project S Advance*") may be requested from time to time (but no more frequently than once during any calendar month) during the period (the "*Loan Availability Period*") from (x) the Financial Closing Date to (y) the date that is thirty-six (36) months following the Financial Closing Date.
- (b) Subject to satisfaction of the conditions precedent set forth in the Loan Documents, the proceeds of (x) Project P Advances will be used to pay Eligible Project P Costs and (y) Project S Advances will be used to pay Eligible Project S Costs, in the case of each of clauses (x) and (y) of this sentence, in accordance with the then current Business Plan for the applicable Project. Subject to the terms of the Funding Agreements and other Transaction Documents, Advances to Tesla will be made in accordance with the following procedures:
- (i) no less than ten (10) business days prior to any Advance Date (as defined in Section 23 of this Term Sheet), Tesla shall provide DOE for its review and approval with (1) an advance request in accordance with Section 23(a), in sufficient detail and including wire transfer instructions and copies of invoices or other reasonable documentation evidencing the Eligible Costs to be paid, (2) a certificate executed by an authorized officer of Tesla certifying that (x) the proceeds of the Project P Advances will be used to pay Eligible Project P Costs due and payable not later than thirty (30) days following the date of such advance request and (y) the Project S Advances will be used to pay Eligible Project S Costs due and payable not later than thirty (30) days following the date of such advance request, in each case, in accordance with the then current Business Plan for the applicable Project, (3) an updated Project P Forecast and Project S

Forecast, and (4) such other applicable documentation, certificates and information specified in this Term Sheet (including, without limitation, in Section 23 and, as applicable, Section 24, and, prior to the Financial Closing Date, Section 22);

- (ii) subject to satisfaction by Tesla of all necessary conditions precedent specified in this Term Sheet, no less than three (3) business days prior to any Advance Date, DOE shall provide the FFB with (1) the applicable advance request from the Tesla described in clause (i) above and (2) an advance approval notice from DOE; and
- (iii) pursuant to the foregoing, FFB will make Advances to Tesla to pay relevant Eligible Project Costs then due and payable, as soon as commercially practicable, and in any event within three (3) business days, or five (5) business days, as applicable, following receipt from DOE of the applicable advance request and advance approval notice specified above, and Tesla will then use the proceeds of the Advances to make all such disbursements as are necessary directly to those persons to whom Tesla is obligated to make payment or retain payment for Eligible Costs in the nature of payroll costs or similar internal costs that are being funded.

Tesla agrees that DOE shall only be required to use reasonable efforts to provide the FFB with the necessary advance requests and advance approval notices within the time-frames specified above, but DOE shall in any event ensure that the FFB receives all such advance requests and advance approval notices as soon as practicable following receipt from Tesla of the applicable advance requests and necessary certificates specified above (subject to Tesla satisfying all necessary conditions precedent specified in this Term Sheet, including, without limitation in Section 23 and, as applicable, Section 24, and, prior to the Financial Closing Date, Section 22).

Tesla acknowledges and agrees that notwithstanding any other provision of this Term Sheet to the contrary, DOE shall not be required to approve any Advance unless the same has been requested and will be applied to pay the costs of services rendered, materials delivered and required deposits incurred from and after December 15, 2008 and due and payable not later than thirty (30) days following the date of the applicable Advance request.

DOE reserves the right to retain an independent engineer to review advance requests, verify Tesla's application of the proceeds of the Loans, confirm Tesla's completion of the Milestones and perform such other similar tasks in connection with the administration of the Loans as may be required by DOE.

12. Interest Rate

Subject to the terms of the Funding Agreements, each Advance shall have its own interest rate (the "*Interest Rate*"), which rate will be determined by the Secretary of the Treasury as of the date the respective Advance is made. The Interest Rate for each Advance will be a rate per annum equal to the single equivalent rate for the payment stream on the Advance under the terms of the Funding Agreements. The single equivalent rate will be determined first by envisioning the payment stream on the Advance under the Funding Agreements as a payment stream on a series of bonds in which each bond has a principal amount equal to the level principal installment due on each payment date on the Advance, and each bond matures on the same date as a payment date on the Advance, and then by assigning to each serial bond a separate interest rate derived from the daily Treasury Yield Curve corresponding to each bond's maturity date. Then, a single equivalent rate is calculated and given to the Advance that produces the same payment stream that the sum of the payments on the individual serial bonds produces.

All overdue amounts on the Loans will accrue interest at the Late Charge Rate (as such term is defined in the promissory notes evidencing the Loans) to be determined, and be payable by the Borrower, in accordance with the Funding Agreements.

13. Interest Payments

Interest will accrue from the first Advance and thereafter be payable in cash in arrears on each quarterly payment date as specified in the Funding Agreements (each such date, a "*Payment Date*").

14. Principal Amortization and Maturity

The outstanding principal amount of the Project P Loan will be payable in twenty-eight (28) equal quarterly installments commencing on December 15, 2012 (the "*First Project P Principal Payment Date*").

The final maturity of the Project P Loan will be September 15, 2019.

The outstanding principal amount of the Project S Loan will be payable in forty (40) equal quarterly installments commencing on December 15, 2012 (the "*First Project S Principal Payment Date*").

The final maturity of the Project S Loan will be September 15, 2022.

15. Prepayments of the Loans

(a) Voluntary Prepayments

- (i) Tesla may prepay the Project P Loan, in whole or in part, subject to clause (c) below, in the aggregate minimum amount of One Million and 00/100 Dollars (\$1,000,000) and integral multiples of One Hundred Thousand and 00/100 Dollars (\$100,000) in excess of that amount.
- (ii) Tesla may prepay the Project S Loan, in whole or in part, subject to clause (c) below, in the aggregate minimum amount of One Million and 00/100 Dollars (\$1,000,000) and integral multiples of One Hundred Thousand and 00/100 Dollars (\$100,000) in excess of that amount.

(b) Mandatory Prepayments

Subject to clause (c) below, and unless waived by DOE in its sole discretion, Tesla will make mandatory prepayments of borrowings under the Loans as follows:

- (i) with any net proceeds received upon the permitted sale of any Collateral or other assets, except:
 - (1) inventory, including refurbished prototypes, sold in the ordinary course of business;
 - (2) non-exclusive licenses of intellectual property in the ordinary course of business on customary terms that do not impair the value of such intellectual property or any other assets as Collateral; and
 - (3) certain other limited customary exceptions to be agreed;
- (ii) with any net casualty insurance proceeds received in connection with a fire or other casualty loss and any net condemnation proceeds from a taking of all or any portion of any property that are not applied to restoration of the applicable property (provided that DOE shall have the right in its sole discretion to apply all such proceeds to the applicable Loan and not make the same available for restoration under customary circumstances to be agreed in the Definitive Agreements), and payments in respect of warranty claims with respect to any Collateral or other extraordinary receipts (e.g., cash received by or paid to the

account of Tesla not in the ordinary course of business from, for example, damage claims under construction contracts) with respect to any Collateral (except to the extent such proceeds are permitted to be, and are, used to restore, repair or replace the affected Collateral);

- (iii) with proceeds of any excess draws (x) under the Project P Loan to the extent an Agreed-Upon Procedures Report (as defined in Section 27(q) of this Term Sheet) provides that the proceeds of any Project P Advance was not applied to pay Eligible Project P Costs or (y) under the Project S Loan to the extent an Agreed-Upon Procedures Report provides that the proceeds of any Project S Advance was not applied to pay Eligible Project S Costs; and
- (iv) to the extent the outstanding principal amount of (x) the Project P Loan exceeds the then applicable Project P Maximum Loan Amount or (y) the Project S Loan exceeds the then applicable Project S Maximum Loan Amount.

(c) All Prepayments

All prepayments of the Loans:

- (i) are subject to the terms of the applicable Funding Agreements and the Arrangement Agreement; and
- (ii) will be applied:
 - (1) in each case of prepayments pursuant to clause (a) above, to remaining scheduled amortization payments, in the inverse order of maturity, under any of the outstanding Advances selected by the Borrower, as set forth in the Funding Agreements and the Arrangement Agreement;
 - (2) in each case of prepayments pursuant to clause (b)(i) and (ii) above to remaining scheduled amortization payments, in the inverse order of maturity, under any of the Advances selected by DOE and outstanding in respect of the Project S Loan until such Loan is repaid in full, then in respect of the Project P Loan until repaid in full, as set forth in the Funding Agreements and the Arrangement Agreement; and
 - (3) in each case of prepayments pursuant to clauses (b)(iii) and (iv) above to remaining scheduled amortization payments, in the inverse order of maturity, under any of the Advances selected by DOE in its sole discretion

and outstanding in respect of the relevant Loan, as set forth in the Funding Agreements and the Arrangement Agreement.

Any outstanding Loan amounts prepaid may not be re-borrowed, nor create availability for further borrowings during the Loan Availability Period. Prepayments shall be made at a price equal to (i) in the event of a prepayment in whole of an Advance, the sum of (x) the price for such Advance that would, if such Advance (including all unpaid interest accrued thereon through the intended prepayment date) were purchased by a third party and held until maturity, produce a yield to such third party purchaser, for the period between the date of purchase and maturity substantially equal to the interest rate that would be set on a loan from the Secretary of the Treasury to FFB to purchase an obligation having a payment schedule identical to the payment schedule of such Advance for the period from the intended prepayment date to maturity, *plus* (y) all unpaid late charges accrued on such Advance through the intended prepayment date (the “*Prepayment Price*”), (ii) in the event of a partial prepayment of an Advance, a *pro rata* share of the Prepayment Price that would be required for a prepayment of the entire principal amount of such Advance, and (iii) in the event of a repayment in full of all outstanding Advances, the sum of the Prepayment Prices for all such outstanding Advances.

16. Collateral

The Obligors’ obligations under the Loan Documents will be secured by a first-priority perfected security interest in the following (collectively, the “*Collateral*”):

- (1) all assets financed or acquired with the proceeds of the Loans and the Applicant Commitments;
- (2) (i) all equity interests in all Guarantors and (ii) 65% of all voting equity interests and 100% of all non-voting equity interests in all non-Guarantor foreign subsidiaries that are owned directly by Tesla or a Guarantor;
- (3) all intellectual property, technical data including software, licenses, general intangibles and goodwill of the Obligors (subject to certain limited ordinary course exceptions to be agreed);
- (4) all fee real property interests of the Obligors, all leasehold real property interests relating to the Projects, any other future leasehold real property interests that DOE determines are material to the interests of DOE and FFB as lender and all related fixtures, easements, rights-of-way and licenses; provided that the Collateral will not include leasehold interests existing on the date of this Term Sheet or any leases relating solely to retail stores or distribution facilities;

- (5) all equipment, inventory, receivables, investment property, insurance policies, deposit accounts, contract rights, books and records and all other property of the Obligors (subject to certain limited ordinary course exceptions to be agreed); and
- (6) all proceeds of the foregoing.

For the avoidance of doubt, it is understood that all of the assets described in clauses (2) through (6) of this Section 16 shall be included in the Collateral whether or not financed or acquired with the proceeds of the Loans and the Applicant Commitments. The security interests granted in the Collateral will be made in favor of the United States of America, acting by and through DOE (and including, without limitation, FFB) or agents designated by them to act.

17. Facility Fee

On the Financial Closing Date, (a) Tesla will pay to DOE a facility fee (the “*Project P Facility Fee*”) equal to One Hundred One Thousand One Hundred Eighty-Six and 00/100 Dollars (\$101,186) and (b) Tesla will pay to DOE a facility fee (the “*Project S Facility Fee*”) equal to Three Hundred Sixty-Three Thousand Eight Hundred Sixty-One and 00/100 Dollars (\$363,861).

18. Loan Administration

Servicing and monitoring duties with respect to the Loans will be performed by DOE in accordance with the Arrangement Agreement.

Transaction Documents

19. Loan Documents

The agreements to be entered into with DOE and FFB in connection with the Loans are expected to include the following, each of which must be satisfactory in form and substance to DOE, in its sole discretion (collectively, the “*Loan Documents*”):

- (a) a Loan, Arrangement and Reimbursement Agreement (the “*Arrangement Agreement*”) by and among Tesla, the Guarantors and DOE, setting forth, *inter alia*, (i) an undertaking by DOE to arrange for the Project P Loan and the Project S Loan to be made by and through FFB, (ii) conditions to funding of the Project P Loan and the Project S Loan, (iii) representations, warranties and covenants to be made by Tesla and the Guarantors in

favor of DOE, (iv) events of default that will trigger a right to exercise of remedies under the Loan Documents, and (v) reimbursement obligations;

- (b) all documents and agreements necessary or desirable in connection with the making by FFB of the Loans (the “*Funding Agreements*”), including without limitation:
 - (i) the Program Financing Agreement between DOE and FFB, in substantially the form attached as Exhibit A hereto (the “*Program Financing Agreement*”);
 - (ii) the Note Purchase Agreement among Tesla, DOE and FFB, in substantially the form attached as Exhibit B hereto;
 - (iii) a future advance promissory note evidencing each of the Project P Loan and the Project S Loan issued by Tesla and payable to FFB, in substantially the form attached as Exhibit C hereto; and
 - (iv) any other agreements required in connection with the funding of the Loans by FFB;
- (c) a guarantee agreement pursuant to which the Guarantors guarantee all obligations under the Loan Documents;
- (d) Security Documents (as defined below);
- (e) subordination agreements with respect to payments from Tesla to the Guarantors;
- (f) a warrant agreement having the terms set forth in Section 22(v) of this Term Sheet; and
- (g) such other documents and agreements as may be required under the Program Requirements.

20. Security Documents

The security documents to be entered into in connection with the Loans are expected to include the following, each of which must be satisfactory to DOE, in its sole discretion, in form and substance and include detailed terms and conditions necessary and appropriate to protect the interests of the United States, including without limitation, DOE and FFB, in the Collateral in the case of any default or event of default, including ensuring availability (and delivery, in the case

of technical data including software and any other applicable assets) of all intellectual property rights, technical data including software, other books and records, real property, physical assets and all other rights necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of any part of the Collateral (collectively, the “*Security Documents*”):

- (a) pledge agreements under U.S. law with respect to all of the equity interests referred to in Section 16(2) and, if and to the extent requested by DOE from time to time, such pledge agreements under foreign law with respect to the equity interests referred to in Section 16(2) of any foreign subsidiaries of Tesla the value of which DOE determines at such time to be material to the interests of DOE and FFB as lender;
- (b) agreements collaterally assigning the Project Documents (as defined in Section 21 of this Term Sheet);
- (c) agreements collaterally assigning all governmental approvals, licenses and permits for the Projects;
- (d) (i) consents and/or recognition agreements from (x) counterparties to specified Project Documents requested by DOE, and (y) any applicable governmental authorities, as appropriate, with respect to the collateral assignment of any governmental approvals and licenses and the transfer thereof following an event of default and (ii) landlord estoppel certificates and lien waiver and collateral access agreements from applicable landlords, vendors and warehouse owners to permit DOE to exercise remedies against and take possession of the applicable Collateral;
- (e) agreements collaterally assigning all insurance policies (including key personnel life policies) maintained by the Obligors;
- (f) agreements collaterally assigning all intellectual property, licenses, technical data including software, general intangibles and goodwill of the Obligors;
- (g) agreements mortgaging all real property owned or leased by the Obligors (except as provided in Section 16(4)) and providing access, easements and other rights with respect thereto;
- (h) deposit and securities account control agreements;
- (i) agreements collaterally assigning all other property acquired with proceeds of the Loans; and

- (j) all other agreements and instruments necessary to create a first-priority perfected security interest under applicable law in the Collateral.

The Obligors will pay all costs in connection with the pledge, perfection and maintenance of the Collateral and the Security Documents, including without limitation, registration, recording taxes, notarization, and filing fees and charges. In its sole discretion, DOE can require the use of a Collateral Trustee, the cost of which shall be paid by the Obligors. In such event, the Loan Documents will be modified to reflect such a Collateral Trustee.

21. Project Documents

Prior to the end of the Loan Availability Period, Tesla shall give DOE reasonable advance notice before entering into (i) any lease for either Project, (ii) any material agreement relating to Tesla's relationship with Daimler with respect to manufacturing any A-class vehicle or (iii) any material agreement with Daimler relating to any other material operations in the United States that (x) are outside the scope of Project P and Project S and (y) require an investment by Tesla in excess of \$75,000,000 (each such lease and agreement, a "*Project Document*"). The terms of each Project Document that relate to DOE's security interest therein must be on terms satisfactory to DOE in its sole discretion. In addition, with respect to the other terms of such Project Document, Tesla shall not enter into such Project Document unless DOE shall have had a reasonable period within which to object to such other terms and such objections, if any, shall have been addressed to DOE's reasonable satisfaction.

The Loan Documents and the Project Documents are collectively referred to as the "*Transaction Documents*".

Financial Closing, Loan Advances and Conditions Precedent

22. Conditions Precedent to the Financial Closing Date

The financial closing of the Loans 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 in its sole discretion 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:

- (a) **Due Diligence Review.** DOE shall have completed its due diligence review of the Projects and all other matters related thereto and to the Borrower and its subsidiaries, and the results thereof shall be satisfactory to DOE in its sole discretion, including that no

material issues exist with respect to either Project under the laws of the State of California or any subdivision or local jurisdiction thereof;

- (b) Organization of the Obligors. Delivery of organizational documents in form and substance satisfactory to DOE, in its sole discretion, of each Obligor;
- (c) Receipt of Corporate Approvals; Company Certificates. Delivery, in form and substance satisfactory to DOE, in its sole discretion, of (i) certificates and documents evidencing the Obligors' receipt of all board, stockholder and other corporate approvals to enter into any Transaction Document to which it is a party and fully implement and perform the terms thereof (including approvals of amendments to Tesla's certificate of incorporation to increase the authorized number of shares of capital stock sufficient for the warrants referred to below (the "*Charter Amendment*")), (ii) secretary's certificates, resolutions and good standing certificates of each Obligor, and (iii) evidence that the Charter Amendment has been duly executed, delivered and filed;
- (d) Information. Delivery of a certificate of Tesla certifying that, as of the Financial Closing Date, the information contained in the Application, together with all other information delivered by or on behalf of Tesla or any direct or indirect subsidiary thereof in connection with such Application and the negotiation of the Transaction Documents, including the Information Certificate delivered by Tesla to DOE on the date hereof (the "*Information Certificate*") is true and complete in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statement contained therein not misleading in light of the circumstances under which such statements were made (it being understood that in the case of projections, such projections are based on estimates which are reasonable as of the date such projections are stated or certified);
- (e) Transaction Documents. Execution and delivery of all Transaction Documents, in form and substance satisfactory to DOE, in its sole discretion, together with evidence that the Transaction Documents (i) contain all terms and conditions DOE, in its sole discretion, deems necessary or desirable to protect the interests of the United States of America, including, without limitation, DOE and FFB, and (ii) are in full force and effect;
- (f) Security Interests. Evidence of perfection of all requisite security interests in the Collateral and all necessary waivers, amendments, approvals and consents authorizing the pledge of such Collateral;
- (g) Lien Searches. Receipt of lien searches, satisfactory to DOE, in its sole discretion, in each of the jurisdictions in which the Uniform Commercial Code financial statements or other filings should be made revealing no liens on the Collateral, aside from liens referred to in Section 22(i) of this Term Sheet;

- (h) Existing Debt. Confirmation that no other debt or redeemable stock is outstanding except as permitted by DOE in its sole discretion;
- (i) Existing Collateral. Releases of all liens on any Collateral in favor of any other person except for customary ordinary course permitted liens not securing indebtedness (other than certain limited ordinary course permitted indebtedness to be agreed);
- (j) Legal Opinions and Similar Documents. Delivery of such legal opinions that are usual and customary in secured financings, rendered by counsel to the Obligors, as well as any additional legal opinions, bring-down certificates, reliance letters, and similar documents as DOE may request;
- (k) Financial Statements. Delivery of any financial statements and compliance certificates required to be delivered by the Obligors, not later than fifteen (15) business days prior to the Financial Closing Date;
- (l) Business Plan. Delivery of an updated Business Plan in form and substance satisfactory to DOE in its sole discretion, including, but not limited to, the information provided for in Section 5 of this Term Sheet;
- (m) Eligible Project Costs. Receipt of all information with respect to Eligible Project Costs incurred by any Obligor as of the Financial Closing Date, including such breakdowns of such information as DOE may request, all certified by an authorized officer of the Borrower;
- (n) Consents. Receipt of all consents and waivers required pursuant to any contractual obligation or governmental requirement that would prohibit any Obligor from executing and performing its obligations under the Transaction Documents;
- (o) Insurance. Receipt of satisfactory evidence, including without limitation a report and associated closing certificate from the Obligors' insurance advisor, that the Obligors have obtained (and maintained) the Required Insurance (as defined in Section 31 of this Term Sheet);
- (p) Intellectual Property. Evidence that the Obligors have all intellectual property rights necessary for the Projects;
- (q) Exchange Risk. Evidence that the Borrower has a commercially reasonable strategy with respect to foreign exchange;

- (r) Availability of Funds. Evidence (including certification by Tesla) that (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S and (iii) the Cash Equity Condition shall be satisfied;
- (s) [Intentionally omitted];
- (t) Payment of the Facility Fees. Payment of the Project P Facility Fee and Project S Facility Fee due and payable on the Financial Closing Date;
- (u) Status as Eligible Applicant; Eligible Project. Certification of Tesla that since execution of the Conditional Commitment Letter no event has occurred that affects or alters (i) Tesla's status as an Eligible Applicant, as described in the Applicable Regulations, (ii) Project P's designation as an Eligible Project, as defined in the Applicable Regulations, and (iii) Project S's designation as an Eligible Project, as defined in the Applicable Regulations;
- (v) Warrants. Delivery to DOE of warrants having the terms set forth as follows:
 - (i) To provide a financial incentive for Tesla to repay the Loans early, as a condition precedent to the financial closing of the Loans, Tesla will deliver to DOE on the Financial Closing Date warrants to purchase 9,255,035 shares of Series E preferred stock at an exercise price of \$2.5124 per share. The warrants will be exercisable in accordance with the vesting schedule set forth on Schedule 1 (which assumes that the Loans are repaid in accordance with the original amortization schedule with no early principal repayments), but in no event later than December 15, 2023; provided, however, that if the Loans and all other obligations under the Loan Documents are paid in full prior to December 15, 2018, then the warrants shall expire on the date of such prepayment and DOE shall not have any right to exercise them. Notwithstanding the foregoing, the warrants shall immediately vest in full after the occurrence of an event of default under the Loan Documents which either (x) arises from a change of control that DOE has not consented to in writing if the Loans have not been repaid in full on or before the effective date of such change of control or (y) is any other event of default that has not been cured to DOE's reasonable satisfaction or waived by DOE in its sole discretion if such event of default has continued for a period of at least 90 days (the "90-Day Period") and the Loans have not been repaid in full.
 - (ii) If clause (y) of paragraph (i) above becomes applicable, and if the Borrower makes a dividend or distribution on its common stock or its Series E Preferred

Stock during the 90-Day Period that is not already adjusted for under the terms of the warrants or the Company's certificate of incorporation, as applicable, or if for any other reason there is a decline in the value of the Company's common stock or Series E Preferred Stock during the 90-Day Period, the warrants shall be adjusted in an equitable manner such that immediately after giving effect to such adjustment the value of the capital stock into which the warrants are exercisable will be no less than the value that the DOE would have received on the first day of the 90-Day Period had all of the warrants been exercised for Series E Preferred Stock on that day, all such Series E Preferred Stock had been converted into common stock on that day and all such common stock had been sold on that day (it being understood that no such adjustment shall be made to the extent it would result in a decrease in value to DOE from what such value would have been in the absence of such adjustment).

- (iii) If the Loans are prepaid, the numbers of warrants that vest each quarter thereafter will be adjusted downward to reflect the lower average quarterly loan balance outstanding during such quarter in accordance with the following formula: for each \$1 million of lower average quarterly loan balance outstanding for such quarter, the number of warrants that vest will be reduced by 7,268.75 from the number of warrants shown to vest on Schedule 1 for such quarter.
- (iv) DOE will have the following registration rights with respect to the common stock underlying the warrants, which (except as otherwise provided in this paragraph) shall be on terms substantially similar to those currently enjoyed by Blackstar Investco, LLC: (x) two (2) demand registrations, which may not be exercised prior to the time Tesla undergoes an initial public offering unless an event of default under the Loan Documents occurs before then and is continuing (and all or any portion of the warrants has vested) and which may not be exercised with respect to shares with an anticipated aggregate offering price of less than \$10,000,000; (y) unlimited piggyback registration rights; and (z) after Tesla becomes eligible to do so, the right to require Tesla to file a shelf registration statement on Form S-3; provided that DOE shall not be entitled to exercise any registration rights under clauses (x), (y) or (z) above after the later of (A) the date that is five (5) years following such time as Rule 144 (but not Rule 144A) or another similar exemption under the Securities Act is first available for the sale of all of the common stock underlying DOE's warrants during a three (3) month period without registration and (B) the date that is two (2) years following such time as DOE's warrants are fully vested, except (in the case of both clauses (A) and (B)) if DOE holds at least two percent (2%) of the outstanding voting stock of Tesla.
- (v) The shares of Series E preferred stock issuable upon exercise of the warrants will receive the benefit of price-based and all other anti-dilution protections consistent with such price-based and other anti-dilution protections enjoyed by holders of

currently outstanding warrants to purchase Series E Preferred Stock (e.g., the anti-dilution protection such holders enjoy through the broad-based, weighted average anti-dilution provisions currently in effect under the Company's Fifth Amended and Restated Certificate of Incorporation). The other provisions of the warrants will be substantially similar to those set forth in the currently outstanding warrants to purchase Series E Preferred Stock.

- (w) Evidence of No Judgment Liens. Evidence satisfactory to DOE that neither Tesla nor any of its subsidiaries has a judgment lien against any of their respective properties for a debt owed to the United States of America;
- (x) Lobbying Certification. Certification of Tesla that is required to be filed by recipients of federal loans regarding lobbying, in the form set forth in Appendix A to 31 CFR Part 21 and, if required under 31 CFR Part 21, disclosure forms to report lobbying, in the form set forth in Appendix B to 31 CFR Part 21; and
- (y) Other Documents and Information. Receipt by DOE and FFB of any other certificates, documents, agreements and information respecting the Projects, Tesla or any of its subsidiaries and the Collateral as may have been requested.

23. Conditions Precedent to Each Advance Date

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

- (a) Advance Request and Invoices; Forecast. Receipt by DOE, no later than ten (10) business days prior to such Advance Date, of an advance request, substantially in the form attached as Exhibit D, from Tesla, in sufficient detail and including wire transfer instructions and copies of invoices, together with the certification of Tesla as to the satisfaction of all conditions precedent to such Advance, together with an updated Project P Forecast and Project S Forecast;
- (b) Representations and Warranties. All representations and warranties shall be true and correct in all material respects; provided that any representation and warranty relating solely to an earlier date shall be true and correct in all material respects as of such date;
- (c) No Default. No default or event of default shall have occurred and be continuing, before and after giving effect to the subject Advance;

- (d) **No Material Adverse Change.** No event shall have occurred or could reasonably be expected to occur with respect to either Project, Tesla or any of its subsidiaries or the Collateral that could reasonably be expected to have a material adverse effect on either Project, Tesla or any of its subsidiaries, taken together as a whole, or the value of the Collateral, or the enforceability of any Transaction Documents (a “*Material Adverse Effect*”);
- (e) **Performance Metrics.** Evidence that the Obligors have achieved and maintained specified Project milestones, efficiency levels, production levels, and other performance metrics for the Projects;
- (f) **Availability of Funds.** Evidence (including certification by Tesla) that (i) the proceeds of the Project P Loan, when combined with other funds committed to Project P, including any contingency funds, will be available and sufficient to carry out Project P, (ii) the proceeds of the Project S Loan, when combined with other funds committed to Project S, including any contingency funds, will be available and sufficient to carry out Project S, (iii) the Cash Equity Condition and any Correction by Commitment Condition shall be satisfied, or, in each case, Tesla shall have proposed a Corrective Plan in respect thereof that has been approved by DOE and Tesla has complied with such Corrective Plan and (iv) the requirements of Section 11 of this Term Sheet are met;
- (g) **Prior Advances.** Evidence that (i) the proceeds of all Project P Advances with respect to the immediately preceding calendar quarter (or, if no Project P Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project P Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable advance requests for such Project P Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project P Advances or as otherwise approved by DOE in its sole discretion (and Tesla shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance) and (ii) the proceeds of all Project S Advances with respect to the immediately preceding calendar quarter (or, if no Project S Advances were made with respect to the immediately preceding calendar quarter, with respect to the most recently preceding calendar quarter in respect of which Project S Advances were made) have been applied to pay the costs of services rendered, materials delivered, and required deposits due and payable not later than thirty (30) days following the dates of the applicable advance requests for such Project S Advances, as set forth in the most recent Agreed-Upon Procedures Report relating to such Project S Advances or as otherwise approved by DOE in its sole discretion (and Tesla shall submit such evidence in respect of the final Advance within thirty (30) days after receipt of such Advance);
- (h) **Aggregate Advances.** Evidence that (i) the aggregate principal amount of all outstanding Project P Advances, after giving effect to such Project P Advance, does not exceed the

then applicable Project P Maximum Loan Amount and (ii) the aggregate principal amount of all outstanding Project S Advances, after giving effect to such Project S Advance, does not exceed the then applicable Project S Maximum Loan Amount;

- (i) Applicant Payments and Excess Cost Overruns. Evidence (i) that (1) Tesla has paid the Project P Applicant Payments required to have been paid as of such Project P Advance Date; (2) that the amounts corresponding to the Project P Applicant Payments were, or will be, applied towards Eligible Project P Costs; (3) immediately following such Advance Date, the aggregate amount of Project P Applicant Payments made by Tesla shall equal or exceed twenty percent (20%) of the proceeds of Total Eligible Project P Costs previously funded or to be funded with the current Advance, and (4) any Project P Excess Cost Overruns as of such Project P Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan) and (ii) that (1) Tesla has paid the Project S Applicant Payments required to have been paid as of such Project S Advance Date; (2) that the amounts corresponding to the Project S Applicant Payments were, or will be, applied towards Eligible Project S Costs; (3) immediately following such Advance Date, the aggregate amount of Project S Applicant Payments made by Tesla shall equal or exceed twenty percent (20%) of the proceeds of Total Eligible Project S Costs previously funded or to be funded with the current Advance, and (4) any Project S Excess Cost Overruns as of such Project S Advance Date have been allocated for payment in accordance with the requirements of the Loan Documents (including, without limitation, as provided in any approved Corrective Plan);
- (j) Advance Proceeds. Evidence that (i) the proceeds of all Project P Advances to be made will be needed for Project P Eligible Project Costs that have been incurred and are due and payable not later than thirty (30) days following the dates of the applicable advance requests with respect to services rendered, materials delivered and required deposits, together with a description in sufficient detail of such Project P Eligible Project Costs, as certified by Tesla and (ii) the proceeds of all Project S Advances to be made will be needed for Eligible Project S Costs that have been incurred and are due and payable not later than thirty (30) days following the dates of the applicable advance requests with respect to services rendered, materials delivered and required deposits, together with a description in sufficient detail of such Eligible Project S Costs, as certified by Tesla;
- (k) Milestones. Evidence demonstrating that all Milestones contemplated to be achieved as of such Advance Date have been substantially completed.
- (l) No Litigation. No legal or arbitral proceedings are pending or threatened against Tesla or any of its subsidiaries or any Collateral that individually, or in the aggregate, would reasonably be expected to result in a Material Adverse Effect and has not otherwise been disclosed to and waived by DOE;

- (m) No Illegality. No applicable law or regulation, in the judgment of DOE is in effect that restrains, prevents or imposes materially adverse conditions upon the transactions contemplated hereby;
- (n) Lien Waivers. Demonstration that (i) any unpaid balances or unsettled claims, if any, with contractors or suppliers have been adequately paid and that those being contested or negotiated in good faith are bonded or otherwise provisioned to the satisfaction of DOE, in its sole discretion, and (ii) all mechanics liens or other liens of such contractors or suppliers (including with respect to any payments made out of the subject Advance) have been released to the satisfaction of DOE, in its sole discretion;
- (o) Certificates. Receipt of all necessary certifications and delivery of officer's certificates and other customary certificates;
- (p) Legal Opinions. Delivery of such legal opinions, bring-down certificates, reliance letters, and similar documents as DOE may request;
- (q) 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 Section 136 applicants;
- (r) Governmental Approvals. Certification by Tesla that all material governmental approvals, permits (including, without limitation, building permits or notices of commencement) or consents not previously delivered and required for construction, operation or maintenance of the Projects, and such other governmental approvals, permits or consents as DOE may request or as may be required under the Transaction Documents, and, to the extent requested by DOE, copies of such approvals, permits or consents have been delivered to DOE;
- (s) Perfection of Security Interests. Determination by DOE that all actions necessary or, in the opinion of DOE, desirable to create and maintain the United States of America's, including, without limitation, DOE's and FFB's, perfected interests in the Collateral (including after-acquired Collateral) have been taken;
- (t) Davis-Bacon Act. Certification by the Obligors of compliance with the obligation to pay prevailing wages to all laborers and mechanics employed by contractors or subcontractors during construction, alteration or repair that is financed through the ATVM Program;

- (u) No Change to Project Completion Outside Date. Certification by Tesla that the completion of each Project is reasonably expected to occur by the outside completion date specified in the Business Plan approved by DOE on the Financial Closing Date; and
- (v) Additional Documents. Such other documents, certifications or consents relating to the Projects or the matters contemplated by the Transaction Documents or Tesla or any of its subsidiaries as DOE may request.

24. *Additional Conditions Precedent to each Site-Dependent Advance Date*

In addition to each of the conditions precedent set forth in the immediately preceding Section 23, any Advance to the extent not used to fund the cost of certain engineering, integration, design and development services, equipment and assembly tooling and supplier tooling, as identified in the applicable approved Business Plan (a “Site-Dependent Advance”), is subject to the satisfaction as of the Advance Date of the first such Site-Dependent Advance of the following conditions precedent, which must be to the satisfaction of DOE in its sole discretion:

- (a) With respect to a Site-Dependent Advance on account of the Project P Loan:
 - (i) Environmental Review. Delivery of Phase I environmental site assessment prepared in accordance with ASTM standards (and delivery of a Phase II environmental site assessment prepared in accordance with ASTM standards if required by DOE) and associated reliance letters reasonably requested by DOE and satisfaction of any additional environmental requirements then required for Project P (including required mitigations and completion of the National Environmental Policy Act of 1969 (“NEPA”) process and the California Environmental Quality Act (“CEQA”) process), if applicable;
 - (ii) Permits. All material environmental, regulatory, construction and other permits and approvals then required for Project P shall be in place and not be subject to waiting periods or appeal; and
 - (iii) Real Estate. The applicable Borrower shall have (a) acquired all fee simple title, leasehold interests, easements and/or other real property interests required for Project P, (b) executed and delivered a mortgage or deed of trust of such interests in favor of DOE together with a fixture filing, (c) if applicable, recorded a memorandum of lease and delivered a lessor consent and/or recognition agreement to protect DOE’s interests as lender, and (d) delivered to DOE an ALTA survey of such real property, evidence of zoning and legal compliance, a structural engineer’s report (if applicable), and ALTA mortgagee’s policy with applicable endorsements and any other customary deliveries, all of the foregoing

in form and substance and in all other respects satisfactory to DOE in its sole discretion.

- (b) With respect to a Site-Dependent Advance on account of the Project S Loan:
- (i) Environmental Review. Delivery of Phase I environmental site assessment prepared in accordance with ASTM standards (and delivery of a Phase II environmental site assessment prepared in accordance with ASTM standards if required by DOE) and associated reliance letters reasonably requested by DOE and satisfaction of any additional environmental requirements then required for Project S (including required mitigations and completion of the NEPA and CEQA processes), if applicable;
 - (ii) Permits. All material environmental, regulatory, construction and other permits and approvals then required for Project S shall be in place and not be subject to waiting periods or appeal; and
 - (iii) Real Estate. The applicable Borrower shall have (a) acquired all fee simple title, leasehold interests, easements and/or other real property interests required for Project S, (b) executed and delivered a mortgage or deed of trust of such interests in favor of DOE together with a fixture filing, (c) if applicable, recorded a memorandum of lease and delivered a lessor consent and/or a recognition agreement to protect DOE's interests as lender, and (d) delivered to DOE an ALTA survey of such real property, if required to obtain the necessary title insurance endorsements, evidence of zoning and legal compliance, a structural engineer's report (if applicable), and ALTA mortgagee's policy with applicable endorsements and any other customary deliveries, all of the foregoing in form and substance and in all other respects satisfactory to DOE in its sole discretion.

Representations, Covenants and Defaults

25. Representations and Warranties

The Loan Documents will contain such customary and appropriate representations and warranties regarding Tesla and its subsidiaries as are usual and customary for financings of this kind or are otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications and exceptions to be agreed), including without limitation:

- (a) due organization and valid existence;

- (b) good standing and qualification to do business;
- (c) power and authority (including all authority necessary for completion of the construction and operation of the Projects);
- (d) capitalization, ownership and organization;
- (e) subsidiaries;
- (f) solvency;
- (g) status of Tesla as an Eligible Applicant, as described in the Applicable Regulations;
- (h) status of each Project as an Eligible Facility, as defined in the Applicable Regulations;
- (i) enforceability of the Transaction Documents;
- (j) no conflicts;
- (k) no consents or approvals required to consummate transactions (except as have been obtained and are in full force and effect);
- (l) material agreements;
- (m) no litigation (except as scheduled in the Information Certificate);
- (n) debt;
- (o) no judgments or orders (except as scheduled in the Information Certificate);
- (p) no defaults;
- (q) compliance with law and Program Requirements;
- (r) Investment Company Act and other regulatory matters;

- (s) no margin stock; proceeds of the Loans shall not be used to purchase margin stock in violation of applicable law;
- (t) no corrupt or prohibited practices;
- (u) financial statements, disclosure and projections, the Business Plan, the Information Certificate;
- (v) title to properties;
- (w) no liens, except for customary ordinary course permitted liens not securing indebtedness (other than certain limited ordinary course permitted indebtedness to be agreed);
- (x) operation of business;
- (y) ownership and sufficiency of assets and necessary rights with respect to each Project;
- (z) availability and adequacy of utility and technology rights and other services;
- (aa) rights to intellectual property;
- (bb) perfection and priority of security interests;
- (cc) location of books and records;
- (dd) taxes;
- (ee) necessary creditor and other third party consents and government permits and approvals;
- (ff) environmental and safety matters;
- (gg) labor matters and employment agreements, including, without limitation, collective bargaining agreements and activities and a certification with respect to payment of prevailing wages;

- (hh) ERISA matters and employee benefit plan liabilities;
- (ii) accuracy of representations and warranties in the Project Documents;
- (jj) location of chief executive office and chief operating office;
- (kk) identification of key personnel and their incentive arrangements as of the Financial Closing Date (which shall be satisfactory to DOE);
- (ll) USA Patriot Act;
- (mm) no embargoed person;
- (nn) no fraudulent conveyance;
- (oo) insurance;
- (pp) coordination of public statements by the Obligors with DOE;
- (qq) no restricted payment that is not permitted has been made since a date to be agreed upon by the parties;
- (rr) no event having a Material Adverse Effect; and
- (ss) customary representations and warranties relating to the warrants and the preferred and common stock underlying the warrants.

26. Financial Covenants

The Loan Documents will contain provisions regarding compliance with the financial covenants described on Schedule 2 (the “*Financial Covenants*”).

27. *Affirmative Covenants*

In addition to the other covenants described herein, the Loan Documents will contain such affirmative covenants (which shall be complied with unless the prior written consent of DOE is obtained) as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications and exceptions to be agreed) from each of Tesla and its subsidiaries, including without limitation regarding:

- (a) use of proceeds of the Loans;
- (b) maintenance of corporate existence of each of Tesla and its subsidiaries;
- (c) conduct of each Project substantially in accordance with the applicable Business Plan;
- (d) commercially reasonable best efforts to construct each Project substantially in accordance with the applicable Business Plan, and completion of each Project no later than the outside completion date for such Project set forth in the Business Plan approved by DOE in connection with the Financial Closing Date (without extension for force majeure);
- (e) operation and maintenance of each Project and the Collateral;
- (f) maintenance of security interests;
- (g) to the extent necessary or desirable, actions to grant additional required Collateral and include additional required Guarantors;
- (h) performance of the Transaction Documents and material agreements by each of Tesla and its subsidiaries;
- (i) provision by each of Tesla and its subsidiaries of financial statements and financial reporting and customary compliance certificates, including demonstration that Tesla has satisfied the Financial Covenants;
- (j) provision of a description of any material changes to any existing, and copies of any new, Project Document;

- (k) provision of a description of any material claims brought against any of Tesla or its subsidiaries or any labor disputes;
- (l) provision of updated construction budgets and construction progress reports;
- (m) provision of periodic operating budgets and reports;
- (n) provision of default notices and other material events and information, including, without limitation, (i) material transactions, (ii) ratings changes, if applicable, (iii) receipt of material insurance proceeds with respect to the Collateral or other assets, (iv) events having or reasonably likely to have a Material Adverse Effect, (v) change of control, (vi) judgment notices, (vii) non-ordinary course notices given or received under the Project Documents and (viii) changes in accounting policies;
- (o) provision of updated Business Plans at regular intervals to be agreed in the Loan Documents reflecting certain financial covenants/performance metrics and the other information required pursuant to Section 5;
- (p) subject to reasonable measures implemented to ensure confidentiality of information provided, consistent with FOIA, the Program Requirements and other applicable law, cooperation with DOE requests for continuing due diligence reviews with respect to the Tesla and its subsidiaries, the Collateral and any aspect relating to the Projects, including, without limitation, DOE requests for reports on the technical and financial performance of the Project-related manufacturing facilities, the Model S and the battery packs, motors and components to be produced by Project P;
- (q) provision within 45 calendar days following the Financial Closing Date and quarterly thereafter within 45 calendar days, of an Agreed-Upon Procedures Report satisfactory to DOE, in its sole discretion, (the “*Agreed-Upon Procedures Report*”) by the Borrower’s independent certified public accounting firm (the “*Independent Auditor*”) certifying that the proceeds of each Advance made during such calendar quarter were used, in each case, to pay Eligible Project Costs that were incurred and are due and payable not later than thirty (30) days following the date of the applicable advance request with respect to services rendered, materials delivered and required deposits for the relevant Project for which such Advance was made in accordance with the Business Plan, the Loan Documents and the Applicable Regulations;
- (r) maintenance of and compliance with permits, licenses, approvals and consents;
- (s) compliance with laws and Program Requirements;

- (t) compliance with Office of Foreign Assets Control rules and regulations;
- (u) right to additional information reasonably requested by DOE;
- (v) environmental and safety matters, including without limitation with respect to compliance with NEPA and CEQA and delivery of any environmental audits and assessments;
- (w) maintenance of operations in a manner which will not require registration under the Investment Company Act;
- (x) maintenance of Required Insurance and application of proceeds thereof;
- (y) payment of taxes, etc.;
- (z) maintenance of adequate accounting, management information and cost control systems;
- (aa) maintenance of independent auditors acceptable to DOE;
- (bb) maintenance of books and records and allowing inspection thereof and of all other property of Tesla and its subsidiaries (and allowing DOE and its representatives to discuss their affairs, finances and accounts with their officers and auditors), including
 - (i) such records as are necessary to facilitate an effective and accurate audit and performance evaluation of each Project as required by the Program Requirements and
 - (ii) provision to FFB, DOE and U.S. Government Accountability Office and its representatives and advisors of access to each Project site and ancillary facilities at all reasonable times in order to monitor the performance of each Project;
- (cc) maintenance of properties and title thereto;
- (dd) maintenance of intellectual property, including, without limitation, know-how and trade secrets, and appropriate documentation and record-keeping in respect thereof;
- (ee) compliance with contractual obligations;
- (ff) compliance with debarment regulations;

- (gg) disclosure and management of Excess Cost Overruns;
- (hh) upon request of DOE, provision of updated information of the type referred to in 10 CFR 611.101(k);
- (ii) return to FFB any investment earnings realized by any Obligor in connection with the Loan proceeds in excess of the accrued interest expense due and payable by Tesla pursuant to the Loan Documents;
- (jj) ongoing obligation to pay prevailing wages to all laborers and mechanics employed by contractors or subcontractors during construction, alteration or repair that is financed through the ATVM Program;
- (kk) provision of additional information at the request of DOE or FFB;
- (ll) remediation of environmental contamination; and
- (mm) further assurances.

28. Negative Covenants

In addition to the other covenants described herein, the Loan Documents will contain such negative covenants (which shall be complied with unless the prior written consent of DOE is obtained) as are usual and customary for financings of this kind or as are otherwise deemed appropriate by DOE in its sole discretion for this transaction in particular (with qualifications and exceptions to be agreed), from each of Tesla and its subsidiaries, including without limitation regarding:

- (a) no material change to either Project or material changes in lines of business;
- (b) limitation on incurrence of additional debt, capital leases or guarantees;
- (c) limitation on granting of additional liens;
- (d) limitation on dividends and distributions, redemption or repurchase of equity, payments on subordinated debt (or any redemption, repurchase or defeasance thereof) and other restricted payments;

- (e) limitation on acquisitions and dispositions of assets or capital expenditures;
- (f) no merger, consolidation, or similar action;
- (g) limitation on investments;
- (h) limitation on formation of subsidiaries unless all applicable requirements of the Loan Documents have been met with respect to such subsidiaries;
- (i) no changes to charter or organizational documents in a manner that is materially adverse to the DOE's interests as a lender;
- (j) limitation on termination, amendment or waiver of any provision of any Project Document;
- (k) limitation on entering into transactions with affiliates, other than pursuant to the Transaction Documents on an arm's length basis;
- (l) no speculative or hedging transactions, other than as specifically permitted or required;
- (m) limitation on entering into joint venture agreements;
- (n) no material modifications of any Business Plan or Budget without the prior written consent of DOE;
- (o) no prepayment, redemption, repurchase or defeasance of other senior debt prior to maturity without the consent of DOE;
- (p) limitation on sale and leaseback transactions (except for certain sale and leaseback arrangements of equipment with the California Alternative and Advanced Transportation Financing Authority, so long as such arrangements do not exceed a maximum amount to be agreed, are consistent with the Program Requirements and do not impose any material liabilities on Tesla or its subsidiaries);
- (q) no granting of permission to pledged subsidiaries to take any actions that will impair the Collateral;

- (r) no entering into any agreement that prohibits creation of any lien or restricts distributions from subsidiaries, other than the Loan Documents;
- (s) no establishment or adoption of any employee benefit pension plan subject to Title IV of ERISA or Section 412 of the tax code;
- (t) no agreement to contribute to or incur any liability to or in respect of any multiemployer plan (pursuant to 413(c) of the tax code) or multiple employer plan (pursuant to ERISA §§ 3(37) and 4001(a)(3));
- (u) no use of proceeds of the Loans to pay interest payments on the Loans, administrative or other fees relating to the Loans or any other amounts under the Loan Documents;
- (v) no changes in fiscal year;
- (w) no changes in accounting principles except as required by GAAP;
- (x) with respect to Project Documents, the requirement that they not include, and with respect to any other contracts entered into by Tesla or any of its subsidiaries after the date hereof the loss of which would be reasonably expected to have a Material Adverse Effect, the requirement that Tesla use commercially reasonable efforts to avoid or limit inclusion in such contracts of any provisions restricting their assignment as Collateral (including upon exercise of remedies against Collateral) or causing or giving the counterparty the right to cause such contracts to be terminated or materially impaired as a result, directly or indirectly, of any event of default or exercise of remedies under the Loan Documents; and
- (y) limitations relating to foreign subsidiaries, including limitations on investments in or loans to them by Tesla or its domestic subsidiaries (including by way of guarantee), limitations on transactions with them on other than an arms-length basis in the ordinary course of business, limitations on any liabilities being incurred by them outside the ordinary course of business and limitations on the activities in which they may engage.

29. *Events of Default*

The Loan 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 in its sole discretion for this transaction in particular (with materiality qualifications, exceptions and grace periods to be agreed), including without limitation:

- (a) failure to make payments when due;
- (b) default under any other indebtedness (other than the Loans);
- (c) breach of representations and warranties under the Loan Documents;
- (d) breach of covenants under the Loan Documents;
- (e) admission by any of Tesla or its subsidiaries of the inability to, or intention not to, perform material obligations under the Loan Documents;
- (f) default by any of Tesla or its subsidiaries in the performance of any Project Document or any lease referred to in Section 20 of this Term Sheet;
- (g) failure to fund when required or other default with respect to the Applicant Commitments or the Excess Cost Overruns;
- (h) loss or impairment of government permits or approvals that could reasonably be expected to have a Material Adverse Effect;
- (i) bankruptcy, insolvency, dissolution or other similar events of any of Tesla or its subsidiaries;
- (j) (i) judgments against any of Tesla or its subsidiaries for the payment of money in excess of an agreed upon amount to the extent not covered by insurance acceptable to DOE and as to which the insurance company has acknowledged coverage, which remains unsatisfied for a period of thirty (30) days and during which period a stay of enforcement shall not be in effect; or (ii) non-monetary judgments that could reasonably be expected to have a Material Adverse Effect and which remain in force for a period of thirty (30) days and during which period a stay of enforcement shall not be in effect;
- (k) certain ERISA events;
- (l) occurrence of specified force majeure events and continuation thereof for 180 days;
- (m) condemnation or assumption of custody of all or any substantial part of the property of any of Tesla or its subsidiaries by any governmental authority or any governmental authority taking action to displace the management of any of Tesla or its subsidiaries;

- (n) lapse or termination of any Required Insurance;
- (o) any change of control;
- (p) failure generally, or admission in writing, of inability to pay debts when such debts become due;
- (q) impairment of security interests in the Collateral;
- (r) invalidity, unenforceability or termination of the Transaction Documents;
- (s) physical destruction or condemnation of real property that could reasonably be expected to have a Material Adverse Effect and that has not been repaired with the proceeds of insurance within a specified number of days;
- (t) any of the Loan Documents shall cease to be in full force and effect or any of Tesla or its subsidiaries so asserts;
- (u) failure to comply with applicable laws when such failure could reasonably be expected to have a Material Adverse Effect; and
- (v) failure to complete both Projects within thirty-six (36) months after the Financial Closing Date (without extension for force majeure events).

30. Remedies

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

Additional Provisions of Loan Documents

31. Required Insurance

Tesla and its subsidiaries will maintain or cause to be maintained in full force and effect at all times insurance with financially sound insurers and reinsurers, as approved by DOE in its

reasonable discretion (the “*Required Insurance*”) as are required by DOE and listed and described in the Definitive Agreements.

Each such casualty policy described above will name the United States of America, including, without limitation, DOE and FFB, as loss payee and each such liability policy described above will name the United States of America as additional insured. Each insurance policy will provide for thirty (30) days’ written notice to DOE prior to termination or expiration of any coverage and such other endorsements as DOE may require. So long as principal amount of any Loan is outstanding, Tesla and its subsidiaries shall (x) promptly upon renewal of any insurance policy, deliver, or cause to be delivered, to DOE any certificate of insurance with respect to such policy and (y) notify DOE in writing of any change of insurance carrier within thirty (30) days of such change.

32. Amendments.

No amendment, modification or waiver of any provision of any Loan Document nor consent to any departure by any Obligor therefrom shall in any event be effective unless:

- (a) Amendments and Waivers. The amendment, modification or waiver shall be in writing and signed by each of the Obligors party to such Loan Document and DOE and/or FFB, as applicable, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; and
- (b) Federal Credit Reform Act Compliance. DOE performs all accounting and other requirements related to such amendment, modification or waiver arising out of the Federal Credit Reform Act of 1990, as amended (codified at 2 U.S.C. § 661 et seq.), including but not limited to:
 - (i) analysis of the amendment, modification or waiver to determine whether it increases the costs of the applicable Loan;
 - (ii) making a determination whether budget authority for the additional cost has been provided in advance in an appropriations Act; and
 - (iii) paying any such increased costs from the credit program account into the financing account and recording such increased costs in the fiscal year in which the applicable Loan is disbursed or the costs altered.

33. Indemnification

The Obligors shall indemnify and hold harmless the United States of America and each other governmental agency or instrumentality of the United States, their respective designees, agents, and contractors, and all of their respective directors, officers and employees (each, an "*Indemnified Person*") from and against (and will reimburse each Indemnified Person as the same are incurred for) any and all losses, claims, damages, liabilities or other expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel, but not including the expenses incurred by DOE in connection with the preparation, negotiation, execution and delivery of this Conditional Commitment Letter, Term Sheet and any Transaction Documents) to which such Indemnified Person may become subject arising out of or relating to (i) the execution or delivery of this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the enforcement or preservation of any rights under this Conditional Commitment Letter, Term Sheet, any Transaction Document or any agreement or instrument prepared in connection herewith or therewith, (iii) any Loan or the use or proposed use of the proceeds thereof, (iv) any actual or alleged presence or release of any substance of any kind defined as hazardous or toxic under the environmental laws of the United States, any foreign government or international organization, or of any state, local, municipal or other governmental authority, on or from any property owned, occupied or operated by the Applicant or any of its affiliates, or any environmental liability related in any way to the Applicant or any of its affiliates or any of its properties, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Applicant or any of its affiliates or otherwise, and regardless of whether any Indemnified Person is a party thereto; *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 or a material breach of the Indemnified Person's obligations hereunder, in each case as determined by a court of competent jurisdiction in a final, non-appealable order. This indemnity obligation shall survive the execution of the Loan Documents and the expiration or other termination of the Loans.

34. Governing Law

All Loan Documents and Security Documents will be governed by the federal laws of the United States of America and not the laws of the several states.

Schedule 1
Warrant Vesting Schedule

Schedule 1.0
Department of Energy
ATVM Program - Warrant Valuation
Vesting Schedule

| Tranche | Period | Loan Outstanding (000's) | Repayment (000's) | Tranche (%) of Total Warrants | Vesting Schedule (No. of Warrants) (whole units) |
|---|---------|-----------------------------|----------------------|-------------------------------------|--|
| Loan Repayment Balance Before Start of Warrant Vesting | | | | | |
| | Q3 2018 | \$ 172,710 | \$ (12,710) | | |
| Start of Warrant Vest | | | | | |
| Tranche 1 | Q4 2018 | \$ 159,999 | (12,710) | 12.57% | 1,162,995 |
| Tranche 2 | Q1 2019 | 147,289 | (12,710) | 11.57% | 1,070,607 |
| Tranche 3 | Q2 2019 | 134,579 | (12,710) | 10.57% | 978,219 |
| Tranche 4 | Q3 2019 | 121,868 | (12,710) | 9.57% | 885,831 |
| Tranche 5 | Q4 2019 | 109,158 | (9,097) | 8.57% | 793,443 |
| Tranche 6 | Q1 2020 | 100,062 | (9,097) | 7.86% | 727,323 |
| Tranche 7 | Q2 2020 | 90,965 | (9,097) | 7.14% | 661,203 |
| Tranche 8 | Q3 2020 | 81,869 | (9,097) | 6.43% | 595,083 |
| Tranche 9 | Q4 2020 | 72,772 | (9,097) | 5.72% | 528,962 |
| Tranche 10 | Q1 2021 | 63,676 | (9,097) | 5.00% | 462,842 |
| Tranche 11 | Q2 2021 | 54,579 | (9,097) | 4.29% | 396,722 |
| Tranche 12 | Q3 2021 | 45,483 | (9,097) | 3.57% | 330,601 |
| Tranche 13 | Q4 2021 | 36,386 | (9,097) | 2.86% | 264,481 |
| Tranche 14 | Q1 2022 | 27,290 | (9,097) | 2.14% | 198,361 |
| Tranche 15 | Q2 2022 | 18,193 | (9,097) | 1.43% | 132,241 |
| Tranche 16 | Q3 2022 | 9,097 | (9,097) | 0.71% | 66,120 |
| Total | | \$ 1,273,263 | | 100.00% | 9,255,035 |

Number of warrants issued per \$1million
of average quarterly loan balance: 7,268.75

Schedule 2 **Financial Covenants**

Financial Covenants will be based on the Borrower's consolidated financial statements prepared in accordance with US GAAP and consistent with historically applied accounting policies and practices.² They will be calculated, and the terms used therein will be defined, in a manner that is consistent with the example set forth in Appendix I.

Financial Covenants will be established for each of the following two phases:

- A. During the period from the Financial Closing Date through December 15, 2012, the following Financial Covenants will be measured as set forth below:

- The ratio of Current Assets to Current Liabilities shall be measured quarterly and, beginning in the fourth quarter of 2009, shall not be less than 1.4 to 1.0.

"Current Assets" means, for any period, cash, cash equivalents, accounts receivable, prepaid expenses, inventory and other current assets.

"Current Liabilities" means, for any period, accounts payable, accrued liabilities, deferred revenue, the current portion of long-term debt and other current liabilities, excluding membership fees/reservation payments/customer deposits.

- Cash balance shall be measured monthly and shall exceed annualized interest for the next twelve (12) months (based on the amount of debt outstanding as of any measurement date) by at least \$15 million.

- B. For each fiscal quarter ending after December 15, 2012 (each such quarter, an "Applicable Quarter"), the following Financial Covenants will be measured:

- The ratio of Funded Debt to EBITDA (for the trailing twelve months ending with each Applicable Quarter) shall not exceed the levels set forth in the schedule below for the fiscal year during which such Applicable Quarter occurs.

"Funded Debt" is defined as: (a) all obligations for borrowed money, whether current or long term, and all obligations evidenced by bonds (except performance bonds), debentures, notes, loan agreements or other debt instruments, (b) the maximum amount available by any undrawn letters of credit, bankers acceptances, guarantees, or similar instruments, (c) any redeemable preferred stock, capitalized lease obligations, interest rate swap obligations or asset securitization transactions and (d) other "Indebtedness" as such term is defined in Annex A to the Information Certificate.

² For the avoidance of doubt, the financial statements shall be prepared and the Financial Covenants shall be calculated without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a person to value its financial liabilities at the fair value thereof.

"EBITDA" is defined as consolidated net income plus interest expense, plus provision for foreign, federal, state, and local taxes, plus depreciation and amortization of intangible assets (including loan amortization fees), plus (minus) loss (gain) from sale of fixed assets, plus (minus) loss (gain) from sale of marketable securities, minus interest income, minus other non-operating income, plus (minus) income (loss) from minority interest, plus (minus) loss (gain) from discontinued operations, plus (minus) other non-cash items reducing (increasing) net income, plus (minus) loss (gain) from currency fluctuations. Net income of subsidiaries that are not wholly-owned or that are subject to restrictions on dividends will be excluded from EBITDA except to the extent of dividends actually received by the Borrower.

| Fiscal Year Ending | Maximum Ratio of Funded Debt to EBITDA |
|---------------------------|--|
| 12/31/2012 | 6.5 to 1.0 |
| 12/31/2013 | 4.5 to 1.0 |
| 12/31/2014 | 3.5 to 1.0 |
| 12/31/2015 and thereafter | 2.5 to 1.0 |

- The ratio of EBITDA (for the trailing twelve months ending with each Applicable Quarter) to Interest Expense (for such period) shall not be less than the levels set forth in the schedule below for the fiscal year during which such Applicable Quarter occurs. Interest Expense will include the imputed interest in any capital lease payments.

| Fiscal Year Ending | Minimum Ratio of EBITDA to Interest Expense |
|---------------------------|---|
| 12/31/2012 | 1.25 to 1.0 |
| 12/31/2013 | 1.75 to 1.0 |
| 12/31/2014 and thereafter | 2.00 to 1.0 |

- The ratio of EBITDA to Fixed Charges ("Fixed Charge Coverage Ratio") (for the trailing twelve months ending with each Applicable Quarter) shall not be less than the levels set forth in the schedule below for the fiscal year during which such Applicable Quarter occurs. "Fixed Charges" is defined as interest expense plus cash taxes, regularly scheduled principal payments, capital expenditures and permitted acquisitions.

| Fiscal Year Ending | Minimum Fixed Charge Coverage Ratio |
|---------------------------|-------------------------------------|
| 12/31/2013 | 1.0 to 1.0 |
| 12/31/2014 and thereafter | 1.25 to 1.0 |

The Minimum Fixed Charge Coverage Ratio requirements set forth above may be changed as follows:

If Tesla submits any Business Plan with financial projections which include changes in capital expenditures and financing programs, Tesla may propose, as part of such Business Plan, revised Minimum Fixed Charge Coverage Ratios based on such changes. Unless DOE explicitly rejects Tesla's proposed changes to the Minimum Fixed Charge Coverage Ratios within 45 days of receiving any Business Plan, DOE's approval of any Business Plan as a whole shall be deemed to extend to the proposed changes to the Minimum Fixed Charge Coverage Ratios contained therein.

- The ratio of Current Assets to Current Liabilities (each as defined above) for each Applicable Quarter shall not be less than the levels set forth in the schedule below for the fiscal year during which the Applicable Quarter occurs.

| Fiscal Year Ending | Minimum Ratio of Current Assets to Current Liabilities |
|---------------------------|--|
| 12/31/2012 | 1.0 to 1.0 |
| 12/31/2013 | 1.05 to 1.0 |
| 12/31/2014 | 1.10 to 1.0 |
| 12/31/2015 and thereafter | 1.15 to 1.0 |

- Beginning March 31, 2014, the ratio of Total Liabilities, including warranty reserve to Shareholder Equity shall not exceed 2.0 to 1.0.
- Capital Expenditures for any period shall not exceed 120% of the amount set forth for Capital Expenditures for such period in the most recent forecast approved by DOE.
- DOE reserves the right to require an additional Financial Covenant relating to operating lease expense to be established on mutually agreeable terms in connection with the approval of any Business Plan which includes an amount of operating lease expense that DOE deems to be material.

Appendix I to Financial Covenants

[attached behind]

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE A (FROM LOAN EXECUTION TO 12/17/2012)
Appendix I to Financial Covenants

Example Income Statement (\$1,000)

| | Quarter |
|-------------------------------|---------------------------|
| A Revenue | 25,000 |
| B Cost of Goods Sold | 18,750 |
| C Gross Margin | <u>\$ 6,250</u> |
| D Research & Development | 10,000 |
| E Sales & Marketing | 5,000 |
| F G&A | 2,500 |
| G Operating Income | <u><u>\$ (11,250)</u></u> |
| H Depreciation & Amortization | 2,000 |
| I Interest Expense (Income) | 1,500 |
| J Tax | - |
| K Net Income | <u><u>\$ (14,750)</u></u> |

Example Balance Sheet (\$1,000)

| | Quarter |
|--|--------------------------|
| ASSETS | |
| Current Assets | |
| L Cash | 37,750 |
| M Accounts Receivable, net | 5,000 |
| N Inventory, net | <u>40,000</u> |
| O Total Current Assets | <u>82,750</u> |
| P Property and equipment, gross | 72,000 |
| Q Accumulated Depreciation | <u>(16,000)</u> |
| R Property and equipment, net | <u>56,000</u> |
| S Total ASSETS | <u><u>\$ 138,750</u></u> |
| LIABILITIES & EQUITY | |
| Current Liabilities | |
| T Accounts Payable & Accrued Liabilities | 50,000 |
| U Membership Fees | 13,000 |
| V Current Portion, Long-Term Debt | - |
| W Total Current Liabilities | <u>63,000</u> |
| X Capital Lease | 1,000 |
| Y Warranty Reserve | 4,000 |
| Z Long-Term Debt | <u>25,000</u> |
| AA Total LIABILITIES | <u><u>\$ 93,000</u></u> |
| EQUITY | |
| AB Paid In Capital | 250,000 |
| AC Local Grants and Incentives | - |
| AD Retained earnings (deficit) | <u>(204,250)</u> |
| AE Total EQUITY | <u><u>\$ 45,750</u></u> |
| AF TOTAL LIABILITIES & EQUITY | <u><u>\$ 138,750</u></u> |

Example Cash Flow Statement (\$1,000)

| | Quarter |
|---|---------------------------|
| OPERATIONS | |
| | |
| AG Net Income | (14,750) |
| AH Depreciation | 2,000 |
| AI Accounts Receivable, net | - |
| AJ Inventory, net | <u>(5,000)</u> |
| AK Accounts Payable & Accrued Liabilities | - |
| AL Membership Fees | 1,000 |
| AM Warranty Reserve | 1,000 |
| AN Total Cash from Operations | <u><u>\$ (15,750)</u></u> |
| INVESTING | |
| AO Capital Expenditures | <u>(10,000)</u> |
| AP Total Cash from Investing | <u><u>\$ (10,000)</u></u> |
| FINANCING | |
| AQ Current Portion, Long-Term Debt | - |
| AR Capital Lease | - |
| AS Long-Term Debt | 15,000 |
| AT Paid In Capital | - |
| AU Local Grants and Incentives | - |
| AV Total Cash from Financing | <u><u>\$ 15,000</u></u> |
| AW Total Cash Flow | <u><u>\$ (10,750)</u></u> |

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE A (FROM LOAN EXECUTION TO 12/17/2012)

Appendix I to Financial Covenants

PHASE A COVENANTS

Current Assets to Current Liabilities (excluding Membership Fees, Vehicle Deposits, or Vehicle Reservations)

| | <u>Quarter</u> |
|--|----------------|
| O Current Assets | 82,750 |
| W Current Liabilities | 63,000 |
| U Membership Fees | 13,000 |
| W - U Current Liabilities minus Membership Fees | <u>50,000</u> |
| | |
| Current Ratio | 1.68 |

Available Cash balance (calculated monthly).

| | <u>Quarter</u> |
|--|----------------|
| L Cash Balance | 37,750 |
| I x 4 Interest Payments (Annualized) | 6,000 |
| Cash Balance in excess of Interest | <u>31,750</u> |

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE B (FROM 12/17/2012 TO LOAN MATURITY)
Appendix I to Financial Covenants

Example Income Statement (\$1,000)

| | | Quarter 1 | Quarter 2 | Quarter 3 | Quarter 4 |
|---|-----------------------------|------------|------------|------------|------------|
| A | Revenue | 600,000 | 600,000 | 600,000 | 600,000 |
| B | Cost of Goods Sold | 450,000 | 450,000 | 420,000 | 420,000 |
| C | Gross Margin | \$ 150,000 | \$ 150,000 | \$ 180,000 | \$ 180,000 |
| D | Research & Development | 30,000 | 30,000 | 30,000 | 30,000 |
| E | Sales & Marketing | 45,000 | 45,000 | 50,000 | 50,000 |
| F | G&A | 15,000 | 15,000 | 15,000 | 15,000 |
| G | Operating Income | \$ 60,000 | \$ 60,000 | \$ 85,000 | \$ 85,000 |
| H | Depreciation & Amortization | 10,000 | 10,000 | 10,000 | 10,000 |
| I | Interest Expense (Income) | 4,000 | 4,000 | 4,000 | 4,000 |
| J | Tax | 2,000 | 4,000 | 6,000 | 8,000 |
| K | Net Income | \$ 44,000 | \$ 42,000 | \$ 65,000 | \$ 63,000 |

Example Balance Sheet (\$1,000)

| | | Quarter 0 | Quarter 1 | Quarter 2 | Quarter 3 | Quarter 4 |
|---------------------------------|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| ASSETS | | | | | | |
| Current Assets | | | | | | |
| L | Cash | 55,500 | 75,500 | 68,600 | 109,600 | 124,500 |
| M | Accounts Receivable, net | 50,000 | 50,000 | 75,000 | 75,000 | 100,000 |
| N | Inventory, net | 105,000 | 110,000 | 115,000 | 120,000 | 125,000 |
| O | Total Current Assets | 210,500 | 235,500 | 258,600 | 304,600 | 349,500 |
| P | Property and equipment, gross | 302,000 | 322,000 | 342,000 | 352,000 | 382,000 |
| Q | Accumulated Depreciation | (90,000) | (100,000) | (110,000) | (120,000) | (130,000) |
| R | Property and equipment, net | 212,000 | 222,000 | 232,000 | 242,000 | 252,000 |
| S | Total ASSETS | \$ 422,500 | \$ 457,500 | \$ 490,500 | \$ 546,500 | \$ 601,500 |
| LIABILITIES & EQUITY | | | | | | |
| Current Liabilities | | | | | | |
| T | Accounts Payable & Accrued Liabilities | 50,000 | 50,000 | 50,000 | 50,000 | 50,000 |
| U | Membership Fees | 15,000 | 15,000 | 15,000 | 15,000 | 15,000 |
| AY | Deferred Revenue | - | - | - | - | 1,000 |
| V | Current Portion, Long-Term Debt | 40,000 | 40,000 | 40,000 | 40,000 | 40,000 |
| W | Total Current Liabilities | 105,000 | 105,000 | 105,000 | 105,000 | 106,000 |
| X | Capital Lease | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| Y | Warranty Reserve | 17,000 | 18,000 | 19,000 | 20,000 | 21,000 |
| Z | Long-Term Debt | 308,000 | 298,000 | 286,000 | 276,000 | 266,000 |
| AA | Total LIABILITIES | \$ 429,000 | \$ 420,000 | \$ 411,000 | \$ 402,000 | \$ 394,000 |
| EQUITY | | | | | | |
| AB | Paid in Capital | 250,000 | 250,000 | 250,000 | 250,000 | 250,000 |
| AC | Local Grants and Incentives | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |
| AD | Retained earnings (deficit) | (257,500) | (213,500) | (171,500) | (108,500) | (43,500) |
| AE | Total EQUITY | \$ (6,500) | \$ 37,500 | \$ 78,500 | \$ 144,500 | \$ 207,500 |
| AF | TOTAL LIABILITIES & EQUITY | \$ 422,500 | \$ 457,500 | \$ 490,500 | \$ 546,500 | \$ 601,500 |

Example Cash Flow Statement (\$1,000)

| | | Quarter 1 | Quarter 2 | Quarter 3 | Quarter 4 |
|-------------------|--|-------------|-------------|-------------|-------------|
| OPERATIONS | | | | | |
| AG | Net Income | 44,000 | 42,000 | 65,000 | 63,000 |
| AH | Depreciation | 10,000 | 10,000 | 10,000 | 10,000 |
| AI | Accounts Receivable, net | - | (25,000) | - | (25,000) |
| AJ | Inventory, net | (5,000) | (5,000) | (6,000) | (5,000) |
| AK | Accounts Payable & Accrued Liabilities | - | - | - | - |
| AL | Membership Fees | - | - | - | - |
| AX | Other Non-Cash Items | - | - | - | 1,000 |
| AM | Warranty Reserve | 1,000 | 1,000 | 1,000 | 1,000 |
| AN | Total Cash from Operations | \$ 50,000 | \$ 23,000 | \$ 71,000 | \$ 45,000 |
| INVESTING | | | | | |
| AO | Capital Expenditures | (20,000) | (20,000) | (20,000) | (20,000) |
| AP | Total Cash from Investing | \$ (20,000) | \$ (20,000) | \$ (20,000) | \$ (20,000) |
| FINANCING | | | | | |
| AQ | Current Portion, Long-Term Debt | - | - | - | - |
| AR | Capital Lease | - | - | - | - |
| AS | Long-Term Debt | (10,000) | (10,000) | (10,000) | (10,000) |
| AT | Paid In Capital | - | - | - | - |
| AU | Local Grants and Incentives | - | - | - | - |
| AV | Total Cash from Financing | \$ (10,000) | \$ (10,000) | \$ (10,000) | \$ (10,000) |
| AW | Total Cash Flow | \$ 20,000 | \$ (7,000) | \$ 41,000 | \$ 15,000 |

TESLA MOTORS FINANCIAL COVENANT EXAMPLES - PHASE B (FROM 12/17/2012 TO LOAN MATURITY)
Appendix I to Financial Covenants
PHASE B COVENANTS

Note: Calculation of "EBITDA" for Phase B Covenants

| | Quarter 1 | Quarter 2 | Quarter 3 | Quarter 4 |
|---|-------------------------|---------------|---------------|---------------|
| Net Income | \$ 44,000 | \$ 42,000 | \$ 65,000 | \$ 63,000 |
| plus Interest Expense | 4,000 | 4,000 | 4,000 | 4,000 |
| plus Provision for Taxes | 2,000 | 4,000 | 6,000 | 8,000 |
| plus Depreciation and Amortization | 10,000 | 10,000 | 10,000 | 10,000 |
| plus loss from Sales of Assets | - | - | - | - |
| plus loss from Sales of Securities | - | - | - | - |
| minus Interest Income | - | - | - | - |
| minus other Non-Operating Income | - | - | - | - |
| plus Income from Minority Interest | - | - | - | - |
| plus loss from Discontinued Operations | - | - | - | - |
| plus other Non-Cash items reducing Income | - | - | - | - |
| plus loss from Currency Fluctuations | - | - | - | 1,000 |
| AY | "EBITDA" defined | 60,000 | 60,000 | 85,000 |
| | | 60,000 | 85,000 | 85,000 |

(1) The ratio of Funded Debt to EBITDA (for the trailing twelve months ending with each Applicable Quarter)

| | Quarter 4 |
|------------------------------------|----------------|
| AY, TTM "EBITDA" (TTM) | 291,000 |
| V+X+Z Funded Debt | 307,000 |
| Funded Debt to EBITDA (TTM) | 1.05 |

(2) The ratio of EBITDA (for the trailing twelve months ending with each Applicable Quarter) to Interest Expense (for such period)

| | Quarter 4 |
|---|----------------|
| I Interest Expense | 4,000 |
| I, TTM Interest Expense (TTM) | 16,000 |
| AY, TTM "EBITDA" (TTM) | 291,000 |
| EBITDA (TTM) to Interest Expense (TTM) | 18.19 |

(3) The ratio of EBITDA to Fixed Charges ("Fixed Charge Coverage Ratio")

| | Quarter 4 |
|--|----------------|
| AY, TTM "EBITDA" (TTM) | 291,000 |
| I Interest Expense (TTM) | 16,000 |
| AQ+AS Principal Payments (TTM) | 40,000 |
| AP CAPX (TTM) | 80,000 |
| Total Fixed Charges (TTM) | 136,000 |
| EBITDA (TTM) to Fixed Charges (TTM) | 2.14 |

(4) The ratio of Current Assets to Current Liabilities ("Current Ratio")

| | Quarter 4 |
|------------------------------|----------------|
| O Current Assets | 349,500 |
| W Current Liabilities | 106,000 |
| Current Ratio | 3.30 |

(5) Total Liabilities (including warranty reserve) to Shareholder Equity

| | Quarter 4 |
|--|----------------|
| AA Total Liabilities | 394,000 |
| AE Total Shareholder Equity | 207,500 |
| Total Liabilities to Shareholder Equity | 1.90 |

(6) Capital Expenditures Incurred for the period

| | Quarter 4 |
|--------------------------------|---------------|
| AO Capital Expenditures | 20,000 |

Exhibit A
Form of Program Financing Agreement
[attached behind]

PROGRAM FINANCING AGREEMENT dated as of _____, by and between the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, and the **SECRETARY OF ENERGY** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Program Authority (as hereinafter defined), to carry out a program that provides for loans that meet the requirements of the Program Authority; and

WHEREAS, FFB is authorized, pursuant to the Program Authority, to make loans under the Secretary's program; and

WHEREAS, FFB and the Secretary desire now to enter into an agreement to provide the terms and conditions under which FFB will make loans under the Secretary's program.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, FFB, and the Secretary agree as follows:

ARTICLE 1**DEFINITIONS AND RULES OF INTERPRETATION****Section 1.1 Definitions.**

As used in this Agreement, the following terms shall have the respective meanings specified in this section 1.1, unless the context clearly requires otherwise.

"Advance" shall mean an advance of funds made by FFB under a Note that is purchased by FFB under any Note Purchase Agreement entered into under this Agreement.

"Advance Request" shall mean a letter from a Borrower requesting an Advance under a Note, in the form of letter attached as Exhibit A to the form of Note Purchase Agreement attached as Annex 3 to this Agreement.

"Advance Request Approval Notice" shall mean the written notice from the Department located at the end of an Advance Request advising FFB that such Advance Request has been approved on behalf of the Secretary.

"Borrower" shall mean an entity designated by the Secretary to be a "Borrower" for purposes of this Agreement in a Designation Notice delivered by the Secretary under this Agreement.

"Business Day" shall mean any day on which both FFB and the Federal Reserve Bank of New York are open for business.

"Certificate Specifying Authorized Department Officials" shall mean a certificate specifying the names and titles of those officials of the Department who are authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the original signature of each of those authorized officials, and specifying the name and title of those officials of the Department who are authorized to confirm telephonically the authenticity of the Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the telephone number of each of

those authorized officials, in the form of the Certificate Specifying Authorized Department Officials attached as Annex 1 to this Agreement.

"Department" shall mean the Department of Energy.

"Designation Notice" shall mean a written notice from the Secretary to FFB and the particular entity identified therein as the respective "Borrower," designating that entity to be a "Borrower" for purposes of this Agreement, in the form of notice that is attached as Annex 2 to this Agreement.

"Initial Note" or "Initial Notes" shall mean the first Note or, if more than one Note is offered at the same time, the first Notes offered by any Borrower for purchase under a Note Purchase Agreement entered into under this Agreement.

"Maturity Date" shall have the meaning specified in section 2.2(h) of this Agreement.

"Note" shall mean a future advance promissory note (or other similar debt instrument approved by FFB and the Secretary) issued by a Borrower payable to FFB, in the form of Note that is attached as Exhibit C to the form of Note Purchase Agreement that is attached as Annex 3 to this Agreement, as such Note may be amended, supplemented, and restated from time to time in accordance with its terms.

"Note Purchase Agreement" shall mean a Note Purchase Agreement among FFB, a Borrower, and the Secretary setting forth the terms and conditions of the agreement of FFB to purchase a particular Note or Notes to be issued by the respective Borrower, in the form of agreement that is attached as Annex 3 to this Agreement, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Opinion of Secretary's Counsel re: Program Financing Agreement" shall mean an opinion of counsel from counsel to the Secretary, substantially in the form of opinion that is attached as Annex 4 to this Agreement.

"Payment Date" shall have the meaning specified in section 2.2(i) of this Agreement.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or governmental authority.

"Program Authority" shall mean section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended from time to time, including as amended by section 129 of Division A of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578).

"Program Financing Commitment Amount" shall mean \$25,000,000,000.

"Program Financing Commitment Termination Date" shall mean September 30, ___, subject to extensions thereof permitted by section 8.2.2 of this Agreement.

"Secretary's Affirmation" shall mean an affirmation of the Secretary, in the form of affirmation that is attached as Exhibit G to the form of Note Purchase Agreement that is attached as Annex 3 to this Agreement.

"this Agreement" shall mean this Program Financing Agreement dated as of _____, between FFB and the Secretary.

Section 1.2 Rules of Interpretation.

Unless the context shall otherwise indicate, the terms defined in section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural. The words "herein," "hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE 2**DESIGNATION OF BORROWERS****Section 2.1 Designating a Borrower.**

2.1.1 Time Permitted for Designations. During the period commencing on the date of this Agreement and terminating on the Program Financing Commitment Termination Date, the Secretary shall have the right to designate entities that are to be Borrowers for purposes of this Agreement.

2.1.2 Means of Designation. The Secretary shall make each designation described in section 2.1.1 of this Agreement by delivering a Designation Notice to FFB and the particular entity identified therein as the "Borrower."

Section 2.2 Designation Notices.

Each Designation Notice shall specify, among other things:

- (a) the proper legal corporate name of the particular entity identified therein to be a "Borrower" for purposes of this Agreement;
- (b) the address of such Borrower for purposes of the delivery of written notices and other communications;
- (c) the name, title, telephone number, facsimile number, and email address (if any) of an official of such Borrower to whom notices and other communications are to be delivered or made;
- (d) the maximum principal amount of the loan to be committed to such Borrower, which amount shall also be the aggregate maximum principal amount of the particular Note or Notes that is or are to be issued by such Borrower and offered to FFB for purchase and, if more than one Note is to be issued and offered for purchase, the maximum principal amount of each Note;
- (e) the state of incorporation of such Borrower;

(f) the title of all security instruments securing the loan to be made to such Borrower;

(g) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the last day on which an Advance may be made under such Note;

(h) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the date on which such Note and all Advances made thereunder are to mature (such date being the "Maturity Date");

(i) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, whether interest accrued on the outstanding principal balance of each Advance shall be due and payable on a semi-annual or quarterly basis; if on a semi-annual basis, then the particular semi-annual dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other must be the particular calendar date in each year that is six months from such date; and if on a quarterly basis, then the particular quarterly dates on which accrued interest shall be due and payable, one of which must be the same calendar date in each year as the Maturity Date, and the other three of which must be the particular calendar dates in each year that are at three-month intervals from such date (each of such dates being a "Payment Date"); and

(j) for the Note or, if more than one Note is to be issued and offered for purchase, for each Note, the date on which the first installment of principal is to be payable on such Note, which must be a Payment Date.

Section 2.3 Effect of Designations.

Upon the Secretary's delivery of a Designation Notice to FFB and the particular entity identified therein as the "Borrower":

(a) FFB shall be committed to the Secretary to enter into a Note Purchase Agreement with the particular Borrower identified in the Designation Notice and the Secretary setting forth the terms and conditions under which FFB will purchase one or more Notes issued by such Borrower in the

maximum principal amount specified in the respective Designation Notice;

(b) the Secretary shall be committed to FFB to issue the Secretary's Affirmation relating to such Note; and

(c) FFB shall be committed to the Secretary to purchase such Note when the terms and conditions specified in the respective Note Purchase Agreement shall have been satisfied.

ARTICLE 3

CONDITIONS TO PURCHASE OF NOTES

Section 3.1 Condition to Purchase of Initial Note Offered for Purchase.

FFB shall be under no obligation to purchase the Initial Note (or Initial Notes) under any Note Purchase Agreement entered into under this Agreement unless and until each of the conditions specified in this section 3.1 (in addition to each of the conditions referred to in section 3.2 of this Agreement) has been satisfied.

3.1.1 Executed Counterpart of this Agreement. FFB shall have received an original counterpart of this Agreement, duly executed by or on behalf of the Secretary.

3.1.2 Opinion of Secretary's Counsel Regarding this Agreement. FFB shall have received an Opinion of Secretary's Counsel re: Program Financing Agreement.

3.1.3 Certificate Specifying Authorized Department Officials. FFB shall have received a Certificate Specifying Authorized Department Officials.

Section 3.2 Conditions to Purchase of Every Note Offered for Purchase.

The Secretary acknowledges that FFB shall be under no obligation to purchase any Note offered by a Borrower to FFB for purchase unless and until each of the conditions specified in

this Agreement and the particular Note Purchase Agreement relating to such Note or Notes, as being conditions to purchasing such Note or Notes, has been satisfied.

ARTICLE 4

OFFER AND PURCHASE OF NOTES

Section 4.1 Offer of Notes for Purchase.

Each Note that is to be offered to FFB for purchase shall be offered in accordance with the provisions of the particular Note Purchase Agreement relating to the respective Note.

Section 4.2 Purchase of Notes.

Each Note that is to be purchased by FFB shall be purchased in accordance with the provisions of the particular Note Purchase Agreement relating to the respective Note.

ARTICLE 5

DUTIES AND RIGHTS OF THE SECRETARY AS ISSUER OF SECRETARY'S AFFIRMATIONS

Section 5.1 Duties.

In consideration of FFB's commitment to purchase Notes under Note Purchase Agreements and thereby make loans under the Secretary's program, the Department agrees to perform all accounting and other requirements related to such loans arising out of the Federal Credit Reform Act of 1990, as amended (codified at 2 U.S.C. § 661 et seq.).

Section 5.2 Rights.

In consideration of the particular Secretary's Affirmation relating to any Note that has been purchased by FFB under a Note Purchase Agreement, the Secretary shall have the sole authority (vis-a-vis FFB), if such Note is in default, in respect of

acceleration of such Note, the exercise of other available remedies, and the disposition of sums or property recovered.

ARTICLE 6

AGREEMENTS AND OTHER RIGHTS OF THE SECRETARY AND THE DEPARTMENT

Section 6.1 Delivery of Replacement Certificates Specifying Authorized Department Officials.

6.1.1 Annual Replacement Certificates. Promptly after the commencement of each fiscal year, the Department shall deliver to FFB a Certificate Specifying Authorized Department Officials, updated as appropriate, in replacement of the original such certificate delivered pursuant to section 3.1.3 hereof.

6.1.2 Replacement Certificates within any Fiscal Year. The Department may at any time within any fiscal year deliver to FFB a revised Certificate Specifying Authorized Department Officials, updated as appropriate, in replacement of the annual certificate delivered pursuant to section 6.1.1 hereof.

Section 6.2 Certain Agreements of the Secretary and FFB.

6.2.1 Agent for Compliance Purposes. In the event that FFB shall become subject to any duties under any applicable law or regulation solely because of its providing or having provided financing under a Note purchased under a Note Purchase Agreement entered into under this Agreement, the Secretary shall serve as agent for FFB to the fullest extent permitted under that law or regulation in connection with satisfying the requirements of that law or regulation.

6.2.2 Secretary's Agreement Regarding His Appointment as Agent for FFB. Recognizing the legitimate needs of FFB to ensure that the Secretary, as compliance agent for FFB, has performed all duties to which FFB becomes subject under any applicable law or regulation solely because of providing or having provided financing under a Note

purchased under a Note Purchase Agreement entered into under this Agreement, and with the Secretary and FFB expressing their intent to cooperate in connection with the exchange of information related thereto, the Secretary agrees:

- (a) to deliver to representatives of FFB or its designate, when requested to do so by FFB or its designate, actual possession of the original of any certificate, report, document or paper collected or prepared by the Secretary, as compliance agent for FFB; or
- (b) at the option of FFB, to permit representatives of FFB or its designate, during reasonable business hours, to have access to, and to inspect and make copies of, any and all certificates, reports, documents or papers collected or prepared by the Secretary, as compliance agent for FFB.

6.2.3 Litigation Cooperation. When requested to do so by FFB, the Secretary shall cooperate with FFB in the prosecution or defense of any litigation that FFB may institute against any Person other than the Secretary or to which FFB is named as a party, as the case may be, arising out of FFB providing or having provided financing under a Note or Notes purchased under a Note Purchase Agreement entered into under this Agreement.

Section 6.3 Reimbursement.

6.3.1 Secretary's Agreement to Reimburse. To the extent permitted by applicable law and subject to the availability of funds, the Secretary agrees to reimburse FFB (but not any successor, assignee or transferee of FFB) for any and all liabilities, losses, costs or expenses of any nature that may be imposed upon, incurred by or asserted against FFB by any Person other than the Secretary in any way relating to or arising out of FFB providing or having provided financing under a Note or Notes purchased under a Note Purchase Agreement entered into under this Agreement, but specifically excluding any liability, loss, cost or expense relating to or arising out of any sale, assignment or other transfer by FFB, pursuant to

section 8.4 hereof, of all or any part of any Note that has been purchased by FFB under a Note Purchase Agreement.

6.3.2 Secretary's Agreement to Seek Appropriations. In the event that no funds are available to the Secretary at the time that the Secretary needs funds to reimburse FFB as contemplated by section 6.3.1 hereof, the Secretary agrees that it will diligently seek to obtain additional appropriations for that purpose.

6.3.3 FFB's Agreement to Deliver Notice. Solely for the purpose of assisting the Secretary in mitigating the extent of any reimbursement contemplated by section 6.3.1 hereof, FFB agrees that it will deliver notice to the Secretary of any and all liabilities, losses, costs or expenses imposed upon, incurred by or asserted against FFB promptly after FFB has actual knowledge of the imposition, incurrence or assertion of such liability, loss, cost or expense.

Section 6.4 Effect of Secretary's Nonperformance.

In the event that the Secretary shall fail to fulfill any of his or her agreements in this article 6, FFB shall nevertheless continue:

- (a) to make Advances under Notes that have been purchased under any Note Purchase Agreement before the date of the respective failure; and
- (b) to purchase Notes that are issued by Borrowers that have been designated by the Secretary, before the date of the respective failure, to be Borrowers for purposes of this Agreement.

Section 6.5 Right of the Secretary to Purchase Advances and Notes.

Notwithstanding the provisions of any Note that has been purchased by FFB from a Borrower under a Note Purchase Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under such Note, or may purchase from FFB such Note in its entirety, in either case in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the terms of such

Note, to a repurchase by such Borrower of all or any portion of any Advance that has been made under such Note, or such Note in its entirety.

ARTICLE 7

EFFECTIVE DATE, TERM, SURVIVAL

Section 7.1 Effective Date.

This Agreement shall be effective as of the date first above written.

Section 7.2 Term of Commitment to Purchase Notes.

The obligation of FFB to enter into Note Purchase Agreements under this Agreement shall expire on the Program Financing Commitment Termination Date, subject to extensions thereof as provided in section 8.2.2 hereof.

Section 7.3 Survival.

7.3.1 Representations and Certifications. All representations and certifications made by the Secretary in this Agreement, or in any agreement, instrument or certificate delivered pursuant hereto, shall survive the execution and delivery of this Agreement and the entering into Note Purchase Agreements as provided in this Agreement.

7.3.2 Remainder of this Agreement. Notwithstanding the occurrence and passage of the Program Financing Commitment Termination Date or the termination by mutual agreement of the commitment of FFB to enter into Note Purchase Agreements with Borrowers designated by the Secretary, all provisions of this Agreement other than articles 2, 3, and 4 shall remain in full force and effect until payment of all amounts due under all of the Notes that have been purchased by FFB under any Note Purchase Agreement entered into under this Agreement. Without limiting the foregoing, FFB expressly acknowledges that FFB's commitment to make Advances under any Note that is purchased under a Note Purchase Agreement that is entered

into as provided in this Agreement before the Program Financing Commitment Termination Date shall not lapse or expire upon the occurrence and passage of the Program Financing Commitment Termination Date.

ARTICLE 8

MISCELLANEOUS

Section 8.1 Notices.

8.1.1 Addresses of the Parties. All notices and other communications that are required by the terms of this Agreement to be in writing shall be addressed as follows:

To FFB:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Telephone No. (202) 622-2470
Facsimile No. (202) 622-0707

To the Secretary:

Telephone: (____) ____-_____
Facsimile: (____) ____-_____

The address, telephone number, or facsimile number for either party may be changed at any time and from time to time upon written notice given by such changing party to the other party hereto.

8.1.2 Permitted Means of Delivery. Advance Requests, notices, and other communications to FFB may be delivered by facsimile (fax) transmission of the executed instrument.

8.1.3 Effective Date of Delivery. A properly addressed notice or other communication shall be deemed to have been "delivered" for purposes of this Agreement:

(a) if made by personal delivery, on the date of such personal delivery;

(b) if mailed by first class mail, registered or certified mail, express mail, or by any commercial overnight courier service, on the date that such mailing is received;

(c) if sent by facsimile (fax) transmission:

(1) if the transmission is received and receipt confirmed before 4:00 p.m. (Washington, DC, time) on any Business Day, on the date of such transmission;

(2) if the transmission is received and receipt confirmed after 4:00 p.m. (Washington, DC, time) on any Business Day or on any day that is not a Business Day, on the next Business Day.

8.1.4 Notices to FFB to Contain FFB Identification References. All notices to FFB making any reference to any Note purchased under a Note Purchase Agreement or any Advance made under any Note purchased under a Note Purchase Agreement shall identify such Note or such Advance by the respective Note Identifier or the respective Advance Identifier, as the case may be, assigned by FFB to such Note or such Advance.

Section 8.2 Amendments.

8.2.1 Written Instruments Required. No provision of this Agreement may be amended, modified, supplemented, waived, discharged, or terminated orally but only by an instrument in writing duly executed by the parties hereto.

8.2.2 To Extend Program Financing Commitment Termination Date. FFB agrees that, upon the request of the Secretary, it will negotiate in good faith amendments to this Agreement to extend the Program Financing Commitment Termination Date.

Section 8.3 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of each of FFB and the Secretary, and each of their respective successors and assigns.

Section 8.4 Rights Confined to Parties.

Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give to, any Person other than FFB and the Secretary, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements contained herein shall be for the sole and exclusive benefit of FFB and the Secretary, and their respective successors and permitted assigns.

Section 8.5 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the United States of America and not the law of the several States.

Section 8.6 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 8.7 Headings.

The descriptive headings of the various articles, sections, and subsections of this Agreement were formulated and inserted

for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 8.8 Counterparts.

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, FFB and the Secretary have caused this Agreement to be executed as of the day and year first above mentioned.

**FEDERAL FINANCING BANK
("FFB")**

By: _____

Name: _____

Title: Vice President and Treasurer

**SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized
[designate]/[representative]**

By: _____

Name: _____

Title: _____

Exhibit B
Form of Note Purchase Agreement
[attached behind]

NOTE PURCHASE AGREEMENT made as of _____, by and among the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, _____ (the "Borrower"), a corporation organized and existing under the laws of the State of _____, and the **SECRETARY OF ENERGY** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Program Authority (as hereinafter defined), to carry out a program to provide for loans that meet the requirements of the Program Authority; and

WHEREAS, FFB is authorized, pursuant to the Program Authority, to make loans under the Secretary's program; and

WHEREAS, FFB has entered into the Program Financing Agreement (as hereinafter defined) with the Secretary setting forth the commitment of FFB to enter into agreements to purchase notes issued by entities designated by the Secretary when the Secretary affirms that (i) the Secretary is obligated to reimburse FFB under circumstances and in amounts as provided therein in connection with loans evidenced by those notes, and (ii) such reimbursement obligations are made with the full faith and credit of the United States, and the commitment of the Secretary to make such affirmations; and

WHEREAS, pursuant to the Program Financing Agreement, the Secretary has delivered to FFB and the Borrower a Designation Notice (as hereinafter defined) designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement; and

WHEREAS, FFB is entering into this Note Purchase Agreement, in fulfillment of its commitment under the Program Financing

Agreement, setting out, among other things, FFB's agreement to purchase the Note (as hereinafter defined) to be issued by the Borrower, when the terms and conditions specified herein have been satisfied, as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FFB, the Secretary, and the Borrower agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

As used in this Agreement, the following terms shall have the respective meanings specified in this section 1.1, unless the context clearly requires otherwise.

"Advance" shall mean an advance of funds made by FFB under the Note in accordance with the provisions of article 7 of this Agreement.

"Advance Identifier" shall mean, for each Advance, the particular sequence of letters and numbers constituting the Note Identifier plus the particular sequence of additional numbers assigned by FFB to the respective Advance in the interest rate confirmation notice relating to such Advance delivered by FFB in accordance with section 7.7 of this Agreement.

"Advance Request" shall mean a letter from the Borrower requesting an Advance under [the][any] Note, in the form of letter attached as Exhibit A to this Agreement.

"Advance Request Approval Notice" shall mean the written notice from the Department located at the end of an Advance Request advising FFB that such Advance Request has been approved by or on behalf of the Secretary.

"Borrower Instruments" shall have the meaning specified in section 3.2.1 of this Agreement.

"Business Day" shall mean any day on which FFB and the Federal Reserve Bank of New York are both open for business.

"Certificate Specifying Authorized Borrower Officials" shall mean a certificate of the Borrower specifying the names and titles of those officials of the Borrower who are authorized to execute and deliver from time to time Advance Requests on behalf of the Borrower, and containing the original signature of each of those officials, substantially in the form of the Certificate Specifying Authorized Borrower Officials attached as Exhibit B to this Agreement.

"Certificate Specifying Authorized Department Officials" shall mean a certificate specifying the names and titles of those officials of the Department who are authorized to execute and deliver Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the original signature of each of those authorized officials, and specifying the name and title of those officials of the Department who are authorized to confirm telephonically the authenticity of the Advance Request Approval Notices from time to time on behalf of the Secretary and setting out the telephone number of each of those authorized officials, in the form of the Certificate Specifying Authorized Department Officials attached as Annex 1 to the Program Financing Agreement.

"Department" shall mean the Department of Energy.

"Designation Notice" shall mean, generally, a notice from the Secretary to FFB and the particular entity identified therein as the respective "Borrower," designating that entity to be a "Borrower" for purposes of the Program Financing Agreement, in the form of notice that is attached as Annex 2 to the Program Financing Agreement; and "the Designation Notice" shall mean the particular Designation Notice delivered by the Secretary to FFB and the Borrower designating the Borrower to be a "Borrower" for purposes of the Program Financing Agreement.

"Governmental Approval" shall mean any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Authority" shall mean any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial, regulatory, or administrative function of government.

"Governmental Judgment" shall mean any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Registration" shall mean any registration, filing, declaration, or notice, or any other action of a similar nature, with or to a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Governmental Rule" shall mean any statute, law, rule, regulation, code, or ordinance of a Governmental Authority having jurisdiction over the Borrower or any of its properties.

"Holder" shall mean, with respect to [the] [any] Note, FFB, for so long as it shall be the holder of [the] [such] Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of [the] [such] Note.

"Loan Commitment Amount" shall mean _____.

"Material Adverse Effect on the Borrower" shall mean any material adverse effect on the financial condition, operations, business or prospects of the Borrower [or any affiliated guarantor of the Borrower] or the ability of the Borrower to perform its obligations under this Agreement or any of the other Borrower Instruments.

"Note" shall mean [the][any] future advance promissory note issued by the Borrower payable to FFB, in the form of note that is attached as Exhibit C to this Agreement, as [any] such Note may be amended, supplemented, and restated from time to time in accordance with its terms.

"Note Identifier" shall mean[, with respect to each Note,] the particular sequence of letters and numbers assigned by FFB to [the][the respective] Note in the Principal Instruments acceptance notice relating to [the][such] Note delivered by FFB in accordance with section 5.1 of this Agreement.

"Opinion of Borrower's Counsel re: Borrower Instruments" shall mean an opinion of counsel from counsel to the Borrower, substantially in the form of opinion that is attached as Exhibit D to this Agreement.

"Opinion of Secretary's Counsel re: Secretary's Affirmation" shall mean an opinion of counsel from counsel to the Secretary, substantially in the form of opinion that is attached as Exhibit E to this Agreement.

"Other Debt Obligation" shall mean any note or any other evidence of an obligation for borrowed money of a similar nature, made or issued by the Borrower (other than the Note[s] purchased by FFB under this Agreement), or any mortgage, indenture, deed of trust or loan agreement with respect thereto to which the Borrower is a party or by which the Borrower or any of its properties is bound (other than this Agreement).

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, trust company, unincorporated organization or Governmental Authority.

"Principal Instruments" shall have the meaning specified in section 4.2 of this Agreement.

"Program Authority", shall mean section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended from time to time, including as amended by section 129 of Division A of

the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. No. 110-329, 122 Stat. 3574, 3578).

"Program Financing Commitment Amount" shall have the meaning specified in section 1.1 of the Program Financing Agreement.

"Program Financing Agreement" shall mean the Program Financing Agreement dated as of _____, between FFB and the Secretary, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Requested Advance Amount" shall have the meaning specified in section 7.3.1(a)(2) of this Agreement.

"Requested Advance Date" shall have the meaning specified in section 7.3.1(a)(3) of this Agreement.

"Secretary's Affirmation" shall mean the affirmation of the Note issued by the Secretary, in the form of affirmation that is attached as Exhibit G to this Agreement.

"Secretary's Certificate" shall mean the certificate relating to the Secretary's Affirmation and other matters, in the form of certificate that is attached as Exhibit H to this Agreement.

"Secretary's Instruments" shall have the meaning specified in section 3.3.1 this Agreement.

"this Agreement" shall mean this Note Purchase Agreement among FFB, the Secretary, and the Borrower.

"Uncontrollable Cause" shall mean an unforeseeable cause beyond the control and without the fault of FFB, being: act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, disruption or failure of the Treasury Financial Communications System, closure of the Federal Government, or

an unforeseen or unscheduled closure or evacuation of the FFB offices.

Section 1.2 Rules of Interpretation.

Unless the context shall otherwise indicate, the terms defined in section 1.1 of this Agreement shall include the plural as well as the singular and the singular as well as the plural. The words "herein," "hereof," and "hereto," and words of similar import, refer to this Agreement as a whole.

ARTICLE 2

FFB COMMITMENT TO PURCHASE THE NOTE

Subject to the terms and conditions of this Agreement, FFB agrees to purchase the Note[s] that [is][are] offered by the Borrower to FFB for purchase under this Agreement.

ARTICLE 3

COMMITMENT CONDITIONS

FFB shall be under no obligation to purchase the Note[s] under this Agreement unless and until each of the conditions specified in this article 3 has been satisfied.

Section 3.1 Commitment Amount Limits.

3.1.1 Loan Commitment Amount. The [aggregate] maximum principal amount of the Note[s] that [is][are] offered for purchase shall not exceed the Loan Commitment Amount.

3.1.2 Program Financing Commitment Amount. At the time that [the][each] Note is offered to FFB for purchase under this Agreement, the [aggegate] maximum principal amount of the Note[s], when added to the aggregate maximum principal amount of all other notes that have been issued by entities that have been designated by the Secretary in Designation Notices to be "Borrowers" for purposes of the

Program Financing Agreement and in connection with which the Secretary has undertaken certain reimbursement obligations pursuant to the Program Authority, shall not exceed the Program Financing Commitment Amount.

Section 3.2 Borrower Instruments.

3.2.1 Borrower Instruments. FFB shall have received from the Borrower the following instruments (such instruments being, collectively, the "Borrower Instruments"):

- (a) an original counterpart of this Agreement, duly executed by the Borrower; and
- (b) [the][each] original Note described in the Designation Notice, with all of the blanks on page 1 of [the][each] Note filled in with information consistent with the information set out in the Designation Notice, and duly executed by the Borrower.

3.2.2 Opinion of Borrower's Counsel re: Borrower Instruments. FFB shall have received from the Borrower an Opinion of Borrower's Counsel re: Borrower Instruments.

3.2.3 Certificate Specifying Authorized Borrower Officials. FFB shall have received from the Borrower a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 3.3 Secretary's Instruments.

3.3.1 Secretary's Instruments. FFB shall have received from the Secretary the following instruments (such instruments being, collectively, the "Secretary's Instruments"):

- (a) an original counterpart of this Agreement, duly executed by or on behalf of the Secretary;
- (b) the original Secretary's Affirmation relating to the Note, duly executed by or on behalf of the Secretary; and

(c) an original Secretary's Certificate relating to the Secretary's Affirmation and other matters, duly executed by or on behalf of the Secretary.

3.3.2 Opinion of Secretary's Counsel re: Secretary's Affirmation. FFB shall have received an Opinion of Secretary's Counsel re: Secretary's Affirmation.

Section 3.4 Conditions Specified in Other Agreements.

Each of the conditions specified in the Program Financing Agreement as being conditions to purchasing the Note shall have been satisfied.

ARTICLE 4

OFFER OF THE NOTE FOR PURCHASE

The Note that is to be offered to FFB for purchase under this Agreement shall be offered in accordance with the procedures described in this article 4.

Section 4.1 Delivery of Borrower Instruments to the Secretary.

The Borrower shall deliver to the Secretary, for redelivery to FFB, the following:

- (a) all of the Borrower Instruments, each duly executed by the Borrower;
- (b) an Opinion of Borrower's Counsel re: Borrower Instruments; and
- (c) a completed and signed Certificate Specifying Authorized Borrower Officials.

Section 4.2 Delivery of Principal Instruments by the Secretary to FFB.

The Secretary shall deliver to FFB all of the following instruments (collectively being the "Principal Instruments":

- (a) all of the instruments described in section 4.1;
- (b) all of the Secretary's Instruments, each duly executed by the Secretary; and
- (c) an Opinion of Secretary's Counsel re: Secretary's Affirmation.

ARTICLE 5

PURCHASE OF THE NOTE BY FFB

Section 5.1 Acceptance or Rejection of Principal Instruments.

Within 5 Business Days after delivery to FFB of the Principal Instruments relating to the Note that is offered for purchase under this Agreement, FFB shall deliver by facsimile transmission (fax) to the Department one of the following:

- (a) an acceptance notice, which notice shall:
 - (1) state that the Principal Instruments meet the terms and conditions detailed in article 3 of this Agreement, or are otherwise acceptable to FFB; and
 - (2) assign a Note Identifier to [such][each] Note for use by the Borrower and the Department in all communications to FFB making reference to [such][the respective] Note; or
- (b) a rejection notice, which notice shall state that one or more of the Principal Instruments does not meet the terms and conditions of this Agreement and specify how such instrument or instruments does not meet the terms and conditions of this Agreement.

Section 5.2 Purchase.

FFB shall not be deemed to have accepted the Note[s] offered for purchase under this Agreement until such time as FFB shall

have delivered an acceptance notice accepting the Principal Instruments relating to the Note[s]; provided, however, that in the event that FFB shall make an Advance under [the] [any] Note, then FFB shall be deemed to have accepted [the] [such] Note offered for purchase.

ARTICLE 6

CUSTODY OF NOTE; LOSS OF NOTE, ETC.

Section 6.1 Custody.

FFB shall have custody of [the] [each] Note purchased under this Agreement until all amounts owed under the [respective] Note have been paid in full.

Section 6.2 Lost, Stolen, Destroyed, or Mutilated Note.

In the event that [the] [any] Note purchased under this Agreement shall become lost, stolen, destroyed, or mutilated, the Borrower shall, upon the written request of FFB, execute and deliver, in replacement thereof, a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed, or mutilated Note or, if no interest has been paid thereon, dated the same date as such lost, stolen, destroyed, or mutilated Note. Upon delivery of such replacement Note, the Borrower shall be released and discharged from any further liability on account of the lost, stolen, or destroyed Note. If the Note being replaced has been mutilated, such mutilated Note shall be surrendered to the Borrower for cancellation.

ARTICLE 7**ADVANCES****Section 7.1 Commitment.**

Subject to the terms and conditions of this Agreement, FFB agrees to make Advances under [the] [each] Note for the account of the Borrower.

Section 7.2 Treasury Policies Applicable to Advances.

Each of the Borrower and the Secretary understands and consents to the following Treasury financial management policies generally applicable to all advances of funds:

(a) each Advance will be requested by the Borrower, and each Advance Request will be approved by the Secretary, only at such time and in such amount as shall be necessary to meet the immediate payment or disbursing need of the Borrower;

(b) except for Advances to reimburse the Borrower for expenditures that it has made from its own working capital, each Advance will be requested to be disbursed directly to the Person(s) to whom the Borrower is obligated to make payments;

(c) Advances for investment purposes will not be requested by the Borrower or approved by the Secretary; and

(d) all interest earned on any lawful and permitted investment of Advances in excess of the interest accrued on such Advances will be remitted to FFB.

Section 7.3 Conditions to Making Advances.

FFB shall be under no obligation to make any Advance under [the] [any] Note unless and until each of the conditions specified in this section 7.3 is satisfied.

7.3.1 Advance Requests. For each Advance under [the] [any] Note, the Borrower shall have delivered to the

Secretary, for review and approval before being forwarded to FFB, an Advance Request, which Advance Request:

(a) shall specify, among other things:

(1) the particular "Note Identifier" that FFB assigned to the [respective] Note (as provided in section 5.1 of this Agreement;

(2) the particular amount of funds that the Borrower requests to be advanced (such amount being the "Requested Advance Amount" for the respective Advance);

(3) the particular calendar date that the Borrower requests to be the date on which the respective Advance is to be made (such date being the "Requested Advance Date" for such Advance), which date:

(A) must be a Business Day; and

(B) shall not be earlier than the third Business Day to occur after the date on which FFB shall have received the respective Advance Request;

(4) the particular bank account to which the Borrower requests that the respective Advance be made; and

(b) shall have been duly executed by an official of the Borrower whose name and signature appear on the Certificate Specifying Authorized Borrower Officials delivered by the Borrower to FFB pursuant to section 3.2.3 of this Agreement; and

(c) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.2 Advance Request Approval Notice. For each Advance, the Secretary shall have delivered to FFB the Borrower's executed Advance Request, together with the

Department's executed Advance Request Approval Notice, which Advance Request Approval Notice:

(a) shall have been duly executed on behalf of the Secretary by an official of the Department whose name and signature appear on the Certificate Specifying Authorized Department Officials delivered to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and

(b) shall have been received by FFB not later than the third Business Day before the Requested Advance Date specified in such Advance Request.

7.3.3 Telephonic Confirmation of Authenticity of Advance Request Approval Notices. For each Advance, FFB shall have obtained telephonic confirmation of the authenticity of the related Advance Request Approval Notice from an official of the Department (a) whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and (b) who is not the same official of the Department who executed the Advance Request Approval Notice on behalf of the Secretary.

7.3.4 Note Maximum Principal Amount Limit. At the time of making any Advance under [the] [any] Note, the amount of such Advance, when added to the aggregate amount of all Advances previously made under [the] [such] Note, shall not exceed the maximum principal amount of [the] [such] Note.

7.3.5 Conditions Specified in Other Agreements. Each of the conditions specified in the Program Financing Agreement as being conditions to making Advances under [the] [each] Note, shall have been satisfied.

Section 7.4 Amount and Timing of Advances.

FFB shall make each Advance in the Requested Advance Amount specified in the respective Advance Request and on the Requested Advance Date specified in the respective Advance Request, subject to satisfaction of the conditions specified in section 7.3 of

this Agreement and subject to the following additional limitations:

- (a) in the event that the Requested Advance Date specified in the respective Advance Request is not a Business Day, FFB shall make the respective Advance on the first day thereafter that is a Business Day;
- (b) in the event that FFB receives the respective Advance Request and the related Advance Request Approval Notice later than the third Business Day before the Requested Advance Date specified in such Advance Request, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the third Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date; and
- (c) in the event that an Uncontrollable Cause prevents FFB from making the respective Advance on the Requested Advance Date specified in the respective Advance Request, FFB shall make such Advance as soon as such Uncontrollable Cause ceases to prevent FFB from making such Advance, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date.

Section 7.5 Type of Funds and Means of Advance.

Each Advance shall be made in immediately available funds by electronic funds transfer to such bank account(s) as shall have been specified in the respective Advance Request.

Section 7.6 Interest Rate Applicable to Advances.

The rate of interest applicable to each Advance made under [the] [any] Note shall be established as provided in paragraph 6 of [the] [such] Note.

Section 7.7 Interest Rate Confirmation Notices.

After making each Advance, FFB shall deliver, by facsimile transmission, to the Borrower and the Department written confirmation of the making of the respective Advance, which confirmation shall:

- (a) state the date on which such Advance was made;
- (b) state the interest rate applicable to such Advance; and
- (c) assign an Advance Identifier to such Advance for use by the Borrower and the Department in all communications to FFB making reference to such Advance.

ARTICLE 8**REPRESENTATIONS AND WARRANTIES BY THE BORROWER**

The Borrower makes the representations and warranties provided in this article 8 to FFB.

Section 8.1 Organization.

The Borrower is a corporation duly organized, validly existing and in good standing under the laws of _____ and is qualified to do business in the [state(s) of the project(s)].

Section 8.2 Authority.

The Borrower has all requisite corporate power and authority to carry on its business as presently conducted, to execute and deliver this Agreement and each of the other Borrower Instruments, to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder.

Section 8.3 Due Authorization.

The execution and delivery by the Borrower of this Agreement and each of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby and thereby, and the performance by the Borrower of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action.

Section 8.4 Due Execution.

This Agreement has been, and each of the other Borrower Instruments will have been at the respective time of delivery of each thereof, duly executed and delivered by officials of the Borrower who are duly authorized to execute and deliver such documents on its behalf.

Section 8.5 Validity and Enforceability.

This Agreement constitutes, and each of the other Borrower Instruments will constitute at the respective time of delivery of each thereof, the legal, valid, and binding agreement of the Borrower, enforceable against the Borrower in accordance with their respective terms.

Section 8.6 No Governmental Actions Required.

No Governmental Approvals or Governmental Registrations are now, or under existing Governmental Rules will in the future be, required to be obtained or made, as the case may be, by the Borrower to authorize the execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, or the performance by the Borrower of its obligations hereunder or thereunder.

Section 8.7 No Conflicts or Violations.

The execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, and the performance by the Borrower of its obligations hereunder or thereunder do not and will not conflict with or violate, result in a breach of, or constitute a default under (a) any term or

provision of the charter documents or bylaws of the Borrower; (b) any of the covenants, conditions or agreements contained in any Other Debt Obligation of the Borrower; (c) any Governmental Approval or Governmental Registration obtained or made, as the case may be, by the Borrower; or (d) any Governmental Judgment or Governmental Rule currently applicable to the Borrower.

Section 8.8 All Necessary Governmental Actions.

The Borrower has not failed to obtain any material Governmental Approval or make any material Governmental Registration required or necessary to carry on the business of the Borrower as presently conducted, and the Borrower reasonably believes that it will not be prevented by any Governmental Authority having jurisdiction over the Borrower from so carrying on its business as presently conducted.

Section 8.9 No Material Litigation.

There are no lawsuits or judicial or administrative actions, proceedings or investigations pending or, to the best knowledge of the Borrower, threatened against the Borrower which, in the reasonable opinion of the Borrower, is likely to have a Material Adverse Effect on the Borrower.

ARTICLE 9

BILLING BY FFB

Section 9.1 Billing Statements to the Borrower and the Department.

FFB shall prepare a billing statement for the amounts owed to FFB on each Advance that is made under [the][each] Note purchased under this Agreement, and shall deliver each such billing statement to the Borrower and the Department.

Section 9.2 Failure to Deliver or Receive Billing Statements No Release.

Failure on the part of FFB to deliver any billing statement or failure on the part of the Borrower to receive any billing statement shall not, however, relieve the Borrower of any of its payment obligations under the Note or this Agreement.

Section 9.3 FFB Billing Determinations Conclusive.

9.3.1 Acknowledgment and Consent. The Borrower acknowledges that FFB has described to it:

- (a) the rounding methodology employed by FFB in calculating the amount of accrued interest owed at any time on [the] [each] Note; and
- (b) the methodology employed by FFB in calculating the equal principal installments payment schedule for amounts due and payable on [the] [each] Note;

and the Borrower consents to these methodologies.

9.3.2 Agreement. The Borrower agrees that any and all determinations made by FFB shall be conclusive and binding upon the Borrower with respect to:

- (a) the amount of accrued interest owed on [the] [each] Note determined using this rounding methodology; and
- (b) the amount of any equal principal installments payment due and payable on [the] [each] Note determined using this methodology.

ARTICLE 10

PAYMENTS TO FFB

Each amount that becomes due and owing on [the] [each] Note purchased under this Agreement shall be paid when and as due, as provided in the [respective] Note.

ARTICLE 11**SECRETARY'S RIGHT TO PURCHASE ADVANCES OR [THE] [ANY] NOTE**

Notwithstanding the provisions of [each of] the Note[s], the Borrower acknowledges that, under the terms of the Program Financing Agreement, the Secretary may purchase from FFB all or any portion of any Advance that has been made under [the][any] Note, or may purchase from FFB [the][any] Note in its entirety, in the same manner, at the same price, and subject to the same limitations as shall be applicable, under the terms of [the][such] Note, to a prepayment by the Borrower of all or any portion of any Advance made under [the][such] Note, or a prepayment by the Borrower of [the][such] Note in its entirety, as the case may be.

ARTICLE 12**EFFECTIVE DATE, TERM, SURVIVAL****Section 12.1 Effective Date.**

This Agreement shall be effective as of the date first above written.

Section 12.2 Term of Commitment to Make Advances.

The obligation of FFB under this Agreement to make Advances under [the][each] Note issued by the Borrower shall expire on the "Last Day for an Advance" specified in the [respective] Note.

Section 12.3 Survival.

12.3.1 Representations, Warranties, and Certifications. All representations, warranties, and certifications made by the Borrower in this Agreement, or in any agreement, instrument, or certificate delivered pursuant hereto, shall survive the execution and delivery of this

Agreement, the purchasing of the Note hereunder, and the making of Advances thereunder.

12.3.2 Remainder of Agreement. Notwithstanding the occurrence and passage of the Last Day for an Advance, the remainder of this Agreement shall remain in full force and effect until all amounts owed under this Agreement and [each of] the Note[s] purchased by FFB under this Agreement have been paid in full.

ARTICLE 13

MISCELLANEOUS

Section 13.1 Notices.

13.1.1 Addresses of the Parties. All notices and other communications hereunder to be made to either party shall be in writing and shall be addressed as follows:

To FFB:

Federal Financing Bank
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Attention: Chief Financial Officer

Telephone No. (202) 622-2470
Facsimile No. (202) 622-0707

To the Borrower:

Attention: _____

Telephone: (____) ____-____
Facsimile: (____) ____-____

To the Secretary (or the Department):

The Secretary of Energy
Attention: _____

Telephone: (____) ____-____
Facsimile: (____) ____-____

The address, telephone number, or facsimile number for any party may be changed at any time and from time to time upon written notice given by such changing party to each of the other parties hereto.

13.1.2 Permitted Means of Delivery. Advance Requests, notices, and other communications to FFB may be delivered by facsimile (fax) transmission of the executed instrument.

13.1.3 Effective Date of Delivery. A properly addressed notice or other communication shall be deemed to have been "delivered" for purposes of this Agreement:

(a) if made by personal delivery, on the date of such personal delivery;

(b) if mailed by first class mail, registered or certified mail, express mail, or by any commercial overnight courier service, on the date that such mailing is received;

(c) if sent by facsimile (fax) transmission:

(1) if the transmission is received and receipt confirmed before 4:00 p.m. (Washington, DC, time) on any Business Day, on the date of such transmission; and

(2) if the transmission is received and receipt confirmed after 4:00 p.m. (Washington, DC, time) on any Business Day or any day that is not a Business Day, on the next Business Day.

13.1.4 Notices to FFB to Contain FFB Identification References. All notices to FFB making any reference to [either the] [any] Note or any Advance made [thereunder] [under such Note] shall identify the [respective] Note or such Advance by the [respective] Note Identifier or the respective Advance Identifier, as the case may be, assigned by FFB to [the] [such] Note or such Advance.

Section 13.2 Amendments.

No provision of this Agreement may be amended, modified, supplemented, waived, discharged, or terminated orally but only by an instrument in writing duly executed by each of the parties hereto and consented to in writing by the Secretary.

Section 13.3 Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of each of FFB and the Borrower, and each of their respective successors and assigns.

Section 13.4 Sale or Assignment of Note.

13.4.1 Sale or Assignment Permitted. FFB may sell, assign, or otherwise transfer all or any part of [the] [any] Note or any participation share thereof.

13.4.2 Notice of Sale, Etc. FFB will deliver to the Borrower and the Department written notice of any sale, assignment, or other transfer of any Note promptly after any such sale, assignment, or other transfer.

13.4.3 Manner of Payment after Sale. Any sale, assignment, or other transfer of all or any part of any Note may provide that, following such sale, assignment, or other transfer, payments on such Note shall be made in the manner specified by the respective purchaser, assignee, or transferee, as the case may be.

13.4.4 Replacement Notes. The Borrower agrees:

(a) to issue a replacement Note or Notes with the same aggregate principal amount, interest rate, maturity, and other terms as each respective Note or Notes sold, assigned, or transferred pursuant to subsection 13.4.1 of this Agreement; provided, however, that, when requested by the respective purchaser, assignee, or transferee, such replacement Note or Notes shall provide that payments thereunder shall be made in the manner specified by such purchaser, assignee, or transferee; and

(b) to effect the change in ownership on its records and on the face of each such replacement Note issued, upon receipt of each Note or Notes so sold, assigned, or transferred.

Section 13.5 Forbearance Not a Waiver.

Any forbearance on the part of FFB from enforcing any term or condition of this Agreement shall not be construed to be a waiver of such term or condition or acquiescence by FFB in any failure on the part of Borrower to comply with or satisfy such term or condition.

Section 13.6 Rights Confined to Parties.

Nothing expressed or implied herein is intended or shall be construed to confer upon, or to give to, any Person other than FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises, and agreements contained herein shall be for the sole and exclusive benefit of FFB, the Borrower, and the Secretary, and their respective successors and permitted assigns.

Section 13.7 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in

accordance with, the laws of the United States of America and not the law of the several States.

Section 13.8 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

Section 13.9 Headings.

The descriptive headings of the various articles, sections, and subsections of this Agreement were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.

Section 13.10 Counterparts.

This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, FFB, the Borrower, and the Secretary have each caused this Agreement to be executed as of the day and year first above mentioned.

**FEDERAL FINANCING BANK
("FFB")**

By: _____

Name: _____

Title: Vice President and Treasurer

(the "Borrower")

By: _____

Name: _____

Title: _____

THE SECRETARY OF ENERGY
(the "Secretary")
acting through his or her
duly authorized
[designate]/[representative]

By: _____

Name: _____

Title: _____

Exhibit C
Form of Promissory Note
[attached behind]

| |
|-------------------------|
| FOR FFB USE ONLY |
| Note Identifier: |
| Purchase Date: |

Note Date _____

Place of Issue _____

Last Day for an Advance (#3) _____

Maximum Principal Amount (#4) _____

Maturity Date (#5) _____

Payment Dates (#7) _____, & _____ of each year First Principal Payment Date (#8) _____

Security Instrument (#19) _____

FUTURE ADVANCE PROMISSORY NOTE

1. Promise to Pay.

FOR VALUE RECEIVED,

(the "Borrower", which term includes any successors or assigns), promises to pay the **FEDERAL FINANCING BANK ("FFB")**, a body corporate and instrumentality of the United States of America (FFB, for so long as it shall be the holder of this Note, and any successor or assignee of FFB, for so long as such successor or assignee shall be the holder of this Note, being the "Holder"), at the times, in the manner, and with interest at the rates to be established as hereinafter provided, such amounts as may be advanced from time to time by FFB to or for the account of the Borrower under this Note (each such amount being an "Advance" and more than one such amounts being "Advances").

2. Reference to Certain Agreements.

(a) Program Financing Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Program Financing Agreement dated as of _____, made by and between FFB and the Secretary of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

(b) Note Purchase Agreement. This Note is [one of] the "Note[s]" referred to in, and entitled to the benefits of, the Note Purchase Agreement dated as of even date herewith, made by and among FFB, the Borrower, and the Secretary (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Note Purchase Agreement").

3. Advances; Advance Requests; Last Day for Advances.

(a) Subject to the terms and conditions of the Note Purchase Agreement, FFB shall make Advances under this Note in the amounts, at the times, and to the accounts requested by the Borrower from time to time, in each case upon delivery to FFB of a written request by the Borrower for an Advance under this Note, in the form of request attached to the Note Purchase Agreement as Exhibit A thereto (each such request being an "Advance Request"), completed as prescribed in the Note Purchase Agreement.

(b) To be effective, an Advance Request must first be delivered to the Department of Energy for approval and be approved by or on behalf of the Secretary in writing, and such Advance Request, together with written notification of the Secretary's approval thereof, must be received by FFB on or before the third Business Day before the particular calendar date specified in such Advance Request that the Borrower requests to be the date on which the respective Advance is to be made.

(c) The Borrower hereby agrees that FFB, for its purposes, may consider any Advance Request approved by or on behalf of the Secretary and delivered to FFB in accordance with the terms of the Note Purchase Agreement to be an accurate representation of the Borrower's request for an Advance under this Note and the Secretary's approval of that Advance Request.

4. Principal Amount of Advances; Maximum Principal Amount.

The principal amount of each Advance shall be the amount specified in the respective Advance Request; provided, however, that the aggregate principal amount of all Advances made under this Note may not exceed the particular amount specified on page 1 of this Note as the "Maximum Principal Amount."

5. Maturity Date.

This Note, and each Advance made hereunder, shall mature on the particular date specified on page 1 of this Note as the "Maturity Date" (such date being the "Maturity Date").

6. Computation of Interest on Each Advance.

(a) Subject to paragraphs 11 and 14 of this Note, interest on the outstanding principal of each Advance shall accrue from the date on which the respective Advance is made to the date on which such principal is due.

(b) Interest on each Advance shall be computed on the basis of (1) actual days elapsed from (but not including) the date on which the respective Advance is made (for the first payment of interest due under this Note for the respective Advance) or the date on which the payment of interest was last due (for all other payments of interest due under this Note for the respective Advance), to (and including) the date on which payment is next due, and (2) a year of 365 days.

(c) The interest rate applicable to each Advance shall be established by FFB at the time that the respective Advance is made on the basis of the determination made by the Secretary of the Treasury pursuant to section 136 of the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492, 1514), as amended (the "Program Authority"); provided, however, that the shortest maturity used as the basis for any basic interest rate determination shall be the remaining maturity of the most recently auctioned United States Treasury bills having the shortest maturity of all United States Treasury bills then being regularly auctioned.

7. Payment of Interest; Payment Dates.

Interest accrued on the outstanding principal balance of each Advance shall be due and payable on each of the particular dates specified on page 1 of this Note as "Payment Dates" (each such date being a "Payment Date"), beginning on the first Payment Date to occur after the date on which such Advance is made, up through and including the Maturity Date.

8. Payment of Principal.

(a) The principal amount of each Advance shall be payable in installments, which payments shall be due beginning on the particular date specified as the "First Principal Payment Date" on page 1 of this Note (such date being the "First Principal Payment Date"), and shall be due on each Payment Date to occur thereafter until the principal of the respective Advance is repaid in full on or before the Maturity Date; provided, however, that with respect to each Advance that is made after the First Principal Payment Date, principal installments shall be due beginning on the second Payment Date to occur after the date on which the respective Advance is made.

(b) With respect to each Advance, the amount of principal due on the First Principal Payment Date, on each Payment Date to occur thereafter, and on the Maturity Date shall be, in each case, substantially equal to the amount of every other quarterly installment of principal and shall be sufficient, when added to all other such quarterly installments of equal principal, to repay the principal amount of the respective Advance in full on the Maturity Date.

9. Business Days.

(a) Whenever any Payment Date or the Maturity Date shall fall on a day on which neither FFB nor the Federal Reserve Bank of New York is open for business, the payment which would otherwise be due on such Payment Date or the Maturity Date shall be due on the first day thereafter on which FFB and the Federal Reserve Bank of New York are both open for business (any such day being a "Business Day").

(b) In the case of a Payment Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on such Payment Date shall (1) be taken into account in establishing the interest rate for

each Advance, and (2) be included in computing interest due in connection with such payment and excluded in computing interest due in connection with the next payment.

(c) In the case of the Maturity Date falling on a day other than a Business Day, the extension of time for making the payment that would otherwise be due on the Maturity Date shall (1) be taken into account in establishing the interest rate for each Advance, and (2) be included in computing interest due in connection with such payment.

10. Manner of Making Payments.

(a) For so long as FFB is the Holder of this Note, each payment under this Note shall be paid in immediately available funds by electronic funds transfer to the account of the United States Treasury (for credit to the subaccount of FFB) maintained at the Federal Reserve Bank of New York specified by FFB in a written notice to the Borrower, or to such other account as may be specified from time to time by FFB in a written notice to the Borrower.

(b) In the event that FFB is not the Holder of this Note, then each payment under this Note shall be made in immediately available funds by electronic funds transfer to such account as shall be specified by the Holder in a written notice to the Borrower.

11. Late Payments.

(a) In the event that any payment of any amount owing under this Note is not made when and as due (any such amount being then an "Overdue Amount"), then the amount payable shall be such Overdue Amount plus interest thereon (such interest being the "Late Charge") computed in accordance with this subparagraph (a):

(1) The Late Charge shall accrue from the scheduled date of payment for the Overdue Amount (taking into account paragraph 9 of this Note) to the date on which payment is made.

(2) The Late Charge shall be computed on the basis of (A) actual days elapsed from (but not including) the scheduled date of payment for such Overdue Amount (taking into account paragraph 9 of this Note) to (and including)

the date on which payment is made, and (B) a year of 365 days.

(3) The Late Charge shall accrue at a rate (the "Late Charge Rate") equal to one and one-half times the rate to be determined by the Secretary of the Treasury taking into consideration the prevailing market yield on the remaining maturity of the most recently auctioned 13-week United States Treasury bills.

(4) The initial Late Charge Rate shall be in effect until the earlier to occur of either (A) the date on which payment of the Overdue Amount and the amount of the accrued Late Charge is made, or (B) the first Payment Date to occur after the scheduled date of payment for such Overdue Amount. In the event that the Overdue Amount and the amount of the accrued Late Charge are not paid on or before the such Payment Date, then the amount payable shall be the sum of the Overdue Amount and the amount of the accrued Late Charge, plus a Late Charge on such sum accruing at a new Late Charge Rate to be then determined in accordance with the principles of clause (3) of this subparagraph (a). For so long as any Overdue Amount remains unpaid, the Late Charge Rate shall be re-determined in accordance with the principles of clause (3) of this subparagraph (a) on each Payment Date to occur thereafter, and shall be applied to the Overdue Amount and all amounts of the accrued Late Charge to the date on which payment of the Overdue Amount and all amounts of the accrued Late Charge is made.

(b) Nothing in subparagraph (a) of this paragraph 11 shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder, modify, extend, alter or affect in any manner whatsoever (except as explicitly provided herein) the right of the Holder to receive any and all payments on account of this Note on the dates specified in this Note.

12. Final Due Date.

Notwithstanding anything in this Note to the contrary, all amounts outstanding under this Note remaining unpaid as of the Maturity Date shall be due and payable on the Maturity Date.

13. Application of Payments.

Each payment made on this Note shall be applied first to the payment of Late Charges (if any) payable under paragraphs 11 and 15 of this Note, then to the payment of premiums (if any) payable under paragraph 14 of this Note, then to the payment of accrued interest, then on account of outstanding principal of this Note.

14. Prepayments.

(a) The Borrower may elect to prepay all or any portion of the outstanding principal amount of any Advance made under this Note, or to prepay this Note in its entirety, in the manner, at the price, and subject to the limitations specified in this paragraph 14 (each such election being a "Prepayment Election").

(b) The Borrower shall deliver to FFB (and if FFB is not the Holder, then also to the Holder) written notification of each Prepayment Election (each such notification being a "Prepayment Election Notice"), specifying:

(1) the Advance Identifier that FFB assigned to the respective Advance (as provided in the Note Purchase Agreement);

(2) the particular date on which the Borrower intends to prepay the respective Advance (such date being the "Intended Prepayment Date" for the respective Advance), which date must be a Business Day; and

(3) the amount of principal of the respective Advance that the Borrower intends to prepay, which amount may be either:

(A) the total outstanding principal amount of such Advance; or

(B) an amount less than the total outstanding principal amount of such Advance (any such amount being a "Portion").

(c) To be effective, a Prepayment Election Notice must be received by FFB (and if FFB is not the Holder, then also by the Holder) on or before the fifth Business Day before the date specified in therein as the Intended Prepayment Date for the respective Advance or Portion.

(d) The Borrower shall pay to the Holder a price for the prepayment of any Advance or Portion (such price being the "Prepayment Price" for such Advance or Portion) determined as follows:

(1) in the event that the Borrower elects to prepay the entire outstanding principal amount of any Advance, then the Borrower shall pay to the Holder a Prepayment Price for such Advance equal to the sum of:

(A) the price for such Advance that would, if such Advance (including all unpaid interest accrued thereon through the Intended Prepayment Date) were purchased by a third party and held to the Maturity Date, produce a yield to the third-party purchaser for the period from the date of purchase to the Maturity Date substantially equal to the interest rate that would be set on a loan from the Secretary of the Treasury to FFB to purchase an obligation having a payment schedule identical to the payment schedule of such Advance for the period from the Intended Prepayment Date to the Maturity Date; and

(B) all unpaid Late Charges (if any) accrued on such Advance through the Intended Prepayment Date;

(2) in the event that the Borrower elects to prepay a Portion of any Advance, then the Borrower shall pay to the Holder a Prepayment Price for such Portion that would equal such Portion's pro rata share of the Prepayment Price that would be required for a prepayment of the entire principal amount of such Advance (determined in accordance with the principles of clause (1) of this subparagraph (d)); and

(3) in the event that the Borrower elects to prepay this Note in its entirety, then the Borrower shall pay to the Holder an amount equal to the sum of the Prepayment Prices for all outstanding Advances (determined in accordance with the principles of clause (1) of this subparagraph (d)).

(e) Payment of the Prepayment Price for any Advance or any Portion shall be due to the Holder before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date for such Advance or Portion.

(f) Each prepayment of a Portion shall, as to the principal amount of such Portion, be subject to a minimum amount equal to \$100,000.00 of principal.

(g) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the Prepayment Price paid for such Portion will be applied as provided in paragraph 13 of this Note, and, with respect to application to outstanding principal, such Prepayment Price shall be applied to principal installments in the inverse order of maturity.

(h) In the event that the Borrower makes a Prepayment Election with respect to any Portion of an Advance, then the outstanding principal amount of such Advance, from and after such partial prepayment, shall be due and payable in accordance with this subparagraph (h).

(1) The amount of the quarterly principal installments that will be due after such partial prepayment shall be equal to the quarterly installments of equal principal that were due in accordance with the level principal repayment schedule that applied to such Advance immediately before such partial prepayment.

(2) The equal payments of principal shall be due beginning on the first Payment Date to occur after such partial prepayment, and shall be due on each Payment Date to occur thereafter up through and including the date on which the entire principal amount of such Advance and all unpaid interest (and Late Charges, if any) accrued thereon, are paid.

15. Rescission of Prepayment Elections; Late Charges for Late Payments of Prepayment Prices.

(a) The Borrower may rescind any Prepayment Election made in accordance with paragraph 14 of this Note, but only in accordance with this paragraph 15.

(b) The Borrower shall deliver to FFB written notification of each rescission of a Prepayment Election (each such notification being an "Election Rescission Notice") specifying the particular Advance for which the Borrower wishes to rescind such Prepayment Election, which specification must make

reference to the particular "Advance Identifier" (as that term is defined in the Note Purchase Agreement) that FFB assigned to such Advance (as provided in the Note Purchase Agreement). The Election Rescission Notice may be delivered by facsimile transmission to FFB at (202) 622-0707 or at such other facsimile number or numbers as FFB may from time to time communicate to the Borrower.

(c) To be effective, an Election Rescission Notice must be received by FFB not later than 3:30 p.m. (Washington, DC, time) on the second Business Day before the Intended Prepayment Date or the Intended Refinancing Date, as the case may be.

(d) In the event that the Borrower (1) makes a Prepayment Election in accordance with paragraph 14 of this Note, (2) does not rescind such Prepayment Election in accordance with this paragraph 15, and (3) does not, before 3:00 p.m. (Washington, DC, time) on the Intended Prepayment Date, pay to FFB the Prepayment Price described in paragraph 14(d) of this Note, then a Late Charge shall accrue on any such unpaid amount from the Intended Prepayment Date to the date on which payment is made, computed in accordance with the principles of paragraph 11 of this Note.

16. Amendments to Note.

To the extent not inconsistent with applicable law, this Note shall be subject to modification by such amendments, extensions, and renewals as may be agreed upon from time to time by the Holder and the Borrower, with the approval of the Secretary.

17. Certain Waivers.

The Borrower hereby waives any requirement for presentment, protest, or other demand or notice with respect to this Note.

18. Effective Until Paid.

This Note shall continue in full force and effect until all amounts due and payable hereunder have been paid in full.

19. Security Instrument; Secretary as "Holder" of Note for Purposes of the Security Instrument.

This Note is [the note] [one of the notes] permitted to be executed and delivered by, and is entitled to the benefits and security of, the particular security instrument or instruments specified on page 1 of this Note (such security instrument or instruments, as it or they may have heretofore been, and as it or they may hereafter be, amended, supplemented, restated, or consolidated from time to time in accordance with its or their terms, being, collectively, the "Security Instrument"), whereby the Borrower pledged and granted a security interest in certain property of the Borrower, described therein, to secure the payment of and performance of certain obligations owed to the Secretary, as set forth in the Security Instrument. For purposes of the Security Instrument, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase Agreement, and the affirmation by the Secretary dated as of even date herewith, delivered by the Secretary to FFB as provided in the Note Purchase Agreement (the "Secretary's Affirmation"), the Secretary shall be considered to be, and shall have the rights, powers, privileges, and remedies of, the Holder of this Note.

20. Default and Enforcement.

In case of a default by the Borrower under this Note or the occurrence of an event of default under the Security Instrument [or the Arrangement Agreement], then, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement and the Note Purchase Agreement, and the Secretary's Affirmation, the Secretary, in his own name, shall have all rights, powers, privileges, and remedies of the Holder of this Note, in accordance with the terms of this Note and the Security Instrument, including, without limitation, the right to enforce or collect all or any part of the obligation of the Borrower under this Note or arising as a result of the Secretary's Affirmation, to file proofs of claim or any other document in any bankruptcy, insolvency, or other judicial proceeding, and to vote such proofs of claim.

21. Acceleration.

The entire unpaid principal amount of this Note, and all interest thereon, may be declared, and upon such declaration shall become, due and payable to the Secretary, under the

circumstances described, and in the manner and with the effect provided, in the Security Instrument [or the Arrangement Agreement].

22. Governing Law.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the United States of America and not the laws of the several states.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed in its corporate name and its corporate seal to be hereunder affixed and attested by its officers thereunto duly authorized, all as of the day and year first above written.

(name of Borrower)

BY:

Signature: _____

Print Name: _____

Title: President

ATTEST:

Signature: _____
(SEAL)

Print Name: _____

Title: Secretary

Exhibit D
Form of Advance Request
[attached behind]

ADVANCE REQUEST

PLEASE REFER TO DEPARTMENT OF ENERGY (DOE) REGULATIONS AND INSTRUCTIONS FOR A DESCRIPTION OF (1) ANY OTHER FORMS AND MATERIALS THAT DOE REQUIRES TO BE SUBMITTED IN CONNECTION WITH EACH ADVANCE REQUEST, AND (2) THE TIME LIMITS FOR SUBMITTING THOSE FORMS AND MATERIALS AND THIS ADVANCE REQUEST TO DOE.

PLEASE DIRECT ALL QUESTIONS ON HOW TO COMPLETE THIS ADVANCE REQUEST FORM TO THE DOE CONTACT OFFICE INDICATED BELOW:

[Name of contact DOE office]
[Telephone number for DOE contact office]

WHEN COMPLETED, PLEASE DELIVER THIS FORM (TOGETHER WITH ALL OTHER FORMS AND MATERIAL REQUIRED BY DOE TO DOE AT THE ADDRESS OF THE DOE CONTACT OFFICE INDICATED BELOW:

[Name of DOE contact office]
[Mailing address for DOE contact office]
[Fax number for DOE contact office]

Chief Financial Officer
Federal Financing Bank

Reference is made to the following-described Future Advance Promissory Note (the "Note") payable to the Federal Financing Bank ("FFB"):

NAME OF BORROWER (the "Borrower"):

1

FFB NOTE IDENTIFIER:

2

The undersigned, as an authorized official of the Borrower, hereby requests FFB to make an advance of funds ("this Advance") under, pursuant to, and in accordance with the applicable terms of the Note.

The undersigned further requests that this Advance be made as follows:

¹ Insert the corporate name of the Borrower. If the corporate name of the Borrower at the time of this Advance is different from the corporate name that appears on page 1 of the Note, add "(formerly _____)", and insert in this second blank the corporate name of the Borrower as it appears on page 1 of the Note.

² Insert the "Note Identifier" that FFB assigned to the Note (as provided in the Note Purchase Agreement).

1. REQUESTED ADVANCE AMOUNT:

The principal amount of this Advance is requested to be

\$ _____³

2. REQUESTED ADVANCE DATE:

This Advance is requested to be made on:

_____⁴

3. WIRE INSTRUCTIONS:**A. Correspondent bank (if any) for payee's bank:**

Name of financial institution _____

Address of financial institution _____

ABA number of financial institution _____

B. Payee's bank and account:

Name of financial institution _____

Address of financial institution _____

ABA number of financial institution _____

Account name _____

Account number _____

Taxpayer ID number _____

The undersigned certifies that the undersigned has been authorized to execute this Advance Request on behalf of the Borrower and to deliver it to the Secretary of Energy (the "Secretary") for review and approval before being forwarded to FFB, and that this authority is valid and in full force and effect on the date hereof.

³Insert the particular amount of funds that the Borrower requests to be advanced.

⁴Insert the particular calendar date that the Borrower requests to be date on which this Advance is to be made, which must be a Business Day.

IN WITNESS WHEREOF, the undersigned has executed this Advance Request and caused it to be delivered to the Secretary for review and approval before being forwarded to FFB.

[Name of Borrower]

Signature: _____

Print Name: _____

Title: _____

Date: _____

ADVANCE REQUEST APPROVAL NOTICE

Notice is hereby given to FFB that the preceding Advance Request made by the Borrower identified therein has been approved on behalf of the Secretary for purposes of the Note identified therein.

SECRETARY OF ENERGY
acting through his or her
duly authorized
[designee]/[representative]

Signature: _____

Print Name: _____

Title: _____

Date: _____

Exhibit E
Form of Project Status Report
[attached behind]

Tesla Motors, Inc.
PROJECT S STATUS REPORT
6/30/2010

| | |
|----------------|---|
| Author: | We will do periodic project forecasts, including past costs, and measure these against the budget |
| Author: | This is the initial budget at closing, and does not change |

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Uncommitted Costs | Remaining Project Costs | Budgeted Project Costs | Status | Notes |
|---------------------------------|-------------|------------------------|-------------------------|-----------------------|-------------------------|------------------------|-------------|------------------------------|
| Line Item 1 | \$ 0 | \$ 0 | 0 | \$ 100,000 | \$ 100,000 | \$ 100,000 | - | |
| Line Item 2 | 0 | 0 | 0 | \$ 80,000 | \$ 80,000 | 80,000 | - | Starting Point. |
| Line Item 3 | 0 | 0 | 0 | \$ 80,000 | \$ 80,000 | 80,000 | - | Note that forecast = budget. |
| Line Item 4 | 0 | 0 | 0 | \$ 60,000 | \$ 60,000 | 60,000 | - | |
| Total Costs without Contingency | 0 | 0 | 0 | \$ 320,000 (f) | \$ 320,000 (f) | 320,000 (g) | - | |
| Contingency % | 0 | 0 | 0 | \$ 32,000 (c) | \$ 32,000 | 32,000 (d) | - | Note definitions |
| Total | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ 352,000 (e)</u> | <u>\$ 352,000 (a)</u> | <u>\$ 352,000 (b)</u> | <u>\$ -</u> | |

Definitions in Term Sheet:

- (a) = Forecasted Total Costs (note that this now includes the contingency)
- (b) = Budgeted Total Costs (note that this now includes the contingency)
- (c) = Remaining Project Contingency
- (d) = Budgeted Project Contingency
- (e) = Remaining Uncommitted Costs

(f) = Net Forecasted Total Costs = Forecasted Total Costs - Remaining Project Contingency

(g) = Net Budgeted Total Costs = Budgeted Total Costs - Budget Project Contingency

(h) = Net Remaining Uncommitted Costs

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status | Notes |
|-------------------------------------|------------------|------------------------|-------------------------|-------------------|--------------------------|------------------------|-------------|--|
| Line Item 1 | \$ 35,000 | \$ 15,000 | 50,000 | \$ 75,000 | \$ 125,000 | \$ 100,000 | \$ (25,000) | |
| Line Item 2 | 0 | 0 | 0 | \$ 50,000 | \$ 50,000 | 80,000 | 30,000 | |
| Line Item 3 | 0 | 0 | 0 | \$ 80,000 | \$ 80,000 | 80,000 | 0 | |
| Line Item 4 | 2,500 | 4,000 | 6,500 | \$ 17,000 | \$ 23,500 | \$ 80,000 | 36,500 | |
| Total Costs without Contingency | \$ 37,500 | \$ 19,000 | \$ 56,500 | \$ 222,000 | \$ 278,500 | \$ 320,000 | \$ 41,500 | |
| Contingency | 0 | 0 | 0 | \$ 73,500 | \$ 73,500 | 32,000 | \$ (41,500) | At this point, the project is well below target, and on track. Note that project cost overruns in one area are balanced by savings in another. |
| Total | <u>\$ 37,500</u> | <u>\$ 19,000</u> | <u>\$ 56,500</u> | <u>\$ 295,500</u> | <u>\$ 352,000</u> | <u>\$ 352,000</u> | <u>\$ -</u> | |
| Contingency % | | | | 33.1% | | | | Contingency increases by the change in project status, and will go up and down each period depending on performance against budget each period. |
| | | | | | | | | Note that having a growth in contingency is OK, as (a) forecast is still equal to budget and (b) over the life of the project, cost underruns in one area will likely be offset by overruns in another area. |
| Testa Contribution Starting Balance | \$ - | | | | | | | |
| Permitted Overrun (Correction) | \$ - | | | | | | | |
| New Balance | \$ - | | | | | | | |

NO EXCESS COST OVERRUN

Testa Contribution Starting Balance
Permitted Overrun (Correction)
New Balance

| Category | Status | | | | | | |
|-------------------------------------|-------------------------|-------------------------|--------------------------|-----------------------------|--------------------------|--------------------------|--------------------------|
| | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status Bal(W) Budget |
| Line Item 1 | \$ 35,000 | \$ 30,000 | \$ 65,000 | \$ 93,000 | \$ 158,000 | \$ 100,000 | \$ (58,000) |
| Line Item 2 | \$ 30,000 | 0 | 30,000 | \$ 30,000 | \$ 60,000 | \$ 80,000 | 20,000 |
| Line Item 3 | 0 | 0 | 0 | 0 | \$ 83,500 | \$ 80,000 | (3,500) |
| Line Item 4 | 2,500 | 4,000 | 6,500 | 17,000 | 23,500 | 60,000 | 36,500 |
| Total without Contingency | <u>67,500</u> | <u>34,000</u> | <u>101,500</u> | <u>223,500</u> | <u>325,000</u> | <u>320,000</u> | <u>(5,000)</u> |
| Contingency | 0 | 0 | 0 | 27,000 | 27,000 | 32,000 | 5,000 |
| Total | <u>\$ 67,500</u> | <u>\$ 34,000</u> | <u>\$ 101,500</u> | <u>\$ 250,500</u> | <u>\$ 352,000</u> | <u>\$ 352,000</u> | <u>\$ 352,000</u> |
| Contingency % | | | | | | | |
| NO EXCESS COST OVERRUN | 12.1% | \$ - | | | | | |
| Tesla Contribution Starting Balance | \$ - | | | | | | |
| Permitted Overrun (Correction) | \$ - | | | | | | |
| New Balance | \$ - | | | | | | |

Note that some of the contingency (\$5 m) has been applied to the overrun.
Costs are trending higher, but there is still enough buffer in contingency to avoid tripping the Excess Cost Overrun. Less than 50%, so Excess Cost trigger is at 7.5%.

No changes here. It will only get adjusted with an agreed action plan.

Tab3

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By(W) Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line item 1 | \$ 35,000 | \$ 50,000 | \$ 80,000 | \$ 100,000 | \$ 180,000 | \$ 100,000 | \$ (80,000) |
| Line item 2 | \$ 30,000 | 0 | 0 | 30,000 | \$ 30,000 | \$ 80,000 | 20,000 (3,500) |
| Line item 3 | 0 | 0 | 0 | 0 | \$ 83,500 | \$ 83,500 | (3,500) |
| Line item 4 | 2,500 | 4,000 | 6,500 | 17,000 | \$ 23,500 | \$ 60,000 | 36,500 (27,000) |
| Total without Contingency | 67,500 | 54,000 | 116,500 | 230,500 | 347,000 | 320,000 | |
| Contingency | 0 | 0 | 0 | 5,000 | 5,000 | 32,000 | 27,000 |
| Total | <u><u>\$ 67,500</u></u> | <u><u>\$ 54,000</u></u> | <u><u>\$ 116,500</u></u> | <u><u>\$ 235,500</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ 322,000</u></u> | <u><u>\$ 352,000</u></u> |
| Contingency % | | | | 2.2% | | | |
| | | | | EXCESS COST OVERRUN | | | |
| | | | | \$ 12,288 | | | |

Tesla Contribution Starting Balance

Permitted Overrun (Correction)

\$ -

New Balance

\$ -

Tesla Contribution Starting Balance

Permitted Overrun (Correction)

\$ -

New Balance

\$ -

To adjust this requires an action plan, which must be agreed by DoE and Tesla. See next panel.

- Note: In this case, we introduce the two step concept of managing an Excess Cost:
1. Test for Excess Cost.
 2. Determine an action plan to address any change in status (excess cost overrun, or correction, etc.)

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By(W) Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line item 1 | \$ 35,000 | \$ 50,000 | \$ 80,000 | \$ 91,500 | \$ 171,500 | \$ 100,000 | \$ (71,500) |
| Line item 2 | \$ 30,000 | 0 | 30,000 | 30,000 | \$ 60,000 | \$ 80,000 | 20,000 (20,000) |
| Line item 3 | 0 | 0 | 0 | 83,500 | \$ 83,500 | \$ 80,000 | (3,500) |
| Line item 4 | 2,500 | 4,000 | 6,500 | 17,000 | \$ 23,500 | \$ 60,000 | 36,500 (18,500) |
| Total without Contingency | 67,500 | 54,000 | 116,500 | 222,000 | 338,500 | 320,000 | |
| Contingency | 0 | 0 | 0 | 13,500 | 13,500 | 32,000 | 18,500 |
| Total | <u><u>\$ 67,500</u></u> | <u><u>\$ 54,000</u></u> | <u><u>\$ 116,500</u></u> | <u><u>\$ 235,500</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ 322,000</u></u> | <u><u>\$ 352,000</u></u> |
| Contingency % | | | | 6.1% | | | |
| | | | | EXCESS COST OVERRUN | | | |
| | | | | \$ 3,150 | | | |

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By(W) Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line item 1 | \$ 35,000 | \$ 50,000 | \$ 80,000 | \$ 91,500 | \$ 171,500 | \$ 100,000 | \$ (71,500) |
| Line item 2 | \$ 30,000 | 0 | 30,000 | 30,000 | \$ 60,000 | \$ 80,000 | 20,000 (20,000) |
| Line item 3 | 0 | 0 | 0 | 83,500 | \$ 83,500 | \$ 80,000 | (3,500) |
| Line item 4 | 2,500 | 4,000 | 6,500 | 17,000 | \$ 23,500 | \$ 60,000 | 36,500 (18,500) |
| Total without Contingency | 67,500 | 54,000 | 116,500 | 222,000 | 338,500 | 320,000 | |
| Contingency | 0 | 0 | 0 | 16,650 | 16,650 | 32,000 | 15,500 |
| Total | <u><u>\$ 67,500</u></u> | <u><u>\$ 54,000</u></u> | <u><u>\$ 116,500</u></u> | <u><u>\$ 238,650</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ 322,000</u></u> | <u><u>\$ (3,500)</u></u> |
| Contingency % | | | | 7.5% | | | |
| | | | | NO EXCESS COST OVERRUN | | | |
| | | | | \$ - | | | |

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By(W) Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line item 1 | \$ 35,000 | \$ 50,000 | \$ 80,000 | \$ 91,500 | \$ 171,500 | \$ 100,000 | \$ (71,500) |
| Line item 2 | \$ 30,000 | 0 | 30,000 | 30,000 | \$ 60,000 | \$ 80,000 | 20,000 (20,000) |
| Line item 3 | 0 | 0 | 0 | 83,500 | \$ 83,500 | \$ 80,000 | (3,500) |
| Line item 4 | 2,500 | 4,000 | 6,500 | 17,000 | \$ 23,500 | \$ 60,000 | 36,500 (18,500) |
| Total without Contingency | 67,500 | 54,000 | 116,500 | 222,000 | 338,500 | 320,000 | |
| Contingency | 0 | 0 | 0 | 16,650 | 16,650 | 32,000 | 15,500 |
| Total | <u><u>\$ 67,500</u></u> | <u><u>\$ 54,000</u></u> | <u><u>\$ 116,500</u></u> | <u><u>\$ 238,650</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ 322,000</u></u> | <u><u>\$ (3,500)</u></u> |
| Contingency % | | | | 7.5% | | | |
| | | | | NO EXCESS COST OVERRUN | | | |
| | | | | \$ - | | | |

Tesla Contribution Starting Balance

Permitted Overrun (Correction)

\$ -

New Balance

\$ -

Tesla Contribution Starting Balance

Permitted Overrun (Correction)

\$ -

New Balance

\$ -

Still in Tab3, this is part 12 of the action plan.

Still in Tab3, we now have an action plan to agree to remove the excess cost overrun situation. This is in two parts. First, in this panel, we scrub the forecast (subject to DoE approval) and determine that we can save \$8.5 million of the \$12.3 million prior excess overrun. This still leaves a \$3 million excess cost overrun. (simple subtraction won't work as the total remaining cost has changed). Therefore, part two of the action plan is to have Tesla agree to fund the remaining overrun. Jump to next panel.

Note: That we are not changing the budget at all, as this is a fixed number as of the closing.

Still in an excess cost overrun situation

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By(W) Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line item 1 | \$ 35,000 | \$ 50,000 | \$ 80,000 | \$ 91,500 | \$ 171,500 | \$ 100,000 | \$ (71,500) |
| Line item 2 | \$ 30,000 | 0 | 30,000 | 30,000 | \$ 60,000 | \$ 80,000 | 20,000 (20,000) |
| Line item 3 | 0 | 0 | 0 | 83,500 | \$ 83,500 | \$ 80,000 | (3,500) |
| Line item 4 | 2,500 | 4,000 | 6,500 | 17,000 | \$ 23,500 | \$ 60,000 | 36,500 (18,500) |
| Total without Contingency | 67,500 | 54,000 | 116,500 | 222,000 | 338,500 | 320,000 | |
| Contingency | 0 | 0 | 0 | 16,650 | 16,650 | 32,000 | 15,500 |
| Total | <u><u>\$ 67,500</u></u> | <u><u>\$ 54,000</u></u> | <u><u>\$ 116,500</u></u> | <u><u>\$ 238,650</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ 322,000</u></u> | <u><u>\$ (3,500)</u></u> |
| Contingency % | | | | 7.5% | | | |
| | | | | NO EXCESS COST OVERRUN | | | |
| | | | | \$ - | | | |

When we agree to a plan, this number will change.

Note that this change takes us out of the excess cost overrun situation.

We will need to keep track of what we have agreed in prior periods.

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status |
|---------------------------|-------------------------|--------------------------|--------------------------|-----------------------------|--------------------------|--------------------------|--------------------------|
| | \$ | \$ | \$ | \$ | \$ | \$ | B(M) Budget |
| Line Item 1 | \$ 35,000 | \$ 15,000 | \$ 50,000 | \$ 85,000 | \$ 135,000 | \$ 100,000 | \$ (35,000) |
| Line Item 2 | 12,000 | 75,000 | 87,000 | 15,000 | 102,000 | 80,000 | (22,000) |
| Line Item 3 | 25,000 | 40,000 | 65,000 | 21,000 | 86,000 | 80,000 | (6,000) |
| Line Item 4 | 2,500 | 4,000 | 6,500 | 17,000 | 23,500 | 60,000 | 36,500 |
| Total without Contingency | <u>\$ 74,500</u> | <u>134,000</u> | <u>208,500</u> | <u>138,000</u> | <u>346,500</u> | <u>320,000</u> | <u>(26,500)</u> |
| Contingency | 0 | 0 | 0 | 8,550 | 8,550 | 32,000 | 23,350 |
| Total | <u>\$ 74,500</u> | <u>\$ 134,000</u> | <u>\$ 208,500</u> | <u>\$ 145,650</u> | <u>\$ 355,150</u> | <u>\$ 352,000</u> | <u>\$ (3,150)</u> |
| Contingency % | | | | 6.3% | | | |

Contingency %

NO EXCESS COST OVERRUN
Tesla Contribution Starting Balance
Permitted Overrun (Correction)
New Balance

6.3%
\$ (1,750)
\$ 3,150
\$ 5,500

Note that shifting to the 5% threshold takes us out of the excess cost situation. But now Tesla may have contributed too much, as indicated by the negative excess cost overrun. Go to Action Plan.

Table 4 (Action Plan)

| Category | Status | | | | | |
|---------------------------|-------------------------|--------------------------|--------------------------|-----------------------------|--------------------------|--------------------------|
| | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs |
| Line Item 1 | \$ 35,000 | \$ 15,000 | \$ 50,000 | \$ 85,000 | \$ 135,000 | \$ 100,000 |
| Line Item 2 | 12,000 | 75,000 | 87,000 | 15,000 | 102,000 | 80,000 |
| Line Item 3 | 25,000 | 40,000 | 65,000 | 21,000 | 86,000 | 80,000 |
| Line Item 4 | 2,500 | 4,000 | 6,500 | 17,000 | 23,500 | 60,000 |
| Total without Contingency | <u>\$ 74,500</u> | <u>134,000</u> | <u>208,500</u> | <u>138,000</u> | <u>346,500</u> | <u>320,000</u> |
| Contingency | 0 | 0 | 0 | 8,550 | 8,550 | 32,000 |
| Total | <u>\$ 74,500</u> | <u>\$ 134,000</u> | <u>\$ 208,500</u> | <u>\$ 144,950</u> | <u>\$ 353,400</u> | <u>\$ 352,000</u> |
| Contingency % | | | | 5.0% | | |

Contingency %

NO EXCESS COST OVERRUN
Tesla Contribution Starting Balance
Permitted Overrun (Correction)
New Balance

5.0%
\$ -
\$ 5,500

When the contingency is adjusted, we are still in a "no excess cost overrun" state. As we have agreed to reduce the required contribution, we can adjust the contribution balance.

Contingency %

5.0%
Tesla Contribution Starting Balance
Permitted Overrun (Correction)
New Balance

\$ 3,150
\$ (1,750)
\$ 1,420

As we have agreed to reduce the required contribution, we can adjust the contribution balance. Tesla still needs to contribute \$1.4 million.

| Category | Paid | Committed but Not Paid | Paid or Committed Costs | Remaining Uncommitted Costs | Forecasted Project Costs | Budgeted Project Costs | Status By/W Budget |
|---------------------------|-------------------------|---------------------------|----------------------------|-----------------------------------|--------------------------------|------------------------------|--------------------------|
| Line Item 1 | \$ 35,000 | \$ 55,000 | \$ 90,000 | \$ 25,000 | \$ 115,000 | \$ 100,000 | \$ (15,000) |
| Line Item 2 | 12,000 | 75,000 | 87,000 | 27,000 | 114,000 | 80,000 | (34,000) |
| Line Item 3 | 25,000 | 50,000 | 75,000 | 25,000 | 100,000 | 80,000 | (20,000) |
| Line Item 4 | 2,500 | 4,000 | 6,500 | 17,000 | 23,500 | 30,000 | 36,500 |
| Total without Contingency | <u>\$ 74,500</u> | <u>\$ 184,000</u> | <u>\$ 258,500</u> | <u>\$ 94,500</u> | <u>\$ 352,500</u> | <u>\$ 320,000</u> | <u>(32,500)</u> |
| Contingency | 0 | 0 | 0 | 0 | 900 | 32,000 | 31,100 |
| Total | <u><u>\$ 74,500</u></u> | <u><u>\$ 184,000</u></u> | <u><u>\$ 258,500</u></u> | <u><u>\$ 94,500</u></u> | <u><u>\$ 353,400</u></u> | <u><u>\$ 352,000</u></u> | <u><u>\$ (1,400)</u></u> |

Contingency %

Total without Contingency

Contingency

Total

Contingency %

Total

Contingency

Total