

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORM 10-Q**

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2024

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to  
Commission file number 001-40978

**Fluence Energy, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**4601 Fairfax Drive, Suite 600  
Arlington, Virginia**

(Address of Principal Executive Offices)

**87-1304612**

(I.R.S. Employer  
Identification No.)

**22203**

(Zip Code)

**(833) 358-3623**

Registrant's telephone number, including area code

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, \$0.00001 par value	FLNC	The Nasdaq Global Select Market

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of August 5, 2024, the registrant had 128,991,227 shares of Class A common stock outstanding and 51,499,195 shares of Class B-1 common stock outstanding.

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This Quarterly Report on Form 10-Q for the period ended June 30, 2024 (this “Report”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts contained in this Report are forward-looking statements. In particular, statements regarding our future results of operations and financial position, operational performance, anticipated growth and business strategy, future revenue recognition and estimated revenues, future capital expenditures and debt service obligations, projected costs, prospects, plans, and objectives of management for future operations, including, among others, statements regarding expected growth and demand for our energy storage solutions, services, and digital application offerings, relationships with new and existing customers and suppliers, introduction of new energy storage solutions, services, and digital application offerings and adoption of such offerings by customers, assumptions relating to the Company’s tax receivable agreement, expectations relating to backlog, pipeline, and contracted backlog, current expectations relating to legal contingencies, and anticipated impact and benefits from the Inflation Reduction Act of 2022 and related U.S. Treasury domestic content guidelines on us and our customers, contained in this Report are forward-looking statements. In some cases, you may identify forward-looking statements by terms such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “seeks,” “intends,” “targets,” “projects,” “contemplates,” “grows,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these terms or other similar expressions. Accordingly, we caution you that any such forward-looking statements are not guarantees of future performance and are subject to risks, assumptions, and uncertainties that are difficult to predict. Although we believe that the expectations reflected in these forward-looking statements are reasonable as of the date made, actual results may prove to be materially different from the results expressed or implied by the forward-looking statements.

These forward-looking statements are subject to a number of important factors that could cause actual results to differ materially from those in the forward-looking statements, including our limited operating and revenue history as an independent entity and the nascent clean energy industry; our history of net losses, we anticipate increasing expenses in the future, and our ability to maintain prolonged profitability; delays, disruptions, and quality control problems in our manufacturing operations; difficulties in establishing mass manufacturing capacity and estimating potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities; dependence on our existing suppliers and supply chain competition; supplier concentration and capacity; interruption of flow and/or availability of components and materials from international vendors; significant changes in the cost of raw materials and product components; vendor non-compliance with ethical business practices and applicable laws and regulations; loss of significant customers or their inability to perform under their contracts; competition for our offerings and our ability to attract and retain customers; ability to effectively manage our recent and future growth and expansion of our business and operations; ability to maintain and enhance our reputation and brand recognition; success of our relationships with third parties; ability to attract and retain highly qualified personnel; risk related to the construction, utility interconnection, commissioning and installation of our energy storage products, cost overruns, and delays; risks related to defects, errors, vulnerabilities and/or bugs in our products and technology; compromises, interruptions, or shutdowns of our systems; lengthy sales and installation cycle for our products and services and ability to timely close sales; amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits; events and incidents relating to storage, delivery, installation, operation, maintenance and shutdowns of our products; risks relating to whether renewable energy technologies are suitable for widespread adoption or if sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate; estimates on size of our total addressable market; barriers arising from electric utility industry policies and regulations; cost of electricity available from alternative sources; risk relating to interest rates or a reduction in the availability of tax equity or project debt capital in the global financial markets and corresponding effects on customers’ ability to finance energy storage systems and demand for our products; potential changes in tax laws or regulations, including relating to incentives under the IRA; reduction, elimination, or expiration of government incentives or regulations regarding renewable energy; decline in public acceptance of renewable energy, or delay, prevent, or increase in the cost of customer projects; restrictions set forth in our 2024 Credit Agreement or other debt agreements we may enter into; uncertain future capital needs and potential need to raise additional funds in the future; ability to obtain, maintain and enforce proper protection for our intellectual property, including our technology; risks related to legal proceedings, regulatory disputes, and government inquiries; risks related to us being a “controlled company” within the meaning of the NASDAQ rules; our relationship with our founders; and the factors described under the headings Part I, Item 1A. “Risk Factors” and Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended September 30, 2023, filed with the Securities and Exchange Commission (the “SEC”) on November 29, 2023 (the “2023 Annual Report”), and Part II, Item

1A. “Risk Factors” and Item 2. “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in this Report. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate. Many of the important factors that will determine these results are beyond our ability to control or predict. Accordingly, you should not place undue reliance on any such forward-looking statements. We qualify all forward-looking statements contained in this Report by these cautionary statements. Any forward-looking statement speaks only as of the date on which it is made, and, except as otherwise required by law, we do not undertake any obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise. New factors emerge from time to time, and it is not possible for us to predict which will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

**Part I - Financial Information**
**Item 1. Financial Statements**

**FLUENCE ENERGY, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(U.S. Dollars in Thousands, except share and per share amounts)

	Unaudited June 30, 2024	September 30, 2023
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 388,242	\$ 345,896
Restricted cash	101,988	106,835
Trade receivables, net	93,497	103,397
Unbilled receivables	96,002	192,064
Receivables from related parties	100,945	58,514
Advances to suppliers	155,648	107,947
Inventory, net	469,934	224,903
Current portion of notes receivable - pledged as collateral	55,251	24,330
Other current assets	42,453	31,074
Total current assets	1,503,960	1,194,960
Non-current assets:		
Property and equipment, net	\$ 13,586	\$ 12,771
Intangible assets, net	58,628	55,752
Goodwill	26,337	26,020
Deferred income tax asset	85	86
Note receivable - pledged as collateral	—	30,921
Other non-current assets	87,357	31,639
Total non-current assets	185,993	157,189
Total assets	\$ 1,689,953	\$ 1,352,149
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 321,880	\$ 65,376
Deferred revenue	409,612	273,164
Deferred revenue with related parties	36,742	110,274
Current portion of borrowings against note receivable - pledged as collateral	53,714	22,539
Personnel related liabilities	41,435	52,174
Accruals and provisions	213,339	175,960
Taxes payable	32,619	29,465
Other current liabilities	15,365	16,711
Total current liabilities	1,124,706	745,663
Non-current liabilities:		
Deferred income tax liability	\$ 5,143	\$ 4,794
Borrowings against note receivable - pledged as collateral	—	28,024
Other non-current liabilities	21,927	17,338
Total non-current liabilities	27,070	50,156
Total liabilities	1,151,776	795,819
Stockholders' Equity:		
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of June 30, 2024 and September 30, 2023	—	—
Class A common stock, \$0.00001 par value per share, 1,200,000,000 shares authorized; 129,656,527 shares issued and 128,893,582 shares outstanding as of June 30, 2024; 119,593,409 shares issued and 118,903,435 shares outstanding as of September 30, 2023, respectively	1	1
Class B-1 common stock, \$0.00001 par value per share, 134,325,805 shares authorized; 51,499,195 shares issued and outstanding as of June 30, 2024; \$0.00001 par value per share, 200,000,000 shares authorized; 58,586,695 shares issued and outstanding as of September 30, 2023, respectively	—	—
Class B-2 common stock, \$0.00001 par value per share, 200,000,000 shares authorized; 0 shares issued and outstanding as of June 30, 2024 and September 30, 2023	—	—
Treasury stock, at cost	(9,040)	(7,797)
Additional paid-in capital	627,923	581,104
Accumulated other comprehensive income	1,572	3,202
Accumulated deficit	(199,291)	(174,164)
Total stockholders' equity attributable to Fluence Energy, Inc.	421,165	402,346
Non-Controlling interests	117,012	153,984
Total stockholders' equity	538,177	556,330
Total liabilities and stockholders' equity	\$ 1,689,953	\$ 1,352,149



**FLUENCE ENERGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND**  
**COMPREHENSIVE LOSS (UNAUDITED)**  
**(U.S. Dollars in Thousands, except share and per share amounts)**

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2024	2023	2024	2023
Revenue	\$ 328,091	\$ 431,616	\$ 856,125	\$ 1,042,328
Revenue from related parties	155,226	104,735	614,289	502,669
Total revenue	483,317	536,351	1,470,414	1,544,997
Cost of goods and services	400,272	514,531	1,286,803	1,480,324
Gross profit	83,045	21,820	183,611	64,673
Operating expenses:				
Research and development	14,976	9,918	47,843	51,631
Sales and marketing	14,773	10,106	41,271	29,299
General and administrative	45,106	38,145	126,901	101,190
Depreciation and amortization	3,624	2,267	8,589	7,360
Interest income, net	(1,300)	(1,520)	(4,554)	(4,251)
Other expense (income), net	562	(733)	(410)	(8,862)
Income (loss) before income taxes	5,304	(36,363)	(36,029)	(111,694)
Income tax expense (benefit)	4,229	(1,318)	1,328	(2,058)
Net income (loss)	\$ 1,075	\$ (35,045)	\$ (37,357)	\$ (109,636)
Net income (loss) attributable to non-controlling interest	\$ 290	\$ (11,655)	\$ (12,230)	\$ (36,748)
Net income (loss) attributable to Fluence Energy, Inc.	\$ 785	\$ (23,390)	\$ (25,127)	\$ (72,888)
Weighted average number of Class A common shares outstanding:				
Basic	127,910,081	117,456,282	125,273,648	116,368,987
Diluted	184,219,065	117,456,282	125,273,648	116,368,987
Income (loss) per share of Class A common stock:				
Basic	\$ 0.01	\$ (0.20)	\$ (0.20)	\$ (0.63)
Diluted	\$ —	\$ (0.20)	\$ (0.20)	\$ (0.63)
Impact of foreign currency translation and cash flow hedges, net of tax	(2,343)	5,079	(2,311)	25
Total other comprehensive (loss) income	\$ (2,343)	\$ 5,079	\$ (2,311)	\$ 25
Total comprehensive loss	\$ (1,268)	\$ (29,966)	\$ (39,668)	\$ (109,611)
Comprehensive loss attributable to non-controlling interest	(384)	(9,963)	(12,911)	(36,761)
Total comprehensive loss attributable to Fluence Energy, Inc.	\$ (884)	\$ (20,003)	\$ (26,757)	\$ (72,850)

The accompanying notes are an integral part of these condensed consolidated statements

**FLUENCE ENERGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (UNAUDITED)**  
**(U.S. Dollars in Thousands, except Shares)**

	Class A Common Stock		Class B-1 Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock		Non- Controlling interest	Total stockholders' equity
	Shares	Amount	Shares	Amount				Shares	Amount		
<b>Balance at March 31, 2024</b>	127,387,538	\$ 1	51,499,195	—	\$ 617,793	\$ (200,076)	\$ 3,241	694,423	\$ (7,885)	\$ 118,662	\$ 531,736
Net Income	—	—	—	—	—	785	—	—	—	290	1,075
Stock-based compensation	463,449	—	—	—	6,140	—	—	—	—	—	6,140
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(68,522)	—	—	—	—	—	—	68,522	(1,155)	—	(1,155)
Effect of remeasurement of non-controlling interest due to other share transactions	—	—	—	—	1,266	—	—	—	—	(1,266)	—
Proceeds from exercise of stock options	1,111,117	—	—	—	2,724	—	—	—	—	—	2,724
Impact of foreign currency translation and cash flow hedges, net of tax	—	—	—	—	—	—	(1,669)	—	—	(674)	(2,343)
<b>Balance at June 30, 2024</b>	128,893,582	\$ 1	51,499,195	—	\$ 627,923	\$ (199,291)	\$ 1,572	762,945	\$ (9,040)	\$ 117,012	\$ 538,177



	Class A Common Stock		Class B-1 Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock		Non- Controlling interest	Total stockholders' equity
	Shares	Amount	Shares	Amount				Shares	Amount		
<b>Balance at September 30, 2023</b>	118,903,435	1	58,586,695	—	581,104	(174,164)	3,202	689,974	(7,797)	153,984	556,330
Net Loss	—	—	—	—	—	(25,127)	—	—	—	(12,230)	(37,357)
Stock-based compensation	839,112	—	—	—	18,386	—	—	—	—	—	18,386
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(72,971)	—	—	—	—	—	—	72,971	(1,243)	—	(1,243)
Effect of AES redemption of Class B-1 common stock for Class A common stock	7,087,500	—	(7,087,500)	—	21,428	—	—	—	—	(21,428)	—
Effect of remeasurement of non-controlling interest due to other share transactions	354,134	—	—	—	2,633	—	—	—	—	(2,633)	—
Proceeds from exercise of stock options	1,782,372	—	—	—	4,372	—	—	—	—	—	4,372
Impact of foreign currency translation and cash flow hedges, net of tax	—	—	—	—	—	—	(1,630)	—	—	(681)	(2,311)
<b>Balance at June 30, 2024</b>	128,893,582	\$ 1	51,499,195	—	\$ 627,923	\$ (199,291)	\$ 1,572	762,945	\$ (9,040)	\$ 117,012	\$ 538,177

	Class A Common Stock		Class B-1 Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock		Non- Controlling interest	Total stockholders' equity
	Shares	Amount	Shares	Amount				Shares	Amount		
<b>Balance at March 31, 2023</b>	116,486,460	1	58,586,695	—	563,222	(154,041)	(565)	572,251	(5,301)	164,679	567,995
Net Loss	—	—	—	—	—	(23,390)	—	—	—	(11,655)	(35,045)
Stock-based compensation	358,788	—	—	—	5,677	—	—	—	—	—	5,677
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(73,537)	—	—	—	—	—	—	73,537	(1,331)	—	(1,331)
Effect of remeasurement of non-controlling interest due to other share transactions	—	—	—	—	1,877	—	—	—	—	(1,877)	—
Proceeds from exercise of stock options	1,511,607	—	—	—	3,074	—	—	—	—	—	3,074
Impact of foreign currency translation and cash flow hedges, net of tax	—	—	—	—	—	—	3,387	—	—	1,692	5,079
<b>Balance at June 30, 2023</b>	118,283,318	\$ 1	58,586,695	—	\$ 573,850	\$ (177,431)	2,822	645,788	\$ (6,632)	\$ 152,839	\$ 545,449

	Class A Common Stock		Class B-1 Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Treasury Stock		Non- Controlling interest	Total stockholders' equity
	Shares	Amount	Shares	Amount				Shares	Amount		
<b>Balance at September 30, 2022</b>	114,873,121	1	58,586,695	—	542,602	(104,544)	2,784	550,904	(5,013)	193,378	629,208
Net Loss	—	—	—	—	—	(72,888)	—	—	—	(36,748)	(109,636)
Stock-based compensation	667,048	—	—	—	21,440	—	—	—	—	—	21,440
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(94,884)	—	—	—	—	—	—	94,884	(1,619)	—	(1,619)
Effect of remeasurement of non-controlling interest due to other share transactions	—	—	—	—	3,778	—	—	—	—	(3,778)	—
Proceeds from exercise of stock options	2,838,033	—	—	—	6,030	—	—	—	—	—	6,030
Impact of foreign currency translation and cash flow hedges, net of tax	—	—	—	—	—	—	38	—	—	(13)	25
<b>Balance at June 30, 2023</b>	118,283,318	\$ 1	58,586,695	—	\$ 573,850	\$ (177,431)	\$ 2,822	645,788	\$ (6,632)	\$ 152,839	\$ 545,449

The accompanying notes are an integral part of these condensed consolidated statements

**FLUENCE ENERGY, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
**(U.S. Dollars in Thousands)**

	Nine Months Ended June 30,	
	2024	2023
<b>Operating activities</b>		
Net loss	\$ (37,357)	\$ (109,636)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	10,395	7,739
Amortization of debt issuance costs	1,420	457
Inventory provision (benefit)	15,467	(1,097)
Stock-based compensation	18,386	21,440
Deferred income taxes	295	(1,276)
Changes in operating assets and liabilities:		
Trade receivables, net	4,811	(66,036)
Unbilled receivables	97,076	(17,315)
Receivables from related parties	(42,424)	55,432
Advances to suppliers	(46,999)	(8,142)
Inventory	(257,916)	145,982
Other current assets	(35,381)	5,192
Other non-current assets	(8,029)	(30,984)
Accounts payable	256,264	(139,244)
Deferred revenue with related parties	(73,564)	(155,534)
Deferred revenue	131,073	168,024
Accruals and provisions	37,139	(83,518)
Taxes payable	1,913	12,004
Other current liabilities	22,425	24,593
Other non-current liabilities	(25,838)	11,432
<b>Net cash provided by (used in) operating activities</b>	<b>69,156</b>	<b>(160,487)</b>
<b>Investing activities</b>		
Proceeds from maturities of short-term investments	—	111,674
Payments for purchase of investment in joint venture	—	(5,013)
Capital expenditures on software	(8,606)	(7,284)
Purchase of property and equipment	(4,838)	(1,877)
<b>Net cash (used in) provided by investing activities</b>	<b>(13,444)</b>	<b>97,500</b>
<b>Financing activities</b>		
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(1,243)	(1,618)
Debt Issuance Costs	(5,004)	—
Payments for acquisitions	(3,892)	—
Proceeds from exercise of stock options	4,372	6,030
Proceeds from borrowing against note receivable - pledged as collateral	—	48,176
<b>Net cash (used in) provided by financing activities</b>	<b>(5,767)</b>	<b>52,588</b>
Effect of exchange rate changes on cash and cash equivalents	632	(3,226)
<b>Net increase (decrease) in cash, cash equivalents, and restricted cash</b>	<b>50,577</b>	<b>(13,625)</b>
Cash, cash equivalents, and restricted cash as of the beginning of the period	462,731	429,721
Cash, cash equivalents, and restricted cash as of the end of the period	<b>\$ 513,308</b>	<b>\$ 416,096</b>
<b>Supplemental Cash Flows Information</b>		
Interest paid	\$ 2,178	\$ 955
Cash paid for income taxes	\$ 1,719	\$ 928

The accompanying notes are an integral part of these condensed consolidated statements

**FLUENCE ENERGY, INC.****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)****1. Organization and Operations**

Fluence Energy, Inc., a Delaware corporation (the “Company”), was formed on June 21, 2021. We conduct our business operations through Fluence Energy, LLC, and its direct and indirect subsidiaries. Fluence Energy, LLC was formed on June 30, 2017 as a joint venture between Siemens Industry, Inc. (“Siemens Industry”), an indirect subsidiary of Siemens AG (“Siemens”), and AES Grid Stability, LLC (“AES Grid Stability”), an indirect subsidiary of The AES Corporation (“AES”), and commenced operations on January 1, 2018. We refer to Siemens Industry and AES Grid Stability as the “Founders” in this Quarterly Report on Form 10-Q for the period ended June 30, 2024 (this “Report”).

Upon the completion of our initial public offering (“IPO”) on November 1, 2021, Fluence Energy, Inc. became a holding company whose sole material assets are the limited liability company interests (the “LLC Interests”) in Fluence Energy, LLC. All of our business is conducted through Fluence Energy, LLC, together with its subsidiaries, and the financial results of Fluence Energy, LLC are consolidated in our financial statements. Fluence Energy, LLC is taxed as a partnership for federal income tax purposes and, as a result, its members, including Fluence Energy, Inc., pay income taxes with respect to their allocable shares of its net taxable income. As of June 30, 2024, Fluence Energy, LLC had subsidiaries operating in Germany, Australia, Philippines, Chile, the Netherlands, the United States, India, Singapore, United Kingdom, Canada, Taiwan, Ireland, and Switzerland. Except where the context clearly indicates otherwise, “Fluence,” “we,” “us,” “our” or the “Company” refers to Fluence Energy, Inc. and all of its direct and indirect subsidiaries, including Fluence Energy, LLC.

The Company’s fiscal year begins on October 1 and ends on September 30. References to “fiscal year 2023” and “fiscal year 2024” refer to the twelve months ended September 30, 2023 and September 30, 2024, respectively.

The Company’s chief operating decision maker (“CODM”) is its Chief Executive Officer. The Company’s CODM reviews financial information on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, the Company has determined that it operates in one operating segment, which corresponds to one reportable segment.

***Siemens Industry Redemption***

On June 30, 2022, Siemens Industry exercised its redemption right pursuant to the terms of the Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC (the “LLC Agreement”) with respect to its entire holding of 58,586,695 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of Fluence Energy, Inc. (the “Siemens Redemption”). The Company elected to settle the Siemens Redemption through the issuance of 58,586,695 shares of the Company’s Class A common stock. The Siemens Redemption settled on July 7, 2022.

The Siemens Redemption increased the beneficial ownership interest of the Company in Fluence Energy, LLC to 66.08% as of June 30, 2022. The impact of the change in ownership interest did not result in a change in control. The Siemens Redemption has been accounted for as an equity transaction and the carrying amount of non-controlling interest has been adjusted.

***Secondary Offering and AES Redemption***

On December 8, 2023, AES Grid Stability, Siemens Pension-Trust e.V. (“Siemens Pension Trust”), and Qatar Holding LLC (“QHL” and together with AES Grid Stability and Siemens Pension Trust in such context, the “Selling Stockholders”) closed an underwritten public offering (the “Offering”) of 18,000,000 shares of Class A common stock by the Selling Stockholders. The Company did not sell any of its shares of Class A common stock in the Offering and the Company did not receive any proceeds from the Offering. Pursuant to the terms of the Company’s Registration Rights Agreement, dated as of November 1, 2021, by and among the Company and the Original Equity Owners (as defined therein), the Company paid \$0.7 million in certain expenses of the Selling Stockholders related to the Offering, while the Selling Stockholders paid all applicable underwriting discounts and commissions.

In conjunction with the Offering, AES Grid Stability exercised its redemption right pursuant to the terms of the LLC Agreement with respect to 7,087,500 LLC Interests held by AES Grid Stability, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of the Company (the “AES Redemption”). The Company elected to settle the AES Redemption through the issuance of 7,087,500 shares of the Company’s Class A common stock. The AES Redemption settled on December 8, 2023. All of the 7,087,500 shares issued to AES Grid Stability in connection with the AES Redemption were sold in the Offering.

The AES Redemption increased the beneficial ownership interest of the Company in Fluence Energy, LLC to 71.12% as of December 8, 2023. The impact of the change in ownership interest did not result in a change in control. The AES Redemption has been accounted for as an equity transaction and the carrying amount of the non-controlling interest has been adjusted. Refer to “condensed consolidated statements of changes in stockholders’ equity” included herein for more information on the impacts of the redemption to stockholder’s equity.

## 2. Summary of Significant Accounting Policies and Estimates

### *Principles of Accounting and Consolidation*

The accompanying condensed consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) and under the rules of the U.S. Securities and Exchange Commission (the “SEC”). The accompanying condensed consolidated financial statements include the accounts of Fluence Energy, Inc. and its subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

### *Non-Controlling Interest*

As the sole managing member of Fluence Energy, LLC, Fluence Energy, Inc. operates and controls all the business and affairs of Fluence Energy, LLC and, through Fluence Energy, LLC and its direct and indirect subsidiaries, conducts the Company’s business. Fluence Energy, LLC is a variable interest entity, of which Fluence Energy, Inc. beneficially owns a 71.45% interest as of June 30, 2024. For accounting purposes, Fluence Energy, Inc. is considered the primary beneficiary and therefore consolidates the results of Fluence Energy, LLC and its direct and indirect subsidiaries. The table below summarizes the ownership structure at the end of each respective period:

	June 30, 2024	September 30, 2023
Controlling Interest Ownership	71.45 %	66.99 %
Non-Controlling Interest Ownership (AES)	28.55 %	33.01 %

### *Unaudited Interim Financial Information*

The accompanying condensed consolidated financial statements as of June 30, 2024, and for the three and nine months ended June 30, 2024 and 2023 are unaudited. These financial statements should be read in conjunction with the Company’s audited financial statements included in our Annual Report on Form 10-K for the year ended September 30, 2023 filed with the SEC on November 29, 2023 (the “2023 Annual Report”). In our opinion, such unaudited financial statements reflect all adjustments, including normal recurring items, that are necessary for the fair statement of the Company’s financial position as of June 30, 2024, the results of its operations for the three and nine months ended June 30, 2024 and 2023, and its cash flows for the nine months ended June 30, 2024 and 2023. The financial data and other information disclosed in these notes related to the three and nine months ended June 30, 2024 and 2023 are also unaudited. The results for the three and nine months ended June 30, 2024 and 2023 are not necessarily indicative of results for the full year ending September 30, 2024 and 2023, any other interim periods, or any future year or period. The balance sheet as of September 30, 2023 included herein was derived from the audited financial statements as of that date. Certain disclosures have been condensed or omitted in the interim financial statements.

For a complete description of our significant accounting policies, refer to “Note 2 - Summary of Significant Accounting Policies and Estimates” in the audited consolidated financial statements included in our 2023 Annual Report.

### *Use of Estimates*

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the accompanying condensed consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates. Items subject to such estimates and assumptions include: the relative fair value allocations to contingencies with multiple

elements, the carrying amount and estimated useful lives of long-lived assets; impairment of goodwill, intangible assets, and long-lived assets; valuation allowances for inventories; deferred tax assets; revenue recognized under the percentage-of-completion method; transaction price estimates with variable consideration; accrued bonuses; and various project-related provisions including, but not limited to, estimated losses, warranty obligations.

### **Cash, Cash Equivalents, and Restricted Cash**

Cash and cash equivalents include cash on-hand and highly liquid investments readily convertible to cash, with an original maturity of 90 days or less when purchased.

Cash restricted for use as a result of financing or other obligations is classified separately as restricted cash. If the purpose of restricted cash relates to acquiring a long-term asset, liquidating a long-term liability, or is otherwise unavailable for a period longer than one year from the balance sheet date, the restricted cash is included in “other non-current assets.” Otherwise, restricted cash is included as a separate line item on the Company’s consolidated balance sheets.

The Company typically retains cash for operations within one or more bank accounts. These accounts may hold cash in excess of the FDIC limit of \$250,000. As a result, we are subject to concentration risk associated with the underlying custodial banks with whom deposits of cash and cash equivalents in excess of the FDIC limits are held. If access to these accounts is delayed or suspended indefinitely, it could have a material adverse impact on the Company’s ability to meet its financial obligations required for operations.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash at the end of each respective period as shown in the Company’s condensed consolidated balance sheets.

<i>in thousands</i>	<b>June 30, 2024</b>		<b>September 30, 2023</b>	
Cash and cash equivalents	\$	388,242	\$	345,896
Restricted cash		101,988		106,835
Restricted cash included in “Other non-current assets”		23,078		10,000
Total cash, cash equivalents and restricted cash	\$	513,308	\$	462,731

Restricted cash at the end of each respective period consisted of the following:

<i>in thousands</i>	<b>June 30, 2024</b>		<b>September 30, 2023</b>	
Collateral for credit card program	\$	2,795	\$	2,644
Collateral for outstanding bank guarantees		88,087		102,586
Collateral for surety program		9,428		—
Term deposits		1,678		1,605
Collateral for surety program included in “Other non-current assets”		23,078		10,000
Total restricted cash	\$	125,066	\$	116,835

### **Revenue and Cost Recognition**

The Company’s revenue recognition policy included herein is based on the application of Accounting Standards Codification - Revenue from Contracts with Customers (ASC 606). As of June 30, 2024, the Company’s revenue was generated primarily from the sale of energy storage products and solutions, providing operational services, and the sale of digital applications and solutions.

**Revenue from Energy Storage Products and Solutions:** The Company enters into contracts with utility companies, developers, and commercial and industrial customers to design and build battery-based energy storage products. Each storage product is customized depending on the customer’s energy needs. Customer payments are due upon meeting certain milestones that are consistent with contract-specific phases of a project. The Company determines the transaction price based on the consideration expected to be received which includes estimates of liquidated damages (“LDs”) or other variable consideration that are included in the transaction price in accordance with ASC 606. We assess any variable consideration using an expected value method. The transaction price identified is allocated to each distinct performance obligation to deliver a good or service based on the relative standalone selling prices. Generally, the Company’s contracts to design and build battery-based storage products are determined to have one performance obligation. When shipping and handling activities are performed after the customer obtains control of the product, we elect to account for shipping and handling as activities to fulfill the promise to transfer the product.

The Company recognizes revenue over time as we transfer control of our product to the customer. This transfer of control to the customer is supported by clauses in the contracts that provide enforceable rights to payment of the transaction price associated with work performed to date for products that do not have an alternative use to the Company and/or as the project is built and control transfers depending on the contract terms.

Revenue for these performance obligations is recognized using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs. Standard inventory materials (including batteries, enclosures, chillers, and others, which are assembled into “cubes”) that could be used interchangeably on other projects are included in our measure of progress when they are integrated into, or restricted to, the production of a customer’s project. Due to the significance of the costs associated with cubes, our judgment on when such costs should be included in the measure of progress has a material impact on revenue recognition. Contract costs include all direct material and labor costs related to contract performance. Pre-contract costs with no future benefit are expensed in the period in which they are incurred. Since the revenue recognition of these contracts depends on estimates, which are assessed continually during the term of the contract, recognized revenues and profit are subject to revisions as the contract progresses to completion. The cumulative effects of revisions of estimated total contract costs and revenues, together with any contract reserves which may be deemed appropriate, are recorded in the period in which they occur. Due to the uncertainties inherent in the estimation process, it is reasonably possible that these estimates will be revised in a future period. When a loss is forecasted for a contract, the full amount of the anticipated loss is recognized in the period in which it is determined that a loss will occur. Refer to “Loss Contracts” below for further discussion.

Our contracts generally provide our customers the right to liquidated damages against Fluence in the event specified milestones are not met on time or equipment is not delivered according to contract specifications. Liquidated damages are accounted for as variable consideration and the contract price is reduced by the expected penalty or LD amount when recognizing revenue. Variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty is resolved. Variable consideration is estimated using the expected-value method which computes a weighted average amount based on a range of potential outcomes. In contracts in which a significant reversal may occur, we constrain the amount of revenue recognized based on our estimations using the expected-value method. Estimating variable consideration requires certain estimates and assumptions, including whether and by how much a project will be delayed and/or will not meet performance contractual specifications. The existence and measurement of liquidated damages may also be impacted by our judgments about the probability of favorable outcomes of customer disputes involving whether certain events qualify as force majeure or the reason for the events that caused project delays. Variable consideration for liquidated damages is estimated using the expected value of the consideration to be received. As of June 30, 2024 and September 30, 2023, transaction prices have been reduced to reflect estimates of variable consideration primarily related to liquidated damages of \$75.5 million and \$84.1 million, respectively.

Fluence may incur additional costs to execute on the performance of a contract. When this happens, we typically attempt to recover the revenue associated with these costs via a change order with the customer. When this fact pattern occurs, it can create a timing difference between when we have incurred the cost versus when we record the proportionate revenue, since costs are recognized immediately when incurred and the revenue is recognized based upon the transaction price, which is usually increased upon signing a respective change order with the customer. For the three months and nine months ended June 30, 2024, we recognized approximately \$8.9 million and \$16.3 million, respectively, in revenue from changes in transaction prices during the period, in which the performance obligations were substantially satisfied in previous quarterly periods.

Revenue is recorded net of any taxes assessed on and collected from customers, which are remitted to the governmental authorities.

For our energy storage products and solutions, services, and digital applications contracts where there are multiple performance obligations in a single contract or we sign separate contracts at or near the same time with the same customer that meet the criteria for combination, the Company allocates the consideration to the various obligations in the contract based on the relative standalone selling price. Standalone selling prices are estimated based on estimated costs plus margin taking into consideration pricing history and market factors.

**Revenue from Services:** The Company also enters into long-term service agreements with customers to provide operational services related to battery-based energy storage products and solutions. The services include extended warranty, maintenance, monitoring, and other services. The Company accounts for the services as separate performance obligations from the battery-based energy storage products and solutions. The extended warranty services are typically considered a separate performance obligation from the maintenance, monitoring and other services. We typically recognize revenue ratably over the terms of the services using a straight-line recognition method. The Company believes using a time-based method to measure progress is appropriate as the performance obligations are satisfied evenly over the terms of services. Revenue is recognized for each of the performance obligations by dividing the allocated transaction price over the service period.



Some of these agreements also provide a commitment to perform certain augmentation activities which could require us to install additional batteries, and other components as needed, to compensate for partially lost capacity due to degradation of batteries over time. The obligation to perform augmentation activities can take the form of either maintaining battery capacity above a given threshold for a stated term while other contracts provide a fixed number of augmentations over a contract term. Augmentation arrangements that require us to maintain battery capacity above established thresholds for a given term may be considered service-type warranties depending on the respective contract terms. These represent a stand-ready obligation in which the customer benefits evenly overtime, for which we recognize revenue for these arrangements using a straight-line recognition method. Alternatively, augmentation arrangements that require us to perform a fixed number of augmentations over a contract term follow the percentage of completion revenue recognition method. Since these arrangements require a fixed number of augmentations we must perform, we use the pattern of cost as a proxy to identify when our obligations are satisfied and to recognize revenue.

**Revenue from Digital Applications and Solutions:** The Company provides access to proprietary cloud-based Software-as-a-Service (“SaaS”) offerings through several market facing applications. These applications currently include Fluence Mosaic and Fluence Nispera. Fluence Mosaic is an intelligent bidding software for utility-scale storage and renewable assets, helping to enable customers to optimize asset trading in wholesale electricity markets. Fluence Mosaic is currently available in the NEM (Australia), CAISO (California), and ERCOT (Texas) markets. Fluence Nispera is an asset performance management software that helps customers monitor, analyze, forecast, and optimize the performance of their renewable energy assets. Fluence Nispera is an AI-driven utility-scale asset performance management platform that supports portfolios of energy storage, solar, and wind assets. Customers do not receive legal title or ownership of the applications as a result of these arrangements. The use of the Fluence Digital software applications is separately identifiable from other promises that the Company offers to its customers. As such, Fluence Digital applications are accounted for as separate performance obligations when combined with other Fluence products, solutions, and services. We consider access to the platform and related support services in a customer contract to be a series of distinct services which comprise a single performance obligation because they are substantially the same and have the same pattern of transfer. We recognize revenue over time using a straight-line recognition method.

**Cost of Goods and Services:** Cost of goods and services consists primarily of product costs, including purchased materials and supplies, as well as costs related to shipping, customer support, product warranty, and personnel. Personnel costs in cost of goods and services includes both direct labor costs as well as costs attributable to any individuals whose activities relate to the transformation of raw materials or component parts into finished goods or the transportation of materials to the customer. Cost of goods and services are recognized when services are performed or control of goods are transferred to the customers, which is generally based upon International Commercial Terms (commonly referred to as “incoterms”) stated in corresponding supply agreements or purchase orders. Standard inventory materials that could be used interchangeably on other projects are included in cost of goods sold when they are integrated into, or restricted to, the production of a customer’s project.

**Deferred Revenue:** Deferred revenue represents the excess billings to date over the amount of revenue recognized to date. Contract advances represent amounts received by the Company upon signing of the related contracts with customers. The advances are offset proportionately against progress billings. Any outstanding portion is included in deferred revenue on the accompanying consolidated balance sheets.

**Loss Contracts:** A contract becomes a loss contract when its estimated total costs are expected to exceed its total revenue. The Company accrues the full loss expected in the period a loss contract is identified in “Current liabilities — Accruals and provisions” and “Cost of goods and services” on the Company’s consolidated balance sheets and consolidated statements of operations and comprehensive loss, respectively.

#### ***Inventory, Net***

Inventory primarily consists of cubes, batteries and related equipment, enclosures, inverters, and spare parts which are used in ongoing battery storage projects for sale. Inventory is stated at the lower of cost or net realizable value with cost being determined by the specific identification method. Costs include cost of purchase, costs of conversion, and other costs incurred in bringing the inventories to their present location and condition. The Company periodically reviews its inventory for potential obsolescence and write down of its inventory, as appropriate, to net realizable value based on its assessment of usefulness and marketability conditions.

#### ***Software Development Costs***

Our software development costs primarily relate to three categories: (i) internal-use software development costs, (ii) hosting arrangements which are service contracts, and (iii) external-use software development costs. We capitalize costs incurred to purchase or develop software for internal use and software to be sold or leased externally.

Internal-use software development costs are capitalized during the application development stage in accordance with ASC 350-40, *Internal-Use Software*. These capitalized costs are reflected in “Intangible assets, net” on the consolidated balance sheets and are amortized over the estimated useful life of the software. Our internal-use software relates to our (i) SaaS customer offerings and is amortized to “Cost of goods and services” and (ii) internally developed solutions and are amortized to “General and administrative.” The useful life of our internal-use software development costs is generally 3 to 5 years.

During the nine months ended June 30, 2024 and June 30, 2023, the Company capitalized \$7.0 million and \$5.5 million, respectively, of internal-use software.

Internal-use software development costs associated with hosting arrangements are capitalized during the application development stage. These are generally cloud-computing arrangements that are service contracts. The capitalized costs are reflected in “Other non-current assets” on the consolidated balance sheets and are amortized to “General and administrative” once ready for intended use over the estimated useful life of the hosted software. The useful life of our internal-use software development costs associated with hosting arrangements is generally the period the Company expects to benefit from its right to access the hosted software plus consideration for any renewal or cancellation periods.

During the nine months ended June 30, 2024 and June 30, 2023, the Company capitalized \$24.6 million and \$0.0 million, respectively, of development costs related to hosting arrangements.

External-use software development costs developed to be sold or leased externally are capitalized upon the establishment of technological feasibility for a product in accordance with ASC 985-20, *Software to be Sold or Leased Externally*. These software development costs are reflected in “Intangible assets, net” on our consolidated balance sheets and amortized to “Cost of goods and services” on a product basis by the greater of the straight-line method over the estimated economic life of the product or the ratio that current gross revenues for a product bear to the total current and anticipated future gross revenues for that product. The useful life of our external-use software development costs is generally 5 years.

During the nine months ended June 30, 2024 and June 30, 2023, the Company capitalized \$1.6 million and \$1.8 million, respectively, of external-use software to be sold.

### ***Fair Value Measurements***

The fair value of the Company’s financial assets and liabilities reflects management’s estimate of amounts that the Company would have received in connection with the sale of the assets or paid in connection with the transfer of the liabilities in an orderly transaction between market participants at the measurement date. In connection with measuring the fair value of its assets and liabilities, the Company seeks to maximize the use of observable inputs and to minimize the use of unobservable inputs. The following fair value hierarchy, defined by ASC 820, *Fair Value Measurements*, is used to classify assets and liabilities based on the observable inputs and unobservable inputs used to value the assets and liabilities:

Level 1—Quoted prices are available in active markets for identical assets or liabilities as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

Level 2—Pricing inputs are other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date. Level 2 inputs include those financial instruments that are valued using models or other valuation methodologies. These models are primarily industry-standard models that consider various assumptions, including quoted prices, time value, volatility factors, and current market and contractual prices for the underlying instruments, as well as other relevant economic measures. Substantially all of these assumptions are observable in the marketplace throughout the full term of the instrument, can be derived from observable data, or are supported by observable levels at which transactions are executed in the marketplace.

Level 3—Pricing inputs include significant inputs that are generally less observable from objective sources. These inputs may be used with internally developed methodologies that result in management’s best estimate of fair value from the perspective of a market participant. The Company does not have significant recurring Level 3 fair value measurements.

The Company’s cash equivalents include cash on hand and highly liquid investments readily convertible to cash, with an original maturity of 90 days or less when purchased. Fair value of cash equivalents approximates the carrying amount.

The carrying amounts of trade receivables, accounts payable and short-term debt obligations such as current portion of borrowings against note receivable - pledged as collateral, approximate fair values due to their short maturities.

The fair value of the Company's foreign currency derivatives is measured on a recurring basis by comparing the contracted forward exchange rate to the current market exchange rate. The foreign currency derivatives are categorized as Level 2 in the fair value hierarchy, as the inputs to the derivative pricing model are generally observable and do not contain a high level of subjectivity. Refer to "Note 18 – Derivatives and Hedging" for details regarding the Company's derivatives and hedging activities.

### ***Derivatives and Hedging***

The Company records all derivatives at their gross fair values on the condensed consolidated balance sheets. The accounting for the gains or losses resulting from changes in the fair value of derivatives depends on the intended use of the derivatives, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting.

Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. The gains or losses from designated cash flow hedges are deferred in accumulated other comprehensive income and subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings. The gains or losses will be presented in the same income statement line item as the earnings effect of the hedged item. The effectiveness of cash flow hedges is assessed at inception and quarterly thereafter. The change in fair value of the components excluded from the assessment of effectiveness are recognized in current period earnings. The changes in fair value of derivatives that are not designated for hedge accounting are recognized in current period earnings.

### ***Income (Loss) per Share***

As of June 30, 2024, the Company's Amended and Restated Certificate of Incorporation authorizes three classes of common stock: Class A, Class B-1, and Class B-2. Income (loss) per share is calculated and reported under the "two-class" method. The "two-class" method is an earnings allocation method under which income (loss) per share is calculated for each class of common stock considering both distributions declared or accumulated and participation rights in undistributed income (losses) as if all such income (loss) had been distributed during the period.

Basic income (loss) per share of Class A common stock is computed by dividing net income (loss) attributable to Class A common stockholders by the weighted average number of shares of Class A common stock outstanding during the period. Diluted net income (loss) per share of Class A common stock is computed by adjusting the net income (loss) available to Class A common stockholders and the weighted average shares of Class A common stock outstanding to give effect to potentially dilutive securities. Shares of our Class B-1 and Class B-2 common stock are not entitled to receive any distributions or dividends. When a common unit of Fluence Energy, LLC is redeemed for cash or Class A common stock, at the Company's election, by a Founder who holds shares of our Class B-1 or Class B-2 common stock, as applicable, such Founder will be required to surrender a share of Class B-1 or Class B-2 common stock, as the case may be, which we will cancel for no consideration. In the event of cash settlement, the Company is required to issue new shares of Class A common stock and use the proceeds from the sale of these newly-issued shares of Class A common stock to fully fund the cash settlement. Therefore, we did not include shares of our Class B-1 or Class B-2 common stock in the computation of basic income (loss) per share.

In periods in which we have a loss, diluted loss per share is equal to basic loss per share because the effect of potentially dilutive securities would be antidilutive.

The following table presents the potentially dilutive securities that were excluded from the computation of diluted income (loss) per share:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2024	2023	2024	2023
Class B-1 common stock	—	58,586,695	51,499,195	58,586,695
Outstanding pre-IPO options issued pursuant to the 2020 Unit Option Plan	445,959	5,911,672	3,492,867	5,911,672
Outstanding pre-IPO phantom units	—	256,935	—	256,935
Outstanding restricted stock units (“RSUs”)	1,076,589	1,963,673	1,887,787	1,963,673
Outstanding performance share units (“PSUs”)	356,973	—	386,373	—
Outstanding non-qualified stock options (“NQSOs”)	165,521	—	165,521	—
Outstanding restricted stock (“Nispera equity”)	37,221	354,134	177,067	354,134

Basic and diluted net income (loss) per share of Class A common stock for the three and nine months ended June 30, 2024 and 2023, respectively, have been computed as follows:

<i>In thousands, except share and per share amounts</i>	Three Months Ended June 30,		Nine Months Ended June 30,	
	2024	2023	2024	2023
Net income (loss)	\$ 1,075	\$ (35,045)	\$ (37,357)	\$ (109,636)
Less: Net income (loss) attributable to the non-controlling interest	290	(11,655)	(12,230)	(36,748)
Net income (loss) attributable to Fluence Energy, Inc.	\$ 785	\$ (23,390)	\$ (25,127)	\$ (72,888)
Weighted average number of Class A common stock:				
Basic	127,910,081	117,456,282	125,273,648	116,368,987
Diluted	184,219,065	117,456,282	125,273,648	116,368,987
Net income (loss) per share of Class A common stock:				
Basic	\$ 0.01	\$ (0.20)	\$ (0.20)	\$ (0.63)
Diluted	\$ —	\$ (0.20)	\$ (0.20)	\$ (0.63)

#### Recent Accounting Standards Adopted

The following table presents accounting standards adopted during the nine months ended June 30, 2024.

Standard	Description	Period of Adoption	Effect on the financial statements and other significant matters
Accounting Standards Update (“ASU”) No. 2022-04: Liabilities-Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations	ASU 2022-04 requires entities to disclose the key terms of supplier finance programs they use in connection with the purchase of goods and services, along with the amount of obligations outstanding at the end of each period and an annual roll forward of such obligations. This standard does not affect the recognition, measurement, or financial statement presentation of supplier finance program obligations.	As of the three months ended December 31, 2023.	The Company presented the key terms of its supply chain financing programs along with a roll forward of activity in “Footnote 16 - Supply Chain Financing.” There was no impact as a result of the adoption on financial statement presentation or results of operations for any period presented.

**Recent Accounting Standards Not Yet Adopted**

The following table presents accounting standards not yet adopted:

Standard	Description	Required date of adoption	Effect on the financial statements and other significant matters
ASU No. 2023-07: Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures	ASU 2023-07 requires disclosure of incremental segment information on an annual and interim basis for all public entities to enable investors to develop more decision-useful financial analyses. The update requires other specified segment items and amounts, such as depreciation, amortization, and depletion expense, to be disclosed under certain circumstances. The amendments in this update do not change or remove those disclosure requirements. The amendments in this update also do not change how a public entity identifies its operating segments, aggregates those operating segments, or applies the quantitative thresholds to determine its reportable segments.	ASU 2023-07 is effective for the Company's annual report for fiscal year ending September 30, 2025.	The Company is evaluating the impact that this guidance will have on its disclosures. The Company only has one reportable segment.
ASU No. 2023-09: Income Taxes (Topic 740): Improvements to Income Tax Disclosures	ASU 2023-09 adopts certain amendments to improve the effectiveness of income tax disclosures, including jurisdictional information, by requiring (1) consistent categories and greater disaggregation of information in the rate reconciliation, and (2) income taxes paid, disaggregated by jurisdiction.	ASU 2023-09 is effective for the Company's annual report for fiscal year ending September 30, 2026.	The Company is evaluating the impact this guidance will have on income tax disclosures.
SEC Final Rule Release Nos. 33-11275; 34-99678: The Enhancement and Standardization of Climate-Related Disclosures for Investors	SEC Final Rule Release Nos. 33-11275; 34-99678 requires registrants to provide certain climate-related information in their registration statements and annual reports, including climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, its business strategy, results of operations, or financial condition. In addition, certain disclosures related to severe weather events and other natural conditions will be required in registrants' annual reports.	SEC Final Rule Release Nos. 33-11275; 34-99678 is effective for the Company's annual report for fiscal year ending September 30, 2026.	The Company is evaluating the impact this guidance will have on climate-related disclosures.

**Reclassifications**

Certain prior period amounts have been reclassified to conform to the current period presentation.

Interest income of \$3.0 million and \$7.7 million for the three and nine months ended June 30, 2023, respectively, were reclassified from other expense (income), net to interest income, net on the condensed consolidated statement of operations and comprehensive loss. The reclassification had no impact on income (loss) before income taxes or net income (loss) for any period presented.

Accounts payable with related parties of \$2.5 million and Accruals with related parties of \$3.7 million as of September 30, 2023, were reclassified from Deferred revenue and payables with related parties to Accounts payable and Accruals and provisions, respectively, on the condensed consolidated balance sheet. The reclassification had no impact on the total current liabilities for any period presented. Corresponding reclassifications were also reflected on the condensed consolidated statement of cash flows for the nine months ended June 30, 2023. The reclassifications had no impact on cash provided by (used in) operations for the period presented.

Provision on loss contracts, net of \$8.6 million for the nine months ended June 30, 2023, was reclassified to current accruals and provisions on the condensed consolidated statement of cash flows. The reclassification had no impact on cash provided by (used in) operations for the period presented.

### 3. Revenue from Contracts with Customers

Revenue is primarily derived from sales of our energy storage products and solutions. The following table presents the Company's revenue disaggregated by product or service type:

<i>In thousands</i>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2024</b>	<b>2023</b>	<b>2024</b>	<b>2023</b>
Revenue from energy storage products and solutions	\$ 472,569	\$ 530,268	\$ 1,443,786	\$ 1,529,766
Revenue from services	9,545	4,816	22,818	11,347
Revenue from digital applications and solutions	1,203	1,267	3,810	3,884
<b>Total</b>	<b>\$ 483,317</b>	<b>\$ 536,351</b>	<b>\$ 1,470,414</b>	<b>\$ 1,544,997</b>

The following table presents the Company's revenue disaggregated by geographical region. Revenues are attributed to regions based on location of customers:

<i>In thousands</i>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2024</b>	<b>2023</b>	<b>2024</b>	<b>2023</b>
Americas (North, Central and South America)	\$ 202,971	\$ 439,804	\$ 995,963	\$ 1,173,473
APAC (Asia Pacific)	104,330	29,882	244,409	123,078
EMEA (Europe, Middle-East, and Africa)	176,016	66,665	230,042	248,446
<b>Total</b>	<b>\$ 483,317</b>	<b>\$ 536,351</b>	<b>\$ 1,470,414</b>	<b>\$ 1,544,997</b>

#### Customer Concentration

For the nine months ended June 30, 2024, the Company's top two customers, in the aggregate, accounted for approximately 59% of total revenue.

For the nine months ended June 30, 2023, the Company's top four customers, in the aggregate, accounted for approximately 62% of total revenue.

#### Deferred Revenue

Deferred revenue from related parties is included on the Company's condensed consolidated balance sheets. The following table provides information about deferred revenue from contracts with customers:

<i>In thousands</i>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2024</b>	<b>2023</b>	<b>2024</b>	<b>2023</b>
Deferred revenue, beginning of period	\$ 398,639	\$ 584,425	\$ 273,164	\$ 273,073
Additions	192,851	167,361	335,808	452,069
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(181,878)	(299,717)	(199,360)	(273,073)
Deferred revenue, end of period	\$ 409,612	\$ 452,069	\$ 409,612	\$ 452,069

<i>In thousands</i>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2024</b>	<b>2023</b>	<b>2024</b>	<b>2023</b>
Deferred revenue from related parties, beginning of period	\$ 46,694	\$ 186,957	\$ 110,274	\$ 300,697
Additions	19,052	47,489	35,980	138,781
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(29,004)	(84,146)	(109,512)	(289,178)
Deferred revenue from related parties, end of period	\$ 36,742	\$ 150,300	\$ 36,742	\$ 150,300

***Remaining Performance Obligations***

The Company's remaining performance obligations ("backlog") represent the unrecognized revenue value of its contractual commitments, which include deferred revenue and amounts that will be billed and recognized as revenue in future periods. The Company's backlog may vary significantly each reporting period based on the timing of major new contractual commitments and the backlog may fluctuate with currency movements. In addition, under certain circumstances, the Company's customers have the right to terminate contracts or defer the timing of its services and their payments to the Company.

As of June 30, 2024, the Company had \$4.5 billion of remaining performance obligations related to contractual commitments, of which, we expect to recognize in revenue approximately 50% in the next 12 months, with the remainder recognized in revenue in periods thereafter.



#### 4. Inventory, Net

Inventory consisted of the following:

<i>In thousands</i>	June 30, 2024			September 30, 2023		
	Cost	Provision	Net	Cost	Provision	Net
Cubes, batteries, and other equipment	\$ 478,417	\$ (15,513)	\$ 462,904	\$ 221,711	\$ (105)	\$ 221,606
Spare parts	7,261	(231)	7,030	3,469	(172)	3,297
<b>Total</b>	<b>\$ 485,678</b>	<b>\$ (15,744)</b>	<b>\$ 469,934</b>	<b>\$ 225,180</b>	<b>\$ (277)</b>	<b>\$ 224,903</b>

#### 5. Other Current Assets

Other current assets consisted of the following amounts:

<i>In thousands</i>	June 30, 2024	September 30, 2023
Taxes recoverable	\$ 15,013	\$ 16,411
Advance payments	637	1,102
Prepaid expenses	12,339	3,470
Prepaid insurance	4,404	674
Current portion of recoverable warranty costs from suppliers	5,208	4,041
Other	4,852	5,376
<b>Total</b>	<b>\$ 42,453</b>	<b>\$ 31,074</b>

#### 6. Intangible Assets, Net

Intangible assets are stated at amortized cost and consisted of the following:

<i>In thousands</i>	June 30, 2024			September 30, 2023		
	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization	Net
Patents and licenses	\$ 28,674	\$ (12,452)	\$ 16,222	\$ 28,673	\$ (11,002)	\$ 17,671
Developed technology	29,730	(7,116)	22,614	29,430	(5,218)	24,212
Customer relationship	4,363	(1,807)	2,556	4,277	(1,233)	3,044
Trade names/Trademarks	5,279	(3,814)	1,465	5,265	(3,337)	1,928
Capitalized internal-use software	13,462	(2,117)	11,345	6,458	(762)	5,696
Capitalized software to be sold	4,910	(484)	4,426	3,266	(65)	3,201
<b>Total</b>	<b>\$ 86,418</b>	<b>\$ (27,790)</b>	<b>\$ 58,628</b>	<b>\$ 77,369</b>	<b>\$ (21,617)</b>	<b>\$ 55,752</b>

Intangible assets are amortized over their estimated useful lives on a straight-line basis. Total amortization expense for the three months ended June 30, 2024 and 2023 was \$2.2 million and \$1.9 million, respectively. The amortization expense for the three months ended June 30, 2024 and 2023 included \$0.8 million and \$0.5 million for capitalized software, respectively. Total amortization expense for the nine months ended June 30, 2024 and 2023 was \$6.2 million and \$5.3 million, respectively. The amortization expense for the nine months ended June 30, 2024 and 2023 included \$1.8 million and \$0.5 million for capitalized software, respectively.

## 7. Goodwill

No impairment was recognized for the nine months ended June 30, 2024 or 2023. The following table presents the goodwill activity for the nine months ended June 30, 2024 and 2023:

<i>In thousands</i>	<b>June 30,</b>	
	<b>2024</b>	<b>2023</b>
Goodwill, Beginning of the period	\$ 26,020	\$ 24,851
Foreign currency adjustment	317	1,435
Goodwill, End of the period	\$ 26,337	\$ 26,286

## 8. Leases

The Company's right-of-use assets and lease liabilities primarily relate to offices and warehouses. The Company's leases generally have remaining lease terms of one year to five years. The Company's leases are all classified as operating leases. Certain of the Company's leases contain renewal, extension, or termination options. The Company assesses each option on an individual basis and will only include options reasonably certain of exercise in the lease term. The Company generally considers the base term to be the term provided in the contract. None of the Company's lease agreements contain material options to purchase the leased property, material residual value guarantees, or material restrictions or covenants.

The amounts of assets and liabilities and other information for our operating leases are as follows:

<i>In thousands</i>	<b>Balance Sheet Caption</b>	<b>June 30, 2024</b>	<b>September 30, 2023</b>
<b>Assets:</b>			
Right of use asset - operating leases	Other non-current assets	\$ 6,944	\$ 2,857
<b>Liabilities:</b>			
Current portion of operating lease liabilities	Other current liabilities	\$ 2,848	\$ 1,569
Operating lease liabilities, net of current portion	Other non-current liabilities	4,263	1,334

## 9. Accruals and Provisions

Accruals mainly represent milestones not yet invoiced for inventory such as, but not limited to, batteries, cubes, and inverters. According to master supply agreements between the Company and suppliers of our inventory, vendor invoices are issued according to contracted billing schedules with certain milestones invoiced after delivery, upon full installation and commissioning of the equipment at substantial completion and final completion project stages. Accruals and provisions consisted of the following:

<i>In thousands</i>	<b>June 30, 2024</b>	<b>September 30, 2023</b>
Accruals	\$ 177,395	\$ 148,906
Accruals with related parties	5,771	3,737
Provisions for expected project losses	16,013	12,072
Current portion of warranty accrual	14,160	11,245
Total	\$ 213,339	\$ 175,960

## 10. Debt

### *Revolving Credit Facility*

On November 1, 2021, the Company entered into a credit agreement for a revolving credit facility (the “Revolver”), by and among Fluence Energy, LLC, as borrower, Fluence Energy, Inc., as parent guarantor, the subsidiary guarantors party thereto, the lenders party thereto and JP Morgan Chase Bank, N.A., as administrative agent and collateral agent (as amended, the “Revolving Credit Agreement”). The Revolver was secured by a (i) first priority pledge of the equity securities of Fluence Energy, LLC and its subsidiaries and (ii) first priority security interests in, and mortgages on, substantially all tangible and intangible personal property and material fee-owned real property of Fluence Energy, LLC, the parent guarantor and each subsidiary guarantor party thereto, in each case, subject to customary exceptions and limitations. The aggregate amount of commitments was \$200.0 million. The Revolving Credit Agreement was terminated effective November 22, 2023, in conjunction with the entry into the ABL Credit Agreement (as further described below).

The Revolving Credit Agreement provided that borrowings under the Revolver bore interest at (i) with respect to loans comprising a Term Benchmark Borrowing (as defined in the Revolving Credit Agreement), the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate, or the AUD Rate (each as defined in the Revolving Credit Agreement), as applicable, plus 3.0%, (ii) with respect to loans comprising an ABR Borrowing (as defined in the Revolving Credit Agreement), the Alternate Base Rate (as defined in the Revolving Credit Agreement) plus 2.0%, or (iii) with respect to each RFR Loan (as defined in the Revolving Credit Agreement), the applicable Daily Simple RFR (as defined in the Revolving Credit Agreement) plus 3.1193%, in each instance subject to customary benchmark replacement provisions. Fluence Energy, LLC was required to pay to the lenders a commitment fee of 0.55% per annum on the average daily unused portion of the revolving commitments through maturity. The Revolver also provided for up to \$200.0 million in letter of credit issuances, which required customary issuance and administration fees, as well as a fronting fee payable to each issuer thereof and a letter of credit participation fee of 2.75% per annum payable to the lenders.

### *Asset-Based Lending Facility*

On November 22, 2023, the Company entered into an asset-based syndicated credit agreement (the “ABL Credit Agreement”) by and among Fluence Energy, LLC, as parent borrower, Fluence Energy, Inc., as parent, the other borrowers party thereto, the other guarantors party thereto, the lenders party thereto (the “ABL Lenders”), and Barclays Bank PLC (“Barclays”), as administrative agent, which was amended by the Master Assignment and Assumption and Issuing Bank Joinder, effective December 15, 2023 (the “ABL Joinder”), Amendment No. 1, dated April 8, 2024 (“Amendment No. 1”), and Amendment No. 2, dated May 8, 2024 (“Amendment No. 2”), which provided for revolving commitments in an aggregate principal amount of \$400.0 million (the “ABL Facility”). The ABL Facility was secured by (i) a first priority pledge of Fluence Energy, Inc.’s equity interests in Fluence Energy, LLC and (ii) first priority security interests in, and mortgages on, substantially all tangible and intangible personal property and material fee-owned real property of Fluence Energy, Inc., Fluence Energy, LLC, and Fluence Energy Global Production Operation, LLC, in each case, subject to customary exceptions and limitations. Borrowings under the ABL Facility were scheduled to mature, and lending commitments thereunder would terminate, on November 22, 2027.

As of June 30, 2024, borrowing availability under the ABL Facility was determined by a borrowing base calculation based on specified percentages of U.S. eligible inventory, net orderly liquidation value of most recent inventory appraisal, and U.S. eligible in-transit inventory, as well as potential borrowing base qualified cash, less the aggregate amount of any reserves. Borrowing base qualified cash was defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) held in a specific borrowing base qualified cash account and (b) \$100.0 million. The Company was obligated to provide a borrowing base certificate to lenders twenty days following the end of each calendar month, except during a reporting trigger period where it would provide such certificates on a weekly basis.

After giving effect to Amendment No. 2, unless a Covenant Relief Period (as defined below) had occurred and was continuing, the ABL Credit Agreement provided for a full cash dominion period (a) if an event of default was occurring or (b) beginning on the date on which Excess Availability (as defined below) was less than the greater of (i) 12.5% of the Line Cap (as defined below) and (ii) if the borrowing base then in effect was (A) less than \$200.0 million, \$25.0 million and (B) greater than or equal to \$200.0 million, \$50.0 million. Excess Availability was defined as an amount equal to (a) the lesser of (i) the total commitments of all ABL Lenders and (ii) the borrowing base, minus (b) total outstanding revolving extensions of credit. Line Cap was defined as the lesser of the total commitments of the ABL Lenders and the borrowing base. A Covenant Relief Period was defined as a period during which (a) no default or event of default had occurred and continuing and (b) either of the following shall exist: (i) the aggregate revolving credit exposure of the ABL Lenders was not greater than \$0 or (ii) each of (A) the amount of aggregate borrowings under the ABL Facility was not greater than \$0; (B) the non-cash collateralized LC exposure (as defined under the ABL Credit Agreement) was not greater than \$15.0 million, and (C) the borrowing base exceeded the sum of all lenders' letter of credit exposure.

Total liquidity under the ABL Facility was required to not be less than the greater of (i) 20% of the Line Cap and (ii) (A) if the borrowing base was less than \$200.0 million, \$50.0 million and (B) if the borrowing base was greater than or equal to \$200.0 million, \$64.0 million. In addition, unless we were in a Covenant Relief Period, the Company could not permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap.

The ABL Credit Agreement set forth that (i) loans comprising each ABR Borrowing bore interest at the Alternate Base Rate plus an additional margin ranging from 1.00% to 1.50%, (ii) loans comprising each Canadian Prime Loan Borrowing bore interest at the Canadian Prime Rate plus an additional margin ranging from 1.00% to 1.50%, and (iii) the loans comprising each Term Benchmark Borrowing bore interest at the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA, as applicable, plus an additional margin ranging from 2.00% to 2.50%, in each instance subject to customary benchmark replacement provisions. Fluence Energy, LLC was required to pay to the ABL Lenders a commitment fee on the average daily unused portion of the commitments through maturity, which accrued at the rate of (a) until the last day of the first full calendar quarter following the closing of the ABL Facility, 0.450% per annum, and (b) thereafter, 0.450% per annum if average revolving loan utilization was less than or equal to 50% and 0.375% per annum if average revolving loan utilization was greater than 50%. The ABL Facility also provided for a letter of credit sublimit in the amount of \$200.0 million, if certain conditions were met. Each letter of credit issuance was conditioned upon, among other conditions, the payment of certain customary issuance and administration fees, as well as payment of a fronting fee to each issuer thereof and payment of a letter of credit participation fee payable to the ABL Lenders. Capitalized terms used in this paragraph that are not otherwise defined are defined in the ABL Credit Agreement.

The ABL Credit Agreement contained customary covenants for this type of financing, including, but not limited to, covenants that restricted our ability to incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The ABL Credit Agreement limited our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Fluence Energy, LLC and its subsidiaries were limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions. If certain payment conditions under the ABL Credit Agreement were satisfied, then additional specified transactions could have been made by the Company. Such covenants were tested on a quarterly basis and upon the occurrence of other certain restricted payments, the incurrence of indebtedness, certain dispositions, and other specified transactions. As of June 30, 2024, we were in a Covenant Relief Period and were in compliance with all such applicable covenants or maintained availability above such applicable covenant triggers.

As of June 30, 2024, we had no borrowings under the ABL Facility and no letters of credit outstanding. Based on the borrowing base certificate in effect as of June 30, 2024, we had \$11.3 million of borrowing capacity above the Excess Availability minimum in the ABL Facility.

## **2024 Revolver**

On August 6, 2024 (the "Amendment Effective Date"), Fluence Energy, Inc. entered into Amendment Number Three ("Amendment No. 3") to that certain ABL Credit Agreement by and among Fluence Energy, LLC, as parent borrower, the Company, as parent, the other borrowers party thereto, the other guarantors party thereto, the lenders party thereto, and Citibank, N.A., as administrative agent (as successor to Barclays Bank PLC) (such agreement, as so amended, the "2024 Credit Agreement") in order to (i) convert the existing ABL Facility to a senior secured cash flow revolving credit facility in an initial aggregate principal amount of up to \$500.0 million (the "2024 Revolver"), (ii) replace Barclays as administrative agent under the 2024 Credit Agreement with Citibank, N.A., and (iii) make certain other modifications to the 2024 Credit Agreement as set forth therein. Capitalized terms used in this subsection that are not otherwise defined are defined in the 2024 Credit Agreement.

The 2024 Revolver is secured by (i) a first priority pledge of the Company's equity interests in Fluence Energy, LLC and Fluence Energy Global Production Operation, LLC, (ii) first priority security interests in substantially all tangible and intangible personal property of the Company, Fluence Energy, LLC, Fluence Energy Global Production Operation, LLC and certain of its foreign subsidiaries, in each case, subject to customary exceptions and limitations, and (iii) a pledge of the Company's equity interests in certain of its foreign subsidiaries and security interests in certain assets of such foreign subsidiaries.

The 2024 Credit Agreement sets forth that (i) loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus 2.00%, (ii) loans comprising each Term Benchmark Borrowing shall bear interest at the Term SOFR Rate or the Adjusted EURIBOR Rate, as applicable, plus 3.00%, and (iii) the loans comprising each RFR Borrowing shall bear interest at the Daily Simple RFR plus 3.00%, in each instance subject to customary benchmark replacement provisions including, but not limited to, alternative benchmark rates, customary spread adjustments with respect to borrowings in foreign currencies and benchmark replacement conforming changes. Fluence Energy, LLC is required to pay to the lenders a commitment fee on the average daily unused portion of the commitments through maturity, which shall accrue at the rate of 0.50% per annum. The 2024 Credit Agreement provides for a cash draw sublimit of \$150.0 million as well as a letter of credit sublimit in the amount of \$500.0 million if certain conditions are met.

The 2024 Credit Agreement contains customary covenants for this type of financing, including, but not limited to, covenants that restrict our and certain of our subsidiary's ability to: incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The 2024 Credit Agreement limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Under the terms of the 2024 Credit Agreement, Fluence Energy, LLC and its subsidiaries are currently limited in their ability to pay cash dividends to, lend to, or make other investments in the Company, subject to certain exceptions. In addition, we are required to maintain (i) from the Amendment Effective Date through December 31, 2025, Total Liquidity of no less than \$150,000,000, (ii) from January 1, 2026 and thereafter, Total Liquidity of no less than \$100,000,000 or a Consolidated Leverage Ratio as of the last day of any Measurement Period not to exceed 3.50:1.00, and (iii) certain other financial requirements at each Guarantor Coverage Test Date. Such covenants will be tested on a quarterly basis and upon the occurrence of other certain restricted payments, the incurrence of indebtedness, certain dispositions, and other specified transactions.

The 2024 Credit Agreement contains customary events of default for this type of financing. If an event of default occurs with respect to a borrower, the lenders will be able to, among other things, terminate the commitments immediately, cash collateralize any outstanding letters of credit, declare any loans outstanding to be due and payable in whole or in part, and exercise other rights and remedies. The maturity date and the date of termination of lending commitments under the 2024 Credit Agreement both remain unchanged at November 22, 2027. There are no borrowings and no letters of credit outstanding under the 2024 Credit Agreement as of August 7, 2024.

### ***Borrowings Against Note Receivable - Pledged as Collateral***

In December 2022, the Company transferred \$24.3 million in customer receivables to Standard Chartered Bank ("SCB") in the Philippines for proceeds of \$21.1 million. The receivables all related to our largest customer in that country. The underlying receivables transferred were previously aggregated into a long term note, with interest, and a maturity date of September 30, 2024. In April 2023, the Company aggregated into an additional long term note and transferred an additional \$30.9 million in receivables with the same customer to SCB for proceeds of \$27.0 million, upon substantially similar terms as the December 2022 transfer and has a maturity date of December 27, 2024. These transactions are treated as secured borrowings as the Company did not transfer the entire note receivables due from the customer to SCB. The Company continues to receive quarterly interest income from the customer, while SCB is responsible for collecting

payments on the principal balances which represent the initial receivable balances from the customer. The Company has no other continuing involvement or exposure related to the underlying receivables. For the nine months ended June 30, 2024, the Company recorded net interest income of \$0.2 million, which represents the aggregate of \$3.5 million in interest income and \$3.3 million in interest expense recorded in "Interest income, net."

## 11. Income Taxes

The Company's provision for income taxes is based on the estimated annual effective tax rate, plus discrete items.

Income tax expense (benefit) was \$4.2 million and \$(1.3) million for the three months ended June 30, 2024 and 2023, respectively. The effective tax rate for the three months ended June 30, 2024 and 2023 was 79.7% and 3.6%, respectively. For the three months ended June 30, 2024, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to valuation allowances and pre-tax income in foreign tax jurisdictions without historical losses. For the three months ended June 30, 2023, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to flow-through losses attributable to the Founder, AES Grid Stability, valuation allowances, and foreign exchange losses.

Income tax expense (benefit) was \$1.3 million and \$(2.1) million for the nine months ended June 30, 2024 and 2023, respectively. The effective tax rate for the nine months ended June 30, 2024 and 2023 was (3.7)% and 1.8%, respectively. For the nine months ended June 30, 2024, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to valuation allowances and pre-tax income in foreign tax jurisdictions without historical losses. For the nine months ended June 30, 2023, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to flow-through losses attributable to the Founder, AES Grid Stability, valuation allowances, and foreign exchange gains.

As of each of June 30, 2024 and September 30, 2023, the Company does not believe it has any significant uncertain tax positions and therefore, has not recorded any unrecognized tax benefits.

The Company evaluates the realizability of its deferred tax assets on a quarterly basis and establishes valuation allowances when it is more-likely-than-not that all or a portion of a deferred tax asset may not be realized. As of June 30, 2024 and September 30, 2023, the Company had recorded a full valuation allowance against deferred tax assets on Fluence Energy, Inc. primarily related to its investment in Fluence Energy, LLC, as well as on certain foreign subsidiaries based on the weight of available evidence, including cumulative losses. In the event that the valuation allowance related to tax benefits associated with the Company's Tax Receivable Agreement, dated as of November 1, 2021, by and among Fluence Energy, Inc., Fluence Energy, LLC and the Founders (the "Tax Receivable Agreement") is released in a future period, a Tax Receivable Agreement liability will be recorded based on the amounts probable and reasonably estimable in accordance with ASC 450.

## 12. Commitments and Contingencies

### *Guarantees, Commitments, Letters of Credit, and Surety Bonds*

As of June 30, 2024, the Company had outstanding bank guarantees, parent company guarantees, letters of credit, and surety bonds issued as performance security arrangements associated with a number of our customer projects. In addition, we have a limited number of parent company guarantees issued as payment security to certain vendors. These contractual commitments are all accounted for off-balance sheet. In the event that we fail to perform under a project backstopped by such credit support, the customer or vendor, respectively, may demand performance and/or payment, as applicable, pursuant to the terms of the project contract or vendor contract and applicable credit support instrument from the Company, surety, or bank, as the case may be. Our relationship with our sureties is such that we will indemnify the sureties for any damages and expenses they incur in connection with any of the bonds they issue on our behalf and we may be required to post collateral to support the bonds. With respect to letters of credit, in the event of non-performance under a contract, direct obligations to repay the banks may arise. The Company expects that its performance and payment obligations secured by these bank guarantees, parent company guarantees, letters of credit, and surety bonds will generally be completed in the ordinary course of business and in accordance with the applicable contractual terms.

The following table summarizes our contingent contractual obligations as of June 30, 2024. Amounts presented in the following table represent the Company's current undiscounted exposure to guarantees, commitments, letters of credit, and surety bonds and the range of maximum undiscounted potential exposure. The maximum exposure is not reduced by the amounts, if any, that could be recovered under the recourse or collateralization provisions in the guarantees, commitments, letters of credit, and surety bonds.

	Amount (in \$ millions)	Number of Agreements	Maximum Exposure Range for Each Agreement (in \$ millions)
Guarantees and commitments	\$2,887	62	\$0.1 - 405
Letters of credit under bilateral credit facilities <sup>(a)</sup>	78	31	0 - 28.9
Letters of credit under ABL Credit Agreement	—	—	0 - 0
Surety bonds	660	53	0 - 81.9
<b>Total</b>	<b>\$3,625</b>	<b>146</b>	

(a) In conjunction with the termination of the Revolving Credit Agreement on November 22, 2023 (as described above in “Note 10 – Debt”), the outstanding letters of credit under the terminated agreement were transferred to a bilateral credit facility with JP Morgan Chase Bank, N.A.

The Company has commitments for minimum volumes or spend under master supply agreements with our vendors. The majority of the commitments are for purchases of battery modules. Liquidated damages apply if the minimum purchase volumes or spend are not met. The Company currently expects to meet the minimum committed volumes of purchases and spend. The following table presents our future minimum purchase commitments by fiscal year, primarily for battery modules, and liquidated damages, if the minimum purchase volumes or spend are not met, as of June 30, 2024:

<i>in thousands</i>	<b>Purchase Commitments</b>	<b>Liquidated Damages</b>
2024	\$ 13,292	\$ —
2025	201,749	3,180
2026	753,083	16,200
2027	750,000	16,200
2028 and thereafter	2,250,000	48,600
<b>Total</b>	<b>\$ 3,968,124</b>	<b>\$ 84,180</b>

The Company makes advance payments as capacity guarantees pursuant to purchase agreements with our suppliers. As of June 30, 2024, \$51.5 million is recorded within “Advances to suppliers” on the condensed consolidated balance sheets.

#### ***Negotiations with our Largest Battery Module Vendor***

In December 2021, the Company entered negotiations with our largest battery module vendor to amend the battery supply agreement. As part of the discussions, the vendor sought to renegotiate the price the Company would pay for battery modules purchased in calendar year 2022 as well as those expected to be purchased during the remainder of calendar year 2022 and calendar year 2023. As part of these negotiations, the Company also discussed settlement of contractual claims by Fluence to the vendor. These negotiations continued throughout calendar year 2022. On December 15, 2022, the Company finalized an agreement with the vendor, amending the supply agreement and resolving Fluence’s claims. The approximately \$19.5 million settlement for the Company’s claims was recognized as a reduction of costs of goods and services for the nine months ended June 30, 2023.

#### ***Product Performance Guarantees***

Typical energy storage products and solutions contracts and long-term service agreements contain provisions for performance liquidated damages payments if the energy storage solution fails to meet the guaranteed performance thresholds at completion of the project or throughout the service agreement period.

#### ***Warranties***

The Company is party to both assurance and service-type warranties for various lengths of time. The Company recognizes revenue for service-type warranties, which are referred to as extended warranties, using a straight-line approach over the service period.

The Company provides a limited warranty related to the successful operation of battery-based energy storage solutions, apart from the service-type warranties described above and are normally provided for a limited period of time from one to five years, after the commercial operation date or substantial completion depending on the contract terms. The warranties are considered assurance-type warranties which provide a guarantee of quality of the products. For assurance-type warranties, the Company records an estimate of future warranty cost over the period of construction, consistent with transfer of control and revenue recognition on the equipment or battery-based energy storage products. Furthermore, we accrue the estimated liability cost of specific reserves or recalls when they are probable and estimable if identified. Warranty expense is recorded as a component of “Costs of goods and services” in the Company’s condensed consolidated statements of operations.

The Company’s assurance-type warranties are often backed by supplier covered warranties for major original equipment manufacturers (OEMs) such as batteries and inverters, which is included in our estimated warranty liability. The Company records a corresponding asset for a portion of the warranty cost to be covered by the supplier warranty due to the fact that the contracts are enforceable, the suppliers are financially viable, and we have a history of satisfying claims with our suppliers. The asset is recorded within “Other current assets” and “Other non-current assets” on the condensed consolidated balance sheets.

As of June 30, 2024 and September 30, 2023, the Company accrued the below estimated warranty liabilities, which the table reflects nine months activity and twelve months activity, respectively:

<i>In thousands</i>	<b>June 30, 2024</b>		<b>September 30, 2023</b>	
Warranty balance, beginning	\$	26,909	\$	1,625
Warranties issued and assumed in period		7,687		12,168
Change in estimates		—		8,288
Change in balance sheet presentation		—		10,307
Net changes in liability for warranty expirations, costs incurred, and foreign exchange impact		(3,128)		(5,479)
Warranty balance, ending	\$	31,468	\$	26,909
Less: Recoverable warranty costs from suppliers		12,130		10,307
Warranty balance, net of recoverable warranty costs from suppliers, at end of period	\$	19,338	\$	16,602

Effective March 31, 2023, the Company updated its estimation model for calculating the recurring warranty reserve rate, which is a key input into our estimated assurance-type warranty liability. We then subsequently updated the presentation effective September 30, 2023, to present the full warranty liability and record a corresponding asset for recoverable warranty costs from suppliers.

The key inputs and assumptions used by us to estimate our warranty liability are: (1) the number of units expected to fail or be replaced over time (i.e., failure rate); and (2) the per unit cost of replacement, including shipping, labor costs, and costs for equipment necessary for repair or replacement that are expected to be incurred to replace or repair failed units over time (i.e., repair or replacement cost). The Company’s Safety and Quality department has primary responsibility to determine the estimated failure rates for each generation of product.

The key inputs and assumptions used in calculating the estimated assurance warranty liability and related warranty asset are reviewed by management on a quarterly basis. The Company may make additional adjustments to the estimated assurance warranty liability and related warranty asset based on our comparison of actual warranty results to expected results for significant differences or based on performance trends or other qualitative factors. If actual failure rates, or replacement costs differ from our estimates in future periods, changes to these estimates may be required, resulting in increases or decreases in our estimated assurance warranty liability and related warranty asset which may be material. As we are in an evolving market, there is a degree of estimation uncertainty regarding our estimated recurring warranty accrual rate.



## ***Legal Contingencies***

From time to time, the Company may be involved in litigation, government investigations, and other regulatory or legal proceedings relating to claims that arise out of our operations and businesses and that cover a wide range of matters, including, but not limited to, intellectual property matters, commercial and contract disputes, insurance and property damage claims, labor and employment claims, torts and personal injury claims, product liability claims, environmental claims, and warranty claims. The Company accrues for litigation and claims when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. It is reasonably possible that some matters could have an unfavorable result to the Company and could require the Company to pay damages or make expenditures in amounts that could be material.

### **2021 Overheating Event at Customer Facility**

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. At this time, Fluence cannot comment on or accept the customer's stated findings. The customer's stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer's stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the incident. Fluence has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market's adoption of our products.

### **2023 Project-Related Litigation**

In October 2023, Fluence filed a complaint in the Superior Court of California, Contra Costa County, against Diablo Energy Storage, LLC, Empire Business Park, LLC, the Bank of New York Mellon and others, seeking approximately \$37.0 million in damages arising from the supply and construction of an energy storage facility for the defendants, including for the defendants' nonpayment of contractual amounts owed. On or about November 10, 2023, Defendant Diablo Energy Storage, LLC filed a cross-complaint against Fluence, seeking a minimum of \$25.0 million of alleged damages and disgorgement of all compensation received by Fluence for the project, in the amount of approximately \$230.0 million. The disgorgement claim was based upon an alleged deficiency in Fluence's contractor license. Fluence denies the allegations in the cross-complaint and intends to vigorously defend them and to enforce our claims against the defendants. We are currently not able to estimate the impact, if any, that this litigation may have on our reputation or financial results, or on market adoption of our products.

### **SEC Investigation**

On February 22, 2024, as we previously disclosed, a short-seller report was published about the Company (the "Short Seller Report"). In response to the Short Seller Report, the Audit Committee of the Company's Board of Directors completed an internal investigation, with the assistance of outside counsel and forensic accountants, into the allegations in the Short Seller Report. The Company has been informed that the SEC is conducting a formal investigation and asking for certain information regarding our financial reporting. The Company intends to fully cooperate with the SEC's investigation. While we are unable to predict the likely outcome of this matter or the potential cost, exposure or duration of the process, based on the information we currently possess, we do not expect the total potential cost to be material to our financial condition.

## **13. Related-Party Transactions**

Related parties are primarily represented by AES and Siemens, their respective subsidiaries, other entities under common control, and other entities in which Siemens and AES have significant influence. As of June 30, 2024, AES Grid Stability holds 51,499,195 shares of Class B-1 common stock of Fluence Energy, Inc. and Siemens beneficially owns an aggregate of 51,499,195 of Class A common stock of Fluence Energy, Inc.

### ***Sales and Procurement Contracts with Related Parties***

The Company signs back-to-back battery-based energy storage product and related service contracts with AES, Siemens, their respective subsidiaries, other entities under common control, and other entities in which Siemens and AES have significant influence (collectively referred to as affiliates) in relation to execution of the affiliates' contracts with external customers and also signs direct contracts with affiliates. The Company also signs consortium agreements to partner with affiliates to deliver battery-based energy storage products and related service contracts to external customers. When performing our obligations pursuant to such contracts, we may, from time to time, enter into related change orders or settlements with our related parties and their affiliates.

The Company also provides consulting services to AES whereby Fluence will advise and in some cases provide support to AES on procurement, logistics, design, safety, and commissioning of certain of their projects. Revenue from consulting services is classified as "Revenue from sale of energy storage products and solutions" in the Company's Disaggregation of revenue table in "Note 3 - Revenue from Contracts with Customers." Revenue from the consulting services is primarily recognized ratably over time based on a project specific period of performance in which we expect the performance obligation to be fulfilled. For the nine months ended June 30, 2024, the Company recognized \$5.3 million in revenue from consulting services with AES.

Revenue from contracts with affiliates is included in "Revenue from related parties" on the Company's condensed consolidated statements of operations and comprehensive loss.

In addition, the Company purchases materials and supplies from its affiliates and records the costs in "Cost of goods and services" on the Company's condensed consolidated statements of operations and comprehensive loss.

### ***Administrative and Service Agreements***

For the nine months ended June 30, 2024, the Company has received a limited scope of consulting services from Siemens Advanta, a subsidiary of Siemens AG, and limited treasury services related to executing trades for derivative contracts from The AES Corporation.

In addition, a secondment arrangement with Siemens Industry is currently in place, pursuant to which Siemens Industry has seconded an employee to Fluence Energy, LLC through December 31, 2024. During the term of the secondment, Fluence Energy, LLC has the authority to supervise the employee in all respects and will reimburse Siemens Industry for the employee's salary, employer required taxes, applicable bonuses, benefits, and services attendant to the employee's relocation.

The costs of consulting services are recorded in "Costs of goods and services" or "General and administrative expenses" depending on the scope or nature of the underlying project. The other administrative service agreements are recorded in "General and administrative expenses" on the Company's condensed consolidated statement of operations and comprehensive loss.

### ***Guarantees***

Fluence paid performance guarantee fees to its affiliates in exchange for guaranteeing Fluence's performance obligations under certain contracts with Fluence's customers, which are based on the affiliates' weighted-average cost for bank guarantees and their per annum cost with a reasonable markup. These guarantees are provided pursuant to the Amended and Restated Credit Support and Reimbursement Agreement, dated June 9, 2021, with AES and Siemens Industry whereby they may, from time to time, agree to furnish credit support to us in the form of direct issuances of credit support to our lenders or other beneficiaries or through their lenders' provision of letters of credit to backstop our own facilities or obligations. The guarantee fees are included in "Costs of goods and services" on Fluence's condensed consolidated statements of operations and comprehensive loss.

Refer to "Note 16 - Supply Chain Financing" for details of the related party guarantees associated with the supply chain financing program.

### Balance Sheet Related Party Transactions

The Company's condensed consolidated balance sheet included the following transactions with related parties for the periods indicated:

<i>In thousands</i>	June 30, 2024		September 30, 2023	
Accounts receivable	\$	17,155	\$	7,945
Unbilled receivables		83,790		50,569
<b>Total receivables from related parties</b>	<b>\$</b>	<b>100,945</b>	<b>\$</b>	<b>58,514</b>
Advances to suppliers		51,732	\$	17,592
Accounts payable		5,383		2,477
Deferred revenue		36,742		110,274
Accruals and provisions		5,771		3,737
Other current liabilities		150		324

Receivables, deferred revenue, accounts payables, accruals and provisions and other current liabilities with related parties are unsecured and settlement of these balances occurs in cash. No provision has been made related to the receivables from related parties.

### Income Statement Related Party Transactions

The following table presents the related party transactions that are included the Company's condensed consolidated statements of operations and comprehensive loss for the periods indicated:

<i>In thousands</i>	Three Months Ended June 30,		Nine Months Ended June 30,					
	2024	2023	2024	2023				
Revenue	\$	155,226	\$	104,735	\$	614,289	\$	502,669
Cost of goods and services		4,110		2,420		9,622		10,996
Research and development expenses		—		585		134		897
Sales and marketing expenses		—		90		42		135
General and administrative expenses		1,622		842		5,328		1,362
Other expense (income), net <sup>(a)</sup>		—		—		(1,508)		—

(a) Represents factoring income from a subsidiary of AES related to receivables sold under the Master Receivable Purchase Agreement ("MRPA"). The corresponding cost paid to the purchaser was \$1.5 million and is recorded in "Sales and marketing expense" and is not considered a related party transaction. Pursuant to the MRPA, Fluence Energy, LLC may sell certain receivables for any of our customers that choose to participate in the program. Refer to "Note 17 - Sale of Receivables under Master Receivables Purchase Agreement" for more details.

## 14. Stock-Based Compensation

### Option Plan

In 2020, the Company established the 2020 Unit Option Plan (the "Option Plan") under which employees, directors, and consultants, were originally granted non-qualified options to purchase Class A-1 units of Fluence Energy, LLC. As of September 30, 2021, the Company determined that achievement of the performance conditions related to awards granted under the Option Plan was not probable and therefore, no expense was recognized for the non-qualified options during the fiscal year ended September 30, 2021. The completion of the IPO on November 1, 2021 resulted in achievement of the performance condition for the majority of the underlying awards granted under the Option Plan. In connection with the IPO, the non-qualified options were converted into non-qualified stock options to purchase shares of Class A common stock of Fluence Energy, Inc. Non-qualified stock options under the Option Plan have a contractual term of ten years from the date of grant and an exercise price of \$2.45. The Company estimated the fair value of the awards using the Black-Scholes option-pricing model. The outstanding awards will continue to be governed by the existing terms under the Option Plan. The Option Plan is accounted for as an equity plan. The Company will not make any further awards under the Option Plan.

As of June 30, 2024, 3,492,867 stock options under the Option Plan remain outstanding with no unrecognized stock compensation expense.

***Phantom Units***

Employees, directors, and consultants were granted compensation under the Phantom Equity Incentive Plan (the “Phantom Incentive Plan”). As of September 30, 2021, the Company determined that achievement of the performance conditions related to awards granted under the Phantom Incentive Plan was not probable and therefore, no expense was recognized for the phantom units during the fiscal year ended September 30, 2021. The completion of the IPO on November 1, 2021 resulted in achievement of the performance condition for the majority of the underlying awards granted under the Phantom Incentive Plan. At the completion of the IPO, a portion of the awards to the Company’s officers were modified, extending out the vesting period. All outstanding awards relate to those held by the Company’s officers as a result of the modification. The Company will not make any further awards under the Phantom Incentive Plan.

As of June 30, 2024, there are no phantom unit awards previously issued outstanding and there is no unrecognized stock compensation expense.

***2021 Stock-Based Compensation Plan***

During fiscal year 2021, the Company established the 2021 Incentive Award Plan (the “2021 Incentive Plan”) which reserved 9,500,000 shares of Class A common stock of Fluence Energy, Inc. for issuance to management, other employees, consultants, and board members of the Company. The 2021 Incentive Plan governs both equity-based and cash-based awards, including incentive stock options, non-qualified stock options, PSUs, and RSUs. Employee stock-based awards currently issued pursuant to the 2021 Incentive Plan that are expected to be settled by issuing shares of Class A common stock are recorded as equity awards. The 2021 Incentive Plan is accounted for as an equity plan. The Company accounts for forfeitures as they occur.

***Restricted Stock Units***

RSUs granted under the 2021 Incentive Plan vest ratably at one-third annually on the anniversary of the grant date over a three-year period pursuant to the terms of their applicable award agreements. The Company generally expenses the grant date fair value of the awards on a straight-line basis over each of the three separately vesting tranches within a given grant. There is no contractual term on the RSUs granted under the 2021 Incentive Plan. The Company estimated the fair value of the awards using the market value of our Class A common stock. The market value of our Class A common stock is calculated using the closing price of our Class A common stock on the date of grant. The following table summarizes activity under the 2021 Incentive Plan for the nine months ended June 30, 2024:

	<b>Number of RSUs</b>
Outstanding as of October 1, 2023	1,843,570
Granted	937,783
Vested	(582,177)
Forfeited	(311,389)
Outstanding as of June 30, 2024	1,887,787

As of June 30, 2024, 1,887,787 RSUs previously issued remained outstanding with unrecognized stock compensation expense of \$18.7 million.

***Non-Qualified Stock Options***

During the nine months ended June 30, 2024, the Company granted 165,521 non-qualified stock options to purchase Class A common stock under the 2021 Incentive Plan with a weighted average exercise price of \$22.31. Non-qualified stock options under the 2021 Incentive Plan have a contractual term of ten years from the date of grant. The Company estimated the fair value of the awards using the Black-Scholes option-pricing model. The non-qualified stock options granted under the 2021 Incentive Plan vest ratably at one-third annually on the anniversary of the grant date over a three-year period pursuant to the terms of their applicable award agreements. The Company generally expenses the grant date fair value of the awards on a straight-line basis over each of the three separately vesting tranches within a given grant.

As of June 30, 2024, 165,521 non-qualified stock options previously issued pursuant to the 2021 Incentive Plan remained outstanding with unrecognized stock compensation expense of \$1.5 million.

***Performance Share Units***

During the nine months ended June 30, 2024, the Company granted 386,373 PSUs redeemable for Class A common stock under the 2021 Incentive Plan. The PSUs are considered fully vested when both the performance and service based requirements are met in accordance with the vesting requirements and will be settled in shares no more than 60 days after September 30, 2026. The performance criteria for all current PSUs is based on target revenue and adjusted EBITDA for the performance period set by the Compensation and Human Resources Committee of the Company's Board of Directors. The awards can be paid out in a range of 50% to 200%, with 0% paid out for below-threshold performance, based on the achievement of the performance criteria and upon continued service through the performance period. The Company estimated the fair value of the awards using the market value of our Class A common stock. The market value is calculated using the closing price of our Class A common stock on the date of grant. The Company monitors the achievement of the performance criteria and expenses ratably the grant date fair value of the awards probable to vest over the requisite service period. If there are changes to the amount of probable awards to vest based on achievement of performance criteria, the related stock-based compensation expense may be significantly increased or reduced in the period that our estimate changes.

As of June 30, 2024, 386,373 PSUs previously issued remained outstanding with estimated unrecognized stock compensation expense of \$6.1 million.

#### **Other**

In connection with the acquisition of Nispera AG in 2022, Fluence issued 531,202 shares of restricted stock to Nispera's management team. The estimated post combination expense to the Company as a result of the business combination was approximately \$6.9 million which will be recognized on a straight-line basis over the remaining service period that was stipulated in each holder's original restricted stock agreement.

#### **Stock-based compensation expense**

Stock-based compensation expense was recorded as follows:

<i>In thousands</i> <sup>(a)</sup>	<b>Three Months Ended June 30,</b>		<b>Nine Months Ended June 30,</b>	
	<b>2024</b>	<b>2023</b>	<b>2024</b>	<b>2023</b>
Cost of goods and services	\$ 824	\$ 1,208	\$ 3,203	\$ 3,364
Research and development	509	305	1,901	4,261
Sales and marketing	412	601	1,084	1,573
General and administrative	4,395	3,563	12,217	12,242
<b>Total</b>	<b>\$ 6,140</b>	<b>\$ 5,677</b>	<b>\$ 18,405</b>	<b>\$ 21,440</b>

*(a) Includes incentive awards that will be settled in shares and incentive awards that will be settled in cash.*

#### **15. Investment in Joint Venture**

On August 5, 2022, Fluence Energy Singapore PTE. LTD., a subsidiary of Fluence Energy, LLC, and ReNew Power entered into an agreement to form a partnership in India for an initial investment of \$5.0 million, plus a line of credit of \$15.0 million each for a 50% interest in the partnership. The Company funded the investment and the joint venture commenced operations in the first quarter of fiscal year 2023. The investment is recorded in "Other non-current assets" on our condensed consolidated balance sheet. The investment is accounted for under the equity method with results being reported by Fluence one quarter in arrears. The joint venture is not considered a variable interest entity and we do not consolidate the joint venture as we do not hold a controlling financial interest. The Company recorded an insignificant equity method loss on the investment for the nine months ended June 30, 2024.

#### **16. Supply Chain Financing**

The Company has provided certain of our suppliers with access to a supply chain financing program through a third-party financing institution (“SCF Bank”). This program allows the Company to seek extended payment terms up to 120 days with our suppliers and allows our suppliers to monetize their receivables prior to the payment due date, subject to a discount. The Company does not pledge any assets as collateral under the program. Once a supplier elects to participate in the program and reaches an agreement with SCF Bank, the supplier chooses which individual invoices to sell to the SCF Bank. The Company then pays SCF Bank on the invoice due date. The Company has no economic interest in a supplier’s decision to sell an underlying receivable to SCF Bank. The agreements between our suppliers and SCF Bank are solely at their discretion and are negotiated directly between those two parties. Our suppliers’ ability to continue using such agreements is primarily dependent upon the strength of our financial condition and guarantees issued by AES and Siemens. As of June 30, 2024, AES and Siemens Corporation, a subsidiary of Siemens, issued guarantees of \$50 million each, for a total of \$100 million, to SCF Bank on our behalf. The Company’s outstanding obligations confirmed as valid under its supplier financing program for periods ended June 30, 2024 and September 30, 2023, are as follows:

<i>In thousands</i>	<b>June 30, 2024</b>		<b>September 30, 2023</b>	
Obligations outstanding at the beginning of the period	\$	30,001	\$	24,728
Invoices issued during the period		147,319		35,115
Invoices paid during the period		(136,034)		(29,842)
Obligations outstanding at the end of the period	\$	41,286	\$	30,001

As of June 30, 2024, four suppliers were actively participating in the supply chain financing program. All outstanding payments owed under the program are recorded within “Accounts payable” on the condensed consolidated balance sheets.

### **17. Sale of Receivables under Master Receivables Purchase Agreement**

On February 27, 2024, Fluence Energy, LLC entered into a Master Receivables Purchase Agreement (“MRPA”), by and among Fluence Energy, LLC and any other seller from time to time party thereto, as sellers and servicers, and Credit Agricole Corporate and Investment Bank (“CACIB”), as purchaser.

Pursuant to the MRPA, Fluence Energy, LLC may sell certain receivables (the “Purchased Receivables”) to CACIB from time to time, and CACIB may agree to purchase the Purchased Receivables in each case, on an uncommitted basis. The MRPA provides that the outstanding amount of all Purchased Receivables under the MRPA will not exceed \$75.0 million, with sublimits for each account debtor and for certain kinds of receivables. The MRPA may be terminated by either party at any time by 30 days’ prior written notice. Fluence Energy, LLC has granted CACIB a security interest in the Purchased Receivables, and proceeds thereof, as more fully described in the MRPA, in order to perfect CACIB’s ownership interest in the Purchased Receivables and secure the payment and performance of all obligations of Fluence Energy, LLC to CACIB under the MRPA. The MRPA contains other customary representations and warranties and covenants.

When receivables are sold under the MRPA, they are sold without recourse, and our continuing involvement is limited to their servicing, for which the Company receives a fee commensurate with the service provided and therefore no servicing asset or liability related to these receivables was recognized for any period presented. The fair value of the sold receivables approximated their book value due to their short-term nature.

For the nine months ended June 30, 2024, we sold receivables to CACIB under the MRPA for net proceeds of \$71.5 million. At the date of the true sale, the receivables were de-recognized in their entirety from the condensed consolidated balance sheet. We charged a fee to our customer, primarily for providing extended payment terms, in relation to the sale of receivables. We recorded factoring income of \$1.5 million and related factoring discount of \$1.5 million during the period. The factoring income is recorded in “Other expense (income), net” and the factoring discount is recorded in “Sales and marketing expense” on the condensed consolidated statements of operations and comprehensive loss. Proceeds from the sold receivables are reflected in operating cash flows on the condensed consolidated statements of cash flows.

### **18. Derivatives and Hedging**

Certain of the Company’s foreign operations expose the Company to fluctuations of foreign exchange rates. These fluctuations may impact the value of the Company’s cash receipts and payments in terms of the functional currency of the transacting party. The Company’s primary exposure results from the foreign currency impact of intercompany sales of inventory to regional entities by the Company’s centralized procurement entity. These intercompany sales are denominated

in the functional currency of the regional entities, primarily the Euro, the British Pound and the Australian dollar, while the functional currency of the centralized procurement entity is the U.S. dollar. This introduces foreign exchange risk on the revenues recorded for such intercompany sales. The Company enters into foreign currency forward contracts to manage its exposure to fluctuations in foreign exchange rates. These contracts are entered into with large, reputable financial institutions that are monitored for counterparty credit risks.

For the Company's foreign currency forward contracts that are designated and qualify as cash flow hedges, the gains or losses on the effective portion of such hedges are recorded in accumulated other comprehensive income and subsequently reclassified in the period during which the hedged transaction affects earnings within revenue in the condensed consolidated statements of operations and comprehensive loss (i.e., when control of the inventory is passed to third-party customers and revenue is recognized). The change in fair value of the components excluded from the assessment of effectiveness, including changes in the spot-forward differential and counterparty non-performance risk, will also be recognized within revenue in the condensed consolidated statements of operations and comprehensive loss.

The Company currently also has foreign currency forward contracts that are not designated as hedges and the changes in fair value of such derivatives are recognized in current period earnings. As of June 30, 2024, the impact on our condensed consolidated financial statements was not significant.

### Cash Flow Hedges

The fair value of the Company's cash flow hedges as well as their classification on the condensed consolidated balance sheets as of June 30, 2024 and September 30, 2023 are as follows:

<i>In thousands</i>	June 30, 2024			September 30, 2023		
	Notional Value	Other Current Assets	Other Current Liabilities	Notional Value	Other Current Assets	Other Current Liabilities
Foreign currency forward contracts	\$ 242,933	\$ 531	\$ 3,033	\$ —	\$ —	\$ —

The gains or losses resulting from changes in fair value of the Company's cash flow hedges recognized in accumulated other comprehensive (loss) income for the three and nine months ended June 30, 2024 and 2023 are as follows:

<i>In thousands</i>	Three Months Ended June 30		Nine Months Ended June 30	
	2024	2023	2024	2023
Foreign currency forward contracts, net of tax	\$ (3,243)	\$ —	\$ (1,883)	\$ —

The amounts recognized within "Revenue" in the condensed consolidated statements of operations and comprehensive loss with respect to the Company's cash flow hedges for the three and nine months ended June 30, 2024 and 2023 are as follows:

<i>In thousands</i>	Three Months Ended June 30,		Nine Months Ended June 30,	
	2024	2023	2024	2023
Foreign currency forward contracts	\$ 72	\$ —	\$ 158	\$ —

The following table details the changes in the cumulative impact of the loss on derivatives designated for hedge accounting for the nine months ended June 30, 2024:

<i>In thousands</i>	June 30, 2024
Beginning balance	\$ —
Amount recognized in accumulated other comprehensive (loss) income	(1,883)
Amount reclassified from accumulated other comprehensive (loss) income into earnings	—
Ending balance	\$ (1,883)

## **19. Subsequent Events**

### ***2024 Revolver***

On August 6, 2024, we entered into Amendment No. 3 to ABL Credit Agreement, providing for the 2024 Revolver. Fluence Energy, Inc. entered into Amendment No. 3 in order to (i) convert the existing ABL Facility to a senior secured cash flow revolving credit facility in an initial aggregate principal amount of up to \$500.0 million, (ii) replace Barclays as administrative agent under the 2024 Credit Agreement with Citibank, N.A., and (iii) make certain other modifications to the 2024 Credit Agreement as set forth therein. The maturity date and the date of termination of lending commitments under the 2024 Credit Agreement both remain unchanged at November 22, 2027. There are no borrowings under the 2024 Credit Agreement as of August 7, 2024. See "Note 10. Debt" for additional information.



## Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

### *Overview*

The following analysis provides information that management believes is relevant to an assessment and understanding of the consolidated financial condition and results of operations of Fluence and should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes thereto included in this Quarterly Report on Form 10-Q (this “Report”) and in conjunction with our audited consolidated financial statements and related notes included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2023, filed with the Securities and Exchange Commission (the “SEC”) on November 29, 2023 (the “2023 Annual Report”). In addition to historical data, this discussion contains forward-looking statements about our business, results of operations, cash flows, financial condition and prospects based on current expectations that involve risks, uncertainties and assumptions. Our actual results could differ materially from such forward-looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those discussed in Part I, Item 1A. “Risk Factors” of the 2023 Annual Report and Part II, Item 1A. “Risk Factors” and the section titled “Cautionary Statement Regarding Forward-Looking Information” included elsewhere in this Report. Additionally, our historical results are not necessarily indicative of the results that may be expected for any period in the future. We use words such as “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “potential,” “seek,” “should,” “will,” “would,” and similar expressions to identify forward-looking statements.

Fluence Energy, Inc. is a holding company whose sole material assets are the limited liability interests in Fluence Energy, LLC (the “LLC Interests”). All of our business is conducted through Fluence Energy, LLC, together with its subsidiaries, and the financial results of Fluence Energy, LLC are consolidated in our financial statements. Except where the context clearly indicates otherwise, “Fluence,” “we,” “us,” “our” or the “Company” refers to Fluence Energy, Inc. and its wholly owned subsidiaries.

Our fiscal year begins on October 1 and ends on September 30. References to “fiscal year 2023” and “fiscal year 2024” refer to the twelve months ended September 30, 2023 and ending September 30, 2024, respectively.

### *Segments*

The Company’s chief operating decision maker (“CODM”) is its Chief Executive Officer. The Company’s CODM reviews financial information on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance. As such, the Company has determined that it operates in one operating segment, which corresponds to one reportable segment.

### *Siemens Industry Redemption*

On June 30, 2022, Siemens Industry, Inc. exercised its redemption right pursuant to the terms of the Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC (the “LLC Agreement”) with respect to its entire holding of 58,586,695 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of Fluence Energy, Inc. (the “Siemens Redemption”).

The Company elected to settle the Siemens Redemption through the issuance of 58,586,695 shares of the Company’s Class A common stock (the “Shares”). The Siemens Redemption settled on July 7, 2022. Siemens Industry, Inc. effected an internal transfer of its interest in the Shares to Siemens AG at the time of Siemens Redemption and as of June 30, 2022, Siemens AG became the beneficial owner of 58,586,695 shares of Class A common stock. The Siemens Redemption increased the beneficial ownership interest of the Company in Fluence Energy, LLC to 66.08% as of June 30, 2022. The impact of the change in ownership interest did not result in a change in control. The Siemens Redemption has been accounted for as an equity transaction and the carrying amount of non-controlling interest has been adjusted.

### *Secondary Offering and AES Redemption*

On December 8, 2023, AES Grid Stability, Siemens Pension Pension-Trust e.V. (“Siemens Pension Trust”), Qatar Holding LLC (“QHL” and together with AES Grid Stability and Siemens Pension Trust in such context, the “Selling Stockholders”) sold an aggregate of 18,000,000 shares of Class A common stock in an underwritten public offering (the “Offering”). Fluence did not sell any of its shares in the Offering and the Company did not receive any of the proceeds from the Offering. Pursuant to the terms of the Company’s Registration Rights Agreement, dated as of November 1, 2021, by and among the Company and the Original Equity Owners (as defined therein), the Company paid \$0.7 million in certain expenses of the Selling Stockholders related to the Offering, while the Selling Stockholders paid all applicable underwriting discounts and commissions.

In conjunction with the Offering, AES Grid Stability exercised its redemption right pursuant to the terms of the LLC Agreement with respect to 7,087,500 LLC Interests held by AES Grid Stability, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of Fluence Energy, Inc. (the “AES Redemption”). The Company elected to settle the AES Redemption through the issuance of 7,087,500 shares of the Company’s Class A common stock. The AES Redemption settled on December 8, 2023, the closing date of the Offering. All of the 7,087,500 shares issued to AES Grid Stability in connection with the AES Redemption were sold in the Offering. The AES Redemption increased the beneficial ownership interest of the Company in Fluence Energy, LLC to 71.12% as of December 8, 2023. The impact of the change in ownership interest did not result in a change in control. The AES Redemption has been accounted for as an equity transaction and the carrying amount of non-controlling interest has been adjusted.

#### ***Negotiations with our Largest Battery Module Vendor***

In December 2021, we entered negotiations with our largest battery module vendor to amend our battery supply agreement. As part of the discussions, the vendor sought to renegotiate the price we were to pay for battery modules purchased in calendar year 2022, as well as those expected to be purchased during the remainder of calendar year 2022 and calendar year 2023. As part of these negotiations, we also discussed settlement of contractual claims by Fluence to the vendor. These negotiations continued throughout calendar year 2022. On December 15, 2022, we finalized an agreement with the vendor, amending the supply agreement and resolving our claims. The approximately \$19.5 million settlement for our claims was recognized as a reduction of “costs of goods and services” for the nine months ended June 30, 2023.

#### ***2021 Overheating Event at Customer Facility***

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider and designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. The customer’s stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer’s stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the incident. At this time, Fluence cannot accept the customer’s stated findings and has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact, that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market’s adoption of our products and solutions.

#### ***2023 Project-Related Litigation***

In October 2023, Fluence filed a complaint in the Superior Court of California, Contra Costa County, against Diablo Energy Storage, LLC, Empire Business Park, LLC, the Bank of New York Mellon and others, seeking approximately \$37.0 million in damages arising from the supply and construction of an energy storage facility for the defendants, including for the defendants’ nonpayment of contractual amounts owed. On or about November 10, 2023, Defendant Diablo Energy Storage, LLC filed a cross-complaint against Fluence, seeking a minimum of \$25.0 million of alleged damages and disgorgement of all compensation received by Fluence for the project, in the amount of approximately \$230.0 million. The disgorgement claim was based upon an alleged deficiency in Fluence’s contractor license. Fluence denies the allegations in the cross-complaint and intends to vigorously defend against them and to enforce our claims against the defendants. We are currently not able to estimate the impact, if any, that this litigation may have on our reputation or financial results, or on market adoption of our products.

#### **Key Factors and Trends Affecting our Performance**

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and those in Part I, Item 1A. “Risk Factors” in our 2023 Annual Report and Part II, Item 1A. “Risk Factors” in this Report.

### ***Lithium-ion Battery Cost***

Our revenue growth is directly tied to the continued adoption of energy storage products and solutions by our customers. The cost of lithium-ion energy storage hardware has declined significantly in the last decade and has resulted in a large addressable market today. The market for energy storage continues to rapidly evolve and while we believe costs will continue to decline over the long term, there is no guarantee that they will decline or decline at the rates we expect. If costs do not continue to decline long term, this could adversely affect our ability to increase our revenue or grow our business. For example, we saw price increases in 2022. During calendar year 2023, prices returned to their historical trend of declining year-over-year and we continued to see declines through the first nine months of fiscal year 2024.

### ***Supply Chain***

Although we do not rely on any single supplier for the majority of our key components, including our batteries and inverters, we do obtain certain key components from a limited number of suppliers. If one or more suppliers were unable to satisfy our requirements for particular key components, we could experience a disruption to our operations and delays in completing our projects as alternative suppliers are identified and qualified, and new supply arrangements are entered into. Moreover, if one of our suppliers is unable to satisfy our requirements and we turn to another supplier, such replacement supply arrangements may be on less advantageous terms for us and result in higher costs to the Company. In addition, a number of our suppliers are situated outside of the United States, which exposes us to changes in international trade regulations, taxes, tariffs, and/or quotas. As of the date of this Report, we believe that we have adequate access to our key components to meet the needs of our operations. See Part I, Item IA. “Risk Factors” of the 2023 Annual Report for further discussion on supply chain risks for our business.

### ***Increasing Deployment of Renewable Energy***

Deployment of renewable energy resources has accelerated over the last decade, and solar and wind have become a low-cost energy source. BloombergNEF estimates that renewable energy is expected to represent 70% of all new global capacity installations through 2030. Energy storage is critical to reducing the intermittency and volatility of renewable energy generation. However, there is no guarantee that the deployment of renewable energy will occur at the rate estimated by BloombergNEF or that such renewable energy will rely on lithium-ion battery technology for energy storage. Inflationary pressures, supply chain disruptions, geo-political conflicts, government regulations and incentives, and other factors could result in fluctuations in demand for and deployment of renewable energy resources, adversely affecting our revenue and ability to generate profits in the future. See Part I, Item IA. “Risk Factors” of the 2023 Annual Report for further discussion on these risks.

### ***Competition***

The energy storage sector is highly competitive and continuously evolving. Our array of energy storage products, solutions, services, and digital applications are designed to meet the unique demands of the clean energy industry. The intricacy involved in the design and integration of these offerings underscores their technical complexity. Nevertheless, new companies enter the market and offer comparable products and services annually. We remain committed to pioneering novel use cases and exploring untapped market segments, many of which present lower levels of competition. We believe that competitive factors in the energy storage market include, but are not limited to:

- safety, reliability and quality;
- ability to obtain financing;
- our ability to issue performance guarantees, credit support, and product warranties;
- density and duration of our products and solutions;
- shortened delivery, installation, and commissioning time;
- stability in supply chain;
- performance of energy storage products and solutions, services and digital applications;
- historical customer track record (as the market and industry continues to grow);
- experience in the battery energy storage system market (both of the Company and key members of leadership);
- technological expertise and innovation;

- comprehensive solutions and offerings from a single provider;
- brand recognition;
- certain government initiatives, legislation, regulations, and policies;
- ease of integration; and
- seamless hardware and software-enabled service offerings.

The competitive landscape for battery energy storage varies across different geographies, countries, grid services, and customer segments. As the global demand for energy storage products and solutions continues to rise, so does the influx of new and potential entrants into the energy storage sector. However, we believe we distinguish ourselves from competitors by our adeptness in identifying and addressing customer needs with tailor-made products, services, and use cases. We believe we maintain a competitive edge through our performance and value creation, evidenced by attributes such as low total cost of ownership, long-term reliability, diverse service options, and streamlined sales and delivery processes.

### ***Seasonality***

Through fiscal year 2021, we experienced variability in the timing of our order intake, with higher volumes of orders coming the second half of our fiscal year. However, in fiscal years 2022 and 2023, order intake was relatively consistent across each quarter. In fiscal year 2024, we currently expect to see a higher amount of our order intake in the second half of the fiscal year. The variability in our order intake in the most recent quarters has been primarily driven due to the ambiguity regarding the timing of the proposed domestic content guidelines being released by the US Department of the Treasury, which occurred in May of 2024. As a result, we continue to expect our order intake to be higher in the second half of the fiscal year 2024. The timing of our order intake can be difficult to predict, and could result in significant variation among fiscal quarters.

### ***Government Regulation and Compliance***

Governments across the globe have announced and implemented various policies, regulation and legislation to support the transition from fossil fuels to low-carbon forms of energy and to support and accelerate adoption of clean and/or reliable distributed generation technologies. Although we generally are not regulated as a utility, federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. The operation of our business and our customers' use of our products and services are impacted by these various government actions. For example, in August 2022, the United States passed the Inflation Reduction Act of 2022 (the "IRA"), which consists of several renewable energy and energy storage related provisions, including an investment tax credit for standalone energy storage and incentives for grid modernization. These include incentives for domestic battery cell manufacturing, battery module manufacturing and its components, and various upstream applications as well as incentives for energy project owners utilizing battery energy storage systems that include certain U.S. manufactured products and/or product components.

We believe we are well positioned to benefit from incentives contained in the IRA and that its enactment is favorable to our business and future operations with our forthcoming battery module manufacturing facility in Utah and our supply agreement for U.S. manufactured battery cells. However, we have not yet seen the full impact IRA-related incentives may have on our business, operations and financial performance and cannot guarantee we will realize all, or any, of the anticipated benefits of IRA-related incentives. We are continuing to evaluate the overall impact and applicability of the IRA to our business and expected results of operations going forward.

### **Key Components of Our Results of Operations**

The following discussion describes certain line items in our condensed consolidated statements of operations and comprehensive loss.

### ***Total Revenue***

We generate revenue from energy storage products and solutions, service agreements with customers to provide operational services related to battery-based energy storage products, and from digital application contracts. Fluence enters into contracts with utility companies, developers, and commercial and industrial customers. We derive the majority of our revenue from selling energy storage products and solutions. When we sell a battery-based energy storage product and solution, we enter into a contract with our customers covering the price, specifications, delivery dates and warranty for the products being purchased, among other things. The manner in which a solution is provided to a customer may vary; not all solutions may require Fluence to procure batteries on behalf of a customer. A solution may only require logistics, design, installation and/or commission services depending on customer requirements. We also generate revenue by providing consulting services to AES whereby Fluence has agreed to advise, and in some cases provide support to AES, on procurement, logistics, design, safety, and commissioning of certain of their projects.

Our revenue is affected by changes in the price, volume, and mix of products and services purchased by our customers, which is driven by the demand for our products, geographic mix of our customers, strength of competitors' product offerings, and availability of government incentives to the end-users of our products. The Company recognizes revenue over time for our energy storage products and solutions as we transfer control of our product to the customer. This transfer of control to the customer is supported by clauses in the contracts that provide enforceable rights to payment of the transaction price associated with work performed to date for products that do not have an alternative use to the Company and/or as the project is built and control transfers depending on the contract terms.

Our revenue growth is dependent on continued growth in the amount of battery-based energy storage products and solutions projects constructed each year and our ability to increase our share of demand in the geographic regions where we currently compete and plan to compete in the future as well as our ability to continue to develop and commercialize new and innovative products that address the changing technology and performance requirements of our customers.

### ***Cost of Goods and Services***

Cost of goods and services consists primarily of product costs, including purchased materials and supplies, as well as costs related to shipping, customer support, product warranty, and personnel. Personnel costs in cost of goods and services includes both direct labor costs as well as costs attributable to any individuals whose activities relate to the transformation of raw materials or component parts into finished goods or the transportation of materials to the customer.

Our product costs are affected by the underlying cost of raw materials, including steel and aluminum supply costs, including inverters, casings, fuses, and cable; technological innovation; economies of scale resulting in lower supply costs; and improvements in production processes and automation. We do not currently hedge against changes in the price of raw materials as we do not purchase raw materials; instead, we buy the components of energy storage products from our suppliers and we rely on our suppliers to hedge the underlying raw materials. We generally expect the ratio of cost of goods and services to revenue to decrease as sales volumes increase due to economies of scale, however, some of these costs, primarily personnel-related costs, are not directly affected by sales volume.

### ***Gross Profit and Gross Profit Margin***

Gross profit and gross profit margin may vary from quarter to quarter and is primarily affected by our sales volume, product prices, product costs, product mix, customer mix, geographical mix, shipping costs, and warranty costs.

### ***Operating Expenses***

Operating expenses consist of research and development, sales and marketing and general and administrative expenses as well as depreciation and amortization. Personnel-related expenses are the most significant component of our operating expenses and include salaries, stock-based compensation, and employee benefits. We expect to invest in additional resources to support our growth which will increase our operating expenses in the near future.

### ***Research and Development Expenses***

Research and development expenses consist of personnel-related costs across our global research and development ("R&D") centers for engineers engaged in the design and development and testing of our integrated products and technologies. Engineering competencies include data science, machine learning, software development, network and cyber security, battery systems engineering, industrial controls, UI / UX, mechanical design, power systems engineering, certification, and more. R&D expenses also support three product testing labs located across the globe, including a system-level testing facility in Pennsylvania that is used for quality assurance and the rapid iteration, testing, and launching of new Fluence energy storage technology and products. We have established an additional Hardware in the Loop testing facility,

which is co-located with our technical team in Bangalore, India. We expect R&D expenses to generally increase in future periods to support our growth and as we continue to invest in R&D activities that are necessary to achieve our technology and product roadmap goals. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments.

### ***Sales and Marketing Expenses***

Sales and marketing expenses consist primarily of personnel-related expenses, including salaries, stock-based compensation, employee benefits and factoring discounts on receivables sold. We have and intend to continue to expand our sales presence and marketing efforts to additional countries in the future.

### ***General and Administrative Expenses***

General and administrative expenses consist primarily of personnel-related expenses, including salaries, stock-based compensation, and employee benefits, for our executives, finance, human resources, information technology, engineering and legal organizations that do not relate directly to the sales or research and development functions, as well as travel expenses, facilities costs, bad debt expense, and fees for professional services. Professional services consist of audit, legal, tax, insurance, information technology, and other costs.

### ***Depreciation and Amortization***

Depreciation consists of costs associated with property, plant, and equipment (“PP&E”) and amortization of intangibles consisting of patents, licenses, and developed technology over their expected period of use. We expect that as we increase both our revenues and the number of our general and administrative personnel, we will invest in additional PP&E to support our growth resulting in additional depreciation and amortization.

### ***Interest Income, net***

Interest income, net consists of interest income net of interest expense. Interest income consists of interest earned on cash deposits and interest on customer notes receivables. Interest expense consists primarily of interest on borrowings against notes receivable pledged as collateral, unused line fees related to the revolving credit facility (the “Revolver”) pursuant to a credit agreement, dated November 1, 2021, by and among Fluence Energy, LLC, as the borrower, Fluence Energy, Inc., as a parent guarantor, the subsidiary guarantors party thereto, the lenders party thereto and JP Morgan Chase Bank, N.A., as administrative agent and collateral agent (the “Revolving Credit Agreement”), which was terminated upon repayment in full of all obligations under the Revolver, effective November 22, 2023, and amortization of debt issuance costs. Interest income, net also consists of unused line and commitment fees related to the ABL Credit Agreement (as defined below).

### ***Other Expense (Income), Net***

Other expense (income), net primarily consists of expense or income from foreign currency exchange gains and losses on monetary assets and liabilities and factoring income from sale of receivables.

### ***Income Tax Expense (Benefit)***

We are subject to U.S. federal and state income taxes with respect to our allocable share of any taxable income or loss of Fluence Energy, LLC, and are taxed at the prevailing corporate tax rates. We are also subject to foreign income taxes with respect to our foreign subsidiaries and our expectations are valuation allowances will be recorded in certain tax jurisdictions. In addition to tax expenses, we also will incur expenses related to our operations, as well as payments under the Tax Receivable Agreement, which we expect could be significant over time. We will receive a portion of any distributions made by Fluence Energy, LLC. Any cash received from such distributions from our subsidiaries will be first used by us to satisfy any tax liability and then to make payments required under the Tax Receivable Agreement.

### ***Net Income (Loss)***

Net income (loss) may vary from quarter to quarter and is primarily affected by our gross profit and operating expenses as defined above.

### **Key Operating Metrics**

The following tables present our key operating metrics as of June 30, 2024 and September 30, 2023. The tables below present the metrics in either Gigawatts (GW) or Gigawatt hours (GWh). Our key operating metrics focus on project

milestones to measure our performance and designate each project as either “deployed”, “assets under management”, “contracted backlog”, or “pipeline”.

	June 30, 2024	September 30, 2023	Change	Change %
<b>Energy Storage Products and Solutions</b>				
Deployed (GW)	4.5	3.0	1.5	50%
Deployed (GWh)	11.6	7.2	4.4	61%
Contracted Backlog (GW)	6.6	4.6	2.0	43%
Pipeline (GW)	24.3	12.2	12.1	99%
Pipeline (GWh)	77.5	34.2	43.3	127%

<i>(amounts in GW)</i>	June 30, 2024	September 30, 2023	Change	Change %
<b>Service Contracts</b>				
Assets under Management	3.7	2.8	0.9	32%
Contracted Backlog	3.6	2.9	0.7	24%
Pipeline	22.8	13.7	9.1	66%

<i>(amounts in GW)</i>	June 30, 2024	September 30, 2023	Change	Change %
<b>Digital Contracts</b>				
Assets under Management	18.3	15.5	2.8	18%
Contracted Backlog	6.7	6.8	(0.1)	(1%)
Pipeline	30.1	24.4	5.7	23%

The following table presents our order intake for the three and nine months ended June 30, 2024 and 2023. The table is presented in Gigawatts (GW):

<i>(amounts in GW)</i>	Three Months Ended June 30,				Nine Months Ended June 30,			
	2024	2023	Change	Change %	2024	2023	Change	Change %
<b>Energy Storage Products and Solutions</b>								
Contracted	1.6	0.4	1.2	300%	3.7	1.6	2.1	131%
<b>Service Contracts</b>								
Contracted	0.4	0.1	0.3	300%	2.0	1.2	0.8	67%
<b>Digital Contracts</b>								
Contracted	0.6	1.0	(0.4)	(40)%	4.0	4.4	(0.4)	(9)%

### ***Deployed***

Deployed represents cumulative energy storage products and solutions that have achieved substantial completion and are not decommissioned. Deployed is monitored by management to measure our performance towards achieving project milestones.

### ***Assets Under Management***

Assets under management for service contracts represents our long-term service contracts with customers associated with our completed energy storage system products and solutions. We start providing maintenance, monitoring, or other operational services after the storage product projects are completed. In some cases, services may be commenced for energy storage solutions prior to achievement of substantial completion. This is not limited to energy storage solutions delivered by Fluence. Assets under management for digital software represents contracts signed and active (post go live). Assets under management serves as an indicator of expected revenue from our customers and assists management in forecasting our expected financial performance.

### ***Contracted Backlog***

For our energy storage products and solutions contracts, contracted backlog includes signed customer orders or contracts under execution prior to when substantial completion is achieved. For service contracts, contracted backlog includes signed service agreements associated with our storage product projects that have not been completed and the associated service has not started. For digital applications contracts, contracted backlog includes signed agreements where the associated subscription has not started.

We cannot guarantee that our contracted backlog will result in actual revenue in the originally anticipated period or at all. Contracted backlog may not generate margins equal to our historical operating results. We have only recently begun to track our contracted backlog on a consistent basis as performance measures, and as a result, we do not have significant experience in determining the level of realization that we will achieve on these contracts. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control. If our contracted backlog fails to result in revenue as anticipated or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity.

### ***Contracted/Order Intake***

Contracted, which we use interchangeably with “order intake”, represents new energy storage product and solutions contracts, new service contracts and new digital contracts signed during each period presented. We define “Contracted” as a firm and binding purchase order, letter of award, change order or other signed contract (in each case an “Order”) from the customer that is received and accepted by Fluence. Our order intake is intended to convey the dollar amount and gigawatts (operating measure) contracted in the period presented. We believe that order intake provides useful information to investors and management because the order intake provides visibility into future revenue and enables evaluation of the effectiveness of the Company’s sales activity and the attractiveness of its offerings in the market.

### ***Pipeline***

Pipeline represents our uncontracted, potential revenue from energy storage products and solutions, service, and digital software contracts, which have a reasonable likelihood of contract execution within 24 months. Pipeline is an internal management metric that we construct from market information reported by our global sales force. Pipeline is monitored by management to understand the anticipated growth of our Company and our estimated future revenue related to customer contracts for our battery-based energy storage products and solutions, services and digital software.

We cannot guarantee that our pipeline will result in actual revenue in the originally anticipated period or at all. Pipeline may not generate margins equal to our historical operating results. We have only recently begun to track our pipeline on a consistent basis as performance measures, and as a result, we do not have significant experience in determining the level of realization that we will achieve on these contracts. Our customers may experience project delays or cancel orders as a result of external market factors and economic or other factors beyond our control. If our pipeline fails to result in revenue as anticipated or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity.

### **Non-GAAP Financial Measures**

This section contains references to certain non-GAAP financial measures, including Adjusted EBITDA, Adjusted Gross Profit, Adjusted Gross Profit Margin, and Free Cash Flow.

Adjusted EBITDA is calculated from the consolidated statements of operations using net income (loss) adjusted for (i) interest income, net, (ii) income taxes, (iii) depreciation and amortization, (iv) stock-based compensation, and (v) other non-recurring income or expenses. Adjusted EBITDA may in the future also be adjusted for amounts impacting net income related to the Tax Receivable Agreement liability.

Adjusted Gross Profit is calculated using gross profit, adjusted to exclude (i) stock-based compensation expenses, (ii) amortization, and (iii) other non-recurring income or expenses. Adjusted Gross Profit Margin is calculated using Adjusted Gross Profit divided by total revenue.

Free Cash Flow is calculated from the consolidated statements of cash flows and is defined as net cash provided by (used in) operating activities, less purchase of property and equipment made in the period. We expect our Free Cash Flow to fluctuate in future periods as we invest in our business to support our plans for growth. Limitations on the use of Free Cash Flow include (i) it should not be inferred that the entire Free Cash Flow amount is available for discretionary expenditures (for example, cash is still required to satisfy other working capital needs, including short-term investment



policy, restricted cash, and intangible assets); (ii) Free Cash Flow has limitations as an analytical tool, and it should not be considered in isolation or as a substitute for analysis of other GAAP financial measures, such as net cash provided by operating activities; and (iii) this metric does not reflect our future contractual commitments.

These non-GAAP measures are intended as supplemental measures of performance and/or liquidity that are neither required by, nor presented in accordance with, GAAP. We believe that such non-GAAP measures, when read in conjunction with our operating results presented under GAAP, can be used to better assess our performance from period to period and relative to performance of other companies in our industry, without regard to financing methods, historical cost basis or capital structure.

These non-GAAP measures should not be considered in isolation or as substitutes for performance measures calculated in accordance with GAAP and may not be comparable to similar measures presented by other entities. Readers are cautioned that these non-GAAP measures should not be construed as alternatives to other measures of financial performance calculated in accordance with GAAP. These non-GAAP measures and their reconciliation to GAAP financial measures are shown below.

The following tables present our non-GAAP measures for the periods indicated.

(\$ in thousands)	Three Months Ended June 30,				Nine Months Ended June 30,			
	2024	2023	Change	Change %	2024	2023	Change	Change %
Net income (loss)	\$ 1,075	\$ (35,045)	\$ 36,120	103 %	\$ (37,357)	\$ (109,636)	\$ 72,279	66 %
Add:								
Interest income, net <sup>(a)</sup>	(1,300)	(1,520)	220	(14)%	(4,554)	(4,251)	(303)	7 %
Income tax expense (benefit)	4,229	(1,318)	5,547	421 %	1,328	(2,058)	3,386	165 %
Depreciation and amortization	4,423	2,758	1,665	60 %	10,395	7,851	2,544	32 %
Stock-based compensation <sup>(b)</sup>	6,140	5,677	463	8 %	18,405	21,417	(3,012)	(14)%
Other non-recurring expenses <sup>(c)</sup>	1,033	1,965	(932)	(47)%	3,017	5,439	(2,422)	(45)%
<b>Adjusted EBITDA</b>	<b>\$ 15,600</b>	<b>\$ (27,483)</b>	<b>\$ 43,083</b>	<b>157 %</b>	<b>\$ (8,766)</b>	<b>\$ (81,238)</b>	<b>\$ 72,472</b>	<b>89 %</b>

(a) Interest income, net for the three and nine months ended June 30, 2023 have been recast to conform with current period presentation as described in "Footnote 2 - Summary of Significant Accounting Policies and Estimates, Reclassifications."

(b) Includes incentive awards that will be settled in shares and incentive awards that will be settled in cash.

(c) Amount for the three months ended June 30, 2024 includes \$1.0 million in severance costs related to restructuring. Amount for the three months ended June 30, 2023 included \$2.0 million in severance costs and consulting fees related to the restructuring plan from November 2022. Amount for the nine months ended June 30, 2024 includes approximately \$1.0 million in severance costs related to restructuring, \$1.2 million of costs related to the termination of the Revolving Credit Agreement and \$0.8 million in costs related to the Offering. Amount for the nine months ended June 30, 2023 included \$5.4 million in severance costs and consulting fees related to the restructuring plan from November 2022.

(\$ in thousands)	Three Months Ended June 30,				Nine Months Ended June 30,			
	2024	2023	Change	Change %	2024	2023	Change	Change %
Total revenue	\$ 483,317	\$ 536,351	\$ (53,034)	(10)%	\$ 1,470,414	\$ 1,544,997	\$ (74,583)	(5)%
Cost of goods and services	400,272	514,531	(114,259)	(22)%	1,286,803	1,480,324	(193,521)	(13)%
Gross profit	83,045	21,820	61,225	281 %	183,611	64,673	118,938	184 %
Gross profit margin %	17.2 %	4.1 %			12.5 %	4.2 %		
Add:								
Stock-based compensation <sup>(a)</sup>	824	1,208	(384)	(32)%	3,204	3,364	(160)	(5)%
Amortization <sup>(b)</sup>	770	491	279	57 %	1,776	491	1,285	262 %
Other non-recurring expenses <sup>(c)</sup>	—	108	(108)	(100)%	—	436	(436)	(100)%
<b>Adjusted Gross Profit</b>	<b>\$ 84,639</b>	<b>\$ 23,627</b>	<b>\$ 61,012</b>	<b>258 %</b>	<b>\$ 188,591</b>	<b>\$ 68,964</b>	<b>\$ 119,627</b>	<b>173 %</b>
<b>Adjusted Gross Profit Margin %</b>	<b>17.5 %</b>	<b>4.4%</b>			<b>12.8 %</b>	<b>4.5%</b>		

(a) Includes incentive awards that will be settled in shares and incentive awards that will be settled in cash.

(b) Amount relates to amortization of capitalized software included in cost of goods and services.

(c) Amount for the three and nine months ended June 30, 2023 included \$0.1 million and \$0.4 million, respectively in severance costs related to the restructuring plan from November 2022.

(\$ in thousands)	Nine Months Ended June 30,			
	2024	2023	Change	Change %
Net cash provided by (used in) operating activities	\$ 69,156	\$ (160,487)	\$ 229,643	143 %
Less: Purchase of property and equipment	(4,838)	(1,877)	(2,961)	(158)%
<b>Free Cash Flow</b>	<b>\$ 64,318</b>	<b>\$ (162,364)</b>	<b>\$ 226,682</b>	<b>140 %</b>

## Results of Operations

### Comparison of the Three and Nine Months Ended June 30, 2024 to the Three and Nine Months Ended June 30, 2023

The following table sets forth our operating results for the periods indicated.

(\$ in thousands)	Three Months Ended June 30,				Nine Months Ended June 30,			
	2024	2023	Change	Change %	2024	2023	Change	Change %
Total revenue	\$ 483,317	\$ 536,351	\$ (53,034)	(10)%	\$ 1,470,414	\$ 1,544,997	\$ (74,583)	(5)%
Costs of goods and services	400,272	514,531	(114,259)	(22)%	1,286,803	1,480,324	(193,521)	(13)%
Gross profit	83,045	21,820	61,225	281 %	183,611	64,673	118,938	184 %
Gross profit margin %	17.2%	4.1%			12.5%	4.2%		
Operating expenses:								
Research and development	14,976	9,918	5,058	51%	47,843	51,631	(3,788)	(7)%
Sales and marketing	14,773	10,106	4,667	46%	41,271	29,299	11,972	41%
General and administrative	45,106	38,145	6,961	18%	126,901	101,190	25,711	25%
Depreciation and amortization	3,624	2,267	1,357	60%	8,589	7,360	1,229	17%
Interest income, net	(1,300)	(1,520)	220	(14)%	(4,554)	(4,251)	(303)	7%
Other expense (income), net	562	(733)	1,295	(177)%	(410)	(8,862)	8,452	(95)%
Income (loss) before income taxes	\$5,304	\$ (36,363)	\$ 41,667	115 %	\$ (36,029)	\$ (111,694)	\$ 75,665	(68)%
Income tax expense (benefit)	4,229	(1,318)	5,547	421%	1,328	(2,058)	3,386	165%
<b>Net income (loss)</b>	<b>\$1,075</b>	<b>\$ (35,045)</b>	<b>\$ 36,120</b>	<b>103 %</b>	<b>\$ (37,357)</b>	<b>\$ (109,636)</b>	<b>\$ 72,279</b>	<b>(66)%</b>

### Total Revenue

Total revenue decreased by \$53.0 million, or 10%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The decrease in total revenue for the three months ended June 30, 2024 was mainly attributable to a decrease in revenue from our battery-based energy storage products and solutions by \$57.7 million, partially offset by an increase in services revenue of \$4.7 million. The decrease in revenue from our battery-based energy storage products and solutions was primarily driven by decreased volumes of Gen6 solutions delivered in the current period due to timing based upon customer schedules partially offset by a period over period increase in changes in transaction prices of \$7.1 million, from performance obligations substantially satisfied in previous periods. The increase in services revenue is primarily driven by additional battery-based energy storage products and solutions being deployed and transitioned to assets under management.

Total revenue decreased by \$74.6 million, or 5%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The decrease in total revenue for the nine months ended June 30, 2024 was mainly attributable to a decrease in revenue related of our battery-based energy storage products and solutions by \$86.0 million, partially offset by an increase in services revenue of \$11.5 million. The decrease in revenue from our battery-based energy storage products and solutions was primarily driven by (i) decreased volumes of Gen6 solutions delivered in the current period due to timing based upon customer schedules, (ii) a period over period decrease in changes in transaction prices of \$9.9 million, from performance obligations substantially satisfied in previous periods, and (iii) a decrease in revenue from consulting services provided to AES of \$8.4 million. The increase in services revenue is primarily driven by additional battery-based energy storage products and solutions being deployed and transitioned to assets under management.

### ***Costs of Goods and Services***

Cost of goods and services decreased by \$114.3 million, or 22%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The decrease in cost of goods and services for the three months ended June 30, 2024 was mainly attributable to (i) the decrease of volume of Gen6 solutions delivered due to timing based upon customer schedules, and (ii) net improvement of gross margins on the portfolio of newer Gen6 solutions projects delivered during the current period due to operational efficiencies, partially offset by an increase in services cost due to additional battery-based energy storage products and solutions being deployed and transitioned to assets under management.

Cost of goods and services decreased by \$193.5 million, or 13%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The decrease in cost of goods and services for the nine months ended June 30, 2024 was primarily attributable to (i) the decrease of volume of Gen6 solutions delivered due to timing based upon customer schedules, (ii) net improvement of gross margins on portfolio of newer Gen6 solutions projects delivered during the current period due to operational efficiencies, and (iii) a decrease in warranty expense for the period of \$11.2 million due mostly to a change in estimate that occurred in the prior period but did not reoccur in the current period. These decreases in costs of goods and services were partially offset by (i) the favorable impact of a settlement of contractual claims with our largest battery module vendor of \$19.5 million recognized in December 2022 and (ii) an increase in services cost due to additional battery-based energy storage products and solutions being deployed and transitioned to assets under management.

### ***Gross Profit and Gross Profit Margin***

Gross profit increased by \$61.2 million, or 281%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in gross profit for the three months ended June 30, 2024 was primarily due (i) to net improvement of gross margins on the portfolio of newer Gen6 solutions projects delivered in the current period due to operational efficiencies as described above in “Costs of goods and services” and (ii) increases in revenue due to changes in transactions prices from performance obligations substantially satisfied in previous periods described above in “Total revenue.”

Gross profit increased by \$118.9 million, or 184%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The increase in gross profit for the nine months ended June 30, 2024 was primarily due to (i) net improvement of gross margins on the portfolio of newer Gen6 solutions projects in the current period due to operational efficiencies and (ii) a decrease in warranty expense as described above in “Costs of goods and services.” These increases in gross profit were partially offset by (i) decreases in revenue due to changes in transaction prices from performance obligations substantially satisfied in previous periods described above in “Total revenue”, (ii) the favorable impact in the prior period of a settlement of contractual claims with our largest battery module vendor described above in “Costs of goods and services”, and (iii) a decrease in gross profit from consulting services provided to AES of \$6.8 million when compared to the prior period.

### ***Research and Development Expenses***

Research and development expenses increased by \$5.1 million, or 51%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in research and development expenses for the three months ended June 30, 2024 was primarily attributable to a \$4.7 million reduction in internal software development costs capitalized related to development of our technology products when compared to the prior period.

Research and development expenses decreased by \$3.8 million, or 7%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The decrease in research and development expenses for the nine months ended June 30, 2024 was primarily attributable to (i) a \$6.6 million reduction in salaries and personnel-related costs, including stock-based compensation, due to relocation of certain R&D activities to lower cost locations, (ii) a reduction of consulting services of \$2.9 million, and (iii) a reduction of severance costs of \$1.6 million. This decrease was partially offset by (i) a \$4.3 million increase in information technology cost allocations to support our growth and (ii) an increase in expenditures for materials and supplies of \$3.3 million related to R&D activities for our forthcoming battery module manufacturing.

### ***Sales and Marketing Expenses***

Sales and marketing expenses increased by \$4.7 million, or 46%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in sales and marketing expenses for the three months ended June 30, 2024 was primarily attributable to (i) a \$2.1 million increase in salaries and personnel-related expenses, including stock-based compensation, due to an increase in headcount and (ii) a \$1.5 million increase in information technology cost allocations to support our growth.

Sales and marketing expenses increased by \$12.0 million, or 41%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The increase in sales and marketing expenses for the nine months ended June 30, 2024 was primarily attributable to (i) a \$4.2 million increase in information technology cost allocations to support our growth, (ii) a \$3.0 million increase in salaries and personnel-related expenses, including stock-based compensation, due to an increase in headcount, and (iii) a \$1.5 million factoring discount on sale of accounts receivable recorded in the current period.

### ***General and Administrative Expenses***

General and administrative expenses increased by \$7.0 million, or 18%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in general and administrative expenses for the three months ended June 30, 2024 was primarily attributable to (i) an increase in salaries and personnel-related costs, including stock-based compensation, of \$11.3 million due to higher headcount and (ii) a \$3.4 million increase in information technology licenses and consulting services related to implementation of new systems to support our growth. These increases were partially offset by (i) a \$4.7 million increase in information technology cost allocations to other departments which reduces general and administrative costs and (ii) the capitalization of an additional \$3.5 million in internal software development costs related to implementation of new systems.

General and administrative expenses increased by \$25.7 million, or 25%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The increase in general and administrative expenses for the nine months ended June 30, 2024 was primarily attributable to (i) an increase in salaries and personnel-related expenses, including stock-based compensation, of \$30.4 million due to higher headcount and (ii) a \$12.1 million increase in information technology licenses and consulting services related to implementation of new systems to support our growth. These increases were partially offset by (i) a \$12.7 million increase in information technology cost allocations to other departments which reduces general and administrative costs and (ii) the capitalization of an additional \$7.2 million in internal software development costs related to implementation of new systems.

### ***Depreciation and Amortization***

Depreciation and amortization increased by \$1.4 million, or 60%, in the three months ended June 30, 2024, compared to the three months ended June 30, 2023, primarily attributable to a \$1.2 million cumulative adjustment in depreciation resulting from changing the useful life of IT equipment from five years to three years.

Depreciation and amortization increased by \$1.2 million, or 17% in the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023, primarily attributable to a \$1.2 million cumulative adjustment in depreciation resulting from changing the useful life of IT equipment from five years to three years.

### ***Interest Income, Net***

Interest income, net was relatively flat in the three months ended June 30, 2024, compared to the three months ended June 30, 2023.

Interest income, net was relatively flat in the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023.

### ***Other Expense (Income), Net***

Other expense, net increased by \$1.3 million, or 177%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in other expense, net for the three months ended June 30, 2024 was primarily attributable to a \$1.6 million increase in unfavorable foreign currency exchange losses for monetary assets and liabilities period over period.

Other income, net decreased by \$8.5 million, or 95%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The decrease in other income, net for the nine months ended June 30, 2024 was primarily attributable to (i) a decrease in favorable foreign currency exchange adjustments for monetary assets and liabilities of \$8.8 million and (ii) gains that did not reoccur in the current period on changes in fair value of short-term investments of \$1.3 million, (iii) partially offset by the factoring income of \$1.5 million related to the Master Receivables Purchase Agreement dated February 27, 2024 (the “MRPA”) recorded in the current period.

#### ***Income Tax Expense (Benefit)***

Income tax expense increased by \$5.5 million, or 421%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in income tax expense for the three months ended June 30, 2024 is primarily attributable to an increase in pre-tax income in foreign tax jurisdictions without historical losses.

Income tax expense increased by \$3.4 million, or 165%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The increase in income tax expense for the nine months ended June 30, 2024 was primarily attributable to an increase in pre-tax income in foreign tax jurisdictions without historical losses.

#### ***Net Income (Loss)***

Net income increased by \$36.1 million, or 103%, for the three months ended June 30, 2024, compared to the three months ended June 30, 2023. The increase in net income for the three months ended June 30, 2024 is primarily attributable to an increase in “Gross profit” as described above. This was partially offset by (i) an increase in “Research and development expenses,” (ii) an increase in “Sales and marketing expenses” and (iii) an increase in “General and administrative expenses,” each as described above.

Net loss decreased by \$72.3 million, or 66%, for the nine months ended June 30, 2024, compared to the nine months ended June 30, 2023. The decrease in net loss for the nine months ended June 30, 2024 is primarily attributable to (i) an increase in “Gross profit” and (ii) a decrease in “Research and development expenses” as described above. This was partially offset by (i) an increase in “General and administrative expenses,” (ii) an increase in “Sales and marketing expenses,” and (iii) a decrease in “Other (income), net”, each as described above.

#### **Liquidity and Capital Resources**

Since inception and through June 30, 2024, our principal sources of liquidity were the proceeds from our IPO, our cash and cash equivalents, short-term borrowings, borrowings available under the Revolver, borrowings available under the ABL Facility (as defined below), supply chain financing, capital contributions from AES Grid Stability and Siemens Industry, proceeds from short term investments, and borrowings against note receivables and proceeds from sale of accounts receivable under the MRPA.

We believe the proceeds received from our IPO, cash flows from operations, which includes sales of accounts receivable under the MRPA, borrowings against notes receivable and borrowings available under the 2024 Revolver (as defined below) will be sufficient to meet our expense and capital requirements for at least the next 12 months following the filing of this Report.

Our future capital requirements may vary materially from those currently planned and will depend on many factors, including our rate of revenue growth, the timing and extent of our growth initiatives and our introduction of new products, services, and digital application offerings, and overall economic conditions. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and cash requirements, we may be required to seek additional equity or debt financing. The sale of additional equity would result in additional dilutions to our stockholders. The incurrence of additional debt financing would result in debt service obligations and the instruments governing such debt could provide for operating and financing covenants that would restrict our operations. If we are unable to raise additional capital or generate cash flows necessary to expand our operations and invest in continued innovation, we may not be able to compete successfully, which would harm our business, operations, and financial condition.

On November 1, 2021, upon the closing of our IPO, we received net proceeds of \$935.8 million, after deducting underwriting discounts and offering expenses payable by the Company. The net proceeds from the IPO were used to purchase 35,650,000 newly issued LLC Interests directly from Fluence Energy, LLC at a price per unit equal to the IPO price per share of Class A common stock less the underwriting discount and estimated offering expenses payable by us. Fluence Energy, LLC used the net proceeds from the sale of LLC Interests to Fluence Energy, Inc. to repay all outstanding borrowings relating to a line of credit and promissory notes. The remainder of the proceeds has been used for working capital and other general corporate purposes.

### ***Supply Chain Financing***

We have provided certain of our suppliers with access to a supply chain financing program through a third-party financing institution (the “SCF Bank”). This program allows us to seek extended payment terms with our suppliers and allows our suppliers to monetize their receivables prior to the payment due date, subject to a discount. Once a supplier elects to participate in the program and reaches an agreement with the SCF Bank, the supplier elects which individual invoices to sell to the SCF Bank. We then pay the SCF Bank on the invoice due date. We have no economic interest in a supplier’s decision to sell a receivable to the SCF Bank. The agreements between our suppliers and the SCF Bank are solely at their discretion and are negotiated directly between them. Our suppliers’ ability to continue using such agreements is primarily dependent upon the strength of our financial condition and guarantees issued by AES and Siemens Corporation, a subsidiary of Siemens, pursuant to the terms of the Credit Support and Reimbursement Agreement (as defined below). As of June 30, 2024, AES and Siemens Corporation, a subsidiary of Siemens, issued guarantees of \$50.0 million each, for a total of \$100.0 million, to SCF Bank on our behalf.

As of June 30, 2024, four suppliers were actively participating in the supply chain financing program, and we had \$41.3 million of payables outstanding subject to the program. All outstanding payments owed under the program are recorded within “Accounts payable” on the condensed consolidated balance sheets.

### ***Shelf Registration Statement***

On August 11, 2023, we filed an automatic shelf registration statement on Form S-3 with the SEC (the “Form S-3”) which became effective upon filing and will remain effective through August 11, 2026. The Form S-3 allows us to offer and sell from time-to-time Class A common stock, preferred stock, depository shares, debt securities, warrants, purchase contracts or units comprised of any combination of these securities for our own account and allows certain selling stockholders to offer and sell 135,666,665 shares of Class A common stock in one or more offerings. We would not receive any proceeds from any sale of our Class A common stock by such selling stockholders. On December 8, 2023, 18,000,000 shares of Class A common stock of the Company registered by the Form S-3 with the SEC were sold pursuant to a secondary offering conducted by certain selling stockholders. We received no proceeds in connection with this offering.

The Form S-3 is intended to provide us flexibility to conduct registered sales of our securities, subject to market conditions, and our future capital needs. The terms of any future offering under the Form S-3 will be established at the time of such offering and will be described in a prospectus supplement filed with the SEC prior to the completion of any such offering.

### ***Revolving Credit Facility***

We entered into a Revolving Credit Agreement for a revolving credit facility (the “Revolver”) on November 1, 2021, by and among Fluence Energy, LLC, as the borrower, Fluence Energy Inc., as a parent guarantor, the subsidiary guarantors party thereto, the lenders party thereto and JP Morgan Chase Bank, N.A., as administrative agent and collateral agent. The aggregate amount of commitments was \$200.0 million. The Revolver was originally scheduled to mature on November 1, 2025. The Revolving Credit Agreement was terminated effective November 22, 2023, in conjunction with the entry into the ABL Credit Agreement (as further described below), and at such time, the Company prepaid all amounts outstanding under the Revolver and terminated all commitments thereunder. No penalties were required to be paid as a result of the termination.

For further discussion of the Revolver, refer to “Note 10 - Debt” to our unaudited condensed consolidated financial statements included elsewhere in this Report.

### ***Asset-Based Lending Facility***

On November 22, 2023, the Company entered into an asset-based syndicated credit agreement (the “ABL Credit Agreement”) by and among Fluence Energy, LLC, as parent borrower, Fluence Energy, Inc., as parent, the other borrowers party thereto, the other guarantors party thereto, the lenders party thereto (the “ABL Lenders”), and Barclays Bank PLC (“Barclays”), as administrative agent, which was amended by the Master Assignment and Assumption and Issuing Bank Joinder, effective December 15, 2023 (the “ABL Joinder”), Amendment No. 1, dated April 8, 2024 (“Amendment No. 1”), and Amendment No. 2, dated May 8, 2024 (“Amendment No. 2”), which provided for revolving commitments in an aggregate principal amount of \$400.0 million (the “ABL Facility”). The ABL Facility was secured by (i) a first priority pledge of Fluence Energy, Inc.’s equity interests in Fluence Energy, LLC and (ii) first priority security interests in, and mortgages on, substantially all tangible and intangible personal property and material fee-owned real property of Fluence Energy, Inc., Fluence Energy, LLC, and Fluence Energy Global Production Operation, LLC, in each case, subject to customary exceptions and limitations. Borrowings under the ABL Facility were scheduled to mature, and lending commitments thereunder would terminate, on November 22, 2027.

As of June 30, 2024, borrowing availability under the ABL Facility was determined by a borrowing base calculation based on specified percentages of U.S. eligible inventory, net orderly liquidation value of most recent inventory appraisal, and U.S. eligible in-transit inventory, as well as potential borrowing base qualified cash, less the aggregate amount of any reserves. Borrowing base qualified cash was defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) held in a specific borrowing base qualified cash account and (b) \$100.0 million. The Company was obligated to provide a borrowing base certificate to lenders twenty days following the end of each calendar month, except during a reporting trigger period where it would provide such certificates on a weekly basis.

After giving effect to Amendment No. 2, unless a Covenant Relief Period (as defined below) had occurred and was continuing, the ABL Credit Agreement provided for a full cash dominion period (a) if an event of default was occurring or (b) beginning on the date on which Excess Availability (as defined below) was less than the greater of (i) 12.5% of the Line Cap (as defined below) and (ii) if the borrowing base then in effect was (A) less than \$200.0 million, \$25.0 million and (B) greater than or equal to \$200.0 million, \$50.0 million. Excess Availability was defined as an amount equal to (a) the lesser of (i) the total commitments of all ABL Lenders and (ii) the borrowing base, minus (b) total outstanding revolving extensions of credit. Line Cap was defined as the lesser of the total commitments of the ABL Lenders and the borrowing base. A Covenant Relief Period was defined as a period during which (a) no default or event of default had occurred and continuing and (b) either of the following shall exist: (i) the aggregate revolving credit exposure of the ABL Lenders was not greater than \$0 or (ii) each of (A) the amount of aggregate borrowings under the ABL Facility was not greater than \$0; (B) the non-cash collateralized LC exposure (as defined under the ABL Credit Agreement) was not greater than \$15.0 million, and (C) the borrowing base exceeded the sum of all lenders’ letter of credit exposure.

Total liquidity under the ABL Facility was required to not be less than the greater of (i) 20% of the Line Cap and (ii) (A) if the borrowing base was less than \$200.0 million, \$50.0 million and (B) if the borrowing base was greater than or equal to \$200.0 million, \$64.0 million. In addition, unless we were in a Covenant Relief Period, the Company could not permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap.

The ABL Credit Agreement set forth that (i) loans comprising each ABR Borrowing bore interest at the Alternate Base Rate plus an additional margin ranging from 1.00% to 1.50%, (ii) loans comprising each Canadian Prime Loan Borrowing bore interest at the Canadian Prime Rate plus an additional margin ranging from 1.00% to 1.50%, and (iii) the loans comprising each Term Benchmark Borrowing bore interest at the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA, as applicable, plus an additional margin ranging from 2.00% to 2.50%, in each instance subject to customary benchmark replacement provisions. Fluence Energy, LLC was required to pay to the ABL Lenders a commitment fee on the average daily unused portion of the commitments through maturity, which accrued at the rate of (a) until the last day of the first full calendar quarter following the closing of the ABL Facility, 0.450% per annum, and (b) thereafter, 0.450% per annum if average revolving loan utilization was less than or equal to 50% and 0.375% per annum if average revolving loan utilization was greater than 50%. The ABL Facility also provided for a letter of credit sublimit in the amount of \$200.0 million, if certain conditions were met. Each letter of credit issuance was conditioned upon, among other conditions, the payment of certain customary issuance and administration fees, as well as payment of a fronting fee to each issuer thereof and payment of a letter of credit participation fee payable to the ABL Lenders. Capitalized terms used in this paragraph that are not otherwise defined are defined in the ABL Credit Agreement.



The ABL Credit Agreement contained customary covenants for this type of financing, including, but not limited to, covenants that restricted our ability to incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The ABL Credit Agreement limited our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Fluence Energy, LLC and its subsidiaries were limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions. If certain payment conditions under the ABL Credit Agreement were satisfied, then additional specified transactions could have been made by the Company. Such covenants were tested on a quarterly basis and upon the occurrence of other certain restricted payments, the incurrence of indebtedness, certain dispositions, and other specified transactions. As of June 30, 2024, we were in a Covenant Relief Period and were in compliance with all such applicable covenants or maintained availability above such applicable covenant triggers.

As of June 30, 2024, we had no borrowings under the ABL Facility and no letters of credit outstanding. Based on the borrowing base certificate in effect as of June 30, 2024, we had \$11.3 million of borrowing capacity above the Excess Availability minimum in the ABL Facility.

#### **2024 Revolver**

On August 6, 2024 (the "Amendment Effective Date"), Fluence Energy, Inc. entered into Amendment Number Three ("Amendment No. 3") to that certain ABL Credit Agreement by and among Fluence Energy, LLC, as parent borrower, the Company, as parent, the other borrowers party thereto, the other guarantors party thereto, the lenders party thereto, and Citibank, N.A., as administrative agent (as successor to Barclays Bank PLC) (such agreement, as so amended, the "2024 Credit Agreement") in order to (i) convert the existing ABL Facility to a senior secured cash flow revolving credit facility in an initial aggregate principal amount of up to \$500.0 million (the "2024 Revolver"), (ii) replace Barclays as administrative agent under the 2024 Credit Agreement with Citibank, N.A., and (iii) make certain other modifications to the 2024 Credit Agreement as set forth therein. Capitalized terms used in this subsection that are not otherwise defined are defined in the 2024 Credit Agreement.

The 2024 Revolver is secured by (i) a first priority pledge of the Company's equity interests in Fluence Energy, LLC and Fluence Energy Global Production Operation, LLC, (ii) first priority security interests in substantially all tangible and intangible personal property of the Company, Fluence Energy, LLC, Fluence Energy Global Production Operation, LLC and certain of its foreign subsidiaries, in each case, subject to customary exceptions and limitations, and (iii) a pledge of the Company's equity interests in certain of its foreign subsidiaries and security interests in certain assets of such foreign subsidiaries.

The 2024 Credit Agreement sets forth that (i) loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus 2.00%, (ii) loans comprising each Term Benchmark Borrowing shall bear interest at the Term SOFR Rate or the Adjusted EURIBOR Rate, as applicable, plus 3.00%, and (iii) the loans comprising each RFR Borrowing shall bear interest at the Daily Simple RFR plus 3.00%, in each instance subject to customary benchmark replacement provisions including, but not limited to, alternative benchmark rates, customary spread adjustments with respect to borrowings in foreign currencies and benchmark replacement conforming changes. Fluence Energy, LLC is required to pay to the lenders a commitment fee on the average daily unused portion of the commitments through maturity, which shall accrue at the rate of 0.50% per annum. The 2024 Credit Agreement provides for a cash draw sublimit of \$150.0 million as well as a letter of credit sublimit in the amount of \$500.0 million if certain conditions are met.

The 2024 Credit Agreement contains customary covenants for this type of financing, including, but not limited to, covenants that restrict our and certain of our subsidiary's ability to: incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The 2024 Credit Agreement limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Under the terms of the 2024 Credit Agreement, Fluence Energy, LLC and its subsidiaries are currently limited in their ability to pay cash dividends to, lend to, or make other investments in the Company, subject to certain exceptions. In addition, we are required to maintain (i) from the Amendment Effective Date through December 31, 2025, Total Liquidity of no less than \$150,000,000, (ii) from January 1, 2026 and thereafter, Total Liquidity of no less than \$100,000,000 or a Consolidated Leverage Ratio as of the last day of any Measurement Period not to exceed 3.50:1.00, and (iii) certain other financial requirements at each Guarantor Coverage Test Date. Such covenants will be tested on a quarterly basis and upon the occurrence of other certain restricted payments, the incurrence of indebtedness, certain dispositions, and other specified transactions.

The 2024 Credit Agreement contains customary events of default for this type of financing. If an event of default occurs with respect to a borrower, the lenders will be able to, among other things, terminate the commitments immediately, cash collateralize any outstanding letters of credit, declare any loans outstanding to be due and payable in whole or in part, and exercise other rights and remedies. The maturity date and the date of termination of lending commitments under the 2024 Credit Agreement both remain unchanged at November 22, 2027. There are no borrowings and no letters of credit outstanding under the 2024 Credit Agreement as of August 7, 2024.

***Borrowings Against Note Receivable - Pledged as Collateral***

In December 2022, we transferred \$24.3 million in customer receivables to Standard Chartered Bank (“SCB”) in the Philippines for proceeds of \$21.1 million. The receivables all related to our largest customer in that country. The underlying receivables transferred were previously aggregated into a long term note, with interest, and which has a maturity date of September 30, 2024. In April 2023, we aggregated and transferred an additional \$30.9 million in receivables into a second long term note with the same customer to SCB for proceeds of \$27.0 million, upon substantially similar terms as the December 2022 transfer and with a maturity date of December 27, 2024. These transactions are treated as secured borrowings as we did not transfer the entire note receivables due from the customer to SCB. We continue to receive quarterly interest income from the customer, while SCB is responsible for collecting payments on the principal balances which represent the initial receivable balances from the customer. We have no other continuing involvement or exposure related to the underlying receivables. For the nine months ended June 30, 2024, the Company recorded net interest income of \$0.2 million, which represents the aggregate of \$3.5 million in interest income and \$3.3 million in interest expense recorded in “Interest income, net.”

***Sale of Receivables under Master Receivables Purchase Agreement***

On February 27, 2024, Fluence Energy, LLC entered into the MRPA, by and among Fluence Energy, LLC and any other seller from time to time party thereto, as sellers and servicers, and Credit Agricole Corporate and Investment Bank (“CACIB”), as purchaser, of certain receivables on an uncommitted basis. The MRPA provides that the outstanding amount of all Purchased Receivables under the MRPA will not exceed \$75.0 million, with sublimits for each account debtor and for certain kinds of receivables. The MRPA may be terminated by either party at any time by 30 days’ prior written notice. Fluence Energy, LLC has granted CACIB a security interest in the Purchased Receivables, and proceeds thereof, as more fully described in the MRPA, in order to perfect CACIB’s ownership interest in the Purchased Receivables and secure the payment and performance of all obligations of Fluence Energy, LLC to CACIB under the MRPA. The MRPA contains other customary representations and warranties and covenants.

When receivables are sold under the MRPA, they are sold without recourse, and our continuing involvement is limited to their servicing, for which the Company receives a fee commensurate with the service provided and therefore no servicing asset or liability related to these receivables was recognized for any period presented. The fair value of the sold receivables approximated their book value due to their short-term nature.

For the nine months ended June 30, 2024, we sold receivables to CACIB under the MRPA for net proceeds of \$71.5 million. At the date of the true sale, the receivables were de-recognized in their entirety from the consolidated balance sheet. We charged a fee to our customer, primarily for providing extended payment terms, in relation to the sale of receivables. We recorded factoring income of \$1.5 million and related factoring discount of \$1.5 million during the period. The factoring income is recorded in “Other expense (income), net” and the factoring discount is recorded in “Sales and marketing expense” on the condensed consolidated statements of operations and comprehensive loss. Proceeds from the sold receivables are reflected in operating cash flows on the condensed consolidated statements of cash flows.

***Credit Support and Reimbursement Agreement***

We are party to an Amended and Restated Credit Support and Reimbursement Agreement, dated June 9, 2021, with AES and Siemens Industry (the “Credit Support and Reimbursement Agreement”) whereby they may, from time to time, agree to furnish credit support to us in the form of direct issuances of credit support to our lenders or other beneficiaries or through their lenders’ provision of letters of credit to backstop our own facilities or obligations. Pursuant to the Amended and Restated Credit Support and Reimbursement Agreement, if AES or Siemens Industry agree to provide a particular credit support (which they are permitted to grant or deny in their sole discretion), they are entitled to receipt of a credit support fee, reimbursement of actual costs and expenses incurred in having a credit support instrument issued and maintained, and reimbursement for all amounts paid to our lenders or other counterparties, payable upon demand. The Amended and Restated Credit Support and Reimbursement Agreement initially expires on June 9, 2025 (the “initial expiration date”), and will automatically and indefinitely continue after such date; after such initial expiration date, either AES or Siemens Industry is permitted to terminate the agreement upon six months prior notice. Any credit support under

the Credit Support and Reimbursement Agreement will remain in effect after any such termination until such credit support has been replaced by the Company.

Currently, the Company has outstanding performance guarantees provided by AES and Siemens Industry and their respective affiliates that guarantee Fluence's performance obligations under certain contracts with Fluence's customers. These performance guarantees are issued pursuant to the terms of the Credit Support and Reimbursement Agreement. Fluence paid performance guarantee fees to its affiliates in exchange for guaranteeing Fluence's performance obligations under certain contracts with Fluence's customers. The guarantee fees are included in "Costs of goods and services" on Fluence's condensed consolidated statements of operations and comprehensive loss. Guarantees are also issued by AES and Siemens, pursuant to the terms of the Credit Support and Reimbursement Agreement, in connection with the supplier chain financing program (as described in greater detail above).

#### **Commitments, Guarantees, Letter of Credits, Surety Bonds, Off-Balance Sheet Arrangements**

As of June 30, 2024, the Company had outstanding bank guarantees, parent guarantees, letters of credit, and surety bonds issued as performance security arrangements for a large number of customer projects. In addition, we have a limited number of parent company guarantees issued as payment security to certain vendors. The Company also has certain battery purchase obligations and spending requirements under our master supply agreement with suppliers. We are also party to both assurance and service-type warranties for various lengths of time. Refer to "Note 12 - Commitments and Contingencies" to our unaudited condensed financial statements included elsewhere in this Report for more information regarding our contingent obligations, including off-balance sheet arrangements, and legal contingencies.

#### **Historical Cash Flows**

The following table summarizes our cash flows from operating, investing, and financing activities for the periods presented.

(\$ in thousands)	Nine Months Ended June 30,		Change	Change %
	2024	2023		
Net cash provided by (used in) operating activities	\$ 69,156	\$ (160,487)	\$ 229,643	143.1 %
Net cash (used in) provided by investing activities	\$ (13,444)	\$ 97,500	\$ (110,944)	(113.8)%
Net cash (used in) provided by financing activities	\$ (5,767)	\$ 52,588	\$ (58,355)	(111.0)%

Net cash flows provided by operating activities were \$69.2 million for the nine months ended June 30, 2024, compared to negative \$160.5 million for the nine months ended June 30, 2023. The \$229.6 million increase in cash provided by operations period over period was primarily due to a decrease in net loss of \$72.3 million and improvement in cash provided by working capital balances of \$138.7 million. The details of cash provided by (used in) operations for each period are described below.

Net cash flows provided by operating activities of \$69.2 million for the nine months ended June 30, 2024, was primarily due to (i) increases in accounts payable of \$256.3 million due to the timing of payments to various vendors, and (ii) net positive effects of changes in customer contract assets and liabilities. Specifically, deferred revenue, inclusive of related parties increased in aggregate by \$57.5 million and receivables, inclusive of trade, unbilled AR and related parties increased in aggregate by \$59.4 million due to timing of various customer project billings and cash collections in accordance with contract milestone payment schedules. These cash inflows were partially offset by (i) net cash expenditures on inventory of \$257.9 million, and (ii) advance payments primarily made as capacity guarantees pursuant to purchase agreements with our suppliers of \$47.0 million during the period.

Net cash flows used in operations of \$160.5 million for the nine months ended June 30, 2023, were primarily due to (i) net loss of \$109.6 million, (ii) decreases in accounts payable of \$139.3 million due to timing of purchases and payments to various vendors, (iii) net negative effects of changes in customer contract assets and liabilities, specifically, deferred revenue, inclusive of related parties increased in aggregate by \$12.5 million, and receivables, inclusive of trade, unbilled AR and related parties decreased in aggregate by \$27.9 million due to timing of various customer project billings and cash collections in accordance with contract milestone payment schedules, and (iv) advance payments to various vendors of \$8.1 million. These negative effects were partially offset by positive effects of utilization of inventory of \$145.9 million.

Net cash flows used in investing activities were \$13.4 million for the nine months ended June 30, 2024, which were primarily due to capital expenditures on internal-use software of \$8.6 million and purchases of property and equipment of \$4.8 million.

Net cash flows provided by investing activities were \$97.5 million for the nine months ended June 30, 2023, which was primarily due to \$111.7 million in proceeds from short term investments offset by (i) capital expenditures on internal-use software and software of \$7.3 million, (ii) investments in joint ventures of \$5.0 million and (iii) purchases of property and equipment of \$1.9 million.

Net cash flows used in financing activities were \$5.8 million for the nine months ended June 30, 2024. The net cash flows used in financing activities were primarily related to (i) \$5.0 million in payments related to debt issuance costs for the ABL Facility, (ii) \$3.9 million in payments for a previously acquired company (Nispera) and (iii) \$1.2 million related to Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards, offset by \$4.4 million of proceeds from the exercise of stock options during the period.

Net cash flows provided by financing activities were approximately \$52.6 million for the nine months ended June 30, 2023. The net cash flows provided by financing activities were primarily related to (i) \$48.2 million of proceeds from borrowings against notes receivable and (ii) \$6.0 million of proceeds from the exercise of stock options, offset by \$1.6 million related to Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards.

#### ***Tax Receivable Agreement***

In connection with the IPO, we entered into the Tax Receivable Agreement with Fluence Energy, LLC and Siemens Industry and AES Grid Stability (together, the “Founders”). Under the Tax Receivable Agreement, we are required to make cash payments to the Founders equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) the increases in our share of the tax basis of assets of Fluence Energy, LLC and its subsidiaries resulting from any redemptions or exchanges of LLC Interests from the Founders and certain distributions (or deemed distributions) by Fluence Energy, LLC; and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. The payment obligation under the Tax Receivable Agreement is an obligation of Fluence Energy, Inc. and not of Fluence Energy, LLC. We expect to use distributions from Fluence Energy, LLC to fund any payments that we will be required to make under the Tax Receivable Agreement. To the extent we are unable to make timely payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement. Fluence Energy, Inc. expects to benefit from the remaining 15% of cash tax benefits, if any, it realizes from such tax benefits. For purposes of the Tax Receivable Agreement, the cash tax benefits will be computed by comparing the actual income tax liability of Fluence Energy, Inc. to the amount of such taxes that Fluence Energy, Inc. would have been required to pay had there been no such tax basis adjustments of the assets of Fluence Energy, LLC or its subsidiaries as a result of redemptions or exchanges and had Fluence Energy, Inc. not entered into the Tax Receivable Agreement.

On June 30, 2022, Siemens Industry, Inc. exercised its redemption right pursuant to the terms of LLC Agreement with respect to its entire holding of 58,586,695 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of our Class B-1 common stock.

On December 8, 2023, AES Grid Stability exercised its redemption right pursuant to the terms of LLC Agreement with respect to 7,087,500 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of our Class B-1 common stock.

The redemptions resulted in increases in the tax basis of the assets of Fluence Energy, LLC and certain of its subsidiaries. The increases in tax basis and tax basis adjustments increases (for tax purposes) the depreciation and amortization deductions available to Fluence Energy, Inc. and, therefore, may reduce the amount of U.S. federal, state, and local tax that Fluence Energy, Inc. would otherwise be required to pay in the future, although the IRS may challenge all or part of the validity of that tax basis, and a court could sustain such a challenge.

As a result of the tax basis adjustment of the assets of Fluence Energy, LLC and its subsidiaries upon the redemptions and our possible utilization of certain tax attributes, the payments that we may make under the Tax Receivable Agreement will be substantial. The redemptions will result in future tax savings of \$138.6 million. AES and Siemens will be entitled to receive payments under the Tax Receivable Agreement equaling 85% of such amount, or \$117.8 million; assuming, among other factors, (i) we will have sufficient taxable income to fully utilize the tax benefits; (ii) Fluence Energy, LLC is able to fully depreciate or amortize its assets; and (iii) there are no material changes in applicable tax law. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of us by the Founders. Although the timing and extent of future payments could vary significantly under the Tax Receivable Agreement, we anticipate funding payments

from the Tax Receivable Agreement from cash flow from operations of our subsidiaries, available cash or available borrowings under any future debt agreements.

We have determined it is not probable payments under the Tax Receivable Agreement would be made, given the projected inability to fully utilize the related tax benefits over the term of the agreement. Therefore, the Company has not recognized the liability. Should we determine that the Tax Receivable Agreement payment is probable, a corresponding liability will be recorded and as a result, our future results of operations and earnings could be impacted as a result of these matters.

### **Critical Accounting Policies and Use of Estimates**

Our financial statements have been prepared in accordance with U.S. GAAP. In the preparation of these financial statements, we consider an accounting judgment, estimate or assumption to be critical when (1) the estimate or assumption is complex in nature or requires a high degree of judgment and (2) the use of different judgments, estimates, and assumptions could have a material impact on the consolidated financial statements.

During the nine months ended June 30, 2024, there were no significant changes in application of our critical accounting policies or estimation procedures from those described under the heading “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Use of Estimates” in our 2023 Annual Report and the notes to the audited consolidated financial statements appearing elsewhere in the 2023 Annual Report.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Other than as discussed below, there have been no material changes with respect to our exposure to market risk as disclosed in Part II, Item 7A, “Quantitative and Qualitative Disclosures About Market Risk” of our 2023 Annual Report.

#### **Foreign Currency Risk**

Our reporting currency is the U.S. dollar, while certain of our current subsidiaries have other functional currencies, reflecting their principal operating markets. Fluctuations in currency exchange rates between the U.S. dollar and the Euro, the British pound, the Australian dollar, the Canadian Dollar, and the Swiss Franc in our current foreign markets could create significant fluctuations in earnings and cash flows. We use foreign currency forward contracts and may designate these instruments as cash flow hedges to manage our exposure to the foreign currency impact of intercompany sales of inventory to regional entities by our centralized procurement entity. To date, we have not had material exposure to foreign currency fluctuations.

### **Item 4. Controls and Procedures**

#### **Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures designed to provide reasonable assurance of achieving the objective that information in our Securities Exchange Act of 1934, as amended (the “Exchange Act”) reports is recorded, processed, summarized and reported within the time periods specified and pursuant to the requirements of the SEC’s rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow for timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, carried out an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of June 30, 2024, the end of the period covered by this Report. Based upon that evaluation, management concluded that, as of June 30, 2024, our disclosure controls and procedures were effective.

#### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended June 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.



## Part II - Other Information

### Item 1. Legal Proceedings

From time to time, we may be involved in litigation, government investigations, or other regulatory or legal proceedings relating to claims that arise out of our operations and business that cover a wide range of matters, including, but not limited to, intellectual property matters, commercial and contract disputes, insurance and property damage claims, labor and employment claims, personal injury claims, product liability claims, environmental claims and warranty claims. Currently, there are no claims or proceedings against us that we believe will have a material adverse effect on our business, financial condition, results of operations, or cash flows. However, the results of any current or future litigation, government investigations, or other regulatory or legal proceedings cannot be predicted with certainty, and regardless of the outcome, we may incur significant costs and experience a diversion of management resources as a result of claims, litigation, government investigations, and other regulatory or legal proceedings.

For a description of our material pending legal contingencies, please see “Note 12 - Commitments and Contingencies”, to the unaudited condensed consolidated financial statements included elsewhere in this Report.

### Item 1A. Risk Factors

There have been no material changes with respect to our risk factors previously disclosed in our 2023 Annual Report, other than as set forth below. You should carefully consider the risks described in Item 1A. "Risk Factors" of our 2023 Annual Report, and all of the other information included in this Report, before making an investment decision. Our business, financial condition and results of operations could be materially and adversely affected by any of these risks or uncertainties.

#### ***Our 2024 Revolver imposes certain restrictions that may affect our ability to operate our business and make payments on our indebtedness.***

We are party to the 2024 Credit Agreement, as may be amended from time to time, with revolving commitments in an initial aggregate principal amount of \$500.0 million, with a cash draw sublimit of \$150.0 million and a letter of credit sublimit in the amount of \$500.0 million. The 2024 Revolver contains covenants that, among other things, restrict our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; invest; make dividends or distributions or other restricted payments and engage in affiliate transactions. In addition, we are required to maintain minimum liquidity, minimum consolidated leverage ratio, and certain other financial requirements relating to the guarantor coverage test on certain applicable dates. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—2024 Credit Agreement” for further discussion of the 2024 Revolver. The 2024 Revolver limits our ability to make certain payments, including dividends or distributions on Fluence Energy, LLC’s equity and other restricted payments, provided, however, that payments in respect of certain tax distributions under the Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC and certain payments under the Tax Receivable Agreement are permitted. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Tax Receivable Agreement” for further discussion of the Tax Receivable Agreement. Such restrictions may restrict our current and future operations, particularly our ability to respond to certain changes in our business or industry or take future actions, including raising additional debt or equity financing to operate during general economic or business downturns, to compete effectively or to take advantage of new business opportunities. As of the date of this Report, we had no borrowings under the 2024 Revolver and no letters of credit outstanding.

Our ability to meet the restrictive covenants under the 2024 Credit Agreement may be impacted by events beyond our control. Our 2024 Credit Agreement and related security agreements provide that our breach or failure to satisfy certain covenants constitutes an event of default. Upon the occurrence of an event of default, our lenders could elect to declare all amounts outstanding under its debt agreements to be immediately due and payable. In addition, our lenders, to whom we granted a security interest in substantially all of our assets, would have the right to proceed against such assets we provided as collateral pursuant to the 2024 Credit Agreement and related security agreements. If our borrowings under our 2024 Revolver were to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay outstanding borrowings or be able to borrow sufficient funds to refinance, which would have an immediate adverse effect on our business and operating results. Any such acceleration could potentially cause us to cease operations and result in a complete loss of your investment in our Class A common stock.

Moreover, the 2024 Revolver requires us to dedicate a portion of our cash flow from operations to interest payments, thereby reducing the availability of cash flow to fund working capital, capital expenditures and other general corporate purposes; increasing our vulnerability to adverse general economic, industry, or competitive developments or conditions;

and limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate or in pursuing our strategic objectives.

***Short sellers may engage in manipulative activity intended to drive down the market price of our Class A common stock, which has and could in the future result in related governmental and regulatory scrutiny, among other effects.***

Short selling is the practice of selling securities that the seller does not own but rather has borrowed or intends to borrow from a third party with the intention of later buying lower priced identical securities to return to the lender. Accordingly, it is in the interest of a short seller of our Class A common stock for the price to decline. At any time, short sellers may publish, or arrange for the publication of, opinions or characterizations that are intended to create negative market momentum. Short selling reports can cause increased volatility in an issuer's stock price, and result in regulatory and governmental inquiries. For example, on February 22, 2024, as previously disclosed, the Short Seller Report was published which contained certain allegations against the Company. In response to the Short Seller Report, our Audit Committee completed an internal investigation, with the assistance of outside counsel and forensic accountants, into the allegations in the Short Seller Report. We, after consultation with the Audit Committee, believe that the internal investigation demonstrated that the allegations of wrongdoing contained in the Short Seller Report are without merit. We have been informed that the SEC is conducting a formal investigation and asking for certain information regarding our financial reporting. We intend to fully cooperate with the SEC's investigation. Based on the information requested by the SEC, we believe that the SEC is reviewing the Company's revenue recognition practices, a previously-disclosed material weakness in internal controls, capitalization of internal-use software costs, as well as certain service contracts with related parties. These areas were the subject of assertions in the Short Seller Report and were included in the Audit Committee's internal investigation. Any inquiries or investigations conducted by a governmental organization or other regulatory body, such as the ongoing SEC investigation, or any internal investigation, such as the one conducted by our Audit Committee, could result in a material diversion of our management's time and result in substantial cost and, in the event of an adverse finding, could have a material adverse effect on our business and results of operations. In addition, any perceived or actual failure by us to comply with applicable laws, rules, regulations, and standards could have a significant impact on our reputation and expose us to legal risk and potential criminal and civil liability.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

**(a) 2024 Revolver**

On the Amendment Effective Date, Fluence Energy, Inc. entered into Amendment No. 3 to that certain ABL Credit Agreement by and among Fluence Energy, LLC, as parent borrower, the Company, as parent, the other borrowers party thereto, the other guarantors party thereto, the lenders party thereto, and Citibank, N.A., as administrative agent (as successor to Barclays Bank PLC) (such agreement, as so amended, the "2024 Credit Agreement") in order to (i) convert the existing ABL Facility to a senior secured cash flow revolving credit facility in an initial aggregate principal amount of up to \$500 million (the "2024 Revolver"), (ii) replace Barclays Bank PLC as administrative agent under the 2024 Credit Agreement with Citibank, N.A., and (iii) make certain other modifications to the 2024 Credit Agreement as set forth therein. Capitalized terms used herein that are not otherwise defined herein are defined in the 2024 Credit Agreement.

The 2024 Revolver is secured by (i) a first priority pledge of the Company's equity interests in Fluence Energy, LLC and Fluence Energy Global Production Operation, LLC, (ii) first priority security interests in substantially all tangible and intangible personal property of the Company, Fluence Energy, LLC, Fluence Energy Global Production Operation, LLC and certain of its foreign subsidiaries, in each case, subject to customary exceptions and limitations, and (iii) a pledge of the Company's equity interests in certain of its foreign subsidiaries and security interests in certain assets of such foreign subsidiaries.



The 2024 Credit Agreement sets forth that (i) loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus 2.00%, (ii) loans comprising each Term Benchmark Borrowing shall bear interest at the Term SOFR Rate or the Adjusted EURIBOR Rate, as applicable, plus 3.00%, and (iii) the loans comprising each RFR Borrowing shall bear interest at the Daily Simple RFR plus 3.00%, in each instance subject to customary benchmark replacement provisions including, but not limited to, alternative benchmark rates, customary spread adjustments with respect to borrowings in foreign currencies and benchmark replacement conforming changes. Fluence Energy, LLC is required to pay to the lenders a commitment fee on the average daily unused portion of the commitments through maturity, which shall accrue at the rate of 0.50% per annum. The 2024 Credit Agreement provides for a cash draw sublimit of \$150.0 million as well as a letter of credit sublimit in the amount of \$500.0 million if certain conditions are met.

The 2024 Credit Agreement contains customary covenants for this type of financing, including, but not limited to, covenants that restrict our and certain of our subsidiary's ability to: incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The 2024 Credit Agreement limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Under the terms of the Credit Agreement, Fluence Energy, LLC and its subsidiaries are currently limited in their ability to pay cash dividends to, lend to, or make other investments in the Company, subject to certain exceptions. In addition, we are required to maintain (i) from the Amendment Effective Date through December 31, 2025, Total Liquidity of no less than \$150,000,000, (ii) from January 1, 2026 and thereafter, Total Liquidity of no less than \$100,000,000 or a Consolidated Leverage Ratio as of the last day of any Measurement Period not to exceed 3.50:1.00, and (iii) certain other financial requirements at each Guarantor Coverage Test Date.

The 2024 Credit Agreement contains customary events of default for this type of financing. If an event of default occurs with respect to a Borrower, the lenders will be able to, among other things, terminate the commitments immediately, cash collateralize any outstanding letters of credit, declare any loans outstanding to be due and payable in whole or in part, and exercise other rights and remedies. The maturity date and the date of termination of lending commitments under the 2024 Revolver both remain unchanged at November 22, 2027.

The foregoing description is a summary and does not purport to be complete and is subject to, and qualified in its entirety by, the complete text of the 2024 Credit Agreement, which is filed as Exhibit 10.2 hereto and incorporated by reference herein.

(b) None.

(c) **Director and Officer Rule 10b5-1 Trading Arrangements**

During the three months ended June 30, 2024, no directors or "officers" (as defined in Rule 16a-1(f) under the Exchange Act) of the Company adopted, modified, or terminated "Rule 10b5-1 trading arrangements" and/or "non-Rule 10b5-1 trading arrangements" (each as defined in Item 408 of Regulation S-K).

**Item 6. Exhibits**

(a) The following exhibits are filed as part of this Report.

Exhibit No.	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit No.	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	November 3, 2021
3.2	<a href="#">First Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	December 22, 2022
3.3	<a href="#">Certificate of Retirement of 65,674,195 shares of Class B-1 Common Stock Fluence Energy, Inc.</a>	8-K	001-40978	3.1	June 11, 2024
3.4	<a href="#">Amended and Restated Bylaws of Fluence Energy, Inc.</a>	8-K	001-40978	3.2	November 3, 2021
4.1*	<a href="#">Description of Registered Securities</a>				
10.1*†	<a href="#">Revised Non-Employee Independent Director Compensation Policy (effective October 1, 2024)</a>				
10.2*	<a href="#">Amendment Number Three to Syndicated Facility Agreement, dated as of August 6, 2024, by and among Fluence Energy, Inc., Fluence Energy, LLC, Fluence Energy Global Production Operation, LLC, the other guarantors party thereto, the parties thereto identified as “Exiting Lenders”, the parties thereto identified as “Existing Lenders”, the parties thereto identified as “New Lenders”, Barclays Bank PLC, in its capacity as resigning administrative agent, and Citibank, N.A., in its capacity as successor administrative agent.</a>				
31.1*	<a href="#">Certification of the Company’s Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
31.2*	<a href="#">Certification of the Company’s Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
32.1**	<a href="#">Certification of the Company’s Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				
32.2**	<a href="#">Certification of the Company’s Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				
101.SCH*	XBRL Taxonomy Extension Schema Document.				
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.				
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.				
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.				
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.				
104	Cover Page Interactive Data File - The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				

† Indicates a management or compensatory plan or arrangement.

\* Filed herewith.

\*\* This certification is being furnished solely to accompany this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing of the registrant under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Fluence Energy, Inc.

Date: August 7, 2024

By: /s/ Julian Nebreda  
Julian Nebreda  
*Chief Executive Officer and President (Principal Executive Officer)*

Date: August 7, 2024

By: /s/ Ahmed Pasha  
Ahmed Pasha  
*Chief Financial Officer and Senior Vice President (Principal Financial Officer)*

**DESCRIPTION OF CAPITAL STOCK****General**

The following description of the capital stock of Fluence Energy, Inc. (“Fluence,” the “Company,” “we,” “us,” and “our”) and certain provisions of our amended and restated certificate of incorporation, as further amended by the first certificate of amendment and that certificate of retirement thereto (collectively, our “certificate”) and amended and restated bylaws (our “bylaws”) are summaries and are qualified in their entirety by reference to the full text of our amended and restated certificate of incorporation and first certificate of amendment to the amended and restated certificate of incorporation and amended and restated bylaws, each of which is filed as an exhibit to this Quarterly Report on Form 10-Q for fiscal quarter ended June 30, 2024 and filed with the Securities and Exchange Commission on August 8, 2024, and applicable provisions of the General Corporation Law of the State of Delaware (the “DGCL”).

Our certificate authorizes capital stock consisting of:

- 1,200,000,000 shares of Class A common stock, par value \$0.00001 per share;
- 134,325,805 shares of Class B-1 common stock, par value \$0.00001 per share;
- 200,000,000 shares of Class B-2 common stock, par value \$0.00001 per share; and
- 10,000,000 shares of preferred stock, par value \$0.00001 per share.

Certain provisions of our certificate and our bylaws summarized below may be deemed to have an anti-takeover effect and may delay or prevent a tender offer or takeover attempt that a stockholder might consider in its best interest, including those attempts that might result in a premium over the market price for the shares of common stock.

***Class A Common Stock***

Holders of shares of our Class A common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders.

Holders of shares of our Class A common stock are entitled to receive dividends when and if declared by our board of directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock.

Upon our dissolution or liquidation, after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of shares of our Class A common stock are entitled to receive pro rata our remaining assets available for distribution.

Holders of shares of our Class A common stock do not have preemptive, subscription, redemption or conversion rights. There are no redemption or sinking fund provisions applicable to the Class A common stock.

***Class B-1 and Class B-2 Common Stock***

Each share of our Class B-1 common stock entitles its holders to five votes per share and each share of our Class B-2 common stock entitles its holders to one vote per share on all matters presented to our stockholders generally.

Shares of Class B-1 and Class B-2 common stock will be issued in the future only (a) to the extent necessary to maintain a one-to-one ratio between the number of common units of Fluence Energy, LLC (“LLC Interests”) held by the Founders (defined below) and the aggregate number of shares of Class B-1 and Class B-2 common stock issued to the Founders, and (b) in the case of Class B-2 common stock, upon conversion of Class B-1 common stock as described below. Shares of Class B-1 and Class B-2 common stock are transferable only together with an equal number of LLC Interests. Only permitted transferees of LLC Interests held by the Founders are permitted transferees of Class B-1 and Class B-2 common stock. “Founders” means, collectively, the holders of LLC Interests (other than the Company) and our Class B-1 common stock, including AES Grid Stability, LLC, Siemens Industry, Inc., and their respective subsidiaries, who may, at each of their respective options, in whole or in part from time to time, require Fluence Energy, LLC to redeem their LLC Interests (along with an equal number of shares of Class B-1 common stock or Class B-2 common stock, as the case may be (and such shares shall be immediately cancelled)) for, at our election (determined solely by our independent directors (within the meaning of the rules of the Nasdaq) who are disinterested), cash or newly-issued shares of our Class A common stock.

Holders of shares of our Class B-1 and Class B-2 common stock vote together with holders of our Class A common stock as a single class on all matters presented to our stockholders for their vote or approval, except for certain amendments to our certificate described below or as otherwise required by applicable law or our certificate.

Holders of our Class B-1 and Class B-2 common stock do not have any right to receive dividends or to receive a distribution upon dissolution or liquidation. Additionally, holders of shares of our Class B-1 and Class B-2 common stock do not have preemptive, subscription, redemption or conversion rights. There are no redemption or sinking fund provisions applicable to the Class B-1 or Class B-2 common stock. Any amendment of our certificate that gives holders of our Class B-1 or Class B-2 common stock (1) any rights to receive dividends or any other kind of distribution, (2) any right to convert into or be exchanged for Class A common stock or (3) any other economic rights will require, in addition to stockholder approval, the affirmative vote of holders of our Class A common stock voting separately as a class.

Each outstanding share of Class B-1 common stock will automatically convert into one share of Class B-2 common stock upon the earliest of (1) any transfer by a Founder of such shares of Class B-1 common stock other than to an affiliate of such Founder, (2) with respect to each Founder and its affiliates, 5:00 p.m. (New York City time) on a date fixed by our board of directors that is not less than 60 days nor more than 180 days following the date that such Founder, together with its affiliates, ceases to hold an aggregate number of shares of all classes of our common stock representing at least 20% of the aggregate number of all outstanding shares of all classes of our common stock, and (3) 5:00 p.m. (New York City time) on the date that is seven years following the closing of our initial public offering of Class A common stock. In addition, upon the filing of the first certificate of amendment to our amended and restated certificate of incorporation on December 22, 2022, holders of our Class B-1 common stock are permitted to convert shares of Class B-1 common stock into shares of Class B-2 common stock at a one-to-one ratio at any time at the option of such holder.

Following exercise of its redemption rights by Siemens Industry, Inc. of its LLC Interests on June 30, 2022, together with the corresponding cancellation of an equivalent number of shares of our Class B-1

common stock, and our election to settle the redemption through issuance of shares of Class A common stock to Siemens Industry, Inc. (the "Redemption"), AES Grid Stability, LLC currently holds 100% of the outstanding shares of our Class B-1 common stock.

No shares of our Class B-2 common stock are outstanding.

### ***Preferred Stock***

The total of our authorized shares of preferred stock is 10,000,000 shares. We have no shares of preferred stock outstanding.

Our board of directors is authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges, and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges, and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings, and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding voting stock. Additionally, the issuance of preferred stock may adversely affect the holders of our Class A common stock by restricting dividends on the Class A common stock, diluting the voting power of the Class A common stock or subordinating the liquidation rights of the Class A common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our Class A common stock.

### **Registration Rights**

In connection with our initial public offering in October 2021, we entered into a Registration Rights Agreement with certain of the Continuing Equity Owners (as defined below) pursuant to which such parties have specified rights to require us to register for resale all or a portion of their shares of Class A common stock under the Securities Act of 1933, as amended (the "Securities Act"). "Continuing Equity Owners" originally consisted of AES Grid Stability, LLC, Siemens Industry, Inc., and Qatar Holding LLC and each of their respective subsidiaries. Following the Redemption, Siemens Industry, Inc. effected an internal transfer of its interests in 58,586,695 shares of Class A common stock held by Siemens Industry, Inc. to Siemens AG and Siemens AG executed a Registration Rights Joinder, becoming a party to the Registration Rights Agreement. On September 29, 2022, Siemens AG effected an internal transfer of its interest in 18,848,631 shares of Class A common stock held by Siemens AG to Siemens Pension-Trust E.V. and Siemens Pension-Trust E.V. executed a Registration Rights Joinder, becoming a party to the Registration Rights Agreement. On December 19, 2023, Siemens Pension-Trust E.V. effected an internal transfer of all of its outstanding shares of Class A common stock to SPT Invest Management, Sarl and SPT Invest Management, Sarl executed a Registration Rights Joinder, becoming a party to the Registration Rights Agreement.

### **Forum Selection**

Our certificate provides that (A) (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim for or based on breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim against the Company or any current or former



director, officer, employee, agent or stockholder of the Company arising pursuant to any provision of the DGCL, our certificate or our bylaws (as either may be amended or restated) or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim related to or involving the Company that is governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Notwithstanding the foregoing, the exclusive forum provision shall not apply to claims seeking to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended.

### **Dividends**

The DGCL permits a corporation to declare and pay dividends out of "surplus" or, if there is no "surplus," out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. "Surplus" is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by the board of directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of capital stock. Net assets equals the fair value of the total assets minus total liabilities. The DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

Declaration and payment of any dividend is subject to the discretion of our board of directors. The time and amount of dividends will be dependent upon our business prospects, results of operations, financial condition, cash requirements and availability, debt repayment obligations, capital expenditure needs, contractual restrictions, covenants in the agreements governing our future indebtedness, industry trends, the provisions of Delaware law affecting the payment of distributions to stockholders, and any other factors our board of directors may consider relevant.

### **Anti-Takeover Provisions**

Our certificate and bylaws contain provisions that may delay, defer or discourage another party from acquiring control of us. We expect that these provisions, which are summarized below, will discourage coercive takeover practices or inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they also give our board of directors the power to discourage acquisitions that some stockholders may favor.

#### *Authorized but unissued shares.*

The authorized but unissued shares of our common stock and our preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by Nasdaq rules. These additional shares may be used for a variety of corporate finance transactions, acquisitions, employee benefit plans and funding of redemptions of LLC Interests. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

#### *Limitation on Action by Written Consent*

Our certificate of incorporation provides that from and after the date on which the aggregate number of outstanding shares of Class B-1 and Class B-2 common stock, voting together as a single class, cease to represent at least 50% of the total voting power of the outstanding shares of our capital stock, holders of our common stock will not be able to act by written consent without a meeting.

*Special meetings of stockholders.*

Our bylaws provide that from and after the date on which the aggregate number of outstanding shares of Class B-1 and Class B-2 common stock, voting together as a single class, cease to represent at least 50% of the total voting power of the outstanding shares of our capital stock, only the chairperson of our board of directors or a majority of our board of directors may call special meetings of our stockholders.

*Advance notice requirements for stockholder proposals and director nominations.*

In addition, our bylaws provide for an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of candidates for election to our board of directors. In order for any matter to be "properly brought" before a meeting, a stockholder will have to comply with advance notice and duration of ownership requirements and provide us with certain information. Stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of our board of directors or by a qualified stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered timely written notice in proper form to our secretary of the stockholder's intention to bring such business before the meeting. These provisions could have the effect of delaying stockholder actions that are favored by the holders of a majority of our outstanding voting securities until the next stockholder meeting. Notwithstanding anything contained in our bylaws to the contrary, such advance notice procedures shall not apply to a stockholder exercising its rights to designate persons for nomination for election to our board of directors in accordance with the provisions of the Stockholders Agreement for so long as it remains in effect.

*Amendment of certificate of incorporation or bylaws.*

The DGCL provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our certificate and bylaws provide that the affirmative vote of holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of capital stock, voting as a single class, is required to amend certain provisions of our certificate, including provisions relating to amending our bylaws, the size of our board, removal of directors, director liability, vacancies on our board, special meetings, stockholder notices, actions by written consent and exclusive forum.

*Section 203 of the DGCL.*

We have opted out of Section 203 of the DGCL. However, our certificate contains provisions that are similar to Section 203. Specifically, our certificate provides that, subject to certain exceptions, we will not be able to engage in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a manner prescribed in our certificate. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or

controlled by such entity or person, provided that the Founders and certain of their related parties and their respective direct and indirect transferees shall not be considered “interested stockholders.”

### **Limitations on Liability and Indemnification of Officers and Directors**

Our certificate and bylaws provide indemnification for our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. Prior to the consummation of the Transactions, we intend to enter into indemnification agreements with each of our directors and executive officers that may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. In addition, as permitted by Delaware law, our certificate includes provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

### **Corporate Opportunity Doctrine**

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors or stockholders. Our certificate will, to the maximum extent permitted from time to time by Delaware law, renounce any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to any director or stockholder who is not employed by us or our subsidiaries. Our certificate provides that, to the fullest extent permitted by law, any director or stockholder who is not employed by us or our affiliates does not have any duty to refrain from (1) engaging in a corporate opportunity in the same or similar lines of business in which we or our affiliates now engage or propose to engage or (2) otherwise competing with us or our affiliates. In addition, to the fullest extent permitted by law, if any director or stockholder who is not employed by us or our subsidiaries acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself or its or his affiliates or for us or our affiliates, such person has no duty to communicate or offer such transaction or business opportunity to us or any of our affiliates and they may take any such opportunity for themselves or offer it to another person or entity, unless such opportunity was expressly offered to them solely in their capacity as a director, executive officer or employee of us or our affiliates. To the fullest extent permitted by Delaware law, no potential transaction or business opportunity may be deemed to be a corporate opportunity of the corporation or its subsidiaries unless (1) we or our subsidiaries would be permitted to undertake such transaction or opportunity in accordance with the certificate, (2) we or our subsidiaries, at such time have sufficient financial resources to undertake such transaction or opportunity, (3) we have an interest or expectancy in such transaction or opportunity, and (4) such transaction or opportunity would be in the same or similar line of our or our subsidiaries’ business in which we or our subsidiaries are engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business. Our certificate does not renounce our interest in any business opportunity that is expressly offered to an employee director or employee in his or her capacity as a director or employee of Fluence Energy, Inc.

### **Dissenters' Rights of Appraisal and Payment**

Under the DGCL, with certain exceptions, our stockholders have appraisal rights in connection with a merger or consolidation of the Company. Pursuant to the DGCL, stockholders who properly

request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

#### **Stockholders' Derivative Actions**

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our shares at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law.

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our Class A common stock is Computershare Trust Company, N.A.

#### **Trading Symbol and Market**

Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol "FLNC".

**Fluence Energy, Inc.**  
**Non-Employee Independent Director Compensation Policy**

Non-employee independent members of the board of directors (the “**Board**”) of Fluence Energy, Inc. (the “**Company**”) shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Independent Director Compensation Policy (this “**Policy**”). The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who (a) is not an employee of the Company or any parent or subsidiary of the Company and (b) was not nominated to the Board by AES Grid Stability, LLC (“**AES**”), Siemens AG (“**Siemens**”) or Qatar Holding LLC (“**QHL**”) or any of their respective affiliates pursuant to their respective nomination rights set forth in the Stockholders Agreement, dated as of October 27, 2021, as may be amended or modified from time to time, by and among the Company, AES, Siemens and QHL (each, a “**Non-Employee Independent Director**”) who may be eligible to receive such cash or equity compensation, unless such Non-Employee Independent Director declines the receipt of such cash or equity compensation by written notice to the Company. The terms and conditions of this Policy supersedes any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Independent Directors and between any subsidiary of the Company and any of its non-employee independent directors. This Policy shall remain in effect until it is amended or rescinded by further action of the Board.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Independent Director shall receive an annual cash retainer of \$90,000 for service on the Board.

(b) Additional Annual Retainers. In addition, a Non-Employee Independent Director shall receive the following annual cash retainers:

(i) Chairperson of the Board. A Non-Employee Independent Director serving as Chairperson of the Board shall receive an additional annual cash retainer of \$85,000 for such service.

(ii) Audit Committee. A Non-Employee Independent Director serving as Chairperson of the Audit Committee shall receive an additional annual cash retainer of \$17,500 for such service.

(iii) Compensation and Human Resources Committee. A Non-Employee Independent Director serving as Chairperson of the Compensation and Human Resources Committee shall receive an additional annual cash retainer of \$15,000 for such service.

(iv) Nominating and Corporate Governance Committee. A Non-Employee Independent Director serving as Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of \$12,500 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Independent Director does not serve as a Non-Employee Independent Director, or in the applicable positions described in Section 1(b), for an entire calendar quarter, such Non-Employee Independent Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Independent Director for such calendar quarter pursuant to Sections 1(a) and 1(b), with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Independent Director serves as a Non-Employee Independent Director or in the applicable positions described in Section 1(b) during the applicable calendar quarter and the denominator of which is the number of days in the applicable calendar quarter.

2. Equity Compensation. Non-Employee Independent Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Company's 2021 Incentive Award Plan or any other applicable Company equity incentive plan then-maintained by the Company (such plan, as may be amended from time to time, the "**Equity Plan**") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all equity grants hereunder are subject in all respects to the terms of the Equity Plan.

(a) Annual Awards. Each Non-Employee Independent Director who (i) serves on the Board as of the date of any annual meeting of the Company's stockholders (an "**Annual Meeting**") and (ii) will continue to serve as a Non-Employee Independent Director immediately following such Annual Meeting, shall be automatically granted, on the date of such Annual Meeting, an award of restricted stock units that has an aggregate fair value on the date of grant of \$175,000 (as determined in accordance with ASC 718 and subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(a) shall be referred to as the "**Annual Awards**." For the avoidance of doubt, a Non-Employee Independent Director elected for the first time to the Board at an Annual Meeting shall receive only an Annual Award in connection with such election, and shall not receive any Initial Award on the date of such Annual Meeting as well.

(b) Initial Awards. Except as otherwise determined by the Board, each Non-Employee Independent Director who is initially elected or appointed to the on any date other than the date of an Annual Meeting shall be automatically granted, on the date of such Non-Employee Independent Director's initial election or appointment (such Non-Employee Independent Director's "**Start Date**"), an award of restricted stock units that has an aggregate fair value on such Non-Employee Independent Director's Start Date equal to the product of (i)

\$175,000 (as determined in accordance with ASC 718) and (ii) a fraction, the numerator of which is (x) 365 minus (y) the number of days in the period beginning on the date of the Annual Meeting immediately preceding such Non-Employee Independent Director's Start Date and ending on such Non-Employee Independent Director's Start Date and the denominator of which is 365 (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(b) shall be referred to as "**Initial Awards**." For the avoidance of doubt, no Non-Employee Independent Director shall be granted more than one Initial Award.

(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(b) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Annual Awards as described in Section 2(a) above.

(d) Vesting of Awards Granted to Non-Employee Independent Directors. Each Annual Award and Initial Award shall vest on the first anniversary of the date of grant, subject to the Non-Employee Independent Director continuing in service on the Board through the applicable vesting date. No portion of an Annual Award or Initial Award that is unvested at the time of a Non-Employee Independent Director's termination of service on the Board shall become vested thereafter. All of a Non-Employee Independent Director's Annual Awards and Initial Awards shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

3. Review of Policy. The Compensation and Human Resources Committee shall review this Policy periodically and may recommend any modifications to the Board. The Board will determine any changes to be made to this Policy based on the Compensation and Human Resources Committee's recommendations.

Revised by the Board of Directors of Fluence Energy, Inc. on December 12, 2022.

Revised by the Board of Directors of Fluence Energy, Inc. on August 6, 2024, effective as of October 1, 2024.

\* \* \* \* \*

**AMENDMENT NUMBER THREE  
TO SYNDICATED FACILITY AGREEMENT**

**THIS AMENDMENT NUMBER THREE TO SYNDICATED FACILITY AGREEMENT** (this "Amendment"), dated as of August 6, 2024, is entered into by and among **FLUENCE ENERGY, INC.**, a Delaware corporation ("Parent"), **FLUENCE ENERGY, LLC**, a Delaware limited liability company (the "Parent Borrower"), **FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC**, a Delaware limited liability company (together with the Parent Borrower, each a "Borrower" and collectively, jointly and severally, the "Borrowers"), the other Guarantors party hereto (together with Parent and the Borrowers, each an "Existing Loan Party" and collectively, the "Existing Loan Parties"), the parties hereto identified as "Exiting Lenders" on the signature pages hereto (the "Exiting Lenders"), the parties hereto identified as "Existing Lenders" on the signature pages hereto (the "Existing Lenders"), the parties hereto identified as "New Lenders" on the signature pages hereto (the "New Lenders" and, together with the Exiting Lenders and Existing Lenders, the "Lenders"), **BARCLAYS BANK PLC** ("Barclays"), in its capacity as resigning administrative agent (the "Resigning Agent"), and **CITIBANK, N.A.** ("Citi"), in its capacity as successor administrative agent (in such capacity, the "Successor Agent").

**WITNESSETH**

**WHEREAS**, Parent, the Borrowers, the Exiting Lenders, the Existing Lenders, and the Resigning Agent are parties to that certain Syndicated Facility Agreement, dated as of November 22, 2023 (as amended by that certain Amendment Number One to Syndicated Facility Agreement, dated as of April 8, 2024, as amended by that certain Amendment Number Two to Syndicated Facility Agreement, dated as of May 8, 2024, and as further amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement"; the Existing Credit Agreement as amended by this Amendment, the "Credit Agreement");

**WHEREAS**, pursuant to Section 8.07 of the Existing Credit Agreement, (i) Barclays desires to resign as Administrative Agent, and (ii) the Existing Lenders, the Exiting Lenders and the Existing Loan Parties desire to appoint Citi to act as the successor "Administrative Agent" under the Existing Credit Agreement and the other Loan Documents;

**WHEREAS**, the Exiting Lenders and the Existing Lenders collectively constitute 100% of the Lenders (as defined in the Existing Credit Agreement) party to the Existing Credit Agreement on the Amendment No. 3 Effective Date immediately prior to the Amendment No. 3 Effective Time;

**WHEREAS**, the Borrowers have requested, and the Administrative Agent and the Issuing Banks have agreed, that each of the New Lenders become a Lender under the Credit Agreement with a Commitment in the amount as shown for each such New Lender on Schedule 2.01 to the Credit Agreement;



**WHEREAS**, the Exiting Lenders have elected not to remain as lenders following the Amendment No. 3 Effective Date and, as a result thereof, the Borrowers have agreed to pay the Exiting Lenders all principal, interest, fees and other charges owed to the Exiting Lenders under the Loan Documents subject to the terms and conditions hereof; and

**WHEREAS**, pursuant to and in accordance with Section 10.02 of the Existing Credit Agreement and the terms and conditions set forth herein, immediately following the effectiveness of the resignation of Barclays and appointment of Citi as the Administrative Agent, the Existing Loan Parties, the Lenders and the Successor Agent have agreed to amend the Existing Credit Agreement and certain of the other Loan Documents as more particularly set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All initially capitalized terms used herein (including the preamble and recitals hereof) without definition shall have the meanings ascribed thereto in the Credit Agreement.

2. Resignation and Appointment.

(a) Pursuant to Section 8.07 of the Existing Credit Agreement, the Resigning Agent hereby resigns as Administrative Agent under the Existing Credit Agreement and the other Loan Documents, effective as of the Amendment Effective Date immediately prior to the Amendment No. 3 Effective Time (the "Resignation Effective Time"), it being understood that the provisions of Article 8 and Section 10.03 of the Existing Credit Agreement shall continue in effect for the benefit of the Resigning Agent in respect of any actions taken or omitted to be taken by it as Administrative Agent under the Existing Credit Agreement and the other Loan Documents. In accordance with Section 8.07 of the Existing Credit Agreement, the Lenders and the Parent Borrower, as evidenced by their signatures on the signature pages attached hereto, hereby appoint the Successor Agent as Administrative Agent under the Existing Credit Agreement and the other Loan Documents, effective as of the Resignation Effective Time, and the Successor Agent hereby accepts and assumes all of the Resigning Agent's right, title and interest in, to and under the Existing Credit Agreement, the Security Documents, and the other Loan Documents, including without limitation, with respect to the property of any Borrower or any Guarantor, solely in its capacity as Administrative Agent. Such appointment is without recourse, representation or warranty of any kind except as provided herein and in the Existing Credit Agreement and the other Loan Documents. The Lenders and the Parent Borrower hereby consent to the appointment of the Successor Agent as the successor Administrative Agent under the Existing Credit Agreement, the Security Documents and the other Loan Documents, effective as of the Resignation Effective Time. All parties hereto waive any notice requirements under Section 8.07 of the Existing Credit Agreement relating to such resignation and appointment. The Parent Borrower acknowledges that notwithstanding this Section 2, the obligations of each Borrower and each Guarantor under the Existing Credit Agreement, the Security Documents and the other Loan Documents continue in full force and effect.

(b) Effective as of the Resignation Effective Time, the Resigning Agent is hereby released from each and all of its liabilities, obligations, and duties as Administrative Agent under the Existing Credit Agreement, the Security Documents and the other Loan Documents, and the Successor Agent as the successor Administrative Agent succeeds to and becomes vested with all the rights, benefits, powers, privileges and duties of the Administrative Agent under the Existing Credit Agreement, the Security Documents and the other Loan Documents; provided, that the Successor Agent does not assume any duties, obligations, or liabilities as administrative agent for any period prior to the Resignation Effective Time, and the Successor Agent shall have no liabilities, duties, or obligations in respect of any acts or omissions of the Resigning Agent. The Resigning Agent shall not have any liabilities, duties or obligations in respect of any acts or omissions of the Successor Agent.

(c) The Resigning Agent hereby irrevocably assigns and delegates to the Successor Agent, effective as of the Resignation Effective Time, all of the rights, benefits, authority, powers, and duties of the Resigning Agent under the Existing Credit Agreement, the Security Documents and the other Loan Documents (other than those rights and benefits of the Resigning Agent that expressly survive the resignation of the Resigning Agent pursuant to the Existing Credit Agreement (including but not limited to Article 8 and Section 10.03 of the Existing Credit Agreement)). Effective as of the Resignation Effective Time, the Successor Agent shall succeed to the rights, benefits, authority, powers and duties of the Resigning Agent under the Credit Agreement, the Security Agreements and the other Loan Documents as if it were the original Administrative Agent thereunder, and the rights, benefits, powers and duties of the Resigning Agent (other than those rights and benefits of the Resigning Agent that expressly survive the resignation of the Resigning Agent pursuant to the Existing Credit Agreement (including but not limited to Article 8 and Section 10.03 of the Existing Credit Agreement)) under the Existing Credit Agreement and the other Loan Documents shall be terminated.

(d) As of the Resignation Effective Time, the Resigning Agent hereby assigns (without recourse and without representation or warranty of any kind, either express or implied) to the Successor Agent each of the Liens and security interests granted to the Resigning Agent under the Existing Credit Agreement, the Security Documents and the other Loan Documents, and the Successor Agent hereby assumes all such Liens and security interests, for its benefit and for the benefit of the Secured Parties. Each of the Existing Loan Parties hereby confirms that each of the Liens on the Collateral and security interests in the Collateral granted to the Resigning Agent under the Security Documents shall, from and after the Effective Time, be continuing Liens and security interests in favor of the Successor Agent for the benefit of the Successor Agent and the other Secured Parties and such Liens and security interests are reaffirmed by each of the Loan Parties. Each Loan Party agrees that the foregoing provisions of this Section 2(d) do not constitute (i) a novation of the Security Documents or any Collateral or (ii) a release of any obligations of any Existing Loan Party under the Security Documents or in respect of any Lien created under or by the Security Documents, subject in all cases to the terms of the Security Documents.

(e) Effective as of the Resignation Effective Time, the Resigning Agent hereby authorizes the Successor Agent (or its designee), at the expense of the Existing Loan

Parties in accordance with Section 10.03 of the Existing Credit Agreement, to (i) prepare and file the uniform commercial code assignments attached hereto as Exhibit B with respect to any and all UCC-1 financing statements previously filed by or on behalf of the Resigning Agent in its capacity as Administrative Agent under the Credit Agreement and the other Loan Documents, and (ii) record such other assignment documents as may be executed and delivered by the Resigning Agent in connection herewith. The Resigning Agent further agrees, at the expense of the Existing Loan Parties in accordance with Section 10.03 of the Existing Credit Agreement, to (i) execute all documents as may be reasonably requested by the Successor Agent and that is reasonably satisfactory to the Resigning Agent to transfer the rights and privileges of the Resigning Agent under the Loan Documents to the Successor Agent, and (ii) execute and deliver to the Successor Agent such additional documents as the Successor Agent may reasonably request and that are reasonably satisfactory to the Resigning Agent to carry out the terms of this Section 2.

(f) On and after the Resignation Effective Time, (i) any Collateral in the possession or control of the Resigning Agent, for the benefit of the Secured Parties, shall be deemed to be held or controlled, as applicable, by the Resigning Agent, as sub-agent and bailee for the Successor Agent, for the benefit of the Secured Parties, until such time as such Collateral has been delivered to Citi acting as the Successor Agent, notices under any existing control agreements have been delivered to the applicable counterparty on behalf of Citi or new control agreements or amendments to existing control agreements have been entered into in favor of Citi as Successor Agent, as applicable, and (ii) the Resigning Agent shall have the full benefit of the protective provisions of Article 8 and Section 10.03 of the Existing Credit Agreement while serving in such capacities. During such time, the Resigning Agent shall have no obligation to take any actions or accept any instructions or directions, while serving as sub-agent and bailee for the Successor Agent under the terms of this Section 2(f).

(g) Each Existing Loan Party (on behalf of itself and its Related Parties) and their respective successors-in-title, legal representatives and assignees and, to the extent the same is claimed by right of, through or under any of the Existing Loan Parties for its past, present and future employees, agents, representatives, officers, directors, shareholders, and trustees (each, a "Releasing Party" and collectively, the "Releasing Parties"), does hereby remise, release and discharge, and shall be deemed to have forever remised, released and discharged, the Resigning Agent and the Resigning Agent's respective successors-in-title, legal representatives and assignees, past, present and future officers, directors, affiliates, shareholders, trustees, agents, employees, consultants, experts, advisors, attorneys and other professionals and all other persons and entities to whom any of the foregoing would be liable if such persons or entities were found to be liable to any Releasing Party, or any of them (collectively hereinafter the "Released Parties"), from any and all manner of action and actions, cause and causes of action, claims, charges, demands, counterclaims, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, expenses, executions, liens, claims of liens, claims of costs, penalties, attorneys' fees, or any other compensation, recovery or relief on account of any liability, obligation, demand or cause of action of whatever nature, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, joint and/or several, secured or unsecured, due or not due, primary or

secondary, liquidated or unliquidated, contractual or tortious, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties solely in their capacities as such under the Loan Documents, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to the Existing Credit Agreement or any other Loan Document and the transactions contemplated thereby, and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing (each, a “Claim” and collectively, the “Claims”). Each Releasing Party further stipulates and agrees with respect to all Claims, that it hereby waives any and all provisions, rights, and benefits conferred by Cal. Civ. Code 1542 or any law of any state of the United States or of any foreign jurisdiction, or any principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code 1542, which provides: “a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor”. This Section 2(g) shall survive amendment or termination of each of the Existing Credit Agreement and each other Loan Document.

(h) Effective as of the Resignation Effective Time, unless the context shall otherwise require, each reference to the “Administrative Agent” (or any correlative term) in the Existing Credit Agreement and each of the other Loan Documents and all other agreements, documents or instruments previously or hereafter executed and delivered pursuant to the terms hereof or thereof shall be a reference to Citi, as the Administrative Agent, in such capacity.

3. Amendments to Existing Credit Agreement. Effective as of the Amendment No. 3 Effective Date upon the occurrence of the Amendment No. 3 Effective Time, the Existing Credit Agreement and the Schedules and Exhibits to the Existing Credit Agreement are, in each case, hereby amended and restated as set forth in the Credit Agreement and Schedules and Exhibits attached as Exhibit A hereto.

4. Reallocation, etc.

(a) Upon the occurrence of the Amendment No. 3 Effective Time, (i) each Lender whose Commitments outstanding under the Existing Credit Agreement on the Amendment No. 3 Effective Date immediately prior to the Amendment No. 3 Effective Time (the “Existing Commitments”) exceed its Commitments (each, a “Commitment Decrease Lender”) shall automatically and without further action be deemed to have assigned to each Lender whose Commitments exceed its Existing Commitments (each, a “Commitment Increase Lender”) a portion of, and each such Commitment Increase Lender shall assume a portion of, such Commitment Decrease Lender’s outstanding Existing Commitments under the Existing Credit Agreement together with all obligations of the Borrowers owing to the Commitment Decrease Lenders relating to the Commitments so assigned and (ii) each Existing Lender shall automatically and without further act be deemed to have assigned ratably to each Lender other than an Existing Lender, and each such Lender other than an Existing Lender shall assume, such

Exiting Lender's outstanding Existing Commitments under the Existing Credit Agreement together with all obligations of the Borrowers owing to the Exiting Lenders relating to the Existing Commitments so assigned, such that upon the occurrence of the Amendment No. 3 Effective Time, after giving effect to each such assignment and assumption, the percentage of the aggregate outstanding Existing Commitments under the Credit Agreement held by each Lender (including each such Commitment Increase Lender) will equal such Lender's Applicable Percentage. Each of the assignments and assumptions contemplated hereunder shall be deemed to have been effected by way of, and subject to the terms and conditions of, an Assignment and Assumption (as defined in the Existing Credit Agreement).

(b) The Borrowers hereby agree that they shall pay to the applicable Exiting Lenders and Existing Lenders, on the Amendment No. 3 Effective Date, accrued and unpaid interest and fees to the Amendment No. 3 Effective Date on the amount of Existing Commitments assigned and accepted (including fees in respect of any Existing Letters of Credit outstanding on the Amendment No. 3 Effective Date).

(c) In consideration of the Commitments of each Lender under the Credit Agreement as of the Amendment No. 3 Effective Time (after giving effect to Section 4(a) above), the Borrowers hereby, jointly and severally, agree to pay (or cause to be paid) to the Successor Agent, for the account of each Lender with a Commitment as of the Amendment No. 3 Effective Time (after giving effect to Section 4(a) above), a non-refundable commitment fee (the "Commitment Fee") in Dollars equal to 0.25% multiplied by the aggregate principal amount of each such Lender's Commitment as of the Amendment No. 3 Effective Time (after giving effect to Section 4(a) above), which such Commitment Fee will be earned and due and payable in full on the Amendment No. 3 Effective Date.

5. Conditions Precedent to Amendment. The satisfaction of each of the following shall constitute conditions precedent to the effectiveness of this Amendment (the date of such satisfaction being the "Amendment No. 3 Effective Date" and, except as otherwise set forth in Section 2 hereof, the time of such satisfaction being the "Amendment No. 3 Effective Time"):

(a) The Successor Agent (or its counsel) shall have received a duly executed counterpart of this Amendment signed on behalf of each Existing Loan Party, each Exiting Lender and the Lenders representing 100% of the Commitments under the Credit Agreement.

(b) The Successor Agent shall have received (i) the Reaffirmation Agreement, executed and delivered by each of the Existing Loan Parties, (ii) a Note executed by the Borrower in favor of each Lender requesting a Note at least two (2) Business Days prior to the Amendment Effective Date and (iii) the U.S. Security Agreement executed and delivered by each of the Existing Loan Parties and their applicable Subsidiaries in favor of the Successor Agent.

(c) The Successor Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Amendment No. 3 Effective Date) of McGuireWoods LLP, counsel for the Existing Loan Parties, in form and substance reasonably satisfactory to the Successor Agent.

(d) The Successor Agent shall have received (i) certified copies of the resolutions of the board of directors of the Existing Loan Parties approving the transactions contemplated by the Loan Documents to which each such Existing Loan Party is a party and the execution and delivery of such Loan Documents to be delivered by such Existing Loan Party on the Amendment No. 3 Effective Date, and all documents evidencing other necessary organizational action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Successor Agent relating to the organization, existence and good standing of the Existing Loan Parties and authorization of the transactions contemplated hereby.

(e) The Successor Agent shall have received a certificate of the Secretary or an Assistant Secretary (or other equivalent officer) of each Existing Loan Party certifying the names and true signatures of the officers of such entity authorized to sign the Loan Documents to which it is a party, to be delivered by such entity on the Amendment No. 3 Effective Date and the other documents to be delivered hereunder on the Amendment No. 3 Effective Date.

(f) The Successor Agent shall have received (i) a certificate, dated the Amendment No. 3 Effective Date and signed on behalf of the Parent Borrower by the President, a Vice President or a Financial Officer of the Parent Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 of the Credit Agreement as of the Amendment No. 3 Effective Date, and (ii) a certificate, dated the Amendment No. 3 Effective Date and signed on behalf of the Parent Borrower by the chief financial officer of the Parent Borrower, certifying that, as of the Amendment No. 3 Effective Date, the Parent and its Subsidiaries, on a consolidated basis, are and, after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(g) The Lenders and the Successor Agent shall have received all fees required to be paid by the Borrowers on the Amendment No. 3 Effective Date (including, without limitation, the fees payable pursuant to Section 4(c) above), and all expenses required to be reimbursed by the Borrowers for which invoices have been presented at least one (1) Business Day prior to the Amendment No. 3 Effective Date, on or before the Amendment No. 3 Effective Date.

(h) (i) The Successor Agent shall have received, to the extent reasonably requested by any of the Lenders at least three (3) Business Days prior to the Amendment No. 3 Effective Date, all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA Patriot Act and the Proceeds of Crime Act and (ii) to the extent any Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least three (3) days prior to the Amendment No. 3 Effective Date, any Lender that has requested, in a written notice to the Parent Borrower at least three (3) days prior to the Amendment No. 3 Effective Date, a Beneficial Ownership Certification in relation to the Borrowers shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(i) All outstanding Equity Interests (other than Excluded Securities) directly owned by any Existing Loan Party shall have been pledged pursuant to any of the Security Documents.

(j) The Successor Agent shall have received the results of a recent Lien search with respect to each Existing Loan Party, and such search shall reveal no Liens on any of the assets of the Existing Loan Parties except for Liens permitted by Section 6.02 of the Credit Agreement or discharged on or prior to the Amendment No. 3 Effective Date pursuant to documentation reasonably satisfactory to the Successor Agent.

(k) Each document (including any UCC financing statement) required by the Security Documents or reasonably requested by the Successor Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02 of the Credit Agreement), shall be in proper form for filing, registration or recordation

(l) The Loan Parties shall have Total Liquidity, after giving effect to the payment of all fees and expenses to be paid by the Borrowers on the Amendment No. 3 Effective Date under this Amendment and the other Loan Documents, of at least \$150,000,000.

(m) After giving effect to this Amendment, the representations and warranties contained herein, in the Credit Agreement, and in the other Loan Documents, shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of the date hereof, except that (i) for purposes of this Section, the representations and warranties contained in Section 3.04(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01 of the Credit Agreement, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects.

(n) No Default or Event of Default shall have occurred and be continuing as of the Amendment No. 3 Effective Date, nor shall either result from the consummation of the transactions contemplated herein.

(o) The Resigning Agent shall have received, for the ratable benefit of the Existing Lenders and Exiting Lenders, all accrued and unpaid interest with respect to the Loans under the Existing Credit Agreement and all accrued and unpaid fees pursuant to Section 2.09 of the Existing Credit Agreement owing by the Borrowers under the Existing Credit Agreement, in each case, through the Amendment No. 3 Effective Date (which amount received by the Resigning Agent shall be net of any portion of the prepaid quarterly Administration Fee (as defined in the Fee Letter defined in the Existing Credit Agreement) being refunded to the

Borrowers on a pro rata basis for the number of days remaining in the quarterly period in which the Amendment No. 3 Effective Date occurs).

6. Representations and Warranties. Each Loan Party hereby represents and warrants to Administrative Agent and each other Secured Party as follows:

(a) Each of the Parent and its Subsidiaries is duly organized or formed, validly existing and in good standing (or such other analogous status, if any) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing (or such other analogous status, if any) in, every jurisdiction where such qualification is required.

(b) The execution, delivery and performance by the Loan Parties of this Amendment and each of the Loan Documents to which it is party are within each Borrower's and each Guarantor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, equity holder action. Each of the Borrowers and the Guarantors has duly executed and delivered this Amendment and each of the Loan Documents to which it is party, and each of such Loan Documents constitute its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law

(c) The execution, delivery and performance by the Loan Parties of this Amendment and each of the Loan Documents to which it is party (A) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (B) except as would not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (C) will not violate any charter, by-laws or other organizational document of the Parent or any of its Subsidiaries, (D) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (C)) binding upon the Parent or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent or any of its Subsidiaries, and (E) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Subsidiaries (other than Liens arising pursuant to the Security Documents or permitted under Section 6.02 of the Credit Agreement).

(d) Each of the Parent and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and



rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

(e) The representations and warranties set forth in this Amendment, the Credit Agreement, as amended by this Amendment and after giving effect to this Amendment, and the other Loan Documents are true and correct in all material respects (or in all respects if qualified by materiality) on and as of the date hereof, except that (i) for purposes of this Section, the representations and warranties contained in Section 3.04(a) of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01 of the Credit Agreement, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they are true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they are true and correct in all respects.

(f) This Amendment has been entered into without force or duress, of the free will of each Loan Party, and the decision of each Loan Party to enter into this Amendment is a fully informed decision and such Person is aware of all legal and other ramifications of each decision.

(g) It has read and understands this Amendment, has consulted with and been represented by independent legal counsel of its own choosing in negotiations for and the preparation of this Amendment, has read this Amendment in full and final form, and has been advised by its counsel of its rights and obligations hereunder.

7. Payment of Costs and Fees. The Borrowers shall pay to Administrative Agent and each Lender all expenses contemplated under Section 10.03 of the Credit Agreement (including, without limitation, the reasonable fees and expenses of any attorneys retained by Administrative Agent or any Lender) in connection with the preparation, negotiation, execution and delivery of this Amendment and any documents and instruments relating hereto.

**8. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS AND WAIVER OF JURY TRIAL PROVISION. THIS AMENDMENT SHALL BE SUBJECT TO THE PROVISIONS REGARDING GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS AND WAIVER OF JURY TRIAL PROVISION SET FORTH IN SECTIONS 10.09 AND 10.10 OF THE CREDIT AGREEMENT, AND SUCH PROVISIONS ARE INCORPORATED HEREIN BY THIS REFERENCE, *MUTATIS MUTANDIS*.**

9. Amendments. This Amendment cannot be altered, amended, changed or modified in any respect except in accordance with Section 10.02 of the Credit Agreement.

10. Counterpart Execution. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall

constitute but one and the same Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment or any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other state laws based on the Uniform Electronic Transactions Act, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

#### 11. Effect on Loan Documents.

(a) The Credit Agreement as amended hereby, and each of the other Loan Documents shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except as expressly set forth herein, as a modification or waiver of any right, power, or remedy of Administrative Agent or any Lender under the Credit Agreement or any other Loan Document. Except for the amendments to the Credit Agreement expressly set forth herein, the Credit Agreement and the other Loan Documents shall remain unchanged and in full force and effect. The waivers, consents and modifications set forth herein are limited to the specifics hereof (including facts or occurrences on which the same are based), shall not apply with respect to any facts or occurrences other than those on which the same are based, shall neither excuse any future non-compliance with the Loan Documents nor operate as a waiver of any Default or Event of Default, shall not operate as a consent to any further waiver, consent or amendment or other matter under the Loan Documents, and shall not be construed as an indication that any future waiver or amendment of covenants or any other provision of the Credit Agreement will be agreed to, it being understood that the granting or denying of any waiver or amendment which may hereafter be requested by any Borrower remains in the sole and absolute discretion of Administrative Agent and Lenders. To the extent that any terms or provisions of this Amendment conflict with those of the Credit Agreement or the other Loan Documents, the terms and provisions of this Amendment shall control.

(b) Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “herein”, “hereof” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to “the Credit Agreement”, “thereunder”, “therein”, “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified and amended hereby.

(c) To the extent that any of the terms and conditions in any of the Loan Documents shall contradict or be in conflict with any of the terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

(d) This Amendment is a Loan Document.

(e) The provisions of Section 1.03 of the Credit Agreement are hereby incorporated *mutatis mutandis*.

12. Entire Agreement. This Amendment, and the terms and provisions hereof, the Credit Agreement and the other Loan Documents constitute the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior or contemporaneous amendments or understandings with respect to the subject matter hereof, whether express or implied, oral or written.

13. Integration. This Amendment, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

14. Reaffirmation of Obligations. Each Loan Party hereby (a) acknowledges and reaffirms its obligations owing to Administrative Agent, each Lender and each other Secured Party under each Loan Document to which it is a party, and (b) agrees that each of the Loan Documents to which it is a party is and shall remain in full force and effect. Each Loan Party hereby (i) further ratifies and reaffirms the validity and enforceability of all of the Liens and security interests heretofore granted, pursuant to and in connection with the U.S. Security Agreement or any other Loan Document to Administrative Agent, on behalf and for the benefit of each Lender and each other Secured Party, as collateral security for the obligations under the Loan Documents in accordance with their respective terms, and (ii) acknowledges that all of such Liens and security interests, and all Collateral heretofore pledged as security for such obligations, continue to be and remain collateral for such obligations from and after the date hereof (including, without limitation, from after giving effect to this Amendment).

15. Ratification. Each Loan Party hereby restates, ratifies and reaffirms each and every term and condition set forth in the Credit Agreement and the Loan Documents effective as of the date hereof and as modified hereby.

16. Severability. In case any provision in this Amendment shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Amendment and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

FLUENCE ENERGY, LLC, a Delaware limited liability company, as Parent  
Borrower

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President, General Counsel and Secretary

FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC, a  
Delaware limited liability company, as a Borrower

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President and Secretary

FLUENCE ENERGY, INC., a Delaware corporation, as the Parent and a  
Guarantor

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President, General Counsel and Secretary

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

CITIBANK, N.A., as an Existing Lender and an Issuing Bank and as Successor Agent

By: /s/ Agha Murtaza

Name: Agha Murtaza

Title: Managing Director / Authorized Signatory

CITICORP NORTH AMERICA, INC., as a New Lender

By: /s/ Sandip Sen

Name: Sandip Sen

Title: Managing Director / Authorized Signatory

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

BARCLAYS BANK PLC, as Resigning Agent

By: /s/ Sydney G. Dennis

Name: Sydney G. Dennis

Title: Director

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

BARCLAYS BANK PLC, as an Existing Lender and an Issuing Bank

By: /s/ Sydney G. Dennis

Name: Sydney G. Dennis

Title: Director

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

JPMORGAN CHASE BANK N.A.,  
as an Existing Lender and an Issuing Bank

By: /s/ Santiago Gascon  
Name: Santiago Gascon  
Title: Vice President

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*



HSBC Bank USA, N.A., as an Existing Lender  
and an Issuing Bank

By: /s/ Jessica Smith

Name: Jessica Smith

Title: Director

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

Mizuho Bank, Ltd., as a New Lender and an Issuing Bank

By: /s/ Edward Sacks

Name: Edward Sacks

Title: Managing Director

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

BNP Paribas, as a New Lender and an Issuing Bank

By: /s/ Andrey Pimenov

Name: Andrey Pimenov

Title: Vice President

By: /s/ Francis Delaney

Name: Francis Delaney

Title: Managing Director

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

GOLDMAN SACHS BANK USA,  
as an Exiting Lender

By: /s/ Andrew B. Vernon

Name: Andrew Vernon

Title: Authorized Signatory

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

GOLDMAN SACHS LENDING PARTNERS LLC,  
as a New Lender and an Issuing Bank

By: /s/ Andrew B. Vernon

Name: Andrew Vernon

Title: Authorized Signatory

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

Morgan Stanley Senior Funding, Inc, as an  
Existing Lender and an Issuing Bank

By: /s/ Michael King

Name: Michael King

Title: Vice President

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

Royal Bank of Canada, as an Existing Lender  
and an Issuing Bank

By: /s/ Martina Wellik

Name: Martina Wellik

Title: Authorized Signatory

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as a New Lender and an Issuing  
Bank

By: /s/ Kevin Pang

Name: Kevin Pang

Title: Vice President

*[Signature page to Amendment Number Three to Syndicated Facility Agreement]*



**EXHIBIT A**

**Amended Credit Agreement, Exhibits and Schedules**

**[see attached]**

SYNDICATED FACILITY AGREEMENT

dated as of

November 22, 2023

(as amended by that certain Amendment Number One to Syndicated Facility Agreement, dated as of April 8, 2024, as amended by that certain Amendment Number Two to Syndicated Facility Agreement, dated as of May 8, 2024, and as amended by that certain Amendment Number Three to Syndicated Facility Agreement, dated as of August 6, 2024)

among

FLUENCE ENERGY, LLC

and

FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC

each as a Borrower

FLUENCE ENERGY, INC.,

as the Parent

THE OTHER GUARANTORS PARTY HERETO

THE LENDERS PARTY HERETO

and

CITIBANK, N.A.,

as Administrative Agent

---

CITIGROUP GLOBAL MARKETS INC.,

BARCLAYS BANK PLC

and

JPMORGAN CHASE BANK N.A.,

as Joint Lead Arrangers and Joint Bookrunners

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EXHIBIT I	Form of Perfection Certificate

SYNDICATED FACILITY AGREEMENT, dated as of November 22, 2023, among FLUENCE ENERGY, LLC, a Delaware limited liability company (the “**Parent Borrower**”), FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC, a Delaware limited liability company (together with the Parent Borrower, collectively, jointly and severally, the “**Borrowers**”), FLUENCE ENERGY, INC., a Delaware corporation (the “**Parent**”), the other GUARANTORS from time to time party hereto, the LENDERS party hereto and CITIBANK, N.A., as Administrative Agent and as Australian Security Trustee.

The parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**ABR**”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate. All ABR Loans shall be denominated in Dollars.

“**Account**” has the meaning specified in the Security Documents, as applicable.

“**Account Debtor**” means any Person obligated on an Account.

“**Acquired Indebtedness**” means Indebtedness of a Person whose assets or Equity Interests are acquired by the Parent Borrower or its Subsidiaries in an acquisition or similar Investment permitted by Section 6.04; provided, that such Indebtedness (a) was in existence prior to the date of such acquisition or other similar Investment, (b) is not an asset-based credit facility, and (c) was not incurred in connection with, or in contemplation of, such acquisition or other similar Investment.

“**Activation Instruction**” has the meaning specified in Section 5.12(b).

“**Adjusted EURIBOR Rate**” means, with respect to any Term Benchmark Borrowing denominated in Euros for any Interest Period, an interest rate per annum equal to (a) the EURIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate; provided that if the Adjusted EURIBOR Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

“**Administrative Agent**” means Citibank, N.A. (or any of its designated branch offices or affiliates), in its capacity as administrative agent for the Lenders hereunder, or any successor administrative agent.

“**Administrative Agent Fee Letter**” means that certain Engagement Letter, dated as of July 9, 2024, by and between the Parent Borrower and Citigroup Global Markets Inc.

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**AES**” means The AES Corporation, a Delaware corporation, and its subsidiaries and affiliates, including AES Grid Stability, LLC, a Delaware limited liability company.

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For greater certainty, any reference to an Affiliate of the Administrative Agent, a Lender or any other Secured Party shall include a domestic or foreign branch of such Person.

“**Agent Parties**” has the meaning specified in Section 10.01.

“**Agents**” means the Administrative Agent, the Australian Security Trustee and the Arrangers.

“**Agreed Currency**” means Dollars and any Alternative Currency.

“**Agreed Security Principles**” has the meaning assignment to such term in Exhibit G.

“**Agreement**” means this Syndicated Facility Agreement, as the same may hereafter be modified, supplemented, extended, amended, restated or amended and restated from time to time.

“**Alternate Base Rate**” means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1%, provided that for the purpose of this definition, the Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately (8:00 a.m., New York time) on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.11(b)), then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“**Alternative Currency**” means (a) Euros, (b) for purposes of Letters of Credit and cash and Cash Equivalents included in the determination of Total Liquidity only, Australian Dollars, (c) Pounds Sterling, and (d) any additional currencies determined after the Amendment No. 3 Effective Date by mutual agreement of the Borrowers, Lenders, Issuing Banks and Administrative Agent; provided that each such currency is a lawful currency that is readily available, freely transferable and not restricted, and able to be converted into Dollars.

“**Alternative Currency Payment Office**” of the Administrative Agent means, for each Alternative Currency, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency as specified from time to time by notice to the Borrowers and each Lender.

“**Amendment No. 3 Effective Date**” means August 6, 2024.

“**Ancillary Document**” has the meaning specified in Section 10.06(b).

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Parent, any Borrower or any of their Affiliates from time to time concerning or relating to bribery, corruption or money laundering, including the Prevention of Corruption Act 1960 of Singapore and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 of Singapore.

“**Anti-Terrorism Laws**” has the meaning specified in Section 3.15(a)(ii).

“**Applicable Commitment Fee Rate**” means, for any day, 0.50% *per annum*.

“**Applicable LC Fee Rate**” means, for any day, a rate equal to the Applicable Rate then used to determine the interest rate on Term SOFR Loans; provided that, at all times when an Event of Default has occurred hereunder and is continuing, the Applicable LC Fee Rate shall be a rate per annum equal to 2% plus the rate otherwise applicable as provided herein.

“**Applicable Percentage**” means, with respect to any Revolving Lender, the percentage of the total Commitments represented by such Revolving Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“**Applicable Rate**” means, for any day, (a) in the case of any Term Benchmark Loan or RFR Loan, 3.00% *per annum*, and (b) in the case of ABR Loan, 2.00% *per annum*.

“**Approved Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Approved Counterparty**” means, with respect to any Swap Agreement, (a) any Person that is a Lender or an Affiliate of a Lender at the time such Swap Agreement was entered into

(regardless of whether such Person (or its Affiliate) subsequently ceases to be a Lender), and (b) in respect of commodity pricing risk, Macquarie Group Limited (“**Macquarie**”) to the extent that Macquarie has entered into an agreement, in form and substance reasonably satisfactory to the Administrative Agent, duly executed by Macquarie, the applicable Loan Party and the Administrative Agent with respect to such Swap Agreement.

“**Arrangers**” means each of Citigroup Global Markets Inc., Barclays Bank PLC and JPMorgan Chase Bank N.A., in their respective capacities as lead arrangers and bookrunners, and any successors thereto.

“**ASR Agreement**” has the meaning specified in Section 6.05(a)(vi).

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“**Auditors’ Determination**” has the meaning specified in Section 9.09(g).

“**Australia**” means the Commonwealth of Australia, including its states and territories (and “Australian” should be construed accordingly).

“**Australian Banking Code of Practice**” means the Banking Code of Practice published by the Australian Banking Association, as amended, revised or amended and restated from time to time.

“**Australian Consolidated Tax Group**” means a Consolidated Group or a MEC Group as defined in the Australian Tax Act.

“**Australian Controller**” has the meaning given to the term “controller” in section 9 of the Australian Corporations Act.

“**Australian Corporations Act**” means the Corporations Act 2001 (Cth) (Australia).

“**Australian Dollars**” and “**A\$**” means lawful money of the Commonwealth of Australia.

“**Australian GST**” means goods and services tax or similar value added tax levied or imposed in Australia under the Australian GST Act.

“**Australian GST Act**” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (Australia).

“**Australian Loan Party**” means a Loan Party that is incorporated in Australia.

“**Australian PPS Law**” means (a) the Australian PPSA, (b) any regulations made under the Australian PPSA, (c) any legislative instrument made under the Australian PPSA, (d) any

amendment to any of the above, made at any time, or (e) any amendment made at any time to any other legislation as a consequence of an Australian PPS Law referred to in clauses (a) to (d).

“**Australian PPSA**” means the Personal Property Securities Act 2009 (Cth) (Australia).

“**Australian Security Documents**” means the security agreements set forth in Section 4(b) on Schedule 5.16 under the heading “Australia” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by Australian law delivered by any Loan Party in favor of the Administrative Agent.

“**Australian Security Trust Deed**” means the New South Wales law governed security trust deed, among Fluence Energy, LLC, each Australian Loan Party, the Administrative Agent and the Australian Security Trustee, as amended, restated, supplemented or otherwise modified from time to time.

“**Australian Security Trustee**” means Citibank, N.A. (or any of its designated branch offices or affiliates), in its capacity as Australian security trustee for the Secured Parties, or any successor trustee of the Australian security trust.

“**Australian Subsidiary**” means a Subsidiary of the Parent Borrower that is incorporated in Australia.

“**Australian Tax Act**” means the Income Tax Assessment Act 1936 (Cth) (Australia) or the Income Tax Assessment Act 1997 (Cth) (Australia), as applicable.

“**Australian Tax Funding Agreement**” means any tax funding agreement for Australian tax consolidation purposes.

“**Australian Tax Sharing Agreement**” means any tax sharing agreement for Australian tax consolidation purposes that satisfies the requirements of section 721-25 of the Australian Tax Act for being a valid tax sharing agreement.

“**Availability Period**” means the period from and including the Amendment No. 3 Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“**Available Equity Amount**” means, at any time (the “**Available Equity Amount Reference Time**”), an amount equal to, without duplication, the sum of the following (but only to the extent Not Otherwise Applied): (a) the proceeds from issuances of Equity Interests (other than Disqualified Equity Interests) by the Parent after the Amendment No. 3 Effective Date that are received as cash equity by the Parent and contributed in cash as common equity to the Parent Borrower and that are applied for usage as Available Equity Amount substantially concurrently with receipt of such amounts, minus (b) the sum, without duplication, and, without taking into account the proposed portion of the Available Equity Amount calculated above to be used at the

applicable Available Equity Amount Reference Time, of (i) the aggregate amount of any Investments made by any Loan Party or its Subsidiaries using the Available Equity Amount after the Amendment No. 3 Effective Date and prior to the Available Equity Amount Reference Time, (ii) the aggregate amount of any Restricted Payments made by the Loan Parties using the Available Equity Amount after the Amendment No. 3 Effective Date and prior to the Available Equity Amount Reference Time, and (iii) the aggregate amount of any Restricted Debt Payments made by any Loan Party or its Subsidiaries using the Available Equity Amount after the Amendment No. 3 Effective Date and prior to the Available Equity Amount Reference Time.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 2.11.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“**Basel III**” means, collectively, those certain agreements on capital requirements, leverage ratios and liquidity standards contained in “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” “Basel III: International Framework for Liquidity Risk Measurement, Standards and Monitoring,” and “Guidance for National Authorities Operating the Countercyclical Capital Buffer,” each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and as implemented by a Lender’s primary U.S. federal banking regulatory authority or primary non-U.S. financial regulatory authority, as applicable.

“**Benchmark**” means, initially, with respect to any (a) RFR Loan in any Agreed Currency, the applicable Relevant Rate for such Agreed Currency or (b) Term Benchmark Loan,



the Relevant Rate for such Agreed Currency; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the applicable Relevant Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.11.

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in an Alternative Currency, “Benchmark Replacement” means the alternative set forth in (2) below:

(1) in the case of any Loan denominated in Dollars, Daily Simple SOFR; or

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrowers as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time in the United States and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrowers for the applicable Corresponding Tenor giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Agreed Currency at such time.

“**Benchmark Replacement Conforming Changes**” means, with respect to any Benchmark Replacement and/or Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates

and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable and good faith discretion (and in consultation with the Borrower Representative) may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides in its reasonable good faith discretion (and in consultation with the Borrower Representative) that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines in its reasonable good faith discretion that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“**Benchmark Replacement Date**” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation

thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, the central bank for the Agreed Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11(b) and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11(b).

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Board**” means the Board of Governors of the Federal Reserve System of the United States of America.

“**Borrower Competitor**” means any competitor of the Parent Borrower and/or any of its Subsidiaries.

“**Borrower Representative**” has the meaning specified in Section 1.10.

“**Borrowers**” has the meaning specified in the preamble to this Agreement.

“**Borrowing**” means (a) Revolving Loans of the same Type and Agreed Currency, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect or (b) a Protective Advance.

“**Borrowing Limits**” has the meaning specified in Section 2.01.

“**Borrowing Request**” means a request by any Borrower for a Borrowing in accordance with Section 2.03.

“**Borrowing Sublimit**” means, with respect to each Revolving Lender, the amount set forth on Schedule 2.01 opposite such Revolving Lender’s name under the caption “Borrowing Sublimit”.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (a) when used in connection with a Term Benchmark Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market, (b) when used in connection with any transaction in Euros and in relation to the calculation or computation of EURIBOR, any day which is a TARGET Day, (c) in relation to any RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in the applicable Agreed Currency of such RFR Loan, any such day that is only an RFR Business Day, and (d) in relation to Loans referencing the Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements or payments of any such Loans referencing the Term SOFR Rate or any other dealings of such Loans referencing the Term SOFR Rate, any such day that is a U.S. Government Securities Business Day.

“**Canadian Defined Benefit Plan**” means a Canadian Pension Plan which contains a “defined benefit provision,” as defined in subsection 147.1(1) of the Canadian Tax Act.

“**Canadian Loan Party**” means a Loan Party that is incorporated or organized under the laws of Canada or any province or territory thereof.

“**Canadian Pension Event**” means (a) the whole or partial withdrawal of a Loan Party from a Canadian Defined Benefit Plan during a plan year; or (b) the filing of a notice of intent to terminate in whole or in part a Canadian Defined Benefit Plan or the treatment of a Canadian Defined Benefit Plan amendment as a termination or partial termination; or (c) the institution of

proceedings by any Governmental Authority to terminate in whole or in part or have a trustee appointed to administer a Canadian Defined Benefit Plan; (d) any statutory deemed trust or Lien, other than a Permitted Encumbrance, arises in connection with a Canadian Defined Benefit Plan; or (e) any other event which might reasonably result in the termination of, winding up or partial termination of winding up or the appointment of trustee to administer, any Canadian Defined Benefit Plan.

“**Canadian Pension Plan**” means a pension plan that is covered by the applicable pension standards laws of any jurisdiction in Canada including the Pension Benefits Act (Ontario) and the Tax Act and that is maintained or sponsored by a Loan Party for employees or former employees in Canada.

“**Canadian PPSA**” means the Personal Property Security Act (Ontario), including the regulations thereto, provided that if perfection or the effect of perfection or non-perfection or the priority of any Lien created hereunder or under any other Loan Document on the Collateral is governed by the personal property security legislation or other applicable legislation with respect to personal property security in effect in a jurisdiction in Canada other than the Province of Ontario, “**Canadian PPSA**” means the Personal Property Security Act or such other applicable legislation (including the Civil Code (Quebec)) in effect from time to time in such other jurisdiction in Canada for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Canadian Security Documents**” means the security agreements, deeds of hypothec or other security documents set forth in Section 4(c) on Schedule 5.16 under the heading “Canada” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, deed of hypothec, pledge agreement or similar document governed by Canadian law delivered by any Loan Party in favor of the Administrative Agent.

“**Canadian Tax Act**” means the Income Tax Act (Canada), as amended.

“**Capital Impairment**” has the meaning specified in Section 9.09(a)(iii).

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, for the avoidance of doubt, any obligations relating to a lease that was accounted for by such Person as an operating lease as of December 14, 2018 and any similar lease entered into after December 14, 2018 by such Person shall be accounted for as obligations relating to an operating lease and not as Capital Lease Obligations.

“**Captive Insurance Company**” means each Subsidiary of the Parent Borrower formed from time to time that engages primarily in the business of insuring risks of the Parent Borrower and its Subsidiaries.

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in an amount of at least the Minimum Collateral Amount, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank (and “**Cash Collateralization**” has a corresponding meaning). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof or issued by FNMA, FHLMC or FFCB), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within one (1) year from the date of acquisition thereof and (i) issued by any Lender or bank holding company owning any Lender or (ii) rated at least “A-2” or the equivalent thereof by S&P or at least “P-2” or the equivalent thereof by Moody’s, respectively (in each case, at the time of acquisition);

(c) investments in certificates of deposit, floating rate certificates of deposit, bankers’ acceptances and time deposits (including eurodollar deposits) maturing within one (1) year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by (i) any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$100 million; or (ii) any Lender or bank holding company owning any Lender (in each case, at the time of acquisition);

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody’s and (iii) have portfolio assets of at least \$5 billion;

(f) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, or by any political subdivision or taxing authority thereof or by any foreign government, and rated at least “A” by S&P or “A” by Moody’s (in each case, at the time of acquisition);

(g) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (c) above (in each case, at the time of acquisition);

(h) corporate notes issued by domestic corporations that are rated at least “A” by S&P or “A” by Moody’s, in each case maturing within one year from the date of acquisition;

(i) auction rate securities including taxable municipals, taxable auction notes, and money market preferred; provided that the credit quality is consistent with clause (g) of this definition;

(j) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody’s;

(k) short term investments similar to the foregoing made by Foreign Subsidiaries of the Parent Borrower consistent with the Parent’s or the Parent Borrower’s investment guidelines or as approved from time to time by the Parent or the Parent Borrower’s, as applicable, board of directors or governing body;

(l) money market mutual funds that invest primarily in the foregoing items (determined at the time such investment in such fund is made); and

(m) such other comparable investments as may be approved by the Administrative Agent from time to time.

“**Cash Pooling Arrangements**” means cash pooling arrangements entered into in the ordinary course of business among the Parent Borrower and its Subsidiaries to provide cash management services, including treasury depository, electronic funds transfer and other cash management arrangements, which arrangements are structured as loans to and/or from the Parent Borrower and its Subsidiaries.

“**Central Bank Rate**” means (A) the greater of (i) for any Loan denominated in (a) Sterling, the Bank of England (or any successor thereto)’s “Bank Rate” as published by the Bank of England (or any successor thereto) from time to time, (b) Euro, one of the following three rates as may be selected by the Administrative Agent in its reasonable discretion: (1) the fixed rate for the main refinancing operations of the European Central Bank (or any successor thereto), or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank (or any successor thereto), each as published by the European Central Bank (or any successor thereto) from time to time, (2) the rate for the marginal lending facility of the European Central Bank (or any successor thereto), as published by the European Central Bank (or any successor thereto) from time to time or (3) the rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank (or any successor thereto) from time to time and (c) any other Alternative Currency, a central bank rate as determined by the Administrative Agent in its reasonable discretion and (ii) the Floor; plus (B) the applicable Central Bank Rate Adjustment.

“**Central Bank Rate Adjustment**” means, for any day, for any Loan denominated in (a) Euro, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the

average of the EURIBOR Rate for the five most recent Business Days preceding such day for which the EURIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest EURIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Euro in effect on the last Business Day in such period, (b) Sterling, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of SONIA for the five most recent RFR Business Days preceding such day for which SONIA was available (excluding, from such averaging, the highest and the lowest SONIA applicable during such period of five RFR Business Days) minus (ii) the Central Bank Rate in respect of Sterling in effect on the last RFR Business Day in such period, and (c) any other Alternative Currency, a Central Bank Rate Adjustment as determined by the Administrative Agent in its reasonable discretion. For purposes of this definition, (x) the term Central Bank Rate shall be determined disregarding clause (B) of the definition of such term and (y) the EURIBOR Rate on any day shall be based on the EURIBOR Screen Rate on such day at approximately the time referred to in the definition of such term for deposits in the applicable Agreed Currency for a maturity of one month (or, in the event the EURIBOR Screen Rate for deposits in the applicable Agreed Currency is not available for such maturity of one month, shall be based on the EURIBOR Interpolated Rate as of such time); provided that if such rate shall be less than the Floor, such rate shall be deemed to be the Floor.

**“Change in Control”** means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934, as amended, and the rules of the SEC thereunder) (other than the Permitted Holders), of Equity Interests in each of the Parent and the Parent Borrower (i) representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower and (ii) representing more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower than the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower that are owned, directly or indirectly, beneficially or of record, by the Permitted Holders, or (b) the Parent or any successor thereto in accordance with Section 6.12(d) shall at any time cease to be the sole managing member of the Parent Borrower, or (c) the Parent Borrower shall at any time cease to directly or indirectly own 100% of the Equity Interests of each other Borrower and each Subsidiary Guarantor.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory



authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“**Charges**” has the meaning specified in Section 10.13.

“**Citi Supplier Financing Agreement**” means that certain Global Paying Services Agreement, dated as of July 22, 2021 between the Parent Borrower and Citibank, N.A., as it may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“**CME Term SOFR Administrator**” means CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“**Collateral**” means all property and rights of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document, provided that Collateral shall not include any Excluded Property.

“**Collections**” means, all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds and tax refunds) except any of the foregoing of the type permitted to be held in Excluded Accounts.

“**Commercial Letter of Credit**” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Borrowers or any of their Subsidiaries in the ordinary course of business of such Person.

“**Commitment**” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Protective Advances hereunder, expressed as an amount representing the maximum aggregate amount of such Lender’s Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender’s Commitment as of the Amendment No. 3 Effective Date is set forth on Schedule 2.01 opposite such Lender’s name under the caption “Commitment”. The initial aggregate amount of the Lenders’ Commitments as of the Amendment No. 3 Effective Date is \$500,000,000.

“**Commitment Fee**” has the meaning specified in Section 2.09(a).

“**Communications**” has the meaning specified in Section 10.01.

“**Compliance Certificate**” means a certificate duly executed by a Financial Officer of the Parent Borrower substantially in the form of Exhibit F.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated EBITDA**” means, for the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP for any period, Consolidated Net Income adjusted (without duplication) for (a) interest income, net of interest expense, (b) income taxes, (c) depreciation and amortization expense, (d) stock-based compensation, and (e) other non-recurring income or expenses. Consolidated EBITDA may in the future also be adjusted for amounts impacting Consolidated Net Income related to liability under the Tax Receivable Agreement.

For purposes of this definition, whenever Pro Forma Effect is to be given to any event, the Pro Forma Effect calculations shall be made in good faith by a Financial Officer of the Parent Borrower.

“**Consolidated Leverage Ratio**” means, as of any date of determination, the ratio of (a) Net Debt for Borrowed Money of the Parent and its Subsidiaries as of such date to (b) Consolidated EBITDA of the Parent and its Subsidiaries for the applicable Measurement Period (provided that, if Consolidated EBITDA for any applicable Measurement Period is \$0 or negative, then Consolidated EBITDA shall be deemed to be \$0.01 for purposes of determining the Consolidated Leverage Ratio for such Measurement Period).

“**Consolidated Net Income**” means, for the Parent and its Subsidiaries for any period, the net income of the Parent and its Subsidiaries, determined on a consolidated basis for such period in accordance with GAAP.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Control Agreement**” means (a) in respect of any Deposit Account, Securities Account or other bank account located in the United States, a control agreement, in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered by a Loan Party, the Administrative Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account or other bank account), pursuant to which the Administrative Agent obtains control (within the meaning of Articles 8 and 9 of the applicable UCC) over such Deposit Account, Securities Account or other bank account, and (b) in respect of any Deposit Account, Securities Account or other bank account located outside of the United States, one or more agreements customary in the relevant foreign jurisdiction (including a notice of charge (or, as the case may be, a notice of assignment or pledge)), in form and substance reasonably satisfactory to the Administrative Agent, pursuant to which the Administrative Agent shall obtain a first priority perfected Lien in, or administrative control over, such account and the contents of such account with similar effect, which agreements shall be duly executed and delivered by such Loan Party to the account bank, depository institution or securities intermediary, as the case may be, with which such account is maintained and, in each

case, duly executed and delivered by the relevant account bank, depository institution or securities intermediary (or, to the extent customary in the relevant jurisdiction, subject to an executed bank consent letter or acknowledgement of pledge).

“**Controlled Account**” has the meaning specified in Section 5.12(a).

“**Controlled Account Bank**” has the meaning specified in Section 5.12(a).

“**Copyrights**” has the meaning specified in the applicable Security Document.

“**Corresponding Debt**” has the meaning specified in Section 10.20(c).

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Covered Entity**” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“**Covered Jurisdiction**” means the United States, Australia, Canada, Germany, The Netherlands, Ireland, the Philippines, Singapore, Switzerland, Taiwan, England and Wales or any other jurisdiction in which a Foreign Guarantor is incorporated or organized (or any state, territory or political sub-division of any of the foregoing).

“**Covered Party**” has the meaning specified in Section 10.18.

“**Cure Amount**” has the meaning specified in Section 7.02(a).

“**Cure Expiration Date**” has the meaning specified in Section 7.02(a).

“**Cure Quarter**” has the meaning specified in Section 7.02(e).

“**Cure Right**” has the meaning specified in Section 7.02(a).

“**Daily Simple RFR**” means, for any day (an “**RFR Interest Day**”), for any RFR Loan denominated in Sterling, an interest rate per annum equal to the greater of (a) SONIA for the day that is five Business Days prior to (x) if such RFR Interest Day is a Business Day, such RFR Interest Day or (y) if such RFR Interest Day is not a Business Day, the Business Day immediately preceding such RFR Interest Day and (b) 0.00%. Any change in Daily Simple RFR

due to a change in the applicable RFR shall be effective from and including the effective date of such change in the RFR without notice to the Borrowers.

“**Daily Simple SOFR**” means, for any day (a “**SOFR Rate Day**”), a rate per annum equal to SOFR for the day (such day “**SOFR Determination Date**”) that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

“**Debtor Relief Laws**” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, administrative receivership, insolvency, examinership, rescue process, reorganization, judicial management or similar debtor relief Laws of the United States or any other applicable jurisdiction from time to time in effect, including, without limitation, the Bankruptcy Code and the Insolvency Act of 1986 of the United Kingdom, Chapter 5A of the Australian Corporations Act, the Bankruptcy and Insolvency Act (Canada), the Companies’ Creditors Arrangement Act (Canada), the Winding-up and Restructuring Act (Canada), the Canada Business Corporations Act (or any other Canadian corporate statute where such statute is used by a Person to propose an arrangement), the Insolvency, Restructuring and Dissolution Act 2018 of Singapore, the German Insolvency Code (*Insolvenzordnung*) and the German Act on the Stabilisation and Restructuring Framework for Businesses (*Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz - StaRUG)*), Part 10 (*Examinerships*), Part 10(A) (*Rescue Process for Small and Micro Companies*), Part 11 (*Winding-Up*) of the Irish Companies Act and the Dutch Bankruptcy Act (*Faillissementswet*).

“**Deemed LC Issuance**” has the meaning specified in Section 2.19(1).

“**Deemed LC Request**” has the meaning specified in Section 2.19(1).

“**Deemed LC Termination**” has the meaning specified in Section 2.19(1).

“**Default**” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“**Default Right**” has the meaning specified in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s good faith determination that

one or more conditions precedent to such funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (ii) fund any portion of its participation in Letters of Credit or Protective Advances hereunder within two Business Days of the date when due or (iii) pay to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrowers or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers, (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, interim receiver, custodian, conservator, trustee, monitor, administrator, examiner, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender, or (e) has become the subject of a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrowers and each Lender.

“**Deposit Account**” has the meaning specified in the UCC or, with respect to Foreign Loan Parties, such comparable term as set forth in the applicable Security Documents.

“**Disposition**” means, with respect to any property or right, any sale, lease, sale and leaseback, assignment, license, conveyance, transfer or other disposition thereof (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise). “**Dispose**” and “**Disposed of**” have meanings correlative thereto.

“**Disqualified Equity Interests**” means that portion of any Equity Interests which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change in Control or as a result of a Disposition of assets or casualty

event), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change in Control or as a result of a Disposition of assets or casualty event) on or prior to the six-month anniversary of the Maturity Date.

“**Disqualified Lender**” means (a) any Person identified in writing by name to the Arrangers prior to the Effective Date, (b) any Person that is or becomes a Borrower Competitor, and is designated by name by the Parent Borrower as such in a writing provided to the Administrative Agent after the Effective Date, and (c) any Affiliate of any Person referred to in clauses (a) and (b) above that (i) has been identified to the Administrative Agent by the Parent Borrower in writing from time to time or (ii) otherwise is reasonably identifiable on the basis of its name; provided that no written notice delivered pursuant to clauses (b) and (c) above shall (A) apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans or entered into a trade for either of the foregoing or (B) become effective until two Business Days after such written notice is delivered to the Administrative Agent.

“**Dividing Person**” has the meaning specified in the definition of “Division”.

“**Division**” means the division of the assets, liabilities and/or obligations of a Person (the “**Dividing Person**”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“**Documents**” has the meaning specified in the UCC (and, for greater certainty, includes a “document of title” as defined in the Canadian PPSA or in section 10 of the Australian PPSA) or with respect to Foreign Loan Parties, such comparable term as set forth in the applicable Security Documents.

“**Dollar Equivalent**” means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent) by Reuters on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the Alternative Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion; provided that, in the case of any such amount that is expressed in a currency other than Dollars, to the extent such amount is the subject of a currency hedge

arrangement evidenced by a Swap Agreement, the “Dollar Equivalent” of such amount shall be the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with such currency as set forth in such Swap Agreement.

“**Dollars**” or “**\$**” refers to lawful money of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“**Dutch Guarantor**” means, collectively, (a) Fluence Energy B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of the Netherlands, having its corporate seat (*statutaire zetel*) in Amsterdam, the Netherlands, registered office address at Claude Debussylaan 12, 1082 MD Amsterdam, the Netherlands, and registered with the Dutch Chamber of Commerce under number 85674451 and (b) any Subsidiary of the Parent Borrower (not including any Borrower or any Excluded Subsidiary) that is incorporated or established under the laws of the Netherlands or which is treated as a resident in the Netherlands for tax purposes and that becomes a guarantor or otherwise liable on or with respect to any of the Obligations and (c) their respective successors and assigns.

“**Dutch Loan Party**” means, collectively, (a) each Dutch Guarantor, (b) each Loan Party that is incorporated or organized under the laws of the Netherlands, (c) each other Person incorporated under the laws of the Netherlands that at any time becomes a Loan Party under the Loan Documents and (d) their respective successors and assigns.

“**Dutch Security Documents**” means the documents set forth in Section 4(d) on Schedule 5.16 under the heading “The Netherlands” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement, deed, mortgage, instrument or any other similar document governed by the laws of the Netherlands that creates or purports to create a Lien to secure the Parallel Debts or the Obligations, in each case delivered by any Loan Party in favor of the Administrative Agent.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Effective Date**” means November 22, 2023.

“**Electronic Signature**” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“**Environmental Laws**” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, transportation, storage, treatment, disposal, management, release or threatened release of any Hazardous Material or to health and safety matters (to the extent related to Hazardous Material).

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation, reclamation or remediation, fines, penalties or indemnities), of the Parent, any Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any Environmental Law, including compliance or noncompliance therewith, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the presence, release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Interests**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options, share appreciation rights or other rights, contractual or otherwise, entitling the holder thereof to purchase or acquire any such equity interest; provided that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash.

“**ERISA**” means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**ERISA Affiliate**” means any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or otherwise aggregated with the Parent, any Borrower or a Subsidiary under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“**ERISA Event**” means any one or more of the following: (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Plan, unless notice to the PBGC has been waived by regulation; (b) the termination of any Plan under Section 4041(c) of ERISA; (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; (e) the failure to satisfy the minimum funding standard



under Section 412 of the Code or Section 302 of ERISA, whether or not waived; or a determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Plan; (g) the complete or partial withdrawal of the Parent, any Borrower, Subsidiary or any ERISA Affiliate from a Multiemployer Plan which results in the imposition of Withdrawal Liability or the insolvency under Title IV of ERISA of any Multiemployer Plan or (h) a determination that any Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

“**Erroneous Payment**” has the meaning assigned to it in Section 8.11(a).

“**Erroneous Payment Deficiency Assignment**” has the meaning assigned to it in Section 8.11(d)(i).

“**Erroneous Payment Impacted Class**” has the meaning assigned to it in Section 8.11(d)(i).

“**Erroneous Payment Return Deficiency**” has the meaning assigned to it in Section 8.11(d)(i).

“**Erroneous Payment Subrogation Rights**” has the meaning assigned to it in Section 8.11(e).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“**EURIBOR Interpolated Rate**” means, at any time, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the EURIBOR Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the EURIBOR Screen Rate for the longest period (for which the EURIBOR Screen Rate is available for Euros) that is shorter than the Impacted EURIBOR Rate Interest Period; and (b) the EURIBOR Screen Rate for the shortest period (for which the EURIBOR Screen Rate is available for Euros) that exceeds the Impacted EURIBOR Rate Interest Period, in each case, at such time; provided that, if any EURIBOR Interpolated Rate shall be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

“**EURIBOR Rate**” means, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the EURIBOR Screen Rate at approximately 11:00 a.m., Brussels time, two TARGET Days prior to the commencement of such Interest Period; provided that, if the EURIBOR Screen Rate shall not be available at such time for such Interest Period (an “**Impacted EURIBOR Rate Interest Period**”) with respect to Euros then the EURIBOR Rate shall be the EURIBOR Interpolated Rate.

“**EURIBOR Screen Rate**” means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters as of 11:00 a.m. Brussels time two TARGET Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Borrower Representative. If the EURIBOR Screen Rate shall be less than the Floor, the EURIBOR Screen Rate shall be deemed to be the Floor for purposes of this Agreement.

“**Euro**”, “**EUR**” and “**€**” mean the single currency of the Participating Member States.

“**Event of Default**” has the meaning specified in Article 7.

“**Excluded Account**” means (a) Deposit Accounts specifically and exclusively used for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party’s employees, (b) escrow, trust, fiduciary or similar Deposit Accounts or Securities Accounts exclusively holding funds or property for the benefit of third parties in the ordinary course of business, (c) Deposit Accounts holding solely cash collateral encumbered by Liens permitted under Section 6.02, (d) Deposit Accounts holding solely proceeds of Receivables Assets that have been sold, contributed, conveyed or assigned to a Receivables Subsidiary or any other Person (other than a Loan Party) pursuant to a Permitted Factoring Transaction or a Permitted Receivables Facility, (e) Deposit Accounts as to which the Administrative Agent and the Parent Borrower reasonably agree that the costs or other consequence (including any material adverse tax consequence) of obtaining such a security interest or perfection thereof are excessive in relation to the value of the security to be afforded thereby, and (f) Deposit Accounts containing an average daily balance for any thirty (30) day period for all such Deposit Accounts not to exceed \$2,500,000 in the aggregate. For the avoidance of doubt, no Controlled Account shall constitute an Excluded Account.

“**Excluded Property**” means (a) any fee interest in real property having a value of less than \$7,500,000 and any leasehold interest in real property, (b) any property that secures Indebtedness permitted to be incurred pursuant to Section 6.01(d) to the extent the documents governing such Indebtedness do not permit any other Lien on such property, (c) motor vehicles, aircraft, boats and other assets subject to a certificate of title to the extent a Lien on such other assets cannot be perfected by filing a UCC-1 financing statement, an Australian PPSA financing statement or a Canadian PPSA financing statement having an aggregate value of less than \$10,000,000, (d) property the grant of a security interest thereon to secure the Obligations is (1) prohibited by applicable law, rule or regulation or (2) which requires governmental consent, approval, license or authorization to be pledged (unless such consent, approval, license or authorization has been received and the Borrowers shall be under no obligation to seek such consent) (in each case under this clause (d), except to the extent such prohibition or requirement is unenforceable after giving effect to the applicable anti-assignment provisions of the UCC, any

applicable provision of the Australian PPSA or the Canadian PPSA or any other applicable law), (e) any lease, license, contract or other agreement covering real or personal property of any Loan Party to the extent that a grant of a security interest therein to secure the Obligations would violate or invalidate such lease, license, contract or other agreement or create a right of termination in favor of any other party thereto (other than any Loan Party or any Subsidiary or Affiliate thereof), and the consent of the other party to such lease, license, contract or other agreement has not been obtained (provided that the foregoing exclusions of this clause (e) shall in no way be construed to apply to the extent that any described prohibition or restriction is ineffective after giving effect to the applicable anti-assignment provisions of the UCC, any applicable provision of the Australian PPSA or the Canadian PPSA or any other applicable law), (f) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby or require the consent of any Governmental Authority (to the extent such consent has not been obtained; provided that the Borrowers shall be under no obligation to seek such consent) (provided that (i) the foregoing exclusions of this clause (f) shall in no way be construed to apply to the extent that any described prohibition or restriction is ineffective after giving effect to the applicable anti-assignment provisions of the UCC, any applicable provision of the Australian PPSA or the Canadian PPSA or any other applicable law and (ii) the foregoing exclusions of clauses (d), (e) and (f) shall be in no way be construed to limit, impair, or otherwise affect any of the Administrative Agent's or any other Secured Party's continuing security interests in, and liens upon, any rights or interests of any Loan Party in or to (A) monies due or to become due under or in connection with any described contract, lease, permit, license, other agreement, or property (including any Accounts or Equity Interests), or (B) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, other agreement, or property), unless, in each case, such proceeds otherwise independently constitute Excluded Property), (g) any lease, license or other agreement or any property subject to a purchase money security interest, capital lease obligation or similar arrangements, in each case, to the extent permitted under this Agreement, to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement, purchase money, capital lease or a similar arrangement or create a right of termination in favor of any other party thereto (other than any Loan Party, or any Subsidiary or Affiliate thereof) after giving effect to the applicable anti-assignment provisions of the UCC, any applicable provision of the Australian PPSA or the Canadian PPSA or any other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable law notwithstanding such prohibition, (h) pending United States "intent-to-use" trademark applications for which a verified statement of use or an amendment to allege use has not been filed with and accepted by the United States Patent and Trademark Office, (i) commercial tort claims in an amount not exceeding \$7,500,000 individually; (j) those assets (including Equity Interests) as to which the Administrative Agent and the Parent Borrower reasonably agree that the costs or other consequence (including any material adverse tax consequence) of obtaining such a security interest or perfection thereof are excessive in relation to the value of the security to be afforded thereby; (k) Receivables Assets sold, contributed or otherwise transferred pursuant to a Permitted Factoring Transaction or in connection with a Permitted Receivables Facility, (l) Excluded Securities, and (m) Excluded Accounts of the type described in clauses (a),(b) and (d) of the definition of "Excluded Accounts"; provided that immediately upon the lapse or

termination of any prohibitions or the obtaining of any consents, as applicable, referred to herein, such property shall be considered Collateral. Notwithstanding anything to the contrary contained herein, in no event shall any Excluded Property be excluded from the operation of any floating charge (or the equivalent) pursuant to a UK Security Document.

**“Excluded Securities”** means (a) voting Equity Interests of any CFC (other than any CFC that is (i) a Foreign Subsidiary organized or incorporated under the laws of a Covered Jurisdiction, (ii) a Foreign Guarantor, or (iii) a Material Foreign Subsidiary required to become a Guarantor under the Guarantor Coverage Test) in excess of 65% of the outstanding voting Equity Interests of such CFC, (b) any Equity Interests or Indebtedness to the extent and for so long as the pledge thereof would be prohibited by any applicable law after giving effect to the applicable anti-assignment provisions of Article 9 of the UCC, any applicable provision of the Australian PPSA or the Canadian PPSA or any other applicable law, (c) any Equity Interests in any Person that is not a Wholly Owned Subsidiary, (d) any Equity Interests in any Excluded Subsidiary (other than (x) any Receivables Subsidiary (subject to Section 5.11) and (y) any other Excluded Subsidiary as defined in clauses (b), (c), (d), (g) (except to the extent the assumed Indebtedness prohibits the Equity Interests in such Subsidiary from being pledged) and (i) (unless the Equity Interests in such Subsidiary are otherwise excluded pursuant to this definition of “Excluded Securities”) in the definition thereof), (e) any margin stock (as defined in Regulation U and Regulation X of the Board of Governors of the Federal Reserve System), and (f) Equity Interests of the Parent Borrower that are not owned by the Parent.

**“Excluded Subsidiary”** means (a) each Subsidiary that is not a direct or indirect Wholly Owned Subsidiary of the Parent Borrower, (b) each Immaterial Subsidiary, (c) any Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code any shares of which are treated as owned directly or indirectly by a United States shareholder (within the meaning of Section 951(b) of the Code) as measured for purposes of Section 958(a) of the Code (a “CFC”) (except to the extent such CFC is (i) a Foreign Subsidiary organized or incorporated under the laws of a Covered Jurisdiction, (ii) a Foreign Guarantor or (iii) a Material Foreign Subsidiary required to become a Guarantor under the Guarantor Coverage Test), (d) any Subsidiary substantially all the assets of which consist of Equity Interests (or Equity Interests and Indebtedness) of one or more CFCs (a “CFC Holdco”) or other CFC Holdcos (except to the extent (i) the assets of such CFC Holdco include Equity Interests (or Equity Interests and Indebtedness) (whether directly or through its interest in any other CFC Holdco) of (A) a Foreign Subsidiary organized or incorporated under the laws of a Covered Jurisdiction, (B) a Foreign Guarantor, or (C) a Material Foreign Subsidiary required to become a Guarantor under the Guarantor Coverage Test) or (ii) such CFC Holdco is a Guarantor), (e) any Subsidiary of a CFC (other than any CFC that is (i) a Foreign Subsidiary organized or incorporated under the laws of a Covered Jurisdiction, (ii) a Foreign Guarantor or (iii) a Material Foreign Subsidiary required to become a Guarantor under the Guarantor Coverage Test), (f) any Subsidiary that is prohibited by law, regulation or contractual obligation existing on the Effective Date or on the date such entity becomes a Subsidiary after the Effective Date (so long as such prohibition did not arise in contemplation of such entity becoming a Subsidiary) from providing the Guaranty or that would require a an approval of a Governmental Authority or third party (other than an Affiliate of any Loan Party) (pursuant to a contractual obligation) consent, approval, license or authorization in

order to grant such Guaranty that has not been obtained, (g) any Subsidiary acquired pursuant to a permitted Investment financed with Indebtedness permitted to be assumed pursuant to the Loan Documents and any Subsidiary thereof that Guarantees such Indebtedness, in each case to the extent such Indebtedness prohibits such Subsidiary from becoming a Guarantor (but only for as long as such prohibition exists and only if such indebtedness is not an asset-based credit facility), provided that such Indebtedness is not created in contemplation of or in connection with such permitted Investment or such Person becoming a Subsidiary, (h) any Special Purpose Subsidiary, (i) Fluence India Renew JV Pte LTD, and (j) each Subsidiary as to which the Administrative Agent and the Parent Borrower reasonably agree in writing that the costs or other consequence (including any material adverse tax consequence) of obtaining a guaranty of the Obligations therefrom are excessive in relation to the value to be afforded thereby; provided, that (i) any Person that is or that becomes a Guarantor shall not at any time thereafter be designated as or deemed an Excluded Subsidiary (other than, with respect to any such Person that becomes a non-Wholly Owned Subsidiary, in accordance with Section 10.17(a)), (ii) no Borrower may be designated or deemed an Excluded Subsidiary, and (iii) except as permitted under Section 6.14, no Excluded Subsidiary may own or have an exclusive license to any Intellectual Property that is material to the business of the Parent Borrower and its Subsidiaries (taken as a whole).

**“Excluded Swap Obligation”** with respect to any Guarantor, (a) any Swap Agreement Obligation if, and to the extent that, and only for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Agreement Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure to constitute an “eligible contract participant,” as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Agreement Obligation. If a Swap Agreement Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Agreement Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient, or required to be withheld or deducted from any payment to be made by or on account of any obligation of the Parent or any Borrower, as applicable, hereunder, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that otherwise are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrowers under Section 2.16(b)) or (ii) such Lender designates a new lending office, in each case, except to the extent

that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office or assignment, to receive additional amounts pursuant to Section 2.14(a) immediately before such Lender became a party hereto or, as applicable, to such Lender immediately before it designated a new lending office, (c) Taxes attributable to such recipient's failure to comply with Section 2.14(g), (d) any withholding Taxes imposed under FATCA, (e) any Taxes imposed by Germany solely due to the fact that the Loans are secured by real estate located in Germany (*inländischer Grundbesitz*) or by German rights subject to the civil code provisions relating to real estate (*inländische Rechte, die den Vorschriften des bürgerlichen Rechts über Grundstücke unterliegen*) (including any withholding requested by the German tax authorities pursuant to Sec. 50a para. 7 German Income Tax Act), (f) any Taxes which are imposed solely because the payment is made with respect to a Lender incorporated, having its place of effective management, or acting through a lending office or office, as the case may be, located in a Non-Cooperative Jurisdiction, (g) withholding required on account of the payee receiving a direction under section 255 of the Australian Taxation Act or section 260-5 of Schedule 1 of the Taxation Administration Act 1953 (Cth) (Australia), (h) Taxes imposed because the payee has not received written notice of that recipient's tax file number or Australian business number or evidence of any exemption that recipient may have from the need to advise its tax file number or Australian business number; and (i) any Indirect Tax (which, for the avoidance of doubt, shall be handled in accordance with Section 2.14(i)).

“**Executive Order**” has the meaning specified in Section 3.15(a)(i).

“**Existing Letters of Credit**” means each standby letter of credit existing on the Amendment No. 3 Effective Date and identified on Schedule 2.19.

“**Factoring Transaction**” means any transaction or series of transactions that may be entered into by the Parent Borrower or any Subsidiary thereof pursuant to which the Parent Borrower or such Subsidiary may sell, convey, assign or otherwise transfer Receivables Assets (which may include a backup or precautionary grant of security interest in such Receivables Assets so sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) to any Person that is not a Subsidiary.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code or any published intergovernmental agreement and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“**Federal Funds Effective Rate**” means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“**Fee Letters**” means the Administrative Agent Fee Letter and the Lender Fee Letter.

“**Financial Officer**” means, with respect to any Loan Party, the chief financial officer, principal accounting officer, treasurer, vice president of finance or corporate controller of such Loan Party.

“**Flood Laws**” means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**Floor**” means a rate of interest equal to 0.00%.

“**Fluence Energy Philippines**” means Fluence Energy, Inc. a corporation organized under the laws of the Philippines, with company registration no. CS201909440.

“**Fluence Energy Philippines Guaranty**” means each guaranty agreement to be executed by a Philippine Guarantor in favor of the Administrative Agent governed or expressed to be governed by the laws of New York, which agreements shall be granted in accordance with Section 5.11 and the other provisions of this Agreement, in each case, as may be amended, restated, supplemented, or otherwise modified from time to time.

“**Foreign Guarantor**” means each Subsidiary of the Parent that is organized under the laws of a jurisdiction other than the United States (or any State thereof) which is a Guarantor.

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than the United States of America, each State thereof and the District of Columbia.

“**Foreign Loan Party**” means each Foreign Guarantor.

“**Foreign Security Agreement**” means each of the Australian Security Documents, the Canadian Security Documents, the Dutch Security Documents, the German Security Documents, the Irish Security Documents, the Singapore Security Documents, the Swiss Security Documents, the Philippines Security Documents, the Taiwan Security Documents, the UK Security Documents and each of the other agreements entered into from time to time by any Foreign Guarantor in accordance with Section 5.11.

“**Foreign Subsidiary**” means any Subsidiary of the Parent that is not a Domestic Subsidiary.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender’s Applicable Percentage of the outstanding Obligations with respect to Letters of Credit issued by such Issuing Bank other than such

Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**GAAP**” means (a) generally accepted accounting principles in the United States of America, as set forth in the Accounting Standards Codification of the Financial Accounting Standards Board from time to time, (b) where applicable with respect to Loan Parties registered, organized or incorporated in jurisdictions other than the United States or Germany, generally accepted accounting principles, standards and practices in such jurisdictions, and (c) with respect to any Loan Party incorporated or established under the laws of Germany, generally accepted accounting principles (*Grundsätze ordnungsgemäßer Buchführung*) including the German Commercial Code (*Handelsgesetzbuch, HGB*).

“**German Guarantor**” has the meaning specified in Section 9.09(a).

“**German GmbH & Co. KG Guarantor**” has the meaning specified in Section 9.09(a).

“**German GmbH Guarantor**” has the meaning specified in Section 9.09(a).

“**German Loan Party**” means a Loan Party incorporated or established in Germany.

“**German Security**” means any security interest created under the German Security Documents.

“**German Security Documents**” means the security agreements set forth in Section 5(f) on Schedule 5.16 under the heading “Germany” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by German law delivered by any Loan Party in favor of the Administrative Agent.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“**Guarantee**” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition



or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary indemnification obligations entered into in connection with any acquisition or disposition of assets or of other entities (other than to the extent that the primary obligations that are the subject of such indemnification obligation would be considered Indebtedness hereunder).

“**Guarantor**” means (i) any Subsidiary (not including any Borrower or any Excluded Subsidiary) of the Parent Borrower party hereto as a Guarantor or that has executed a guaranty supplement pursuant to Section 5.11 or Section 9.07, (ii) the Parent, (iii) each Dutch Guarantor and (iv) other than with respect to its own Obligations, each Borrower.

“**Guarantor Coverage Test**” means the requirement, subject to the Agreed Security Principles, that, as of each Guarantor Coverage Test Date, (a) the total assets (without duplication) of the Loan Parties as a group as of such date is not less than 75% of the Total Assets as of such date and (b) the aggregate revenues (without duplication) of the Loan Parties as a group for the Measurement Period then ended is not less than 75% of Total Revenue for such Measurement Period.

“**Guarantor Coverage Test Date**” means (i) the date which is 60 days after (and excluding) the Amendment No. 3 Effective Date (or such later date as the Collateral Agent may in its reasonable discretion agree), by reference to the most recently ended fiscal quarter for which financial statements required by Section 5.1(b) have been delivered to the Administrative Agent; and (ii) thereafter, the date on which the financial statements are required to be delivered pursuant to Section 5.1(b), by reference to such financial statements.

“**Guaranty**” means the guaranty and other provisions in Article 9.

“**Guaranty Subordinated Debt**” has the meaning specified in Section 9.02(b).

“**Hazardous Materials**” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“**Immaterial Subsidiary**” means any Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Parent most recently ended for which financials have been delivered pursuant to Section 5.01(a) or (b), have (i) total assets with a value in excess of 5% of the Total Assets, or (ii) revenues representing in excess of 5% of the Total Revenues, for the four fiscal quarters ended as of such date and (b) taken together with all Immaterial Subsidiaries as of the last day of the fiscal quarter of the Parent most recently ended for which financials have been delivered pursuant to Section 5.01(a) or (b), did not have (i) total assets with a value in excess of 10% of the Total Assets, or (ii) revenues representing in excess of 10% of the Total Revenues for the four fiscal quarters ended as of such date; provided that (v) no Borrower may be deemed an Immaterial Subsidiary, (w) no Subsidiary that is then a Loan Party shall be deemed an

Immaterial Subsidiary, (x) no Material Foreign Subsidiary that is required to become a Guarantor under the Guarantor Coverage Test shall be deemed an Immaterial Subsidiary, (y) no Immaterial Subsidiary may hold Equity Interests in any Loan Party, and (z) except as permitted by Section 6.14, no Immaterial Subsidiary may own or have an exclusive license to any Intellectual Property that is material to the business of the Parent Borrower and its Subsidiaries (taken as a whole). Each Immaterial Subsidiary as of the Amendment No. 3 Effective Date shall be set forth in Schedule 3.13.

“**Impacted EURIBOR Rate Interest Period**” has the meaning specified in the definition of “EURIBOR Rate.”

“**Increased Amount Date**” has the meaning specified in Section 2.18.

“**Incremental Amount**” means \$150,000,000.

“**Indebtedness**” of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for any earn-outs or similar obligations or the deferred purchase price of property or services, in each case, to the extent required to be included as a liability on the balance sheet of such Person at such time in accordance with GAAP (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person in respect of Disqualified Equity Interests, (h) all Guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**” has the meaning specified in Section 10.03(b).

“**Indirect Tax**” means any goods and services tax (including Australian GST and goods and services tax imposed in Singapore), consumption tax, value added tax or any tax of a similar nature imposed by any Governmental Authority, including any interest, additions to indirect tax and penalties applicable thereto.

“**Information**” has the meaning specified in Section 10.12(a).

“**Intellectual Property**” means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, Canadian, multinational or foreign laws or other applicable laws, including, without limitation, all Copyrights, Patents, industrial designs, industrial design licenses, Trademarks, proprietary rights in technology, trade secrets, know-how and processes, and all registrations and applications therefor.

“**Intercompany Subordination Agreement**” means an intercompany subordination agreement, dated as of the Effective Date, executed and delivered by each of the Loan Parties, each of their respective Subsidiaries party thereto, and the Administrative Agent, the form and substance of which is reasonably satisfactory to the Administrative Agent.

“**Interest Election Request**” has the meaning specified in Section 2.05(b).

“**Interest Expense**” means, with reference to any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Parent and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Parent and its Subsidiaries (including all net payments and receipts (if any) under Swap Agreements in respect of interest rates to the extent such net payments and receipts are made in cash in such period and allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Parent and its Subsidiaries for such period in accordance with GAAP.

“**Interest Payment Date**” means (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December, (b) with respect to any RFR Loan, (1) the last Business Day of each March, June, September and December and (2) the Maturity Date, and (c) with respect to any Term Benchmark Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“**Interest Period**” means, with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, with the consent of each Lender, twelve months or less than one month) thereafter, (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment for any Agreed Currency) as the Borrowers may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such

Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Term Benchmark Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“**Interest Rate Determination Date**” means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

“**Investment**” has the meaning given to such term in Section 6.04.

“**Irish Companies Act**” means the Companies Act 2014 of Ireland.

“**Irish Loan Party**” means a Loan Party that is incorporated or organized under the laws of Ireland.

“**Irish Security Documents**” means the security agreements set forth in Section 4(g) on Schedule 5.16 under the heading “Ireland” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by the laws of Ireland delivered by any Loan Party in favor of the Administrative Agent.

“**Irish Subsidiary**” means a Subsidiary of the Parent Borrower that is incorporated or organized under the laws of Ireland.

“**IRS**” means the U.S. Internal Revenue Service.

“**Issuing Bank**” means, with respect to a particular Letter of Credit, (a) each Lender identified as an “Issuing Bank” on Schedule 2.01 in its capacity as the issuer of such Letter of Credit, and its successors in such capacity as provided in Section 2.19(j), (b) such other Lender selected by the Borrowers from time to time to issue such Letter of Credit hereunder upon receipt by the Administrative Agent of documentation in form and substance reasonably satisfactory to the Administrative Agent pursuant to which such Lender agrees to assume the rights and obligations of an Issuing Bank hereunder (provided that no Lender shall be required to become an Issuing Bank pursuant to this subclause (b) without such Lender’s consent), and/or (c) any Lender selected by the Borrowers (with the prior consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned)) to replace a Lender who is a Defaulting Lender at the time of such Lender’s appointment as an Issuing Bank (provided that no Lender shall be required to become an Issuing Bank pursuant to this subclause (c) without such Lender’s consent) or any successor in such capacity as provided in Section 2.19(j). Any Issuing Bank may, in its reasonable discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate or branch.

“**Junior Debt**” means (i) any junior lien secured Indebtedness that is subordinated to the Liens of the Secured Parties, (ii) any unsecured Indebtedness, and (iii) any subordinated Indebtedness; provided that Indebtedness in respect of any Parent Convertible Notes shall not constitute Junior Debt. For the avoidance of doubt, Capital Lease Obligations and Purchase Money Indebtedness shall not constitute Junior Debt.

“**LC Commitment**” means, with respect to any Issuing Bank, the amount set forth on Schedule 2.01 opposite such Issuing Bank’s name under the caption “LC Commitment”.

“**LC Disbursement**” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“**LC Exposure**” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrowers at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

“**LC Sublimit**” means the lesser of (a) \$500,000,000 and (b) the aggregate unused amount of the Commitments then in effect; provided that no Issuing Bank shall be required to issue Letters of Credit in an aggregate amount outstanding at any time in excess of the LC Commitment of such Issuing Bank.

“**Legal Reservations**” means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, judicial management, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Statutes of Limitation, 1957 and 1991 of Ireland, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;

(c) similar principles, rights and remedies under the laws of (i) the jurisdiction of incorporation of any Loan Party or of any jurisdiction where it conducts its business, (ii) the jurisdiction where any asset subject to or intended to be subject to any Security Document is situated and (iii) the jurisdiction whose laws govern the perfection of any Security Document; and

(d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinions supplied to the Administrative Agent in connection with this Agreement.

“**Lender Fee Letter**” means that certain Lender Fee Letter, dated as of the Amendment No. 3 Effective Date, by and among the Borrowers, the Lenders and the Administrative Agent.

“**Lender Joinder Agreement**” means a lender joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

“**Lenders**” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Issuing Banks.

“**Letter of Credit**” means any letter of credit issued (or deemed to be issued) under and pursuant to this Agreement. A Letter of Credit may be issued in Dollars or in any Alternative Currency.

“**Letter of Credit Request**” means a request by any Borrower for a Letter of Credit in accordance with Section 2.19.

“**Lien**” means, with respect to any asset or right, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, privilege (*voorrecht*), any right in rem (*beperkt recht*) created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*) or other security interest in, on or of such asset or right (including a “security interest” within the meaning of section 12(1) and section 12(2) of the Australian PPSA, but not section 12(3) unless that security interest in substance secures payment or performance of an obligation), and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, right of retention (*retentierecht*), privilege (*voorrecht*), retention of title arrangements (*eigendomsvoorbehoud*) or right of reclamation (*recht van reclame*) or other title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or right and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Limitation Event**” has the meaning specified in Section 9.09(a)(iii).

“**Liquidity Impairment**” has the meaning specified in Section 9.09(i).

“**Loan Documents**” means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), the Intercompany Subordination Agreement, any Lender Joinder Agreement, any guaranty supplement delivered pursuant to Section 5.11 hereof, the Security Documents, the Australian Security Trust Deed, the Fee Letters, the Reaffirmation Agreement and any other agreement, instrument or document executed by one or more Loan Parties after the Effective Date and designated by its terms as a Loan Document.

“**Loan Parties**” means the Borrowers and the Guarantors, and “**Loan Party**” means any one of the Loan Parties.

“**Loans**” means the loans made by the Lenders to any Borrower pursuant to this Agreement, including Protective Advances.

“**Local Time**” means (a) in the case of a Loan, Borrowing or LC Disbursement denominated in Dollars, New York City time, and (b) in the case of a Loan, Borrowing or LC Disbursement denominated in an Alternative Currency, London, England time unless otherwise notified by the Administrative Agent.

“**Management Notification**” has the meaning specified in Section 9.09(d).

“**Material Adverse Effect**” means a material adverse effect on (a) the business, property, financial condition or results of operations of the Parent and its Subsidiaries taken as a whole, (b) the ability of the Parent or any Borrower to perform any of its payment obligations under this Agreement or any other Loan Document or (c) the rights of or remedies available to the Agents and the Lenders, taken as a whole, under this Agreement or any other Loan Document.

“**Material Foreign Subsidiary**” means, subject to the Agreed Security Principles, any Foreign Subsidiary (other than any Foreign Subsidiary organized or incorporated under the laws of a Covered Jurisdiction) that, (a) as of the last day of the fiscal quarter of the Parent most recently ended for which financial statements have been (or were required to have been) delivered pursuant to Section 5.01(a) or (b) for the Measurement Period then ended, taken together with all Foreign Subsidiaries organized or incorporated under the same jurisdiction, had (i) total assets with a value in excess of 20% of the Total Assets, or (ii) revenues representing in excess of 20% of the Total Revenues for the four fiscal quarters ended as of such date, or (b) owns any Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole).

“**Material Indebtedness**” means Indebtedness (other than any Indebtedness under the Loan Documents and Letters of Credit hereunder), or obligations in respect of one or more Swap Agreements, of any one or more of the Parent and its Subsidiaries having an outstanding principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Parent or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Parent or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“**Maturity Date**” means November 22, 2027.

“**Maximum ASR Amount**” has the meaning specified in Section 6.05(a)(vi).

“**Maximum Rate**” has the meaning specified in Section 10.13.

“**Measurement Period**” means, as of any date of determination, the most recently ended period of four consecutive fiscal quarters of the Parent ended on or prior to such date for which financial statements with respect to each fiscal quarter included in such period have been delivered pursuant to Section 5.01(a) or 5.01(b).

“**Minimum Collateral Amount**” means, at any time, with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting

Exposure of an Issuing Bank with respect to Letters of Credit (105% for any Fronting Exposure with respect to Letters of Credit denominated in a currency other than Dollars) issued and outstanding at such time.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgages**” means, individually and collectively, one or more mortgages, charges, debentures, deeds of trust, deeds of hypothec or deeds to secure debt, executed and delivered by a Loan Party in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, that encumber the real property included in the Collateral.

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or would be an obligation to contribute of) the Parent, any Borrower or a Subsidiary or an ERISA Affiliate, and each such plan for the five- year period immediately following the latest date on which the Parent, any Borrower, or a Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“**Net Assets**” has the meaning specified in Section 9.09(a)(i).

“**Net Debt for Borrowed Money**” means, as to the Parent and its Subsidiaries at any time of determination on a consolidated basis, an amount equal to (i) the sum (without duplication) of (a) the outstanding principal amount of all Indebtedness for borrowed money, (b) all obligations evidenced by notes, bonds, debentures or other similar instruments, (c) the stated amount of all outstanding letters of credit (including, without limitation, the undrawn portion of any Letters of Credit as well as reimbursement obligations with respect to any drawn letters of credit), (d) all Indebtedness in respect of any Parent Convertible Notes outstanding (excluding up to \$750,000,000 of the outstanding principal amount of such Parent Convertible Notes), (e) the aggregate amount of all Capital Lease Obligations and purchase money Indebtedness of the Parent and its Subsidiaries, and (f) to the extent not duplicative with the Indebtedness and obligations specified in clauses (a)-(c) above, all Guarantees of the Parent and its Subsidiaries with respect to outstanding Indebtedness and obligations of the types specified in clauses (a)-(c) above of other Persons, minus (ii) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash and any amounts subject to Cash Pooling Arrangements) of the Parent and its Subsidiaries in an aggregate amount not to exceed \$75,000,000.

“**Netherlands**” means the European territory of the Kingdom of the Netherlands and “Dutch” is in or from the Netherlands.

“**New Commitments**” has the meaning specified in Section 2.18.

“**New Lender**” has the meaning specified in Section 2.18.

“**New Loans**” has the meaning specified in Section 2.18.



“**Non-Consenting Lender**” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.02 and (ii) has been approved by the Required Lenders.

“**Non-Cooperative Jurisdiction**” means a “non-cooperative tax jurisdiction” (*nicht kooperatives Steuerhoheitsgebiet*) as set out in the German Act to avert tax evasion and unfair tax competition (*Gesetz zur Abwehr von Steuervermeidung und unfairem Steuerwettbewerb*) and the respective legislative decree (*Rechtsverordnung*) as amended from time to time.

“**Non-Defaulting Lender**” means, at any time, each Lender that is not a Defaulting Lender at such time.

“**Non-U.S. Plan**” means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Parent, any Borrower or one or more Subsidiaries primarily for the benefit of employees of the Parent, any Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“**Not Otherwise Applied**” means, with reference to any amount otherwise eligible for inclusion in the Available Equity Amount, that such amount (a) was not previously applied to prepay the Obligations, (b) was not previously utilized (meaning such funds remain available for application as Available Equity Amount) for some other purpose (including, without limitation, to finance any capital expenditures), and (c) was not committed to be applied, provided that such commitment remains outstanding or has not otherwise terminated or expired, for some other purpose.

“**Note**” has the meaning specified in Section 2.07.

“**NYFRB**” means the Federal Reserve Bank of New York.

“**NYFRB Rate**” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Obligations**” means all amounts owing by any Loan Party to the Administrative Agent, any Issuing Bank or any Lender (or, in the case of (x) Specified Cash Management Agreements, any Affiliate of any Lender and (y) Specified Swap Agreements, any Affiliate of any Lender or any other Approved Counterparty) pursuant to the terms of this Agreement or any other Loan

Document, including any obligation to provide Cash Collateral, or in respect of any Letter of Credit, any Specified Swap Agreement or any Specified Cash Management Agreement and obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights (including all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, judicial management of, or for the reorganization of the Parent or any of its Subsidiaries, whether or not allowed in such case or proceeding).

“**Other Connection Taxes**” means, with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Parent or any Borrower, as applicable, hereunder, Taxes imposed as a result of a present or former connection between such Administrative Agent, Issuing Bank, Lender or other recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Administrative Agent, Issuing Bank, Lender or recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

“**Other Taxes**” means any and all present or future stamp, court or documentary taxes or any other excise, property, intangible, recording, filing or similar Taxes which arise from any payment made, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and the other Loan Documents; excluding, however, such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than such Taxes imposed with respect to an assignment that occurs as a result of the Parent Borrower’s request pursuant to Section 2.16(b)).

“**Overnight Bank Funding Rate**” means, for any day, the rate comprised of both overnight federal funds and overnight Term Benchmark borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“**Parallel Debt**” has the meaning specified in Section 10.20(a).

“**Parent**” has the meaning specified in the preamble to this Agreement.

“**Parent Borrower**” has the meaning specified in the preamble to this Agreement.

“**Parent Convertible Notes**” means senior unsecured convertible notes issued by the Parent which (a) are not guaranteed by or otherwise recourse to the Parent Borrower or any of its Subsidiaries, (b) do not mature or require any principal payments prior to the date that is 180 days following the Maturity Date and (c) contain terms which (i) are customary for similar types of Indebtedness at such time (as reasonably determined by the Parent) and (ii) are not more restrictive on the Parent and its Subsidiaries than this Agreement and do not contain any financial maintenance covenants.

“**Participant**” has the meaning specified in Section 10.04(c)(i).

“**Participant Register**” has the meaning specified in Section 10.04(c)(iii).

“**Participating Member State**” means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

“**Patents**” has the meaning specified in the applicable Security Document.

“**Payment Recipient**” has the meaning assigned to it in Section 8.11(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Perfection Certificate**” means a certificate in the form of Exhibit I hereto.

“**Permitted Bond Hedge Transaction**” means any call or capped call option (or substantively equivalent derivative transaction) on the Parent’s common Equity Interests purchased by the Parent in connection with the issuance of the Parent Convertible Notes; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Parent from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Parent from the sale of such Parent Convertible Notes issued in connection with the Permitted Bond Hedge Transaction.

“**Permitted Discretion**” means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured lender similarly situated) business judgment.

“**Permitted Encumbrances**” means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet delinquent or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, landlord’s, supplier’s, repairmen’s and other like Liens imposed by law (for the avoidance of doubt, including any Lien to secure amounts payable in respect of any real estate leased or licensed by a Subsidiary Guarantor domiciled in the Federal Republic of Germany and any landlord’s pledge (*Vermieterpfandreht*) arising by operation of law in favor of the relevant third party landlord), arising in the ordinary course of business and securing obligations that are not overdue by more than 90 days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) Liens (other than any Lien imposed under ERISA or Section 430(k) of the Code) to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the

ordinary course of business and to secure surety and appeal bonds in respect of judgments that do not constitute an Event of Default under Section 7.01(l);

(e) Liens in respect of judgments that do not constitute an Event of Default under Section 7.01(k);

(f) easements, zoning restrictions, rights-of-way, encroachments and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Parent, any Borrower or any Subsidiary;

(g) UCC financing statements filed (or similar filings under applicable law, including the Canadian PPSA) solely as a precautionary measure in connection with operating leases;

(h) leases or subleases not prohibited under this Agreement which are granted to other Persons and not interfering in any material respect, individually or taken as a whole, with the business of the lessor or sublessor;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements;

(k) rights of consignors of goods in goods consigned in the ordinary course of business, whether or not perfected by the filing of a financing statement or other registration, recording or filing;

(l) Liens (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (ii) in favor of the commodities broker or intermediary attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) in favor of banking institutions arising as a matter of law or under other customary general terms and conditions encumbering deposits maintained with such banking institutions (including the right of set-off) which Liens secure obligations related to the maintenance of such accounts and do not secure Indebtedness for borrowed money;

(m) [reserved];

(n) [reserved];

(o) Liens given to a public utility or any Governmental Authority when required by such utility or Governmental Authority in connection with the operations of that Person in the ordinary course of its business; provided that such Liens do not materially interfere with the ordinary conduct of business of the Parent, any Borrower or any Subsidiary;

(p) operating leases of vehicles or equipment which are entered into in the ordinary course of the business;

(q) with respect to any German Loan Party, (i) any netting or set-off arrangement entered into by such German Loan Party in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of such German Loan Party (including cash pooling or similar arrangements); (ii) any Lien over bank accounts used in the ordinary course of business granted as part of a bank's customary terms and conditions; and (iii) any Lien created pursuant to § 8a of the German Old Age Employees Part Time Act (*Altersteilzeitgesetz*) or § 7e of the Fourth Book of the German Social Code (*Sozialgesetzbuch IV*); and

(r) customary restrictions in any license agreement with the Parent Borrower as a licensee, including without limitation, with respect to the sale of inventory (provided that the Parent Borrower shall give the Administrative Agent prompt notice of the execution of any such license agreement).

**“Permitted Factoring Net Investment”** means the aggregate cash amount paid by the purchasers under any Permitted Factoring Transactions in connection with their purchase of Receivables Assets, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of such Permitted Factoring Transactions (but excluding any such collections used to make payments of commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Factoring Transactions which are payable to any Person other than the Parent, any Borrower or any of their Subsidiaries).

**“Permitted Factoring Transaction”** means any Factoring Transaction so long as (a) such Factoring Transaction is non-recourse to, and does not obligate, the Parent, any Borrower or any Subsidiary thereof, or their respective properties or assets (other than Receivables Assets) in any way other than pursuant to Standard Securitization Undertakings, (b) all sales, conveyances and/or assignments of Receivables Assets by the Parent Borrower or any Subsidiary thereof in connection with such Factoring Transaction are made at fair market value (as determined in good faith by the Parent Borrower or any applicable Subsidiary), and 100% of the proceeds of such sales, conveyances and/or assignments are received in cash, (c) such Factoring Transaction (including financing terms, covenants, termination events (if any) and other provisions thereof) is on market terms at the time such Factoring Transaction is first entered into (as determined in good faith by the Parent Borrower or any applicable Subsidiary) and may include Standard Securitization Undertakings, and (d) such Factoring Transaction shall be in compliance with each of the Receivables Financing Limitations. The grant of a security interest in any accounts receivable of the Parent Borrower or any of its Subsidiaries (other than a Receivables Subsidiary) to secure any credit agreement shall not be deemed a Permitted Factoring Transaction in and of itself.

**“Permitted Holders”** means one or more of AES and Siemens.

**“Permitted Receivables Facility”** means any Receivables Facility so long as (a) such Receivables Facility does not obligate the Parent, any Borrower or any Subsidiary thereof, or

their respective properties or assets (other than Receivables Assets) in any way other than pursuant to Standard Securitization Undertakings, (b) all sales, contributions, conveyances and/or assignments of Receivables Assets by the Parent Borrower or any Subsidiary to any Receivables Subsidiary in connection with such Receivables Facility are made at fair market value (as determined in good faith by the Parent Borrower or any applicable Subsidiary), (c) the proceeds from the sale, contribution, conveyance and/or assignment of such Receivables Assets by the Parent, any Borrower or any Subsidiary thereof are received in cash or a dollar for dollar increase in the value of the Equity Interest of the Parent, such Borrower or such Subsidiary, as applicable, in the Receivables Subsidiary, and at least 75% of the face value of the sold, contributed, conveyed and/or assigned Receivables Assets shall be paid to the Parent, such Borrower or such Subsidiary, as applicable, in cash, (d) any such Receivables Facility (including financing terms, covenants, termination events (if any) and other provisions thereof) is on market terms at the time such Receivables Facility is first entered into (as determined in good faith by the Parent Borrower or any applicable Subsidiary) and may include Standard Securitization Undertakings, and (e) such Receivables Facility shall be in compliance with each of the Receivables Financing Limitations. The grant of a security interest in any accounts receivable of the Parent Borrower or any of its Subsidiaries (other than a Receivables Subsidiary) to secure any credit agreement shall not be deemed a Permitted Receivables Facility in and of itself.

**“Permitted Receivables Facility Principal Amount”** means, on any date of determination, the aggregate cash amount advanced by the lenders or purchasers under Permitted Receivables Facilities to Receivables Subsidiaries in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets, principal payments or otherwise in accordance with the terms of the documents and agreements evidencing, relating to or otherwise governing the Permitted Receivables Facilities.

**“Permitted Refinancing”** means, with respect to any Indebtedness, any Indebtedness constituting a refinancing or replacement thereof so long as (a) on the date of such refinancing or replacement, no Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing or replacement Indebtedness shall (i) not have a stated maturity or, other than in the case of a revolving credit facility, a weighted average life to maturity that is shorter than that of the Indebtedness being refinanced or replaced, (ii) if the Indebtedness being refinanced or replaced (or the Liens securing such Indebtedness) is subordinated to the Obligations (or to the Liens securing the Obligations, if applicable) by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be (and be secured by Liens, if applicable) at least as subordinate to the Obligations (or to the Liens securing the Obligations) as the Indebtedness being refinanced or replaced (and unsecured if the refinanced or replaced Indebtedness is unsecured) and (iii) be in a principal amount that does not exceed the principal amount so refinanced or replaced plus, accrued interest, any customary premium or other payment required to be paid in connection with such refinancing or replacement, the amount of customary fees and expenses of the Borrowers or any of their Subsidiaries incurred in connection with such refinancing or replacement, and any unutilized commitments thereunder; and (c) the obligors on such refinancing or replacement Indebtedness shall be the obligors on such Indebtedness being refinanced or replaced; provided that any Loan

Party shall be permitted to guarantee any such refinancing or replacement Indebtedness of any other Loan Party.

“**Permitted Third Party Bank**” means any bank or other financial institution, other than the Lenders, with whom any Loan Party maintains a Controlled Account and which is set forth on Schedule 1.01 and any Affiliate of any such bank or other financial institution with whom any Loan Party maintains a Controlled Account.

“**Permitted Warrant Transaction**” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Parent’s common Equity Interests sold by the Parent substantially concurrently with any purchase by the Parent of a related Permitted Bond Hedge Transaction.

“**Person**” means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Philippine Security Documents**” means the (a) Fluence Energy Philippines Guaranty and (b) one or more security agreements in favor of the Administrative Agent pursuant to which any Lien governed or expressed to be governed by the laws of the Republic of the Philippines, which agreements shall be granted in accordance with the Agreed Security Principles and Section 5.11(g), in each case, as may be amended, restated, supplemented or otherwise modified from time to time.

“**Philippines Collateral**” has the meaning specified in Section 5.11(g).

“**Philippines Guarantors**” means the Guarantors organized under the laws of the Philippines, including Fluence Energy Philippines.

“**Philippines Secured Amount**” has the meaning specified in Section 5.11(g).

“**Plan**” means any “employee benefit plan” as defined in Section 3 of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA maintained or contributed to by the Parent, any Borrower, a Subsidiary or any ERISA Affiliate or to which the Parent, any Borrower, a Subsidiary or an ERISA Affiliate has or would have an obligation to contribute, and each such plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA for the five-year period immediately following the latest date on which the Parent, any Borrower, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

“**Platform**” has the meaning specified in Section 10.01.

“**Pounds Sterling**” and “**£**” mean the lawful currency of the United Kingdom.

“**PPSR**” has the meaning specified in Section 5.11(g).

**“Prime Rate”** means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

**“Principal Office”** means the office of the Administrative Agent as set forth in Section 10.01, or such other office or office of a third party or sub-agent, as appropriate, as the Administrative Agent may from time to time designate in writing to the Borrowers and each Lender.

**“Pro Forma Basis”** or **“Pro Forma Effect”** means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

**“Proceeds”** means all “proceeds” as such term is defined in Section 9-102(a)(64) of the New York UCC or the Canadian PPSA, as applicable, and, in any event, shall include, without limitation, all dividends or other income from investment property, collections thereon or distributions or payments with respect thereto.

**“Proceeds of Crime Act”** means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), as amended from time to time, and including all regulations thereunder.

**“Protective Advance Exposure”** means at any time, the Dollar Equivalent of the sum of the aggregate amount of all outstanding Protective Advances at such time. The Protective Advance Exposure of any Lender at any time shall be its Applicable Percentage of the total Protective Advance Exposure at such time.

**“Protective Advances”** has the meaning specified in Section 2.02(e).

**“Purchase Money Indebtedness”** means Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital asset to the extent incurred prior to or within 180 days following such acquisition, construction or improvement.

**“QFC”** has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**“QFC Credit Support”** has the meaning specified in Section 10.18.

**“Qualified Equity Interests”** means any Equity Interests that are not Disqualified Equity Interests.



“**Qualified Keepwell Provider**” has the meaning specified in Section 9.01(i).

“**Reaffirmation Agreement**” means that certain Reaffirmation Agreement, dated as of the Amendment No. 3 Effective Date, in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered by each Loan Party to the Administrative Agent.

“**Receivables Assets**” means accounts receivable (whether now existing or arising in the future) owed to the Parent Borrower or any of its Subsidiaries which has been sold, conveyed, assigned or otherwise transferred to a Receivables Subsidiary or any other Person in connection with a Factoring Transaction or a Receivables Facility, and (i) all collateral securing such accounts receivable, (ii) all contracts and all guarantees or other payment support obligations (including letters of credit, promissory notes or trade credit insurance) in respect of such accounts receivable, (iii) all proceeds of such accounts receivable and other assets which are of the type customarily transferred or in respect of which security interests are customarily granted in connection with non-recourse, asset securitization or factoring transactions involving accounts receivable, and (iv) any Swap Agreements entered into by the Parent Borrower or any such Subsidiary in connection with such accounts receivable.

“**Receivables Facility**” means any transaction or series of transactions that may be entered into by the Parent Borrower or any Subsidiary pursuant to which the Parent Borrower or such Subsidiary, as applicable, sells, contributes, conveys, assigns or otherwise transfers Receivables Assets to (a) a Receivables Subsidiary (in the case of a transfer by the Parent Borrower or any of its Subsidiaries), and such Receivables Subsidiary pays all the proceeds of the Receivables Facility, which may be net of transaction expenses, to the transferors of such Receivables Assets as the purchase price for all or a portion of such Receivables Assets, and (b) any other Person (in the case of a transfer by a Receivables Subsidiary), which in either case, may include a backup or precautionary grant of security interest in such Receivables Assets so sold, contributed, conveyed, assigned or otherwise transferred.

“**Receivables Financing Limitations**” means, collectively, the sum of (i) the aggregate outstanding amount of all Permitted Factoring Transactions (provided that the outstanding amount of any Permitted Factoring Transactions for purposes of this definition shall be deemed to be equal to the Permitted Factoring Net Investment for the most recent Measurement Period with respect thereto), plus (ii) the aggregate outstanding amount of all Permitted Receivables Facilities (provided that the outstanding amount of any Permitted Receivables Facility for purposes of this definition shall be deemed to be equal to the Permitted Receivables Facility Principal Amount at such time with respect thereto), shall not exceed at any time (a) prior to the Trigger Date, \$400,000,000 and (b) from and after the Trigger Date, \$600,000,000.

“**Receivables Subsidiary**” means a Wholly Owned Subsidiary of the Parent Borrower (or another Person formed for the purposes of engaging in a Permitted Receivables Facility) to which the Parent Borrower or any Subsidiary sells, conveys, assigns or otherwise transfers Receivables Assets (which may include a backup or precautionary grant of security interest in such Receivables Assets sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) which engages in no activities other than in connection with the purchase, acquisition or financing of Receivables Assets, and any business

or activities incidental or related to such business, and which is designated by senior management or the board of directors of the Parent Borrower as a Receivables Subsidiary, and:

(A) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary, excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary) in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

(B) with which neither the Parent Borrower nor any Subsidiary (other than a Receivables Subsidiary) has any material contract, agreement, arrangement or understanding other than on terms which the Parent Borrower reasonably believes to be no less favorable to the Parent Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Parent Borrower, and

(C) to which neither the Parent Borrower nor any other Subsidiary of the Borrower has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by senior management or the Board of Directors of the Parent Borrower shall be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Parent Borrower or the determination by applicable senior management of the Parent Borrower, in each case giving effect to such designation and an officer's certificate certifying that such designation complied with the foregoing conditions.

**"Reference Time"** with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 8:00 a.m. (New York time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (2) if such Benchmark is EURIBOR Rate, 11:00 a.m. Brussels time two TARGET Days preceding the date of such setting, (3) if the RFR for such Benchmark is SONIA, then 11:00 a.m. (London time) on the day that is four Business Days prior to such setting, and (3) if such Benchmark is not the Term SOFR Rate, the EURIBOR Rate or SONIA, the time determined by the Administrative Agent in its reasonable discretion.

**"Register"** has the meaning specified in Section 10.04(b).

**"Regulation D"** means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Related Parties**” means, with respect to any specified Person, such Person’s Affiliates and the respective partners, trustees, shareholders, directors, officers, employees, agents, representatives, attorneys, controlling Persons and advisors of such Person and such Person’s Affiliates.

“**Relevant Governmental Body**” means (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto, (ii) with respect to a Benchmark Replacement in respect of Loans denominated in Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, (iii) with respect to a Benchmark Replacement in respect of Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto and (iv) with respect to a Benchmark Replacement in respect of Loans denominated in any other currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

“**Relevant Rate**” means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Term SOFR Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Rate, and (iii) with respect to any Borrowing denominated in Sterling, Daily Simple RFR.

“**Relevant Screen Rate**” means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Term SOFR Reference Rate and (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Screen Rate, as applicable.

“**Required Lenders**” means, at any time, Lenders (a) having Revolving Credit Exposure and unused Commitments representing more than 50% of the sum of the Total Revolving Extensions of Credit and unused Commitments of all Lenders at such time, or (b) at any time after the Commitments of all Lenders shall have been terminated, holding more than 50% of the Total Revolving Extensions of Credit at such time; provided that, for purposes of this definition of “Required Lenders”, a Lender and its Affiliates shall be deemed to be one Lender. The

Revolving Credit Exposure and Commitment of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” means any of the president, the chief executive officer or any Financial Officer of the applicable Loan Party, or any other Person designated by any such Loan Party in writing to the Administrative Agent from time to time, acting singly.

“**Restricted Cash**” means, at any time, the cash and Cash Equivalents of the Parent and its Subsidiaries to the extent (a) classified (or required to be classified) as restricted cash or restricted Cash Equivalents on the balance sheet of the Parent and its Subsidiaries in accordance with GAAP or (b) such cash or Cash Equivalents are subject to any Lien (other than (x) Liens in favor of the Secured Parties pursuant to the Security Documents and (y) Liens permitted pursuant to clauses (a), (e), (l)(i) and (l)(iii) of the definition of Permitted Encumbrances and under Section 6.02(l)).

“**Restricted Debt Payment**” has the meaning specified in Section 6.05(b).

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Parent, any Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interest. For the avoidance of doubt, the receipt or acceptance by the Parent, any Borrower or any Subsidiary of the return of Equity Interests issued by the Parent, any Borrower or any Subsidiary to the seller of a Person, business or division as consideration for the purchase of such Person, business or division, which return is in settlement of indemnification claims owed by such seller in connection with such acquisition, shall not be deemed to be a Restricted Payment.

“**Reuters**” means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

“**Revaluation Date**” means (a) with respect to any Loan denominated in any Alternative Currency, each of the following: (i) the date of the Borrowing of such Loan, (ii) with respect to any Term Benchmark Loan, each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement, (iii) with respect to any RFR Loan, each Interest Payment Date, and (iv) the date of any voluntary reduction of the Commitments pursuant to Section 2.06; (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month, (iii) the date of any extension of such Letter of Credit, (iv) the date of any amendment of such Letter of Credit that has the effect of increasing the available balance thereof, and (v) each date of any payment by the applicable Issuing Bank under any Letter of Credit denominated in an Alternative Currency; (c) for purposes of calculating the Commitment

Fee, the last day of any calendar quarter; and (d) any additional date as the Administrative Agent or the relevant Issuing Bank, as applicable, may determine or the Required Lenders may require.

“**Revolving Credit Exposure**” means, with respect to any Lender at any time, the Dollar Equivalent of the sum of the outstanding principal amount of such Lender’s Revolving Loans, its Protective Advance Exposure and its LC Exposure at such time.

“**Revolving Lender**” means each Lender that has a Commitment or that holds Revolving Loans.

“**Revolving Loan Cap**” means the lesser of (a) \$150,000,000 and (b) the aggregate unused amount of the Commitments then in effect.

“**Revolving Loans**” has the meaning specified in Section 2.01.

“**RFR**” means, for any RFR Loan denominated in Sterling, SONIA.

“**RFR Borrowing**” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“**RFR Business Day**” means, for any Loan denominated in Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London.

“**RFR Interest Day**” has the meaning specified in the definition of “Daily Simple RFR”.

“**RFR Loan**” means a Loan that bears interest at a rate based on Daily Simple RFR.

“**S&P**” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business.

“**Sanctioned Country**” means, at any time, a country, region or territory which is the subject or target of any country-wide or territory-wide Sanctions (and, as of the Effective Date, Crimea, Zaporizhzhia and Kherson Regions of Ukraine, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, Cuba, Iran, North Korea and Syria).

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any EU member state, the Government of Canada, the United Kingdom (including but not limited to His Majesty’s Treasury), the Monetary Authority of Singapore or any other applicable sanctions authority in which the Parent and its Subsidiaries operate (except to the extent inconsistent with U.S. law), (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“**Sanctions**” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, the Government of Canada, the United Kingdom (including but not limited to His Majesty’s Treasury), the Monetary Authority of Singapore or any other applicable sanctions authority in which the Parent and its Subsidiaries operate.

“**SEC**” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“**Secured Parties**” means the collective reference to the Administrative Agent, the Lenders, the Issuing Banks and any other Person to which Obligations are owed.

“**Securities Account**” has the meaning specified in the UCC or the Canadian PPSA, or with respect to Foreign Loan Parties (other than Canadian Loan Parties), such comparable term as set forth in the applicable Security Documents.

“**Security Documents**” means the collective reference to the U.S. Security Agreement, the Foreign Security Agreements, the Control Agreements, any Mortgages and all other security documents hereafter delivered to the Administrative Agent by a Loan Party granting or perfecting a Lien on any property or right of any person to secure the obligations and liabilities of any Loan Party under any Loan Document.

“**Siemens**” refers to Siemens AG, a company incorporated under the laws of Germany, and its subsidiaries and affiliates, including Siemens Industry, Inc., a Delaware corporation.

“**Singapore**” means the Republic of Singapore.

“**Singapore Security Documents**” means the deed set forth in Section 4(i) on Schedule 5.16 under the heading “Singapore” which deed shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by the laws of Singapore delivered by any Loan Party in favor of the Administrative Agent.

“**Singapore Loan Party**” means a Loan Party that is incorporated in Singapore.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Determination Date**” has the meaning specified in the definition of “Daily Simple SOFR”.

“**SOFR Rate Day**” has the meaning specified in the definition of “Daily Simple SOFR”.

“**Solvent**” means, with respect to the Parent and its Subsidiaries on a particular date, that on such date (a) the fair value of the assets of the Parent and its Subsidiaries, on a consolidated basis, is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of the Parent and its Subsidiaries, on a consolidated basis, (b) the present fair saleable value of the assets of the Parent and its Subsidiaries, on a consolidated basis, is not less than the total amount of liabilities, including contingent liabilities, of the Parent and its Subsidiaries, on a consolidated basis, (c) the Parent and its Subsidiaries, on a consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business, (d) the Parent and its Subsidiaries on a consolidated basis have, and will have, adequate capital with which to conduct the business they are presently conducting and reasonably anticipate conducting, (e) with respect to any Australian Loan Party, it is solvent (within the meaning of section 95A of the Australian Corporations Act) and able to pay its debts as and when they fall due, (f) no Canadian Loan Party is an “insolvent person” as defined in the Bankruptcy and Insolvency Act (Canada), (g) no Irish Loan Party, will be unable to pay its debts (within the meaning of section 509(3) of the Irish Companies Act), and (h) with respect to a Singapore Loan Party, the value of its current assets exceeds its current liabilities (taking into account contingent and prospective liabilities) such that it is able to pay its debts as and when they fall due. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5 (ASC 450)).

“**SONIA**” means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator’s Website on the immediately succeeding Business Day.

“**SONIA Administrator**” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“**SONIA Administrator’s Website**” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“**Special Purpose Subsidiary**” means (a) any not-for-profit Subsidiary, (b) any Captive Insurance Company, and (c) any Receivables Subsidiary.

“**Specified Cash Management Agreement**” means any agreement providing for treasury, depositary, purchasing card or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions between the Parent or

any Subsidiary thereof and any Lender or Affiliate thereof, which (i) is in effect as of the Effective Date or (ii) has been designated by such Lender and the Parent Borrower, by notice to the Administrative Agent after the execution and delivery thereof, as a “Specified Cash Management Agreement”. For the avoidance of doubt, (x) the Citi Supplier Financing Agreement shall not constitute a Specified Cash Management Agreement and (y) agreements relating to any Factoring Transaction or Receivables Facility shall not constitute Specified Cash Management Agreements.

“**Specified Event of Default**” means an Event of Default arising under Section 7.01(a), Section 7.01(b), Section 7.01(e) (but solely with respect to a breach of Section 5.01(c)), Section 7.01(h) or Section 7.01(i).

“**Specified Post-Closing Period**” means, with respect to any Foreign Subsidiary of the Parent Borrower, the period from and after the Amendment No. 3 Effective Date and until the date that such Foreign Subsidiary is required to satisfy the requirements set forth in Section 4 in Schedule 5.16 hereto (including any extension of such granted with respect to any such direct or indirect Foreign Subsidiary of the Parent Borrower).

“**Specified Swap Agreement**” means any Swap Agreement in respect of interest rates, currency exchange rates or commodity pricing risk (i) in effect as of the Amendment No. 3 Effective Date between the Parent or any Subsidiary thereof and any Person that is a Lender or an Affiliate of a Lender as of the Amendment No. 3 Effective Date or (ii) in effect as of the Amendment No. 3 Effective Date or entered into after the Amendment No. 3 Effective Date between the Parent or any Subsidiary thereof and any Approved Counterparty, which Swap Agreement is designated in writing by the Parent Borrower to the Administrative Agent as a Specified Swap Agreement (for purposes of the foregoing, the Parent Borrower and the applicable swap provider may designate all Swap Agreements under a specified ISDA Master Agreement as “Specified Swap Agreements”); provided that such Swap Agreement is entered into to hedge or mitigate risks, and not for speculative purposes, in the ordinary course of the Parent’s or such Subsidiary’s business or in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Parent or such Subsidiary.

“**Specified Transaction**” means (a) any incurrence or repayment of Indebtedness of any Borrower or a Subsidiary, (b) any Investment that results in a Person becoming a Subsidiary, (c) any Disposition, (d) the establishment, acquisition or creation of any new joint venture of any Borrower or any Subsidiary, (e) any issuance of Equity Interests, and (f) any acquisition or Investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person or of all or substantially all of the assets of a Person.

“**Standard Securitization Undertakings**” means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Parent, any Borrower or any Subsidiary thereof which the Parent Borrower has determined in good faith to be customary in a Factoring Transaction or Receivables Facility, as applicable, including, without limitation, those relating to the servicing of Receivables Assets.



“**Standby Letter of Credit**” means any Letter of Credit other than any Commercial Letter of Credit.

“**Statutory Reserve Rate**” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted EURIBOR Rate, as applicable, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Term Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“**Sterling**” or “**£**” mean the lawful currency of the United Kingdom.

“**Subsidiary**” means, unless otherwise specified, any subsidiary of the Parent.

“**subsidiary**” means, with respect to any Person (the “**parent**”) at any date, any corporation, limited liability company, unlimited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and which is required by GAAP to be consolidated in the consolidated financial statements of the parent.

“**Supermajority Lenders**” means at any time, Lenders (a) having Revolving Credit Exposure and unused Commitments representing more than 66 2/3% of the sum of the Total Revolving Extensions of Credit and unused Commitments of all Lenders at such time, or (b) at any time after the Commitments of all Lenders shall have been terminated, holding more than 66 2/3% of the Total Revolving Extensions of Credit at such time; provided that, for purposes of this definition of “Supermajority Lenders”, a Lender and its Affiliates shall be deemed to be one Lender. The Revolving Credit Exposure and Commitment of any Defaulting Lender shall be disregarded in determining Supermajority Lenders at any time.

“**Super-Priority Covenant**” means, collectively, (a) clause (iv) in the last paragraph of Section 6.01 and (b) clause (ii) in the last paragraph of Section 6.02.

“**Supplier Financing Excess Amount**” has the meaning specified in Section 6.01(k).

“**Supported QFC**” has the meaning specified in Section 10.18.

“**Swap Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Parent or its Subsidiaries shall be a Swap Agreement.

“**Swap Obligation**” has the meaning specified in Section 9.01(i).

“**Swiss CO**” shall mean the Swiss Code of Obligations of March 30, 1911 (*Obligationenrecht*), as amended from time to time.

“**Swiss DEBA**” shall mean the Swiss Federal Act of April 11, 1889 on Debt Enforcement and Bankruptcy (*Bundesgesetz über Schuldbetreibung und Konkurs*), as amended from time to time.

“**Swiss Federal Tax Administration**” means the tax authorities referred to in art. 34 of the Swiss Withholding Tax Act.

“**Swiss Limitation**” has the meaning given to that term in Section 9.12(a).

“**Swiss Loan Party**” means a Loan Party that is incorporated or organized under the laws of Switzerland, or, if different, a Loan Party which is treated as resident in Switzerland for Swiss Withholding Tax purposes and any future Guarantor or security provider under this Agreement or Loan Documents incorporated under the laws of Switzerland or, if different, a Guarantor or security provider which is treated as resident in Switzerland for Swiss Withholding Tax purposes.

“**Swiss Restricted Obligations**” has the meaning given to that term in Section 9.12(a).

“**Swiss Security Documents**” means the security agreements set forth in Section 4(j) on Schedule 5.16 under the heading “Switzerland” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by the laws of Switzerland delivered by any Loan Party in favor of the Administrative Agent.

“**Swiss Withholding Tax**” means any taxes levied pursuant to the Swiss Withholding Tax Act.

“**Swiss Withholding Tax Act**” means the Swiss Federal Act on the Withholding Tax of 13 October 1965, SR 642.21 (*Bundesgesetz über die Verrechnungssteuer, SR 642.21*), together

with the related ordinances, regulations and guidelines, all as issued, amended, replaced and applicable from time to time.

“**T2**” means the real time gross settlement system operated by the Eurosystem, or any successor system.

“**Taiwan**” means the Republic of China, Taiwan.

“**Taiwan Security Documents**” means the deed set forth in Section 4(k) on Schedule 5.16 under the heading “Taiwan” which deed shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, pledge agreement or similar document governed by the laws of Taiwan delivered by any Loan Party in favor of the Administrative Agent.

“**Taiwan Loan Party**” means a Loan Party that is incorporated in Taiwan.

“**TARGET Day**” means any day on which T2 is open for the settlement of payments in Euro.

“**Tax Receivable Agreement**” means that certain Tax Receivable Agreement, dated as of October 27, 2021, among the Parent, the Parent Borrower and the other parties thereto, as the same may hereafter be modified, supplemented, extended, amended, restated or amended and restated from time to time.

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, goods and services tax (including Indirect Tax), charges, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Benchmark**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Term SOFR Rate or the Adjusted EURIBOR Rate.

“**Term SOFR Determination Day**” has the meaning specified under the definition of Term SOFR Reference Rate.

“**Term SOFR Rate**” means, with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 8:00 a.m., New York time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator; provided that if the Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

“**Term SOFR Reference Rate**” means, for any day and time (such day, the “**Term SOFR Determination Day**”), with respect to any Term Benchmark Borrowing denominated in

Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“**Total Assets**” means, as of any date of determination, the total assets of the Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Parent delivered pursuant to Section 5.01(a) or (b).

“**Total Liquidity**” means, at any time and subject to Section 6.01(k), the sum of (a) all cash and Cash Equivalents (other than any Restricted Cash) in Agreed Currencies of (i) the U.S. Loan Parties to the extent that such cash and Cash Equivalents are held in Controlled Accounts maintained by a branch office of the depository bank or securities intermediary located within the United States and which are, in each case, subject to a first priority perfected Lien in favor of the Administrative Agent and subject to a Control Agreement (which Control Agreement requirement shall not be required with respect to such cash and Cash Equivalents (other than any Restricted Cash) until the date that is 90 days (or such later date as the Collateral Agent may in its reasonable discretion agree) after (x) (in the case of Controlled Accounts existing as of the Amendment No. 3 Effective Date) the Amendment No. 3 Effective Date or (y) (in the case of a Controlled Account opened after the Amendment No. 3 Effective Date) the date such account is opened), and (ii) the Foreign Loan Parties to the extent that such cash and Cash Equivalents are held in Controlled Accounts (which Control Agreement requirement shall not be required with respect to such cash and Cash Equivalents (other than any Restricted Cash) until the date that is 90 days (or such later date as the Collateral Agent may in its reasonable discretion agree) after (x) (in the case of Controlled Accounts existing as of the Amendment No. 3 Effective Date) the Amendment No. 3 Effective Date or (y) (in the case of a Controlled Account opened after the Amendment No. 3 Effective Date) the date such account is opened), maintained with a Lender or a Permitted Third Party Bank located within such Foreign Loan Parties’ jurisdiction of incorporation or organization subject and which are, in each case, subject to a first priority perfected Lien in favor of the Administrative Agent and subject to a Control Agreement, in each case, subject to the Agreed Security Principles; *provided* that (a) not more than 45% of the aggregate amount of cash and Cash Equivalents included in the calculation of Total Liquidity pursuant to this clause (a) may be comprised of (A) cash and Cash Equivalents in Agreed Currencies other than Dollars, (B) cash and Cash Equivalents of Foreign Loan Parties or (C) cash and Cash Equivalents held in Controlled Accounts outside of the United States, and (b) the aggregate amount of the Revolving Loan Cap then in effect and which is then available to be drawn under this Agreement. Notwithstanding the foregoing, during the Specified Post-Closing

Period, for purposes of calculating Total Liquidity attributable to Foreign Loan Parties under clause (a)(ii) of this definition, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Foreign Loan Party”.

“**Total Revenues**” means, as of any date of determination, the gross revenues of the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent income statement of the Parent delivered pursuant to Section 5.01(a) or (b).

“**Total Revolving Extensions of Credit**” means, at any time, the Dollar Equivalent aggregate amount of the Revolving Credit Exposure of the Lenders outstanding at such time.

“**Trademarks**” has the meaning specified in the applicable Security Document.

“**Transactions**” means the execution, delivery and performance by the Loan Parties of each Loan Document to which it is a party, the borrowing of Loans and the issuance of Letters of Credit hereunder, the use of the proceeds thereof, and the payment of fees and expenses relating to each of the foregoing.

“**Trigger Date**” means the date that financial statements are delivered (or required to be delivered) for the period ending as of December 31, 2025, pursuant to Section 5.01(a), so long as the Loan Parties are in compliance with Section 6.10 on a Pro Forma Basis as of such date.

“**Type**”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Term SOFR Rate, the Adjusted EURIBOR Rate, Daily Simple RFR or the Alternate Base Rate.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York from time to time; provided, that if attachment, perfection or the effect of perfection or non-perfection or the priority of any security interest in, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, effect of perfection or non-perfection, priority or remedies.

“**UK Financial Institutions**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Loan Party**” means a Loan Party that is incorporated under the Laws of England and Wales.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**UK Security Documents**” means the security agreements set forth in Section 4(d) in Schedule 5.16 under the heading “United Kingdom” which agreements shall be granted in accordance with the Agreed Security Principles, in each case as may be amended, restated, supplemented or otherwise modified from time to time, and any other security agreement, debenture, share charge or similar document governed by English law delivered by any Loan Party in favor of the Administrative Agent.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Unfunded Pension Liability**” means the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Plan pursuant to Section 412 of the Code for the applicable plan year.

“**USA Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

“**U.S. Government Securities Business Day**” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**U.S. Loan Party**” means any Loan Party organized or existing under the laws of the United States of America, any State of the United States or the District of Columbia or any territory thereof.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Security Agreement**” means the Amended and Restated Security Agreement, dated as of the Amendment No. 3 Effective Date, among the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time, including by each joinder agreement thereto.

“**U.S. Special Resolution Regime**” has the meaning specified in Section 10.18.

“**Wholly Owned Subsidiary**” means as to any Person, any other Person all of the Equity Interests of which (other than directors’ qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

**“Withdrawal Liability”** means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

**“Withholding Agent”** means any Loan Party and the Administrative Agent.

**“Write-Down and Conversion Powers”** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Term Benchmark Loan” or an “RFR Borrowing”). Borrowings also may be classified and referred to by Type (e.g., a “Term Benchmark Borrowing” or an “RFR Borrowing”).

Section 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, legislation or other document herein shall be construed as referring to such agreement, instrument, legislation or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

Section 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrowers notify the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Amendment No. 3 Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrowers that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all financial covenants contained herein shall be calculated (1) without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (ASC 825) (or any similar accounting principle) permitting or requiring a Person to value its financial liabilities or Indebtedness at the fair value thereof, (2) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (3) all leases and obligations under any leases of any Person that are or would be characterized as operating leases and/or operating lease obligations in accordance with GAAP on December 14, 2018 (whether or not such operating leases and/or operating lease obligations were in effect on such date) shall continue to be accounted for as operating leases and/or operating lease obligations (and not as Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such obligations to be recharacterized as Capital Lease Obligations. Prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b) on or after the Amendment No. 3 Effective Date, any reference in this Agreement to the financial statements delivered pursuant to Section 5.01(a) or (b) or similar reference to the same effect shall be deemed to refer to the most recently delivered financial statements.

Section 1.05 Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in dollars or an Alternative Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.11(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the



Borrowers, pursuant to Section 2.11(b), of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, Daily Simple RFR, Daily Simple SOFR, the Adjusted EURIBOR Rate, the Term SOFR Rate or Daily Simple RFR or any component definition thereof or rates referred to in the definition thereof, or any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b) upon the occurrence of a Benchmark Transition Event, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any the Alternate Base Rate, Daily Simple RFR, Daily Simple SOFR, the Adjusted EURIBOR Rate, the Term SOFR Rate or Daily Simple RFR, any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, Daily Simple SOFR, the Adjusted EURIBOR Rate, the Term SOFR Rate, Daily Simple RFR or any other Benchmark, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.06 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.07 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit agreement related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is available to be drawn for all purposes other than the determination of Net Debt for Borrowed Money.

Section 1.08 Exchange Rates; Currency Equivalents. (a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Dollar Equivalent amounts of Borrowings or Letter of Credit extensions denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Borrowers hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any Agreed Currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Bank, as applicable.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Term Benchmark Loan or an RFR Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the Dollar Equivalent of such amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

Section 1.09 Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated in the manner prescribed by this Section 1.09; provided that, notwithstanding anything to the contrary in subsections (b) or (c) of this Section 1.09, when calculating the Consolidated Leverage Ratio (and the component definitions thereof), as applicable, for purposes of determining actual compliance (and not pro forma compliance or compliance on a Pro Forma Basis) with any financial covenant pursuant to Section 6.10, the events described in this Section 1.09 that occurred subsequent to the end of the applicable Measurement Period shall not be given Pro Forma Effect.

(b) For purposes of calculating the Consolidated Leverage Ratio (and the component definitions thereof), Specified Transactions that have been consummated (i) during the applicable Measurement Period or (ii) subsequent to such Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made in each case shall be calculated on a Pro Forma Basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Measurement Period. If, since the beginning of any Measurement Period, any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into any Borrower or any of its Subsidiaries since the beginning of such Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated to give Pro Forma Effect thereto in accordance with this Section 1.09.

(c) In the event that any Borrower or any Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, prepayment, retirement,

exchange, extinguishment or satisfaction and discharge) any Indebtedness included in the calculations of the Consolidated Leverage Ratio (and the component definitions thereof), as the case may be (in each case, other than Indebtedness incurred or repaid under this Agreement), (i) during the applicable Measurement Period and/or (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated giving Pro Forma Effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Measurement Period. Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Parent Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Parent Borrower may designate.

(d) Notwithstanding anything to the contrary herein, unless the Borrowers otherwise notify the Administrative Agent, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (any such amounts, the “**Fixed Amounts**”) substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (any such amounts, the “**Incurrence-Based Amounts**”), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts in connection with such substantially concurrent incurrence.

(e) For the avoidance of doubt, notwithstanding any classification under GAAP of any Person or business in respect of which a definitive agreement for the Disposition thereof has been entered into as discontinued operations, the earnings of such Person or business shall not be excluded from the calculation of Consolidated EBITDA until such Disposition shall have been consummated.

Section 1.10 Borrower Representative. Each Borrower hereby designates the Parent Borrower as the Borrower Representative. The Borrower Representative will be acting as agent on each Borrower’s behalf for the purposes of issuing notices of Borrowing and notices of conversion/continuation of any Loans pursuant to Article 2 or similar notices, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options, requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or the Borrowers under the Loan Documents. The Borrower Representative hereby accepts such appointment. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

Section 1.11 Australian Terms.

(a) Without limiting Section 8.08, in relation to Security Documents that are governed by the laws of Australia, each present and future Secured Party appoints and authorizes the Administrative Agent (in its capacity as “Australian Security Trustee”) to hold each such Security Document as security trustee on its behalf.

(b) Any terms used in this Agreement that are defined in the Australian PPSA, shall have the meanings ascribed to such terms in the Australian PPSA when used in relation to Collateral subject to the Australian PPSA. Notwithstanding the foregoing, and where the context so requires, (i) any term defined in this Agreement or the Loan Documents by reference to the UCC shall also have any extended, alternative or analogous meaning given to such term in applicable Australian PPS Law, in all cases for the extension, preservation or betterment of the security and rights of the Collateral, (ii) all references in this Agreement to a financing statement, continuation statement, amendment or termination statement shall be deemed to refer also to the analogous documents used under applicable Australian PPS Law, (iii) all references to the United States, or to any subdivision, department, agency or instrumentality thereof shall be deemed to refer also to Australia, or to any subdivision, department, agency or instrumentality thereof, and (iv) all references to federal or state securities laws of the United States shall be deemed to refer also to analogous federal and state securities laws in Australia.

(c) Without prejudice to the generality of any provision of this Agreement, in this Agreement where it relates to Australian Loan Party or Australian Security Document, a reference in this Agreement to:

- (i) “Account” also includes any “account” as defined in section 10 of the Australian PPSA;
- (ii) “Account Debtor” also includes any “account debtor” as defined in section 10 of the Australian PPSA;
- (iii) “Deposit Account” also includes any “ADI account” as defined in section 10 of the Australian PPSA;
- (iv) “Documents” also includes any “documents of title” as defined in section 10 of the Australian PPSA;
- (v) “Equity Interests” also includes any “investment instruments” as defined in section 10 of the Australian PPSA;
- (vi) “Proceeds” also includes any “proceeds” as defined in section 10 of the Australian PPSA; and
- (vii) “Securities Account” also includes any “securities account” as defined in section 15 of the Australian PPSA.

(d) The parties agree that the Australian Banking Code of Practice does not apply to the Loan Documents and the transactions under them.

Section 1.12 Quebec Terms. For purposes of the interpretation or construction of this Agreement pursuant to the laws of the Province of Quebec, for purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of any other Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", a "reservation of ownership", "prior claim" and a "resolutive clause," (f) all references to filing, registering or recording under the Canadian PPSA shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" or "perfected" Liens shall be deemed to include a reference to an "opposable" or "set up" Liens as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary," (k) "construction liens" shall be deemed to include "legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable", (l) "joint and several" shall be deemed to include "solidary" and "jointly and severally" shall be deemed to include "solidarily" (m) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (n) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary", (o) "legal title" shall be deemed to include "holding title on behalf of an owner as mandatary or prête-nom", (p) "easement" shall be deemed to include "servitude", (q) "priority" shall be deemed to include "prior claim" or "rank", as applicable, (r) "survey" shall be deemed to include "certificate of location and plan", (s) "fee simple title" and "fee title" shall be deemed to include "right of ownership", (t) "foreclosure" shall be deemed to include "the exercise of a hypothecary right", (u) "leasehold interest" shall be deemed to include "valid rights resulting from a lease", (v) "lease" for personal or movable property shall be deemed to include a "contract of leasing (*crédit-bail*)", (x) "deposit account" shall include a "financial account" as defined in Article 2713.6 of the Civil Code of Québec, and (y) "guarantee" and "guarantor" shall include "suretyship" and "surety", respectively.

Section 1.13 German Terms. In this Agreement, or any other Loan Document, if applicable, where it relates to any Loan Party incorporated or established in Germany, a reference to:

(a) a person being unable to pay its debts or insolvent includes that person being in a state of *Zahlungsunfähigkeit* under section 17 of the German Insolvency Code (*Insolvenzordnung*) or being over-indebted (*überschuldet*) under section 19 of the German Insolvency Code (*Insolvenzordnung*);

(b) a liquidator, trustee in bankruptcy, administrative receiver, compulsory manager receiver, administrator or other similar officer includes an insolvency administrator (*Insolvenzverwalter*), interim insolvency administrator (*vorläufiger Insolvenzverwalter*) or custodian (*Sachwalter*) or interim custodian (*vorläufiger Sachwalter*);

(c) a winding up, administration or dissolution includes liquidation (*Liquidation*), (preliminary) insolvency proceedings (*vorläufiges Insolvenzverfahren*), an order for admissibility of the application for the opening of insolvency proceedings (*Entscheidung über Zulässigkeit des Insolvenzantrags*) or for rejection of insolvency proceedings due to lack of funds (*Abweisungsbeschluss mangels Masse*) and including any action taken by the competent court as set out in section 21 of the German Insolvency Code (*Insolvenzordnung*);

(d) a step or procedure taken in connection with insolvency proceedings for a German entity includes it being subject to a filing for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) for any of the reasons set out in sections 17 to 19 (inclusive) of the German Insolvency Code (*Insolvenzordnung*), including, for the avoidance of doubt, a filing for preliminary proceedings according to sections 270a and 270b of the German Insolvency Code (*Insolvenzordnung*);

(e) a moratorium includes, without limitation, protective shield proceedings (*Schutzschirmverfahren*) and insolvency plan proceedings (*Insolvenzplanverfahren*);

(f) director or manager of a company includes any statutory legal representative(s) (including any German law (*organschaftlicher Vertreter*)) of a person pursuant to the laws of its jurisdiction of incorporation, including with respect to a person incorporated or established in Germany, any managing director (*Geschäftsführer*) or member of the board (*Vorstand*);

(g) a security interest or security includes a mortgage (*Hypothek*), land charge (*Grundschild*) including security purpose declarations, pledge (*Pfandrecht*), assignment or transfer for security purposes (*Sicherungsabtretung oder -übereignung*) and retention of title arrangements (*verlängerter/erweiterter Eigentumsvorbehalt*); and

(h) a guarantee includes any guarantee (*Garantie*), any indemnity, any joint and several (*gesamtschuldnerisch*) or independent obligation (*unabhängiges Schuldversprechen*) within the meaning of German law.

Section 1.14 Irish Terms. In this Agreement and any other Security Document, where it relates to an entity incorporated in or having its registered office in Ireland, a reference to:

(a) a composition, compromise, assignment or arrangement with any creditor, winding up, administration, insolvency or dissolution (where it relates to a person incorporated or having its centre of main interests in Ireland) includes, without limitation:

(i) an act of bankruptcy (as that term is defined in the Irish Bankruptcy Act 1988);

- (ii) the appointment of an examiner (as defined in Section 2 of the Irish Companies Act);
- (iii) examinership;
- (iv) any procedure or process referred to in Part 11 (*Winding Up*) of the Irish Companies Act; and
- (v) any other similar proceedings affecting the rights of creditors generally under Irish law, and shall be construed so as to include any equivalent or analogous proceedings;

(b) an “examiner” means an examiner or an interim examiner under Section 509 or 517 of the Irish Companies Act and “examinership” shall be construed accordingly;

(c) “financial assistance” includes any act contemplated by Section 82 of the Irish Companies Act;

(d) a reference to “Ireland” means the island of Ireland, exclusive of Northern Ireland;

(e) a person being “unable to pay its debts” includes that person being unable to pay its debts within the meaning of Section 509(3) or Section 570 of the Irish Companies Act;

(f) a “process advisor” means a process advisor within the meaning given to that term in Part 2 of the Companies (Rescue Process for Small and Micro Companies) Act 2021; and

(g) a “Wholly Owned Subsidiary” means a wholly owned subsidiary within the meaning of section 8 of the Irish Companies Act.

Section 1.15 UK Terms. In this Agreement, or any other Loan Document, if applicable, where it relates to any Loan Party incorporated under the laws of England and Wales, a reference to an insolvency event in respect of a UK Loan Party means any corporate action, legal proceedings or other formal procedure or step is taken in relation to (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise) of that UK Loan Party, (ii) a composition, compromise, assignment or arrangement with any creditor of that UK Loan Party (other than the Lenders or Administrative Agent in their capacities as such), (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that UK Loan Party or any of its assets subject to the UK Security Documents, (iv) enforcement of any security over any of such UK Loan Party’s assets; or (v) in each case, any analogous procedure or step in any jurisdiction in each case, except for any winding-up petition which is frivolous or vexatious and is discharged, stayed, or dismissed within 15 Business Days of commencement.

Section 1.16 Swiss Terms. In this Agreement and any other Loan Document, if applicable, where it relates to any Swiss Loan Party and unless the contrary intention appears, a reference to:

(a) a person being unable to pay its debts or insolvent includes a reference to that person being in a state of inability to make payments (*Zahlungsunfähigkeit*) and being over-indebted (*Überschuldung*);

(b) receiver, administrative receiver, administrator, trustee in bankruptcy, custodian, conservator, liquidator, receiver manager, compulsory manager, monitor or similar officer includes a reference to any (i) *Sachwalter* appointed in accordance with the Swiss CO, (ii) *Liquidator* appointed in accordance with the Swiss CO and (iii) *Konkursamt* or *Konkursverwaltung* (including a supervisory authority acting in any such capacity) or any of its officials or employees, any *Liquidator* or *Sachwalter* or other officer appointed in accordance with the Swiss DEBA

(c) a liquidation, winding-up, administration, dissolution, bankruptcy, liquidation, composition with creditors or moratorium includes a reference to (i) a Swiss Loan Party's own filing for the declaration of bankruptcy (*Antrag auf Konkursöffnung* pursuant to article 191 DEBA) or a formal declaration of bankruptcy (*Konkursöffnung*) within the meaning of the Swiss DEBA, (ii) the filing for a request for a moratorium (*Gesuch um Nachlassstundung*) or a grant of a moratorium (*provisorische oder definitive Nachlassstundung*) within the meaning of the Swiss DEBA, and (iii) the notification of the court of over-indebtedness pursuant to article 725b paragraph 3 of the Swiss CO; and

(d) a director or a manager includes a reference to in relation to a company limited by shares (*Aktiengesellschaft*) a member of the board of directors (*Verwaltungsrat*) or a member of the executive management (*Geschäftsleitung*).

Section 1.17 Dutch Terms. Without prejudice to the generality of any provision of this Agreement, in this Agreement or any other Loan Document, where it relates to any Dutch Loan Party, a reference to:

(a) a necessary action to authorise, where applicable, includes without limitation:

(i) any action required to comply with the Dutch Works Councils Act (*Wet op de ondernemingsraden*); and

(ii) obtaining a positive advice (*positief advies*) or neutral advice (*neutraal advies*) from the competent works council(s);

(b) a security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrecht*), right of retention (*recht van retentie*) and right to reclaim goods (*recht van reclame*);



(c) a winding-up, administration or dissolution includes a Dutch person being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);

(d) a moratorium or suspension of payments includes a *surseance van betaling* and granted a moratorium or suspension of payments includes *surseance verleend*;

(e) a trustee, receiver or administrator includes a *curator*;

(f) an administrator includes a *bewindvoerder*;

(g) a liquidator includes a *vereffenaar*;

(h) an attachment includes a *beslag*;

(i) a group includes a *groep*;

(j) a subsidiary includes a *dochtermaatschappij*;

(k) an affiliate includes a *groepsmaatschappij*;

(l) a merger includes a *juridische fusie, aandelenfusie* and *bedrijfsfusie*;

(m) a director includes a *bestuurder*; and

(n) constitutional documents include an *akte van oprichting* and *statuten*.

## ARTICLE 2 THE CREDITS

Section 2.01 Commitments. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make revolving credit loans (collectively, “**Revolving Loans**”) in Dollars or in one or more Alternative Currencies to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Revolving Lender’s Revolving Credit Exposure exceeding such Revolving Lender’s Commitment, (b) the Total Revolving Extensions of Credit exceeding the total Commitments of all Lenders, (c) the outstanding principal amount of Revolving Loans exceeding the Revolving Loan Cap or (d) such Revolving Lender’s Applicable Percentage of the Revolving Loans exceeding such Revolving Lender’s Borrowing Sublimit (clauses (a), (b), (c) and (d) above, collectively, the “**Borrowing Limits**”), subject to, in each case, the authority of the Administrative Agent, in its sole discretion, to make Protective Advances pursuant to the terms of Section 2.02(e). Within the foregoing limits and subject to the terms and conditions set forth herein, during the Availability Period, the Borrowers may borrow, prepay and reborrow Revolving Loans in accordance with the terms and conditions hereof.

Section 2.02 Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Revolving Lenders in accordance with their respective Applicable Percentages. The failure of any Revolving Lender to make any Revolving Loan required to be made by it shall not relieve any other Revolving Lender of its obligations hereunder; provided that the Commitments of the Revolving Lenders are several and no Revolving Lender shall be responsible for any other Revolving Lender's failure to make Revolving Loans as required hereby.

(b) Subject to Section 2.11, each Borrowing shall be comprised (A) in the case of Borrowings in Dollars, entirely of ABR Loans or Term Benchmark Loans bearing interest at a rate determined by reference to the Term SOFR Rate and (B) in the case of Borrowings in any other Agreed Currency, entirely of Term Benchmark Loans (bearing interest at a rate determined by reference to the Adjusted EURIBOR Rate) or RFR Loans, as applicable, in each case of the same Agreed Currency, as the applicable Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Dollar Equivalent of \$1,000,000 and not less than the Dollar Equivalent of \$1,000,000. At the time that each ABR Borrowing and/or RFR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Dollar Equivalent of \$1,000,000 and not less than the Dollar Equivalent of \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.19(e). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of fifteen (15) Term Benchmark Borrowings or RFR Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(e) (i) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's Permitted Discretion, but shall have absolutely no obligation, to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (C) to pay any other amount chargeable to or required to be paid by any Loan Party pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 10.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "**Protective Advances**"). Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have

not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be made in Dollars as ABR Loans. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time (x) the amount equal to the Revolving Loan Cap minus the Total Revolving Extensions of Credit then outstanding (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Loans) exceeds the amount of any Protective Advance and (y) the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.02(e).

(ii) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Protective Advances then due).

Section 2.03 Requests for Borrowings. To request a Borrowing, the applicable Borrower shall notify the Administrative Agent of such request by telephone or telecopy (i) (A) in the case of a Term Benchmark Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three U.S. Government Securities Business Days before the date of the proposed Borrowing, (B) in the case of an RFR Borrowing denominated in Sterling, not later than 11:00 a.m., New York City time, five Business Days before the date of the proposed Borrowing, and (C) in the case of any other Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing, or (ii) in the case of an ABR Borrowing, not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request in substantially the form of Exhibit B-1 attached hereto and signed by the applicable Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the Agreed Currency and aggregate amount of the requested Borrowing;

- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing, a Term Benchmark Borrowing or an RFR Borrowing;
- (iv) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and
- (v) the location and number of the account or accounts to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no election as to the currency of a Borrowing is specified, then the requested Borrowing shall be made in Dollars. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing. Except as otherwise provided herein, a Borrowing Request for a Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the applicable Borrower shall be bound to make a borrowing in accordance therewith. As soon as practicable after 10:00 a.m., New York City time, on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Term Benchmark Borrowing for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrowers and each Lender.

#### Section 2.04 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds (x) for any ABR Borrowing, by 3:00 p.m., New York City time, and (y) for any other Borrowing, by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for the purpose of receiving payments of such type by notice to the Lenders. The Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the applicable Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.19(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s Applicable Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Percentage

available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of a Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.05 Interest Elections.

(a) Each Borrowing initially shall be of the Type and Agreed Currency specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated among the Lenders holding the Loans comprising such Borrowing in accordance with their respective Applicable Percentages, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the applicable Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if a Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written request (an "**Interest Election Request**") in substantially the form of Exhibit C attached hereto and signed by the applicable Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Agreed Currency and principal amount of the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing (in the case of Borrowings denominated in Dollars) or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “**Interest Period**”.

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing. Except as otherwise provided herein, an Interest Election Request for conversion to, or continuation of, any Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrowers shall be bound to effect a conversion or continuation in accordance therewith.

(e) If the Borrowers fail to deliver a timely Interest Election Request with respect to a Term Benchmark Revolving Borrowing in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period, such Borrowing shall be converted to an ABR Borrowing at the end of such Interest Period. If the Borrowers fail to deliver a timely and complete Interest Election Request with respect to a Term Benchmark Borrowing in an Alternative Currency prior to the end of the Interest Period therefor, then, unless such Term Benchmark Borrowing is repaid as provided herein, the Borrowers shall be deemed to have selected that such Term Benchmark Borrowing shall automatically be continued as a Term Benchmark Borrowing in its original Agreed Currency with an Interest Period of one month at the end of such Interest Period. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrowers, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, (x) each Term Benchmark Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (y) each Term Benchmark Borrowing denominated in an Alternative Currency shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall either be (A) converted to an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternative Currency) at the end of the Interest Period, as applicable, therefor or (B) prepaid at the end of the applicable Interest Period, as applicable, in full; provided that if no election is made by the Borrowers by the earlier of (x) the date that is three Business Days after receipt by the Borrowers of such notice and (y)

the last day of the current Interest Period for the applicable Term Benchmark Loan, the Borrowers shall be deemed to have elected clause (A) above.

Section 2.06 Termination and Reduction of Commitments.

(a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrowers shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of any Revolving Loans in accordance with Section 2.08, any of the Borrowing Limits would be exceeded.

(c) The Borrowers shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrowers pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or another transaction, in which case such notice may be revoked by the Borrowers (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be applied ratably to the Lenders in accordance with their respective Applicable Percentages.

Section 2.07 Repayment of Loans; Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof, the currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence (including within the meaning of section 151 Dutch Civil Code) of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (each such promissory note being called a “**Note**” and all such promissory notes being collectively called the “**Notes**”). In such event, the Borrowers shall prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in substantially the form of Exhibit D attached hereto. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### Section 2.08 Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (subject to the requirements of Section 2.13), subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrowers shall notify the Administrative Agent by telephone (confirmed by telecopy or delivery of written notice) or telecopy of any prepayment hereunder (i)(x) in the case of prepayment of a Term Benchmark Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (y) in the case of prepayment of a Term Benchmark Borrowing denominated in Euros, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment, and (z) in the case of prepayment of an RFR Borrowing denominated in Sterling, not later than 12:00 noon, New York City time, five Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 noon, New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans of the Lenders in accordance with their respective Applicable Percentages. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and any costs incurred as contemplated by Section 2.13.



(c) The Borrowers shall from time to time prepay the Revolving Loans to the extent necessary so that the aggregate outstanding principal amount of the Revolving Loans shall not at any time exceed the Revolving Loan Cap then in effect.

(d) If at any time, the Total Revolving Extensions of Credit (calculated, with respect to any Loans or LC Exposure denominated in an Alternative Currency, as of the most recent Revaluation Date with respect to such Loan or LC Exposure) exceed (i) the total Commitments of all Lenders then in effect, (ii) the outstanding principal amount of the Revolving Loans (excluding for such purposes Protective Advances) exceed the Revolving Loan Cap, or (iii) any of the Borrowing Limits are exceeded, the Borrowers shall immediately repay Borrowings, Protective Advances and Cash Collateralize LC Exposure in accordance with the procedures set forth in Section 2.17(d), in an aggregate principal amount equal to such excess (it being understood that the Borrowers shall prepay Revolving Loans and/or Protective Advances prior to Cash Collateralization of LC Exposure).

#### Section 2.09 Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) a commitment fee (the “**Commitment Fee**”), which shall accrue at the Applicable Commitment Fee Rate on the average daily amount of the unused Commitment of such Lender during the period from and including the Amendment No. 3 Effective Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the Amendment No. 3 Effective Date; provided that any commitment fees accruing after the date on which the Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable LC Fee Rate on the Dollar Equivalent of the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Amendment No. 3 Effective Date to but excluding the later of the date on which such Lender’s Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate or rates *per annum* separately agreed upon between the applicable Borrower and such Issuing Bank (but not to exceed 0.20% *per annum*) on the Dollar Equivalent of the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Amendment No. 3 Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued

participation fees and fronting fees shall be payable on the last day of March, June, September and December of each year, commencing on the first such date to occur after the Amendment No. 3 Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon by the Parent Borrower in the Administrative Agent Fee Letter.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

#### Section 2.10 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate *plus* the Applicable Rate.

(b) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Term SOFR Rate or the Adjusted EURIBOR Rate, as applicable, for the Interest Period in effect for such Borrowing *plus* the Applicable Rate.

(c) Each RFR Loan shall bear interest at a rate per annum equal to the applicable Daily Simple RFR *plus* the Applicable Rate.

(d) Notwithstanding the foregoing, at all times when an Event of Default listed in paragraph (a) or (b) of Section 7.01 has occurred hereunder and is continuing, all overdue amounts outstanding hereunder shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of or interest on any Loan, 2% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% *plus* the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) Interest computed by reference to the Term SOFR Rate or the EURIBOR Rate hereunder shall be computed on the basis of a year of 360 days. Interest computed by reference to the Daily Simple RFR with respect to Sterling, the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year).

(g) In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(h) All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Alternate Base Rate, Term SOFR Rate, Adjusted EURIBOR Rate, EURIBOR Rate or Daily Simple RFR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.11 Alternate Rate of Interest. (a) Subject to clauses (b), (d), (e), (f) and (g) of this Section 2.11, if:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate, the Adjusted EURIBOR Rate or the EURIBOR Rate, as applicable (including because the Relevant Screen Rate is not available or published on a current basis), for the applicable Agreed Currency and such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the applicable Daily Simple RFR; or

(ii) the Administrative Agent is advised by the Required Lenders that, (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Term SOFR Rate, the Adjusted EURIBOR Rate or the EURIBOR Rate for the applicable Agreed Currency and such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for the applicable Agreed Currency and such Interest Period or (B) at any time, the applicable Daily Simple RFR or RFR for the applicable Agreed Currency will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for the applicable Agreed Currency;

then the Administrative Agent shall give notice thereof to the Borrowers and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing shall be ineffective, (B) if any Borrowing Request requests a Term Benchmark Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing, and (C) if any Borrowing Request requests a Term Benchmark Borrowing (other than a Term Benchmark Borrowing in Dollars) or an RFR Borrowing for the relevant rate above in an Alternative Currency, then such request shall be ineffective; provided that if the circumstances giving rise to such notice affect only one Type of

Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan in any Agreed Currency is outstanding on the date of the Borrowers' receipt of the notice from the Administrative Agent referred to in this Section 2.11(a)(i) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrowers' election prior to such day: (A) be prepaid by the Borrowers on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time, or (iii) if such RFR Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for RFR Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected RFR Loans denominated in any Agreed Currency other than Dollars, at the Borrowers' election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternative Currency) immediately or (B) be prepaid in full immediately.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.11(b)), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" with respect to Dollars for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" with respect to any Agreed Currency for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business

Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) [reserved].

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right (in consultation with the Borrower Representative) to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrowers and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11(e), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11(e).

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate or the EURIBOR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrower may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the applicable Borrower will be deemed to have converted any request for a Term Benchmark Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans or (y) any Term Benchmark Borrowing or RFR Borrowing denominated in an Alternative Currency shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan in any Agreed Currency is outstanding on the date of the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement for such Agreed Currency is implemented pursuant to this Section 2.11(g), (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, and (ii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrowers' election prior to such day: (A) be prepaid by the Borrowers on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time, or (iii) if such RFR Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for RFR Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected RFR Loans denominated in any Agreed Currency, at the Borrowers' election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternative Currency) immediately or (B) be prepaid in full immediately.

Section 2.12 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted EURIBOR Rate) or any Issuing Bank;

(ii) subject the Administrative Agent, any Issuing Bank, any Lender, the London or other applicable offshore interbank market for the applicable Agreed Currency or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (h) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Term Benchmark Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or Issuing Bank of making, continuing, converting to or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments hereunder or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company would have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or Issuing Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefore; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing, increased costs due to a Change in Law resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III may only be requested by a Lender imposing such increased costs on borrowers similarly situated to the Borrowers under syndicated credit facilities comparable to those provided hereunder.

#### Section 2.13 Break Funding Payments.

(a) With respect to Term Benchmark Loans, in the event of (i) the payment or prepayment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), (iv) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrowers pursuant to Section 2.16 or (v) the failure by any Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Term SOFR Rate or the Adjusted EURIBOR Rate, as applicable, that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the applicable Agreed Currency of a comparable amount and period from other banks in the applicable offshore interbank market for such Agreed Currency. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrowers and shall be conclusive



absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrowers pursuant to Section 2.16 or (iv) the failure by any Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

#### Section 2.14 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall make such deduction or withholding and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum and additional amount is payable by the Borrowers as necessary (or, where the Indemnified Tax is a Tax imposed by Australia, the applicable Withholding Agent shall pay an additional amount to the Administrative Agent, Issuing Bank or Lender (as the case may be)) so that after making such deduction or withholding for Indemnified Taxes (including such deductions and withholdings for Indemnified Taxes applicable to additional sums payable under this Section) the Administrative Agent, Issuing Bank or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.

(b) In addition, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally indemnify the Administrative Agent, each Issuing Bank and each Lender, within 10 Business Days after demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, or required to be withheld or deducted from any payment to such recipient by or on account of any obligation of any Borrower hereunder (including Indemnified

Taxes imposed or asserted on or attributable to amounts payable under this Section) and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by an Issuing Bank or a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an Issuing Bank or a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of any Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall, to the extent legally entitled to do so, deliver to the Borrowers, at the time or times reasonably requested by the Borrowers, such properly completed and executed documentation reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers, shall, to the extent legally entitled to do so, deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers as will enable the Borrowers to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.14(g)(i)-(iv)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(g) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Loan Party, any Foreign Lender, if it is legally entitled to do so, shall deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be required by law or requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrowers or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable;

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a portfolio interest certificate in compliance with Section 2.14(g)(iii), IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate in compliance with Section 2.14(g)(iii) on behalf of such direct or indirect partner or partners; or

(i) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax or in withholding tax of any other jurisdiction duly completed together with such supplementary documentation as may be reasonably requested by the Parent Borrower or prescribed by applicable law to permit the Borrowers to determine the withholding or deduction required to be made unless, in the Foreign Lender’s reasonable determination, such completion would subject such Foreign Lender to any material cost or expense or would materially prejudice the legal or commercial position of such Foreign Lender.

In addition, any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this

Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding. In addition, each Lender shall deliver such forms (including those forms required pursuant to Section 2.14(h)) promptly upon the obsolescence or invalidity of any form previously delivered by such Lender or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(h) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender failed to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Borrowers and the Administrative Agent sufficient for the Administrative Agent and the Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.14(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(i) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (i) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (i), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (i), the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(j) The Administrative Agent shall deliver to the Borrowers on or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrowers),

an executed, properly completed copy (together with all required attachments thereto) of: (i) IRS Form W-9 or any successor thereto, or (ii) (A) IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto evidencing its agreement with the Borrowers to be treated as a U.S. Person for U.S. federal withholding purposes. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrowers.

(k) Indirect Tax.

(i) All payments to be made by a Loan Party under or in connection with any Loan Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable without Indirect Tax then, when the Loan Party makes the payment: (A) it must pay to the Administrative Agent, Issuing Bank or Lender (as the case may be) an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and (B) the Administrative Agent, Issuing Bank or Lender (as the case may be) will promptly provide to the Loan Party a tax invoice complying with the relevant law relating to that Indirect Tax (provided that, in case of German Loan Party, such invoice shall comply with sections 14, 14a of the German Value-Added Tax Act (*Umsatzsteuergesetz*) for the refund as input value-added tax).

(i) Where a Loan Document requires a Loan Party to reimburse or indemnify the Administrative Agent, an Issuing Bank or a Lender (as the case may be) for any costs or expenses, that Loan Party shall also at the same time pay and indemnify that Administrative Agent, Issuing Bank or Lender against all Indirect Tax incurred by that Administrative Agent, Issuing Bank or Lender in respect of the costs or expenses save to the extent that that Administrative Agent, Issuing Bank or Lender is entitled to repayment or credit in respect of the Indirect Tax. The Administrative Agent, Issuing Bank or Lender (as the case may be) will promptly provide to the Loan Party a tax invoice complying with the relevant law relating to that Indirect Tax(provided that, in case of German Loan Party, such invoice shall comply with sections 14, 14a of the German Value-Added Tax Act (*Umsatzsteuergesetz*) for the refund as input value-added tax).

(l) Each party's obligations under this Section 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(m) For purposes of this Section, the term "Lender" includes any Issuing Bank and the term applicable law includes FATCA.

Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) (i) Except with respect to principal of and interest on Loans denominated in an Alternative Currency, each Borrower shall make each payment required to be made by it

hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.12, 2.13 or 2.14, or otherwise) in Dollars prior to 12:00 noon, Local Time, on the date when due and (ii) all payments with respect to principal and interest on Loans denominated in an Alternative Currency shall be made in such Alternative Currency not later than the Local Time specified by the Administrative Agent on the dates specified herein, in each case, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent (i) in the case of payments denominated in Dollars, at its Principal Office and (ii) in the case of payments denominated in an Alternative Currency, at its Alternative Currency Payment Office for such Alternative Currency; provided that payments pursuant to Sections 2.12, 2.13 or 2.14 and Section 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment or performance hereunder shall be due on a day that is not a Business Day, the date for payment or performance shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder of principal or interest in respect of any Loan or LC Disbursement shall, except as otherwise expressly provided herein, be made in the currency of such Loan or LC Disbursement, and all other payments hereunder and under each other Loan Document shall be made in Dollars. Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan or LC Disbursement in any Alternative Currency, currency control or exchange regulations are imposed in the country which issues such Alternative Currency with the result that such Alternative Currency no longer exists or the Borrowers are not able to make payment to the Administrative Agent for the account of the Lenders in such Alternative Currency, then all payments to be made by any Borrower hereunder in such Alternative Currency shall instead be made when due in a currency that replaced such Alternative Currency or, if no such replacement currency exists, in Dollars in an amount equal to the Dollar Equivalent (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrowers take all risks of the imposition of any such currency control or exchange regulations.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall (subject to the provisions of Section 10.21) be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) Subject to the provisions of Section 10.21, if any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations

in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to any Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), paragraph (d) or (e) of Section 2.19, or paragraph (d) of this Section, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### Section 2.16 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.12, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall use reasonable efforts to

designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.12, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 or (iii) any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice by the Borrowers to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents, from the assignee (to the extent of such outstanding principal and accrued interest and fees so assigned) or the Borrowers (in the case of all other amounts so assigned), (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments, (iv) such assignment does not conflict with applicable law and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable assignee shall have consented to, or shall consent to, the applicable amendment, waiver or consent and (y) the Borrowers exercises their rights pursuant to this clause (b) with respect to all Non-Consenting Lenders relating to the applicable amendment, waiver or consent; provided, further, that in the event such Lender shall have received payment of the amount referred to in clause (ii) above, such Lender shall be deemed to have so assigned and delegated all its interests, rights and obligations under this Agreement and the other Loan Documents pursuant to the terms set forth in Exhibit A hereto. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

#### Section 2.17 Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:



(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 10.02.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to prepay such Defaulting Lender's Protective Advance Exposure; *third*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder; *fourth*, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17(d); *fifth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *sixth*, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.17(d); *seventh*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *eighth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *ninth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement obligations with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the Commitments without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) (A) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 2.09(a) or participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided that such Defaulting Lender shall be entitled to receive participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender only to extent allocable to its Applicable Percentage of the available balance of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.17(d); and (B) with respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) So long as no Event of Default shall have occurred and be continuing, all or any part of such Defaulting Lender's Protective Advance Exposure and participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. Subject to Section 10.19, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, Cash Collateralize each Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.17(d).

(b) If the Borrowers, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their respective Applicable Percentages (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a

waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) So long as any Lender is a Defaulting Lender, each Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that the related exposure and the participations in any then existing Letters of Credit as well as the new, extended, renewed or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iv) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.17(d).

(d) At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent), the Borrowers shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv)) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.17 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Cash Collateral (or the appropriate portion thereof) provided to reduce each Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.17 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by the Administrative Agent and such Issuing Bank that there exists excess Cash Collateral; provided that, subject to the other provisions of this Section 2.17, the Person providing Cash Collateral and such Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

Section 2.18 Incremental Facility.

(a) The Borrowers may by written notice to the Administrative Agent elect to request prior to the Maturity Date, one or more increases to the existing Commitments (any such increase, the “**New Commitments**”), in Dollars, by an amount not in excess of the Incremental Amount in the aggregate and not less than \$5,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser amount that shall constitute the difference between the Incremental Amount and all such New Commitments obtained prior to such date), and integral multiples of \$1,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an “**Increased Amount Date**”) on which the Borrowers propose that the New Commitments shall be effective, which shall be a date not less than 5 Business Days after the date on which such notice is delivered to the Administrative Agent (unless otherwise agreed by the Administrative Agent in its sole discretion), (B) the requested amount of the New Commitment, and (C) the identity of each Lender or other Person that is an eligible assignee under Section 10.04(b), subject to approval thereof by the Administrative Agent in the case of a Person that is not a Lender (such approval not to be unreasonably withheld or delayed) (each, a “**New Lender**”), to whom the Borrowers propose any portion of such New Commitments be allocated and the amounts of such allocations; provided that any Lender approached to provide all or a portion of the New Commitments may elect or decline, in its sole discretion, to provide a New Commitment; and provided, further that any Lender approached to provide all or a portion of the New Commitments and that does not respond in writing within 5 Business Days of receipt of such offer shall be deemed to have declined. Such New Commitments shall become effective as of such Increased Amount Date; provided that (1) on such Increased Amount Date before or after giving effect to such New Commitments, each of the conditions set forth in Section 4.02 shall be satisfied; (2) the Loan Parties shall be in compliance with Section 6.10 on a Pro Forma Basis after giving effect to such New Commitments, (3) the New Commitments shall be effected pursuant to one or more Lender Joinder Agreements executed and delivered by the Borrowers, the New Lenders and the Administrative Agent, and each of which shall be recorded in the Register and each New Lender shall be subject to the requirements set forth in Section 2.14; (3) the Borrowers shall make any payments required pursuant to Sections 2.12 and 2.13 in connection with the New Commitments; and (5) the Borrowers shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(b) On any Increased Amount Date on which New Commitments are effected, subject to the satisfaction (or waiver by the Required Lenders) of the foregoing terms and conditions, (i) each of the Lenders shall assign to each of the New Lenders, and each of the New Lenders shall purchase from each of the Lenders, at the principal amount thereof (together with accrued interest), such interests in the Loans, and participations in the Letters of Credit, in each case outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Loans and participations in such Protective Advances and Letters of Credit will be held by existing Lenders and New Lenders ratably in accordance with their Commitments after giving effect to the addition of such New Commitments to the Commitments, (ii) each New Commitment shall be deemed for all purposes a Commitment (and the terms and provisions (including pricing and Agreed Currency) of the

New Commitments shall be identical to the existing Commitments), and each Loan made thereunder (a “**New Loan**”) shall be deemed, for all purposes, a Loan and (iii) each New Lender shall become a Lender for all purposes hereunder.

(c) The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower’s notice of each Increased Amount Date and in respect thereof (i) the New Commitments and the New Lenders, and (ii) the respective interests in such Lender’s Loans, in each case subject to the assignments contemplated by this Section 2.18.

(d) The terms and provisions (including pricing and Agreed Currency) of the New Loans shall be identical to the existing Loans. Notwithstanding anything in Section 10.02 to the contrary, each Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the opinion of the Administrative Agent to effect the provision of this Section 2.18.

#### Section 2.19 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, each Borrower may request the issuance of (and subject to the terms of this Section 2.19, each Issuing Bank shall issue) Letters of Credit as the applicant thereof for the support of its or its Subsidiaries’ obligations, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the applicable Borrower to, or entered into by the applicable Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, (i) no Borrower shall request, and no Issuing Bank shall issue, any Letter of Credit the proceeds of which would be made to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country, region or territory, that at the time of such funding is a Sanctioned Country or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit if the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank now or hereafter in effect applicable to letters of credit generally, (iii) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing, amending or extending such Letter of Credit, or request that such Issuing Bank refrain from issuing, amending or extending such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, the issuance, amendment or extension of letters of credit generally or such Letter of Credit in particular, or any such order, judgment or decree, or law shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital or liquidity requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Amendment No. 3 Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Amendment No. 3 Effective

Date and that such Issuing Bank in good faith deems material to it, (iv) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit (1) if the aggregate LC Exposure with respect to all Letters of Credit issued by such Issuing Bank would exceed such Issuing Bank's LC Commitment, (2) denominated in a currency other than Dollars or with respect to each Issuing Bank, any applicable Alternative Currency set forth adjacent to its name on Schedule 2.01, or otherwise consented to by such Issuing Bank, or (3) unless it is a Standby Letter of Credit (or, with the consent of such Issuing Bank (in its sole discretion), a Commercial Letter of Credit), and (v) no Borrower shall request, and no Issuing Bank shall issue, any Letter of Credit if after giving effect to such issuance of a Letter of Credit, (1) any Lender's Revolving Credit Exposure would exceed such Lender's Commitment or (2) the Total Revolving Extensions of Credit would exceed the total Commitments or any of the Borrowing Limits would be exceeded.

(b) Notice of Issuance, Amendment, Renewal, Extension, Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the applicable Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days in connection with a Letter of Credit denominated in Dollars and four Business Days in connection with a Letter of Credit denominated in a currency other than Dollars) a written Letter of Credit Request in substantially the form of Exhibit B-2 attached hereto and signed by the applicable Borrower requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the Agreed Currency applicable thereto, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the applicable Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, the applicable Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Dollar Equivalent of the LC Exposure shall not exceed the LC Sublimit, (ii) the Total Revolving Extensions of Credit shall not exceed the total Commitments and none of the Borrowing Limits shall be exceeded, (iii) the Dollar Equivalent of the LC Exposure of the applicable Issuing Bank shall not exceed the LC Sublimit applicable to such Issuing Bank and (iv) the Revolving Credit Exposure of the applicable Issuing Bank shall not exceed the Commitment of such Issuing Bank.

(c) Currency; Expiration Date. Each Letter of Credit shall be denominated in Dollars or any Alternative Currency to the extent provided in Section 2.19(a) above. Each Letter of Credit shall expire (or be subject to termination by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit unless otherwise consented to by the applicable

Issuing Bank (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; provided that, notwithstanding anything to the contrary in this paragraph (c), a Letter of Credit may expire on a date following the Maturity Date if the Borrowers provide Cash Collateral for, “backstops” or replaces such Letter of Credit, in each case, at the time of issuance of any such Letter of Credit in an amount equal to 103% of the applicable Issuing Bank’s LC Exposure attributable to such Letter of Credit (105% for any LC Exposure with respect to Letters of Credit denominated in a currency other than Dollars) plus any accrued and unpaid interest thereon and pursuant to arrangements (and with “backstop” letter of credit issuers) reasonably acceptable to the applicable Issuing Bank.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of any Issuing Bank or the Lenders, the applicable Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the applicable Issuing Bank, a participation in such Letter of Credit equal to such Lender’s Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit; provided that the Lenders’ participations in a Letter of Credit shall terminate upon giving effect to any Deemed LC Termination in respect of such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender’s Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement in the applicable Agreed Currency within one (1) Business Day after the Borrowers shall have received notice of such LC Disbursement; provided that the Borrowers may, subject to the conditions to borrowing set forth herein and so long as none of the Borrowing Limits shall be exceeded, request in accordance with Section 2.03 that such payment be financed with an ABR Borrowing in an amount equal to the Dollar Equivalent of such LC Disbursement and, to the extent so financed, the Borrowers’ obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrowers fail to make such payment when due, (x) any LC Disbursement denominated in an Alternative Currency shall automatically be converted to an LC Disbursement denominated in Dollars in an amount equal to the Dollar Equivalent of such LC Disbursement at such time and (y) the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender’s Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay

to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.04 with respect to Loans made by such Lender (and Section 2.04 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute a Loan and shall not relieve any Borrower of its obligation to reimburse such LC Disbursement. If the Borrowers' reimbursement of, or obligation to reimburse, any amounts in any Alternative Currency would subject the Administrative Agent, any Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, the Borrowers shall, at their option, either (x) pay the amount of any such tax requested by the Administrative Agent, such Issuing Bank or such Lender or (y) reimburse each LC Disbursement made in such Alternative Currency in Dollars, in an amount equal to the Dollar Equivalent of such LC Disbursement on the date such LC Disbursement is made.

(f) **Obligations Absolute.** Each Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by applicable law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that,



in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, any Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, within the time allowed by applicable laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder and, upon receipt of such notice, the Administrative Agent shall promptly notify the Borrowers by telephone (confirmed by telecopy) of the same; provided that any failure to give or delay by the Issuing Bank or the Administrative Agent in giving such notice shall not relieve any Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate *per annum* then applicable to ABR Loans; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.10(e) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Cash Collateralization. If any Specified Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Administrative Agent, any Issuing Bank or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50.0% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrowers shall provide Cash Collateral in an amount equal to 103% of the LC Exposure (105% for any LC Exposure with respect to Letters of Credit denominated in a currency other than Dollars) as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Loan Party described in Section 7.01(h) or Section 7.01(i). Such Cash Collateral shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. The

Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of each Issuing Bank), be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

(j) Replacement of an Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrowers, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.09(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(k) Resignation of an Issuing Bank. Any Issuing Bank may resign at any time that such Issuing Bank (or its applicable Affiliate) ceases to hold a Commitment hereunder. The Administrative Agent shall notify the Lenders of any such resignation of any Issuing Bank. After the resignation of an Issuing Bank hereunder, the resigning Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit.

(l) Deemed Letter of Credit Requests. The Borrowers may, from time to time, request (a "Deemed LC Request") that (i) any undrawn Letter of Credit issued hereunder be deemed to be terminated and issued under a separate letter of credit facility with the applicable Issuing Bank (a "Deemed LC Termination") or (ii) any undrawn letter of credit issued under a separate letter of credit facility with an Issuing Bank be deemed a Letter of Credit issued hereunder (a "Deemed LC Issuance"). Any such Deemed LC Request shall identify the applicable Letter of Credit, and the Deemed LC Termination or Deemed LC Issuance specified

therein shall, subject to the prior written consent of each of the Administrative Agent and the applicable Issuing Bank (which consent may be withheld in its sole discretion) and, in the case of any Deemed LC Issuance, the satisfaction of the conditions set forth in Section 4.02, be effective upon receipt of such written consent.

(m) Existing Letters of Credit. As of the Amendment No. 3 Effective Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Loan Documents, a Letter of Credit issued and outstanding hereunder.

Section 2.20 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in the currency expressed to be payable herein (the “**specified currency**”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which the Administrative Agent could, in accordance with normal banking procedures applicable to arm’s length transactions, purchase the specified currency with such other currency at the Administrative Agent’s Principal Office on the Business Day immediately preceding that on which final, non-appealable judgment is given. The obligations of each Loan Party in respect of any sum due to the Administrative Agent, any Issuing Bank or any Lender hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, such Issuing Bank or such Lender of any sum adjudged to be so due in such other currency, the Administrative Agent, such Issuing Bank or such Lender may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency, each Loan Party agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such Issuing Bank or such Lender against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.15(c), the Administrative Agent, such Issuing Bank or such Lender agrees to remit such excess to the Loan Parties.

Section 2.21 Swap Agreements. Each counterparty to a Specified Swap Agreement shall deliver to the Administrative Agent, from time to time upon the Administrative Agent’s reasonable request therefor, a summary of the amounts due or to become due in respect of such Swap Agreement.

Section 2.22 Swiss Minimum Interest.

(a) When entering into this Agreement, the parties have assumed in bona fide that interest payments are not subject to Swiss Withholding Tax.

(b) Notwithstanding paragraph (a) above, should any deduction or withholding be required under Swiss law on the account of Swiss Withholding Tax, and should it be unlawful for the

relevant Swiss Loan Party to comply with Section 2.14 for any reason, then the applicable interest rate in relation to that interest payment shall be calculated as set out below:

$$\frac{\text{NormalRate}_{IP}}{1 - \text{WTR}}$$

where:

“**NormalRate<sub>IP</sub>**” means the interest rate which would have applied to that interest payment as provided for in Section 2.10 in the absence of this Section 2.22; and

“**WTR**” means the rate at which the relevant deduction or withholding of Swiss Withholding Tax is required to be made under Swiss domestic tax law and/or applicable double taxation treaties, and that Swiss Loan Party shall:

- (i) pay the relevant interest at the adjusted rate in accordance with this Section 2.22; and
- (ii) make the deduction or withholding of Swiss Withholding Tax on the interest so recalculated, and
- (iii) all references to an interest rate in this Agreement shall be construed accordingly.

(c) To the extent that any amount payable by a Swiss Loan Party under this Agreement becomes subject to Swiss Withholding Tax, each relevant Lender and each relevant Swiss Loan Party shall promptly cooperate by completing any procedural formalities (including submitting forms and documents required by the appropriate tax authority) to the extent possible and necessary:

(i) for the relevant Swiss Loan Party to obtain authorization to make interest payments without them being subject to Swiss Withholding Tax (or, as the case may be, at a treaty rate lower than the domestic tax rate); and

(ii) to ensure that any person which is entitled to a full or partial refund under any applicable double taxation treaty is so refunded.

(d) The relevant Swiss Loan Party shall provide the Lenders with such documents and information required for applying for a refund of such Swiss Withholding Tax.

(e) In the event Swiss Withholding Tax is refunded by the Swiss Federal Tax Administration to a Lender, the relevant Lender shall forward promptly, after deduction of costs, such amount to the relevant Swiss Loan Party.

(f) Nothing in this Section 2.22 shall interfere with each Lender’s right to arrange its tax affairs in whatever manner it thinks fit and, without limiting the foregoing, no Lender shall be under any obligation to claim any Swiss Withholding Tax refund in priority to any other claims, reliefs, credits or deductions available to it.

#### Section 2.23 Joint and Several Liability of Borrowers.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders and Issuing Banks under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.23), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.23 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.23(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Loans or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or Lenders or Issuing Banks under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in the Administrative Agent's, any Lender's or any Issuing Bank's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against the Administrative Agent, any Lender or any Issuing Bank any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to the Administrative Agent, any Lender or any Issuing Bank, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by the Administrative Agent, any Lender or any Issuing Bank including any defense

based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or Lenders or Issuing Banks at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Administrative Agent or Lenders or Issuing Banks in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent, any Lender or any Issuing Bank with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.23 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.23, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.23 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.23 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or the Administrative Agent, any Lender or any Issuing Bank. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. The Administrative Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by the Administrative Agent by one or more judicial or non-judicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy the Administrative Agent, any Lender or any Issuing Bank may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to the Administrative Agent, Lenders and Issuing Banks that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to the Administrative Agent and Lenders and Issuing Banks that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.23 are made for the benefit of the Administrative Agent, each Lender and each Issuing Bank, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, any Lender, any Issuing Bank, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.23 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender or any Issuing Bank upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.23 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.23, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Administrative Agent, any Lender, or any Issuing Bank against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Administrative Agent, any Lender or any Issuing Bank hereunder are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of the Administrative Agent, for the benefit of the Secured Parties, and shall forthwith be paid to the Administrative Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the “**Foreclosed Borrower**”), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

Section 3.01 Organization; Powers. Each of the Parent and its Subsidiaries is duly organized, incorporated or formed, validly existing and in good standing (or such other analogous status, if any) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing (or such other analogous status, if any) in, every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability. The Transactions are within each Borrower's and each Guarantor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, equity holder action. Each of the Borrowers and the Guarantors has duly executed and delivered each of the Loan Documents to which it is party, and each of such Loan Documents constitute its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, judicial management, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) for the registration of the Australian Security Documents on the Australian Personal Property and Security Register and any other relevant security registers, (iii) registration of particulars of each of the Security Documents to which any Singapore Loan Party is a party to at the Accounting and Corporate Regulatory Authority of Singapore under Section 131 of the Companies Act 1967 of Singapore, (iv) the registration of the Philippine Security Documents with the PPSR or the CMR, as applicable, in accordance with paragraph (g)(i)(B) of Section 5.11, (v) for the registration of the relevant Dutch Security Documents with the competent Dutch tax authorities in relation with the granting of an undisclosed right of pledge and (vi) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (b) except as would not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (c) will not violate any charter, by-laws or other organizational document of the Parent or any of its Subsidiaries, (d) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (c)) binding upon the Parent or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent or any of its Subsidiaries, and (e) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Subsidiaries (other than Liens arising pursuant to the Security Documents or permitted under Section 6.02).

Section 3.04 Financial Condition; No Material Adverse Change.



(a) The audited consolidated balance sheets of the Parent and its Subsidiaries and related consolidated statements of operations and comprehensive loss, consolidated statements of changes in stockholders' (deficit) equity, and consolidated statements of cash flows as of and for the fiscal year ended September 30, 2023, reported on by Ernst & Young LLP, independent public accountants present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Parent and its Subsidiaries as of such date and for such period. The consolidated balance sheets the Parent and its Subsidiaries and related consolidated statements of operations and comprehensive loss, consolidated statements of changes in stockholders' (deficit) equity, and consolidated statements of cash flows as of the end of and for the fiscal quarters ended December 31, 2023 and March 31, 2024 and the then elapsed portion of the fiscal year present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent and its Subsidiaries as of such dates and for such periods (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved.

(b) Since March 31, 2024, no event, development or circumstance exists or has occurred that has had or would reasonably be expected to have a Material Adverse Effect.

#### Section 3.05 Properties.

(a) Each of the Parent and its Subsidiaries has good title to, or valid leasehold interests in or rights to use, all real and tangible personal property material to its business, other than those Liens permitted by Section 6.02, except in each case where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Parent and its Subsidiaries owns, or has the valid right to use, all Intellectual Property material to its business as currently conducted, free and clear of all Liens other than Liens permitted by Section 6.02 except to the extent such failure to own or have the right to use, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and the operation of such business or the use of such Intellectual Property by the Parent and its Subsidiaries does not infringe upon, misappropriate, or otherwise violate the rights of any other Person, except for any such infringements, misappropriations, or violations that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### Section 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing (including "cease and desist" letters and invitations to take a patent license) against or affecting the Parent or any of its Subsidiaries (i) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement, any other Loan Document or the Transactions.

(b) Except with respect to any matter that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Parent nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

Section 3.07 Compliance with Laws and Agreements; No Default. Each of the Parent and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.08 Investment Company Status. None of the Parent or any of its Subsidiaries is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 3.09 Margin Stock. None of the Parent or any of its Subsidiaries is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U and Regulation X issued by the Board).

Section 3.10 Taxes. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each of the Parent and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed with respect to income, properties or operations of the Parent and its Subsidiaries, (ii) such returns accurately reflect in all material respects all liability for Taxes of the Parent and its Subsidiaries as a whole for the periods covered thereby and (iii) each of the Parent and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and, to the extent required by GAAP, for which the Parent or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

Section 3.11 ERISA; Canadian Pension Plans.

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no determination, nothing has occurred that would materially adversely

affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification), in each case, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. No ERISA Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) None of the Parent, any Subsidiary thereof or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the five calendar years immediately preceding the date this assurance is given or deemed given, made or accrued an obligation to make contributions to any Multiemployer Plan, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Parent, any Subsidiary thereof or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in any Material Adverse Effect.

(e) The Parent, its Subsidiaries and its ERISA Affiliates have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to result in any Material Adverse Effect.

(f) Except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect: (i) no Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA and (ii) the Parent, any Subsidiary thereof, and any ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Plan subject to Section 4064(a) of ERISA to which it made contributions. None of the Parent, any Subsidiary thereof or any ERISA Affiliate have incurred or reasonably expect to incur any liability to PBGC except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, save for any liability for premiums due in the ordinary course or other liability which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and no lien imposed under the Code or ERISA on the assets of the Parent or any Subsidiary thereof or, to the knowledge of the Parent or any Subsidiary, any ERISA Affiliate exists or, to the knowledge of the Parent or any Subsidiary thereof, is likely to arise on account of any Plan. None of the Parent, any Subsidiary thereof or any ERISA Affiliate has engaged in a transaction that would

reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(g) Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All contributions required to be made with respect to a Non-U.S. Plan have been timely made, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Parent nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, except as would not reasonably be expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Parent's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities, except as would not reasonably be expected to result in a Material Adverse Effect.

(h) Each Canadian Pension Plan is in compliance in form and operation with its terms and with the Canadian Tax Act and all other applicable laws and regulations, except where any failure to comply would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. No Canadian Pension Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. Each Canadian Pension Plan is duly registered under the Canadian Tax Act and any other applicable laws which require registration, and, to the knowledge of the Parent or any Subsidiary, no event has occurred which could cause the loss of such registered status. No Lien has arisen, choate or inchoate, in connection with any Canadian Pension Plan (save for contribution amounts not yet due).

(i) There are no actions, suits or claims pending against or involving a Canadian Pension Plan (other than routine claims for benefits) or, to the knowledge of the Parent or any Subsidiary, threatened, which would reasonably be expected to be asserted successfully against any Canadian Pension Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in any Material Adverse Effect.

(j) The Parent and its Subsidiaries have made all contributions to or under each Canadian Pension Plan required by law within the applicable time limits prescribed thereby, the terms of such Canadian Pension Plan or any contract or agreement requiring contributions to a Canadian Pension Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to result in any Material Adverse Effect.

#### Section 3.12 Disclosure.

(a) All written information provided by any Responsible Officer of any Loan Party (other than any projected financial information, estimates, budgets, forward looking statements and other than information of a general economic or industry specific nature) to the

Administrative Agent or any Lender in connection with this Agreement or delivered hereunder, as modified or supplemented by other information so furnished and when taken as a whole together with any information disclosed in the Parent's public filings with the SEC, does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading; provided that, with respect to any projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time furnished (it being understood that such projected financial information and all information concerning future proposed and intended activities are forward-looking statements by their nature and are subject to significant uncertainties and contingencies, any of which are beyond the Loan Parties' control, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projected financial information may differ significantly from the projected results and such differences may be material).

(b) As of the Amendment No. 3 Effective Date, to the best knowledge of the Loan Parties, the information included in the Beneficial Ownership Certification provided on or prior to the Amendment No. 3 Effective Date to any Lender in connection with this Agreement is true and correct in all material respects.

Section 3.13 Subsidiaries. Schedule 3.13 sets forth as of the Amendment No. 3 Effective Date a list of all Subsidiaries, together with (a) the percentage ownership (directly or indirectly) of the Parent and the Parent Borrower, as applicable, therein and (b) whether such Subsidiary is a Guarantor or an Excluded Subsidiary. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the shares of capital stock or other Equity Interests of all Subsidiaries of the Parent and the Parent Borrower, as applicable, are fully paid and non-assessable and are owned by the Parent and the Parent Borrower, as applicable, directly or indirectly, free and clear of all Liens other than Liens permitted under Section 6.02.

Section 3.14 Solvency. On the Amendment No. 3 Effective Date, the Parent and its Subsidiaries, on a consolidated basis, are and, after giving effect to the incurrence of any Loans being incurred on such date, will be Solvent.

Section 3.15 Anti-Terrorism Law.

(a) None of (x) the Parent, any of its Subsidiaries or any of their respective directors, officers or employees, or (y) to the knowledge of the Loan Parties, any agent or Affiliate of the Parent or any Subsidiary thereof that will act in any capacity in connection with or benefit from the credit facility established hereby, is any of the following:

(i) a Person that is listed in the annex to, or is otherwise the target of the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "**Executive Order**");

(ii) a Person owned or (where applicable under Sanctions) controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any legal requirement relating to applicable laws with respect to terrorism or money laundering (collectively, “**Anti-Terrorism Laws**”);

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Sanctioned Person.

(b) Neither the Parent nor any of its Subsidiaries, nor, to the knowledge of the Loan Parties, any of their respective Affiliates, (i) conducts any business with, or engages in making or receiving any contribution of funds, goods or services to or for the benefit of, a Person described in Section 3.15(a)(i)-(v) above, except as permitted under U.S. law, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, except as permitted under U.S. law, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) None of the Loan Parties will use, nor will permit any of its Subsidiaries or Affiliates to use, the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person described in Section 3.15(a)(i)-(v) above, for the purpose of financing the activities of any Person described in Section 3.15(a)(i)-(v) above, in any Sanctioned Country or in any other manner that would violate any Anti-Terrorism Laws or Sanctions by any party hereto.

The representations given in this Section 3.15 shall not be made by nor apply to any Canadian Loan Party or any of its Subsidiaries in so far as such representations would result in a violation of or conflict with the *Foreign Extraterritorial Measures Act* (Canada) or any other applicable law in effect in Canada from time to time.

#### Section 3.16 Anti-Corruption Laws and Sanctions.

(a) No part of the proceeds of the Loans or Letters of Credit will be used by the Parent, any Borrower or any of their respective Subsidiaries, or, to the knowledge of the Parent and the Borrowers, any of their respective Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, as amended, or any other applicable Anti-Corruption Law.

(b) The Parent has implemented and maintains in effect policies and procedures designed to promote compliance by the Parent, the Borrowers, their respective Subsidiaries and their respective directors, officers, employees, Affiliates, advisors and agents with Anti-Corruption Laws and applicable Sanctions, and the Parent, the Borrower, their respective Subsidiaries and their respective directors, officers and employees, and, to the knowledge of the Parent and the Borrowers, their respective Affiliates, advisors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

Section 3.17 Security Documents. The Security Documents (other than the Australian Security Documents which are covered under Section 3.18 and the Irish Security Documents which are covered under Section 3.19) are effective (or, upon the execution thereof, will be effective) to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest (subject to Liens permitted by Section 6.02 and to any perfection requirements under the German Security Documents) in the Collateral described therein and proceeds thereof. In the case of any Equity Interests required to be pledged under the Security Documents (other than the Australian Security Documents which are covered under Section 3.18 and the Irish Security Documents which are covered under Section 3.19), when stock certificates representing such Equity Interests are delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement or share transfer form(s) executed in blank), in the case of Collateral consisting of Deposit Accounts or Securities Accounts, when such Deposit Accounts or Securities Accounts located in the United States or any other applicable jurisdiction, as applicable, are, subject to the Agreed Security Principles, subject to a Control Agreement (or such notices are served on the relevant account banks in accordance with the terms of the relevant Foreign Security Agreements) and in the case of the other Collateral described in the Security Documents, when financing statements and other filings specified on Schedule 3 to the U.S. Security Agreement or the Canadian Security Documents, in appropriate form are filed in the offices specified on Schedule 3 to the U.S. Security Agreement or the Canadian Security Documents, and in the case of Collateral described in the Security Documents to which a Singapore Loan Party is a party to, registration of particulars of such Security Documents at the Accounting and Corporate Regulatory Authority of Singapore under Section 131 of the Companies Act 1967 of Singapore and the serving of notices on counterparties, as applicable, and in the case of Collateral described in the Philippine Security Documents, the registration of the Philippine Security Documents with the PPSR or the CMR, as applicable, in accordance with paragraph (g)(i)(B) of Section 5.11, the Liens granted under the Security Documents shall constitute fully perfected Liens on, and security interests (subject to Liens permitted by Section 6.02) in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof (to the extent perfection is required pursuant to this Agreement and the Security Documents), as security for the Obligations, in each case prior and superior in right to any other Person (except for Liens permitted by Section 6.02), to the extent that such Liens can be perfected by (i) the filing of financing statements (and (x) registration of the particulars of the UK Security Documents at the Companies Registration Office under the Companies Act 2006 and payment of associated fees, (y) registration of the particulars of charge at the Accounting and Corporate Regulatory Authority of Singapore or (z) registration of the Philippine Security Documents with the PPSR or the CMR in accordance with paragraph (g)(i)(B) of Section 5.11, as applicable), (ii) the delivery to the Administrative Agent of stock

certificates representing Equity Interests pledged pursuant to the Security Documents accompanied by stock power or endorsement or share transfer form(s) executed in blank, (iii) the recordation of intellectual property security agreements with the United States Patent and Trademark Office, the United States Copyright Office or the Canadian Intellectual Property Office, and (iv) entry into Control Agreements and the serving of notices on the account bank counterparties, and (v) the serving of notice on counterparties, as applicable.

Section 3.18 Australian Representations. In respect of any Australian Loan Party:

(a) Australian Security Documents. The security interests created under the Australian Security Documents will, upon execution thereof, create the legal, valid and enforceable security interest it is expressed to create with the ranking and priority it is expressed to have over the property to which it is expressed to apply, in each case subject to the principles of equity, stamping and registration, statute of limitations and laws affecting creditors' rights generally.

(b) Trustee. It is not the trustee of any trust or settlement other than as disclosed to the Administrative Agent in writing and accepted by, prior to the date it became a Loan Party or any trust which arises in the ordinary course of its trading activities.

(c) Related Party Benefit and Financial Assistance. It has not contravened nor will it contravene Chapter 2E or 2J.3 of the Australian Corporations Act by entering into any Loan Document to which it is a party or participating in any transaction in connection with any Loan Document to which it is a party to the extent that any contravention could not reasonably be expected to have a Material Adverse Effect.

(d) Tax Consolidation. Neither it nor any other Subsidiary incorporated in Australia is a member of an Australian Consolidated Tax Group unless it has entered into an Australian Tax Sharing Agreement or an Australian Tax Funding Agreement in form and substance satisfactory to the Administrative Agent (acting reasonably).

(e) Commercial Benefit. In relation to the Australian Loan Parties, the entry into this Agreement and each other Loan Document to which it is a party is for such Australian Loan Party's commercial benefit.

Section 3.19 Irish Security Documents.

(a) Subject to the Legal Reservations and Section 3.19(b) below, each Security Document governed by the laws of Ireland to which that Loan Party is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

(b) Under the laws of Ireland, it is not necessary that the Security Documents entered into by any Irish Loan Party be filed, recorded or enrolled with any court or other authority in Ireland or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation



to such Security Documents or the transactions contemplated by such Security Documents except, where applicable in relation to each such Security Document:

- (i) registration of particulars of each such Security Document at the Companies Registration Office of Ireland as required under Section 4 and Schedule 2, part 1 of the Irish Companies Act and payment of associated fees;
- (ii) registration of the any of such Security Documents requiring to be so registered at the Irish Registry of Deeds and/or Tailte Éireann and payment of associated fees; and
- (iii) notification to the Revenue Commissioners of Ireland of particulars of relevant Irish Security Documents under section 1001 Taxes Consolidation Act, 1997,

which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Security Document.

#### **ARTICLE 4 CONDITIONS**

Section 4.01 [Reserved].

Section 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (provided that a conversion or a continuation shall not constitute a “Borrowing” for purposes of this Section 4.02), and of the applicable Issuing Bank to issue, renew or extend any Letter of Credit, is subject to the satisfaction (or waiver by in accordance with Section 10.02) of the following conditions:

(a) The representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (or in all respects if qualified by materiality) on and as of the date of such Borrowing or the date of issuance, renewal or extension of such Letter of Credit, as applicable, except that (i) for purposes of this Section, the representations and warranties contained in Section 3.04(a) shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) (subject, in the case of unaudited financial statements furnished pursuant to clause (b), to year-end audit adjustments and the absence of footnotes), respectively, of Section 5.01, (ii) to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects; and

(b) At the time of and immediately after giving effect on a Pro Forma Basis to such Borrowing or the issuance, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) At the time of and immediately after giving effect on a Pro Forma Basis to such Borrowing or the issuance of such Letter of Credit, as applicable, the Parent and the Borrowers shall be in compliance with Section 6.10(a).

Each Borrowing and each issuance, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Loan Parties that the conditions specified in paragraphs (a), (b) and (c) of this Section have been satisfied as of the date thereof.

## **ARTICLE 5 AFFIRMATIVE COVENANTS**

Until each of (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan and all other Obligations hereunder (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) shall have been paid in full in cash, and (iii) all Letters of Credit shall have (x) expired or terminated, in each case, without any pending draw, (y) been backstopped or Cash Collateralized in an amount not less than the Minimum Collateral Amount or (z) been deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank, the Loan Parties covenant and agree with the Administrative Agent and the Lenders that:

Section 5.01 Financial Statements; Ratings Change and Other Information. The Parent will furnish to the Administrative Agent (for distribution to each Lender):

(a) on or before the date on which such financial statements are required to be filed with the SEC after the end of each fiscal year of the Parent (or, if such financial statements are not required to be filed with the SEC, within 120 days after the end of each fiscal year of the Parent), its audited consolidated balance sheet and related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception (other than a qualification related to the maturity of the Commitments and the Loans at the Maturity Date or upcoming maturity date under any other Indebtedness occurring within one year from the time such report is delivered or potential inability to satisfy a financial covenant under this Agreement or other Indebtedness) and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) on or before the date on which such financial statements are required to be filed with the SEC after the end of each of the first three fiscal quarters of each fiscal year of the Parent (or, if such financial statements are not required to be filed with the SEC, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent), its consolidated balance sheets and related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative

form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate (i) certifying as to whether a Default has occurred and is continuing as of the date thereof and, if a Default has occurred and is continuing as of the date thereof, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) demonstrating compliance with Section 6.10, (iii) setting forth a reasonably detailed calculation of Consolidated EBITDA and the Consolidated Leverage Ratio for the applicable Measurement Period, (iv) setting forth a reasonably detailed calculation demonstrating compliance with the Guarantor Coverage Test, (v) if and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 had an impact on such financial statements, specifying the effect of such change on the financial statements accompanying such certificate, and (vi) setting forth a list of any issued Patents, registered industrial designs, registered Trademarks or registered Copyrights, and applications for any of the foregoing, acquired or filed by the Parent and its Subsidiaries since the Effective Date or the date of the most recent Compliance Certificate delivered pursuant to this Section 5.01(c) prior to the date thereof, as applicable, which Intellectual Property (including any applications therefor) was not included in the Collateral as of the Effective Date or date of such Compliance Certificate, as applicable;

(d) as soon as available, and in any event no later than 90 days after the end of each fiscal year, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Parent and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income, forecasts with respect to Total Liquidity) (collectively, the “**Projections**”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Parent stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Parent or any Subsidiary with the SEC or any Governmental Authority succeeding to any or all of the functions of said Commission under Section 13 or 15(d) of the Securities Exchange Act of 1934, as the case may be, in each case that is not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) promptly following any reasonable request in writing (including any electronic message) therefor, (i) such other information regarding the operations, business affairs and financial condition of the Parent or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (through the

Administrative Agent) may reasonably request, (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act, the Proceeds of Crime Act and the Beneficial Ownership Regulation, and (iii) such further information as may be required by applicable banking supervisory laws and regulations, provided that, notwithstanding the foregoing, none of the Parent or any of its Subsidiaries shall be required to disclose any document, information or other matter that (A) constitutes non-financial trade secrets or non-financial proprietary information, (B) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party contract legally binding on the Parent or its Subsidiaries or (C) is subject to attorney, client or similar privilege or constitutes attorney work-product;

(g) promptly with notice in writing of (i) the creation or acquisition of any new Receivables Subsidiary and (ii) the Parent or any Subsidiary thereof entering into any Factoring Transaction or Receivables Facility, together with copies of any indenture, loan agreement or similar agreement or any other agreements entered into by the Parent or any Subsidiary thereof in connection therewith; and

(h) concurrently with the delivery thereof, copies of all reports, certificates and notices provided by the Parent or any Subsidiary thereof under any Permitted Factoring Transaction or Permitted Receivables Facility, and promptly upon their becoming available, copies of any amendments, modifications, supplements, restatements or amendments and restatements of, or waivers or consents with respect to, any indenture, loan agreement or similar agreement or any other agreements entered into by the Parent or any Subsidiary thereof in connection with any Permitted Factoring Transaction or Permitted Receivables Facility.

Information required to be delivered pursuant to Section 5.01(a) or Section 5.01(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such information is posted on the Borrowers’ or the Parent’s behalf on an Internet or intranet website, if any, to which the Lenders and the Administrative Agent have been granted access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

Notwithstanding the foregoing, the obligations in Section 5.01(a) or Section 5.01(b) may be satisfied by furnishing (A) the applicable financial statements or other information required by such clauses of Parent (or any other parent company) or (B) the Parent’s or the Parent Borrower’s (or any other parent company), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs; provided that, with respect to each of clauses (A) and (B), upon reasonable request by the Administrative Agent, (i) to the extent such financial statements are delivered under Section 5.01(a) or Section 5.01(b) and relate to the Parent, such financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Parent, on the one hand, and the information relating to the Borrowers and their Subsidiaries on a standalone basis, on the other hand, which

consolidating information shall be certified by a Responsible Officer of the Parent as having been fairly presented and (ii) to the extent such statements are in lieu of statements required to be provided under Section 5.01(a), such statements shall be accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(a).

Section 5.02 Notices of Material Events. The Borrowers will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Parent or any of its Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect;

(c) (i) any change in the Parent's or any other U.S. Loan Party's state of incorporation or organization, name as it appears in the state of its incorporation or other organization, type of entity, organizational identification number, or form of organization, each as applicable, or (ii) any change in any Canadian Loan Party's legal name (including the addition by any Canadian Loan Party of a French form of name), type of organization, jurisdiction of organization, registered head office, principal place of business, chief executive office or domicile (if applicable, within the meaning of the Civil Code of Quebec) or the jurisdictions in Canada in which Collateral of a Loan Party is held or maintained (other than any such Collateral that is in transit or out for repair in the ordinary course of business or any such Collateral that is located in a jurisdiction for which all applicable filings under the Canadian PPSA have already been made), in each case under this clause (c), at least ten (10) Business Days (or such shorter period to which the Administrative Agent may agree in its discretion) prior to the occurrence of any such change; and

(d) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Parent Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 Existence; Conduct of Business. Each Loan Party will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence in its jurisdiction of organization and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that (i) the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under Section 6.03 and (ii) none of the Parent or any of its Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights, licenses, permits, privileges or franchises where failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 5.04 Payment of Taxes. Each Loan Party will, and will cause each of its Subsidiaries to, pay all Tax liabilities, including all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it that, if not paid, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, before the same shall become delinquent or in default, and all lawful claims other than Tax liabilities that, if unpaid, would become a Lien upon any properties of the Parent or any of its Subsidiaries not otherwise permitted under Section 6.02, in both cases except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) to the extent required by GAAP, the Parent or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

Section 5.05 Maintenance of Properties; Protection of Intellectual Property; Insurance. Each Loan Party will, and will cause each of its Subsidiaries to, (a) keep and maintain all property used in the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, (b) preserve, renew and maintain in full force and effect all rights, licenses, Intellectual Property, domain names, permits, privileges, authorizations and other rights necessary for the conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect and (c) maintain insurance on commercially reasonable terms with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses or owning assets in the general areas in which the Borrowers and their Subsidiaries operate.

Section 5.06 Maintenance of Material Agreements. Each Loan Party will, and will cause each of its Subsidiaries to maintain in full force and effect the agreements listed on Schedule 5.06 hereto, except to the extent that (a) that such agreement terminates or expires pursuant to its terms in the ordinary course and (b) failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.07 Books and Records; Inspection Rights. Each Loan Party will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries full, true and correct in all material respects are made and are sufficient to prepare financial statements in accordance with GAAP. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender (pursuant to the request made through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records to the extent reasonably necessary, and to discuss its affairs, finances and condition with its officers and independent accountants (provided that such Loan Party or such Subsidiary shall be afforded the opportunity to participate in any discussions with such independent accountants), all at such reasonable times and as often as reasonably requested (but no more than once annually if no Event of Default exists). Notwithstanding anything to the contrary in this Section, none of the Parent or any of its Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect

of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party contract legally binding on the Parent or its Subsidiaries or (iii) is subject to attorney, client or similar privilege or constitutes attorney work-product.

Section 5.08 ERISA Events; Canadian Pension Events. The Borrowers will furnish to the Administrative Agent and each Lender prompt written notice of the occurrence of any ERISA Event or Canadian Pension Event that, alone or together with any other ERISA Events or Canadian Pension Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Section 5.09 Compliance with Laws and Agreements. Each Loan Party will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions.

Section 5.10 Use of Proceeds. The proceeds of the Revolving Loans and Letters of Credit will be used only for capital expenditures, to pay transaction fees and expenses, and for working capital and general corporate purposes, including, without limitation, for stock repurchases under stock repurchase programs approved by the Borrowers and for acquisitions not prohibited hereunder. No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, to purchase or carry margin stock (within the meaning of Regulations U and X of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose. Without limiting the foregoing, the provisions of Section 5.10 shall not be interpreted to contravene, or require any notification to the Attorney General of Canada under, the Foreign Extraterritorial Measures (United States) Order, 1992, the Foreign Extraterritorial Measures Act (Canada) or any other applicable law in effect in Canada from time to time, by any Canadian Loan Party.

Section 5.11 Additional Loan Parties; Additional Collateral.

(a) At the time any Loan Party forms any direct or indirect Subsidiary organized or incorporated under the laws of a Covered Jurisdiction (other than an Excluded Subsidiary) or acquires any direct or indirect Subsidiary organized or incorporated under the laws of a Covered Jurisdiction (other than an Excluded Subsidiary) after the Amendment No. 3 Effective Date, or any Subsidiary ceases to be an Excluded Subsidiary, or, subject to the Agreed Security Principles, any Material Foreign Subsidiary is required to join the Loan Documents as a Guarantor and a Loan Party in order to satisfy the Guarantor Coverage Test, such Loan Party shall within (x) thirty (30) days, in the case of any Domestic Subsidiary, or (y) ninety (90) days in the case of any Foreign Subsidiary (or, in each case, such later date as permitted by the Administrative Agent in its sole discretion) of such formation or acquisition or change in status

or the applicable Guarantor Coverage Test Date: provide, and cause any such Subsidiary to provide, to the Administrative Agent, subject to the Agreed Security Principles, as applicable:

(i) (A) a guaranty supplement in the form of Exhibit E hereto pursuant to which such Subsidiary will be joined as a Guarantor hereunder and (B) at least three Business Days prior to the date such additional Guarantor becomes a party hereto, all documentation and other information about the additional Guarantor reasonably requested by the Administrative Agent (including any such documentation and other information that the Administrative Agent reasonably determines is required by United States bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act, the Proceeds of Crime Act and the Beneficial Ownership Regulation) in writing at least 10 Business Days prior to such date; provided that, notwithstanding anything to the contrary in Section 10.02 or in any Loan Document, the Loan Documents may be amended as necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Parent Borrower (and without the consent of any other parties thereto) to effect the provisions of or be consistent with this Section 5.11(a)(i);

(ii) such security documents (or amendments to existing Security Documents), as well as appropriate UCC, Australian PPSA, Canadian PPSA financing statements or statements of particulars of charge for registration with the Accounting and Corporate Regulatory Authority of Singapore (or analogous local law filings) and filings with the United States Patent and Trademark Office and United States Copyright Office (or analogous local law filings), all in form and substance reasonably satisfactory to the Administrative Agent, sufficient to cause the Obligations to be secured by a perfected first-priority Lien on all of the assets (including all outstanding Equity Interests in any of its Subsidiaries, but excluding, for the avoidance of doubt, real property which is covered by Section 5.11(c) and Excluded Property (other than in relation to any floating charge (or its equivalent) pursuant to a UK Security Document)) of such Subsidiary, so that the Administrative Agent, for its benefit and the benefit of the Secured Parties, shall have a legal, valid and enforceable perfected first-priority Lien on the Collateral (and subject to any limitations and exceptions consistent with those contained in any such documents or instruments);

(iii) a pledge agreement (or an addendum to an applicable existing Security Document), in form and substance reasonably satisfactory to the Administrative Agent, and appropriate certificates and powers or financing statements, pledging (to the extent not excluded or excused by the Security Documents) all of the direct or beneficial Equity Interests in such Subsidiary (for the avoidance of doubt, 100% of the Equity Interests of each Borrower and Subsidiary that is a Guarantor shall be required to be pledged under Security Documents governed by the local laws of the jurisdiction of such Borrower’s or such Subsidiary’s organization or incorporation); and

(iv) all other documentation, including such proof of corporate, partnership or limited liability company action, incumbency of officers, and customary joinder and, if reasonably requested by the Administrative Agent, one or more opinions of counsel reasonably



satisfactory to the Administrative Agent, which in its reasonable opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

(b) Subject to any applicable limitations set forth in the Security Documents, with respect to any property acquired from time to time by any Loan Party (other than any property described in paragraph (c) below or Excluded Property) as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien as required herein, the applicable Loan Party will promptly (i) execute and deliver to the Administrative Agent such amendments to the Security Documents or such other documents as the Administrative Agent deems necessary or reasonably advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or reasonably advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected security interest in any such property, including the filing of UCC, Australian PPSA, Canadian PPSA financing statements or statements of particulars of charge for registration with the Accounting and Corporate Regulatory Authority of Singapore (or analogous local filings) in such jurisdictions as may be required by the Security Documents or by law or as may be requested by the Administrative Agent.

(c) With respect to any fee interest in any real property at any location having a value (together with improvements thereof) of at least the Dollar Equivalent of \$5,000,000 acquired after the Effective Date by any Loan Party (including a Person that owns such real property and becomes a Loan Party pursuant to Section 5.11(a)) (other than any Excluded Property), within sixty (60) days after the acquisition thereof (or 120 days in the case of the establishment or amendment of any Mortgage) (or such later date as the Administrative Agent shall agree to in its sole discretion), the applicable Loan Party shall (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if reasonably requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably satisfactory to the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate and (y) any consents or estoppels reasonably deemed necessary by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement (including this Section 5.11) or in any other Loan Document, the Administrative Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and the Administrative Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise satisfactory to such Lender.

(d) At the time any Loan Party forms any direct or indirect Receivables Subsidiary, such Loan Party shall within sixty (60) days (or such later date as permitted by the Administrative Agent in its sole discretion) of such formation, provide to the Administrative Agent a pledge agreement (or an addendum to an applicable existing Security Document), in form and substance reasonably satisfactory to the Administrative Agent, and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial Equity Interests in such Receivables Subsidiary; provided that the security interest of the Administrative Agent in the Equity Interests of any Receivables Subsidiary shall be subordinated to any Liens on such Equity Interests granted by such Loan Party in favor of the agent, trustee, lenders or other secured parties under the Permitted Receivables Facility to which such Receivables Subsidiary is a party pursuant to an intercreditor agreement, in form and substance reasonably acceptable to the Administrative Agent, that provides for a “silent second” Lien in favor of the Administrative Agent.

(e) Subject to the terms of the Security Documents, the Parent Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements), which may be required under any applicable law, or which the Administrative Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties.

(f) Notwithstanding the foregoing or anything to the contrary in this Agreement, none of the Parent or its Subsidiaries shall be required to take any action to create or perfect any security interest in the Collateral (including the registration of Intellectual Property in, and the execution of any agreement, document or other instrument governed by the law of, and the filing of any agreement, document or other instrument) in any jurisdiction other than any Covered Jurisdiction or the jurisdiction of organization or incorporation of any Foreign Guarantor.

(g) (i) Subject to Section 5.16, the Parent Borrower agrees to cause Fluence Energy Philippines to become a Guarantor, enter into applicable Philippine Security Documents, including the Fluence Energy Philippines Guaranty, and take such other actions as required by this Section 5.11 and the terms of such Philippine Security Documents; provided, that, such Philippines Security Documents and such actions (including with respect to the perfection of the security interests granted to the Administrative Agent thereunder) shall be subject to the following:

(A) At all times following the Amendment No. 3 Effective Date, the aggregate amount of Obligations which are secured under the applicable Philippine Security Documents on the Equity Interest owned by the Parent Borrower in Fluence Energy Philippines and the Collateral of the Philippines Guarantors (collectively, the “**Philippines Collateral**”) shall be \$62,500,000 (the “**Philippines Secured Amount**”); provided, that if on the last day of any fiscal quarter of the Parent either the aggregate revenues of the Philippines Guarantors for the four fiscal quarter period then ended or the

total assets of the Philippines Guarantors as of such date exceeds the applicable percentage set forth on the grid below of, respectively, Total Revenues (for such period) or Total Assets (as of such date), then the Parent Borrower shall, within 30 days following the end of such fiscal quarter (or such longer period as the Administrative Agent may approve), ensure that such actions are taken (including the execution of any required supplements to the applicable Philippine Security Documents and the payment of any required Philippines documentary, stamp or other tax) for the Philippines Secured Amount to be increased to the applicable amount set forth on the grid below corresponding to such percentage:

Percentage of Total Revenues or Total Assets	Philippines Secured Amount
>40%	\$125,000,000
>50%	\$187,500,000
>60%	\$250,000,000
>70%	\$375,000,000
>80%	\$500,000,000

and

(B) The Parent Borrower shall cause the Administrative Agent’s security interest in the Philippines Collateral pursuant to the applicable Philippine Security Documents to be perfected as follows: (1) in the case of capital stock, through providing control arrangements under the Philippine Security Documents and delivery of the duly endorsed stock certificates to the Administrative Agent; (2) in the case of bank deposit or similar accounts, through the execution of control agreements in accordance with (and at all times following the execution of) the applicable Philippine Security Documents; (3) in the case of all other property and assets constituting Philippines Collateral subject of a security interest which can be perfected by means of a control agreement or possession (other than those assets referred to in (1) and (2)), if any, through execution of control agreements in accordance with (and at all times following the execution of) the applicable Philippine Security Documents or through delivery of possession to the Administrative Agent of such property or assets, as the case may be; and (4) in the case of all other property and assets constituting Philippines Collateral subject of a security interest which cannot be perfected by means of a control agreement or possession, by the registration of such security interests (in accordance with Philippines law) with (A) the Philippines Personal Property Security Registry (“PPSR”) within five business days of the PPSR becoming operational for the purpose of accepting registration of such security interests, or (B) in the event that such registration with the PPSR does not occur on or before the date that is six months after the Amendment No. 3 Effective Date (or such later date as the Administrative Agent may approve), the Chattel Mortgage Registry (“CMR”) (in

each case, together with payment of any applicable required registration or similar fees) (it being understood that (I) such registration with the PPSR or the CMR, as the case may be, shall be limited to the applicable Philippines Secured Amount at such time; and (II) if the Philippines Secured Amount is increased in accordance with clause (g)(i)(A) above, additional registration with the PPSR or the CMR (in each case, together with payment of any additional required registration or similar fees), as the case may be, shall be made at such time as the applicable actions referred to in clause (g)(i)(A) above are made in connection with such increase); and

(ii) At all times following the Amendment No. 3 Effective Date until the date on which the applicable registration of the Administrative Agent's security interest in the Philippines Collateral is made with the PPSR or the CMR in accordance with clause (g)(i)(B) above, the Parent Borrower will ensure that (notwithstanding the provisions of Article 6) Fluence Energy Philippines shall not:

(A) incur any Indebtedness for borrowed money or Guarantees with respect thereto, other than Indebtedness (I) under the Loan Documents, (II) owed to the Borrowers or any of their Subsidiaries, (III) in connection with credit card programs incurred in the ordinary course of business in a manner consistent with past practice or (IV) as set forth on Schedule 6.01;

(B) create or suffer to exist any Lien on any property or asset now owned or hereafter acquired by it, other than (I) security interests created under the Security Documents, (II) Permitted Encumbrances which do not secure Indebtedness for borrowed money and (III) as set forth on Schedule 6.02; or

(C) engage in any material business activity or acquire any material assets other than (I) performing its obligations under customer supply and other agreements to which it is a party on the Amendment No. 3 Effective Date, (II) performing its obligations under the Loan Documents and other Indebtedness and Liens (including the granting of Liens which are Permitted Encumbrances) permitted by this Section 5.11(g); (III) paying dividends with respect to its own Equity Interests; (IV) filing tax reports and paying Taxes and other customary obligations in the ordinary course (and contesting any Taxes); (V) preparing reports to Governmental Authorities; (VI) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable laws; (VII) holding cash and Cash Equivalents including maintaining bank deposit and securities accounts, (VIII) providing indemnification for its officers, directors, members of management, employees and advisors or consultants and other ordinary course obligations; (IX) participating in tax, accounting and other administrative matters; (X) the performance of its obligations under any document or agreement contemplated by this Section 5.11(g); (XI) complying with applicable laws (including with respect to the maintenance of its corporate existence and activities incidental thereto); (XII) the maintenance of its legal existence (including the ability to incur and pay, as applicable,

fees, costs and expenses and taxes related to such maintenance); and (XIII) activities incidental or reasonably related to any of the foregoing.

Section 5.12 Cash Management; Control Agreements.

(a) Subject to Section 5.16, each Loan Party shall (i) establish and maintain cash management arrangements relative to Deposit Accounts, Securities Accounts and other bank accounts (other than Excluded Accounts) of a type and on customary terms at one or more Lenders or Permitted Third Party Banks (each a “**Controlled Account Bank**”), and shall take commercially reasonable steps to ensure that all of its Account Debtors forward payment of the amounts owed by them directly to their respective Controlled Account at a Controlled Account Bank, and (ii) deposit or cause to be deposited promptly, and in any event no later than the second Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to a Loan Party) into a Deposit Account or Securities Account (in each case, other than an Excluded Account) of such Loan Party (each, a “**Controlled Account**”) at one of the Controlled Account Banks. For the avoidance of doubt, the Borrowers shall maintain a separate Controlled Account into which only the Account Debtors of the Borrowers forward payments, which Controlled Account shall not also operate as a disbursement account.

(b) Subject to Section 5.16 (or, in the case of any Person that becomes a Loan Party after the Effective Date pursuant to Section 5.11, or any Deposit Account, Securities Account and other bank account that is not an Excluded Account acquired or opened after the Effective Date, within (x) 90 days for any U.S. Loan Party (or such later date as the Administrative Agent may agree in its discretion), and (y) 90 days for any Foreign Loan Party (or such later date as the Administrative Agent may agree in its discretion) of the date that such Person becomes a Loan Party or the date such Deposit Account, Securities Account or other bank account is opened or acquired, as applicable), subject, in the case of any Deposit Account, Securities Account or other bank account located outside the United States, to the Agreed Security Principles, each Loan Party shall establish and maintain Control Agreements with the Administrative Agent and the applicable Controlled Account Bank with respect to each Loan Party’s Controlled Accounts, as contemplated by the applicable Security Document (or otherwise as contemplated by this Section 5.12 if specified herein) to which such Loan Party is party or otherwise; *provided* that, subject, in the case of any Deposit Accounts, Securities Accounts or other bank accounts located outside the United States, to the Agreed Security Principles, it is understood and agreed that the Loan Parties shall be required to satisfy all requirements under this Section 5.12 in respect of Controlled Accounts within the time periods specified therefor herein or, with respect to any Deposit Accounts, Securities Accounts or other bank accounts located outside the United States, specified in the Agreed Security Principles (including, without limitation, the giving of notices to Controlled Account Banks and the receipt of acknowledgements from Controlled Account Banks). Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, each such Control Agreement shall provide, among other things, that (i) the Controlled Account Bank will comply with any instructions originated by the Administrative Agent directing the disposition of the funds in such Controlled Account without further consent by the applicable Loan Party, (ii) the Controlled Account Bank waives, subordinates, or agrees not to exercise any

rights of setoff or recoupment or any other claim against the applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment, and (iii) upon the instruction of the Administrative Agent (an “**Activation Instruction**”), the Controlled Account Bank will forward all amounts in the applicable Controlled Account to one or more accounts designated by and under the sole control and dominion of the Administrative Agent. The Administrative Agent agrees not to issue an Activation Instruction with respect to the Controlled Accounts unless an Event of Default has occurred and is continuing at the time when such Activation Instruction is issued.

Section 5.13 Further Assurances. Promptly upon the reasonable request by the Administrative Agent, each Loan Party will (a) correct any error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens created thereunder and (ii) assure, preserve, protect and confirm more effectively unto the Lenders, or the Administrative Agent for the benefit of the Lenders, the rights granted to the Lenders, or the Administrative Agent for the benefit of the Lenders, under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party.

Section 5.14 Accuracy of Information. Each Loan Party will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any amendment or modification hereof or waiver hereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, at the time that they were made and in the light of the circumstances under which they were made, not materially misleading.

Section 5.15 [Reserved].

Section 5.16 Post-Closing Covenants. Each Loan Party shall, and shall cause its Subsidiaries to, complete the items set forth on Schedule 5.16 within the time periods set forth therein (or such longer periods of time or on such additional terms, in each case, as agreed to by the Administrative Agent in its sole discretion).

## **ARTICLE 6 NEGATIVE COVENANTS**

Until each of (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan and all other Obligations hereunder (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) shall have been paid in full in cash, and (iii) all Letters of Credit shall have (x) expired or terminated, in each case, without any pending draw, (y) been backstopped or Cash Collateralized in an amount not less than the Minimum Collateral Amount or (z) been deemed reissued under

another agreement reasonably acceptable to the applicable Issuing Bank, the Loan Parties covenant and agree with the Administrative Agent and the Lenders that:

Section 6.01 Indebtedness. Each Loan Party will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness other than:

(a) Indebtedness existing on the Effective Date and set forth in Schedule 6.01 and any Permitted Refinancing thereof;

(b) Indebtedness of (i) the Parent Borrower owing to any Subsidiary or the Parent, (ii) any Loan Party owing to the Parent Borrower or any other Subsidiary, (iii) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party, and (iv) any Subsidiary that is not a Loan Party owing to any Loan Party to the extent permitted pursuant to Section 6.04(c)(i), Section 6.04(d), Section 6.04(e), Section 6.04(f), Section 6.04(h), Section 6.04(m), Section 6.04(n), Section 6.04(o) or Section 6.04(r); provided that, in each case under this clause (b), (x) any Indebtedness of any Loan Party shall be unsecured and shall be subordinated in right of payment to the Obligations pursuant to the Intercompany Subordination Agreement or otherwise on terms customary for intercompany subordinated Indebtedness, as reasonably determined by the Administrative Agent, and (y) if any such Indebtedness owing to any Loan Party shall be evidenced by a promissory note, such promissory note shall have been pledged pursuant to the Security Documents;

(c) Guarantee obligations incurred by any Loan Party or Subsidiary thereof of obligations of any other Loan Party or Subsidiary to the extent such obligations are not prohibited hereunder; provided that (i) to the extent any such obligations are subordinated to the Obligations, any such related Guarantee obligations incurred by a Loan Party shall be subordinated to the guarantee of such Loan Party of the Obligations on terms no less favorable to the Lenders than the subordination provisions of the obligations to which such Guarantee obligation relates and (ii) any Guarantee obligations incurred by any Loan Party of obligations of a Subsidiary that is not a Loan Party shall be permitted to the extent permitted pursuant to Section 6.04(c)(i), Section 6.04(d), Section 6.04(e), Section 6.04(f), Section 6.04(h), Section 6.04(l), Section 6.04(m), Section 6.04(n), Section 6.04(o) or Section 6.04(r);

(d) Indebtedness of the Parent Borrower or any Subsidiary constituting Capital Lease Obligations and Purchase Money Indebtedness; provided that the aggregate principal amount of Indebtedness pursuant to this clause (d) shall not exceed in an aggregate principal amount at any time outstanding the greater of (i) \$55,000,000 and (ii) 3.0% of the Total Assets at any time outstanding;

(e) Indebtedness of the Parent Borrower or any Subsidiary in an aggregate principal amount at any time outstanding not to exceed the greater of (i) \$195,000,000 and (ii) 11.25% of the Total Assets at such time; provided that such Indebtedness is, if incurred or guaranteed only by Loan Parties, either unsecured or secured by a Lien permitted pursuant to Section 6.02(o);

(f) Indebtedness of the Parent Borrower or any Subsidiary so long as the Consolidated Leverage Ratio does not exceed 2.50:1.00 after giving Pro Forma Effect thereto;

provided that any Indebtedness incurred or guaranteed pursuant to this clause (f) (i) is incurred or guaranteed solely by Loan Parties, (ii) is unsecured, (iii) shall not mature prior to date that is 91 days after the Maturity Date, (iv) either (x) shall not require any payment of principal prior to the Maturity Date or (y) shall not require payments of principal in an aggregate amount *per annum* in excess of 1.0% of the principal amount thereof, and (v) contains terms customary for similar issuances of Indebtedness at such time (as determined in good faith by the Parent Borrower) (it being understood that, other than in the case of any issuance of a debt security, such terms shall be no more restrictive, taken as a whole (as determined in good faith by the Parent Borrower), than the Loans, and in any event no such Indebtedness (including any debt securities) shall contain a financial maintenance covenant more restrictive than any financial maintenance covenant contained herein);

(g) unsecured Indebtedness of the Parent Borrower or any Subsidiary in an aggregate principal amount not to exceed the greater of (i) \$65,000,000 and (ii) 4.0% of the Total Assets at any time outstanding;

(h) Indebtedness of Subsidiaries that are not Loan Parties in an aggregate principal amount at any time outstanding not to exceed the greater of (i) \$50,000,000 and (ii) 3.25% of the Total Assets at such time;

(i) Indebtedness incurred pursuant to any agreement or arrangement to provide ordinary course services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements;

(j) Obligations under the Loan Documents;

(k) Indebtedness arising under the Citi Supplier Financing Agreement, only to the extent (A) such agreement pertains to ordinary course supplier financing arrangements and (B) the aggregate principal amount of Indebtedness outstanding thereunder does not exceed \$200,000,000 at any time; provided, however, that the Loan Parties shall be in compliance with Section 6.10 on a Pro Forma Basis on each date that any Loan Party incurs Indebtedness under the Citi Supplier Financing Agreement that results in the outstanding amount thereunder exceeding \$100,000,000 (such excess amount, the “**Supplier Financing Excess Amount**”), it being understood and agreed that solely for the purposes of such pro forma calculation the amount of “Total Liquidity” shall be deemed reduced by the Supplier Financing Excess Amount then outstanding;

(l) Indebtedness of the Parent Borrower or any Subsidiary thereof in connection with one or more bankers’ acceptances, worker’s compensation claims, surety bonds, appeal bonds, performance bonds or completion guarantees issued in the ordinary course of business or pursuant to self-insurance and similar obligations and not in connection with the borrowing of money or the obtaining of advances or credit;



(m) Acquired Indebtedness, so long as the Loan Parties shall be in compliance with Section 6.10 on a Pro Forma Basis after giving effect to the incurrence of such Acquired Indebtedness;

(n) obligations under Swap Agreements entered into by the Parent Borrower or its Subsidiaries not for speculative purposes;

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business;

(p) unsecured Indebtedness arising from agreements of the Parent Borrower or any Subsidiary providing for deferred purchase price for goods or services, earn-outs, indemnification, adjustment of purchase price, seller notes or similar obligations, in each case, incurred or assumed in connection with the acquisition or Disposition of any business, assets or Person otherwise permitted by this Agreement;

(q) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements;

(r) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Parent Borrower or any Subsidiary incurred in the ordinary course of business;

(s) Permitted Factoring Transactions and Permitted Receivables Facilities, in each case, so long as the Loan Parties shall be in compliance with Section 6.10 on a Pro Forma Basis after giving effect thereto and to the incurrence of Indebtedness thereunder;

(t) Indebtedness of the Parent Borrower or any Subsidiary incurred in the ordinary course of business under one or more letter of credit facilities in an aggregate face amount not to exceed \$250,000,000; provided that such Indebtedness is, if incurred or guaranteed by Loan Parties, either unsecured or secured by a Lien permitted pursuant to Section 6.02(v); and

(u) Indebtedness of the Parent permitted under Section 6.12(a).

Notwithstanding the foregoing, (i) any Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party shall be permitted only to the extent subordinated to the Obligations on customary terms reasonably satisfactory to the Administrative Agent, (ii) in no event shall the sum of the aggregate principal amount of Indebtedness incurred by Subsidiaries that are not Guarantors in reliance on clauses (e), (f), (g), (h) and (m) of this Section 6.01 exceed \$125,000,000, (iii) during the Specified Post-Closing Period, for purposes of this Section 6.01, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Loan Party” and (iv) no Indebtedness (other than the Obligations) will be permitted to be secured by Collateral on a senior or pari passu basis with the Obligations.

Section 6.02 Liens. Each Loan Party will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Parent or any Subsidiary existing on the Effective Date and set forth in Schedule 6.02 and any modifications, renewals and extensions thereof and any Lien granted as a replacement or substitute therefor; provided that (i) such Lien shall not apply to any other property or asset of the Parent or any Subsidiary other than improvements thereon or proceeds thereof and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and any Permitted Refinancing thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Parent or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Parent or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and any Permitted Refinancing thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Parent Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness that is permitted by Section 6.01(d), (ii) such security interests and the Indebtedness secured thereby are initially incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement and (iii) such security interests shall not apply to any other property or assets of the Parent Borrower or any Subsidiary other than the property financed by such Indebtedness and any additions, accessions, parts, attachments or improvements thereon or proceeds and products hereof and customary security deposits and related property; provided that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender;

(e) non-exclusive licenses, sublicenses, leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of the Parent Borrower and its Subsidiaries, taken as a whole;

(f) the interest and title of a lessor under any operating lease or sublease entered into by the Parent or any Subsidiary in the ordinary course of its business and other statutory and common law landlords' Liens under leases;

(g) the rights reserved or vested in any Person (including any Governmental Authority) by the terms of any lease, sublease, non-exclusive license, or non-exclusive sublicense held by the Parent or any of its Subsidiaries or by a statutory provision, to terminate any such lease, sublease, license, or sublicense, or to require annual or periodic payments as a condition to the continuance thereof;

- (h) the interests of non-exclusive licensors and non-exclusive sublicensors under license and sublicense agreements;
- (i) in connection with the sale or transfer of any assets in a transaction not prohibited hereunder, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;
- (j) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under Section 6.01(g);
- (k) Liens on earnest money deposits of cash or Cash Equivalents made in connection with any acquisition not prohibited hereunder;
- (l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Parent or any Subsidiary, in each case granted in the ordinary course of business in favor of the banks, securities intermediaries or other depository institutions with which such accounts are maintained, securing amounts owing to such institutions with respect to cash management and operating account arrangements (including Liens under section 24 or section 25 of the general terms and conditions (*algemene bankvoorwaarden*) of any member of the Dutch Bankers' Association (*Nederlandse Vereniging van Banken*) and similar security under other terms and conditions of such banks);
- (m) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Parent or any of its Subsidiaries in the ordinary course of business;
- (n) Liens created pursuant to the Security Documents;
- (o) other Liens securing obligations in an aggregate amount at any time outstanding not to exceed the greater of (i) \$195,000,000 and (ii) 11.25% of the Total Assets at such time; provided that (i) any such Liens on the Collateral shall be subordinated to the Liens of the Administrative Agent under the Security Documents pursuant to a customary intercreditor agreement that is reasonably acceptable to the Administrative Agent and (ii) in no event shall Liens under this clause (o) secure obligations of Subsidiaries that are not Guarantors in excess of \$125,000,000;
- (p) Liens on assets of Excluded Subsidiaries securing Indebtedness incurred by Excluded Subsidiaries; provided that such security interests secure Indebtedness that is permitted by Section 6.01;
- (q) any customary encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any joint venture or similar customary arrangement pursuant to any joint venture or similar agreement;

(r) Liens on Receivables Assets incurred in connection with Permitted Factoring Transactions and Permitted Receivables Facilities (including Liens on such Receivables Assets resulting from precautionary UCC, Australian PPSA or Canadian PPSA filings or from recharacterization or any such with Permitted Factoring Transactions or Permitted Receivables Facilities as a financing or a loan);

(s) rights reserved to or vested in any Governmental Authority to control or regulate, or obligations or duties to any Governmental Authority with respect to (i) the use of any real property or vessel, or (ii) any right, power, franchise, grant, license, or permit, including present or future zoning laws, building codes and ordinances, zoning restrictions, or other laws and ordinances restricting the occupancy, use, or enjoyment of real property or vessel;

(t) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with the Parent Borrower or any Subsidiary (and not created in connection with or in anticipation or contemplation thereof) to the extent such Liens secure Acquired Indebtedness permitted under Section 6.01(m); provided, that such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements and attachments thereon, accessions thereto and proceeds thereof);

(u) Liens securing Indebtedness permitted under Section 6.01(l) on cash collateral or arising from a backstop letter of credit arrangement to the extent permitted hereunder;

(v) Liens on cash collateral securing standalone letters of credit permitted pursuant to Section 6.01(t);

(w) Liens on cash and Cash Equivalents (and on the related escrow accounts or similar accounts, if any) required to be paid to the lessors (or lenders to such lessors) under leases in the ordinary course of business or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;

(x) exclusive licenses of Intellectual Property in effect on the Effective Date, which are more fully described on, and granted pursuant to the agreements identified on, Schedule 6.14, in each case, so long as such licenses are limited in time and geography and are entered into on an arm's length basis;

(y) Liens encumbering deposits made to secure obligations arising from statutory or regulatory requirements of that Person or its Subsidiaries; and

(z) Liens secured in favor of counterparties to Swap Agreements permitted under Section 6.01(n); provided that, subject to Schedule 5.16, any such Liens on the Collateral shall be subordinated to the Liens of the Administrative Agent under the Security Documents pursuant to a customary intercreditor agreement that is reasonably acceptable to the Administrative Agent.

Notwithstanding the foregoing, (i) during the Specified Post-Closing Period, for purposes of this Section 6.02, each direct or indirect Foreign Subsidiary of Parent Borrower described as a "Guarantor" on Schedule 3.13 hereto shall be deemed to be a "Loan Party" and (ii) no Lien on

the Collateral (other than (x) Liens securing the Obligations and (y) Liens of the type described in clauses (a), (b), (f), (i), (l) or (o) of the definition of Permitted Encumbrances which do not secure Indebtedness for borrowed money and arise and have priority over the Administrative Agent's Liens solely as a matter of law) will be permitted to be senior to or pari passu with the Liens of the Administrative Agent on the Collateral securing the Obligations.

### Section 6.03 Fundamental Changes.

(a) Each Loan Party will not, and will not permit any Subsidiary to, (x) enter into a Division, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge or amalgamate into or consolidate with it, (y) otherwise Dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:

(i) any Subsidiary of the Parent may be merged, consolidated or amalgamated with or into the Parent Borrower (provided that the Parent Borrower shall be the continuing or surviving corporation) or with or into any other Subsidiary (provided, that when any U.S. Loan Party is merging, consolidating or amalgamating with or into another Subsidiary, such U.S. Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall, substantially simultaneously with such merger, amalgamation or consolidation, become a U.S. Loan Party, and when any Foreign Loan Party is merging or amalgamating with or into another Subsidiary (other than a Domestic Subsidiary which is addressed above), such Foreign Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall, substantially simultaneously with such merger, amalgamation or consolidation, become a Foreign Loan Party; provided further that, in the event that such merger, amalgamation or consolidation involves one or more Loan Parties and the parties thereto are organized in different jurisdictions, the Parent Borrower shall provide evidence in form and substance reasonably satisfactory to the Administrative Agent that the security interest in the Collateral granted to the Administrative Agent remains in full force and effect);

(ii) any Subsidiary may merge, consolidate or amalgamate with any other Person (other than the Parent) in order to effect an Investment permitted pursuant to Section 6.04; provided that (x) the Borrower must be the continuing or surviving Person of any such merger, consolidation or amalgamation to which it is a party, (y) if such Subsidiary is a U.S. Loan Party the continuing or surviving Person shall be a U.S. Loan Party and (z) unless clause (y) applies, if such Subsidiary is a Foreign Loan Party the continuing or surviving Person shall be a Foreign Loan Party; provided, further, that, in the event that such merger, amalgamation or consolidation involves one or more Loan Parties and the parties thereto are organized in different jurisdictions, the Parent Borrower shall provide evidence in form and substance reasonably satisfactory to the Administrative Agent that the security interest in the Collateral granted to the Administrative Agent remains in full force and effect;

(iii) any Excluded Subsidiary may Dispose of its assets to any Loan Party (other than the Parent) or to any other Excluded Subsidiary;

(iv) any Subsidiary of the Parent may Dispose of any or all of its assets (i) to any Borrower or any Subsidiary that is a Guarantor (upon voluntary liquidation or otherwise) or (ii) pursuant to a Disposition permitted by Section 6.09;

(v) any Loan Party may Dispose of its assets to any other Loan Party (other than the Parent);

(vi) subject to compliance with Section 6.04(d), any Loan Party may Dispose of its assets in order to effect any Investment permitted under Section 6.04(d);

(vii) any Subsidiary may liquidate or dissolve if the Parent Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Parent Borrower and its Subsidiaries (taken as a whole) and is not materially disadvantageous to the Lenders; and

(viii) any Subsidiary may consummate a Division as the Dividing Person if, immediately upon the consummation of the Division, all the assets of the applicable Dividing Person are held by one or more Subsidiaries at such time; provided that, if the applicable Dividing Person is a Loan Party, all of the assets of such Dividing Person shall be held by one or more Loan Parties at such time; and

provided that any such merger, consolidation or amalgamation involving a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation shall not be permitted unless also permitted by Section 6.04.

(b) Each Loan Party will not, and will not permit any of its Subsidiaries to, engage to any material extent in any material line of business substantially different from those lines of businesses conducted or proposed to be conducted by the Parent and its Subsidiaries on the Effective Date and businesses substantially related or incidental thereto.

Notwithstanding the foregoing, during the Specified Post-Closing Period, for purposes of this Section 6.03, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Loan Party”.

Section 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. Each Loan Party will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger or amalgamation with any Person that was not a Wholly Owned Subsidiary prior to such merger or amalgamation) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or assets constituting a division, business line or business unit of any other Person, or make any capital contributions to any other Person, or make any investment in any other Person pursuant to the Division of any Person that was not a Wholly Owned Subsidiary prior to such Division, or make an investment in the form of any other

items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP (the foregoing activities are collectively referred to herein as “Investments”), except:

- (a) Investments in cash and Cash Equivalents;
- (b) (i) Investments by the Parent existing on the Effective Date in the Equity Interests of its Subsidiaries; and (ii) Investments in existence, contemplated or made pursuant to binding commitments in effect on the Effective Date and identified on Schedule 6.04(b)(ii);
- (c) (i) Investments made by the Parent or any Subsidiary in any Loan Party (other than the Parent) and (ii) Investments by Excluded Subsidiaries in other Excluded Subsidiaries;
- (d) Investments made by any Loan Party in any Excluded Subsidiary, provided that the aggregate amount of such Investments at any time outstanding shall not exceed the greater of (i) \$85,000,000 and (ii) 5.0% of the Total Assets at such time;
- (e) Investments (other than Investments in any Excluded Subsidiary or any joint venture) in an aggregate amount at any time outstanding not to exceed the greater of (i) \$45,000,000 and (ii) 2.5% of the Total Assets at such time;
- (f) intercompany Investments in connection with reorganization activities and other activities related to tax planning, provided that, after giving effect to any such activities, the Liens of the Lenders in the Collateral, taken as a whole, would not be impaired in any material respect;
- (g) Investments received in settlement of debts, claims or disputes owed to any Borrower or any Subsidiary that arose out of transactions in the ordinary course of business;
- (h) advances and extensions of credit in the nature of accounts receivable arising from the sale or lease of goods or services or the licensing of property in the ordinary course of business;
- (i) Investments made by any Borrower or any Subsidiary in the Parent to the extent permitted to be made as a Restricted Payment by Section 6.05(a);
- (j) Investments in joint ventures made after the Amendment No. 3 Effective Date in an aggregate amount at any time outstanding not to exceed the greater of (i) \$75,000,000 and (ii) 4% of Total Assets;
- (k) Investments among Subsidiaries pursuant to any agreement or arrangement to provide ordinary course facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements;
- (l) Guarantees constituting Indebtedness permitted by Section 6.01 and guarantees by the Parent permitted by Section 6.12(c);

(m) so long as no Default or Event of Default then exists or would result therefrom, any Loan Party may make Investments (except in the Parent) and other acquisitions if the Loan Parties are in compliance with Section 6.10 on a Pro Forma Basis after giving effect to any such Investment or acquisition;

(n) Investments funded with (i) Equity Interests (other than Disqualified Equity Interests) of the Parent (or any parent company thereof) or (ii) so long as no Default or Event of Default then exists or would result therefrom, the Available Equity Amount at the time such Investment is made;

(o) Investments consisting of the non-exclusive licensing or sublicensing of any Intellectual Property pursuant to joint marketing, collaboration or other similar arrangements with other Persons in the ordinary course of business;

(p) advances up to an aggregate principal amount of \$500,000 per year to officers, directors and employees of the Parent and its Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;

(q) purchases or redemption of the Parent's or the Parent Borrower's Equity Interests to the extent permitted by Section 6.05(a);

(r) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss (including in connection with the bankruptcy or reorganization of such account debtors);

(s) to the extent constituting Investments, capital expenditures and Investments consisting of acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of Intellectual Property in the ordinary course of business;

(t) Investments representing all or a portion of the sales price for property sold to another Person in a transaction permitted under this Agreement;

(u) Investments in a Receivables Subsidiary in connection with a Permitted Receivables Facility and holding the Equity Interests in a Receivables Subsidiary; provided that the Loan Parties are in compliance with Section 6.10 on a Pro Forma Basis after giving effect to any such Investments;

(v) Investments of a Person existing at the time such Person is acquired, becomes a Subsidiary or is amalgamated, merged or consolidated with or into any Borrower or any Subsidiary after the Effective Date to the extent that such transaction was permitted under Section 6.03(a) and such Investments were not made in contemplation of or in connection with such acquisition, designation, redesignation, amalgamation, merger or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;



(w) Investments resulting from pledges and deposits under clauses (c), (d), (e) and (l) and of Permitted Encumbrances and Sections 6.02(v) and (x);

(x) Investments constituting non-cash consideration for Dispositions permitted under Section 6.09;

(y) Investments in connection with Swap Agreements permitted under Section 6.01;

(z) to the extent constituting Investments, transactions permitted under Section 6.02;

(aa) to the extent constituting Investments, transactions permitted under Section 6.03;

(bb) any liability arising under a declaration of joint and several liability (hoofdelijke aansprakelijkheid) as referred to in section 2:403 of the Dutch Civil Code (and any residual liability (overblijvende aansprakelijkheid) under such declaration arising pursuant to Article 2:404(2) Dutch Civil Code);

(cc) any joint and several liability (hoofdelijke aansprakelijkheid) under any fiscal unity for Dutch corporate income tax purposes.

For purposes of this Section 6.04, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but, except to the extent the Parent Borrower shall otherwise elect, deducted by the amount of any repayment, interest, return, profit, distribution, income or similar amount in respect of such Investment which has actually been received in cash or Cash Equivalents or has been converted into cash or Cash Equivalents.

Notwithstanding the foregoing, during the Specified Post-Closing Period, for purposes of this Section 6.04, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Loan Party”.

#### Section 6.05 Restricted Payments and Restricted Debt Payments.

(a) Each Loan Party will not, and will not permit any of their Subsidiaries to, declare or make any Restricted Payments with respect to the Parent or any of its Subsidiaries, except:

(i) (A) any Subsidiary of the Parent may make Restricted Payments to the Parent Borrower or to any direct or indirect Wholly Owned Subsidiary of the Parent Borrower that is a Loan Party, and (B) any non-Wholly Owned Subsidiary may make Restricted Payments to the Parent Borrower or any of its other Subsidiaries that are Loan Parties and to each other owner of Equity Interests of such Subsidiary ratably based on their relative ownership interests of the relevant class of Equity Interests;

(ii) the Parent or the Parent Borrower may declare and make dividends payable solely in the form of additional shares Qualified Equity Interests of the Parent or the Parent Borrower, as applicable;

(iii) the Parent Borrower may repurchase fractional shares of its Equity Interests (or Equity Interests of the Parent) arising out of stock dividends, splits or combinations, business combinations or conversions of convertible securities or, so long as no Default or Event of Default then exists or would result therefrom, make cash settlement payments upon the exercise of warrants to purchase its Equity Interests (or Equity Interests of the Parent), or “net exercise” or “net share settle” warrants;

(iv) the Parent may redeem or otherwise cancel Qualified Equity Interests or rights in respect thereof granted to (or make payments on behalf of) directors, officers, employees or other providers of services to the Parent, the Parent Borrower and the Subsidiaries in an amount required to satisfy tax withholding obligations relating to the vesting, settlement or exercise of such Equity Interests or rights;

(v) the Parent and the Parent Borrower may make any Restricted Payment that has been declared by the Parent or the Parent Borrower, so long as (A) such Restricted Payment would be otherwise permitted under clause (ix) of this Section 6.05(a) at the time so declared (and shall be deemed to be a utilization of such capacity from and after such time) and (B) such Restricted Payment is made within 60 days of such declaration;

(vi) the Parent and the Borrower may make any repurchase (or deemed repurchase) of Equity Interests pursuant to any accelerated stock repurchase or similar agreement (each, an “**ASR Agreement**”) publicly announced by the Parent or the Borrower and specifying the maximum aggregate amount of the stock to be repurchased pursuant to such ASR Agreement (the “**Maximum ASR Amount**”); provided that, at the time such ASR Agreement is publicly announced, (A) no Default or Event of Default then exists or would result from giving Pro Forma Effect to the Maximum ASR Amount, and (B) the Loan Parties would be in compliance with Section 6.10 immediately after giving Pro Forma Effect to the Maximum ASR Amount;

(vii) so long as no Default or Event of Default then exists or would result therefrom, the Parent may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans or agreements for directors, management, employees or other eligible service providers of the Parent or its Subsidiaries, including the repurchase of Qualified Equity Interests or rights in respect thereof granted to directors, management, employees or other eligible service providers of the Parent or its Subsidiaries pursuant to a right of repurchase set forth in any such stock option plans or other benefit plans or agreements in connection with a cessation of service; provided that any such payments do not exceed \$10,000,000 in any fiscal year; provided further that cancellation of Indebtedness owing to the Parent or any of its Subsidiaries from directors, management, employees or other eligible service providers in connection with a repurchase of Qualified Equity Interests will not be deemed to constitute a Restricted Payment for purposes of this clause (vii);

(viii) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties may make Restricted Payments not otherwise permitted under this Section 6.05 in an amount equal to the Available Equity Amount at the time such Restricted Payments are made;

(ix) so long as no Default or Event of Default then exists or would result therefrom, the Parent and the Parent Borrower may make Restricted Payments not otherwise permitted under this Section 6.05(a) in an unlimited amount, in each case, so long as (A) if prior to the Trigger Date, Total Liquidity immediately after giving Pro Forma Effect to such Restricted Payment is greater than or equal to \$150,000,000, or (B) if on or after the Trigger Date, the Loan Parties would be in compliance with Section 6.10 immediately after giving Pro Forma Effect to such Restricted Payment and the Consolidated Leverage Ratio immediately after giving Pro Forma Effect to such Restricted Payment is less than or equal to 2.50:1.00; and

(x) the Parent Borrower may make and pay Restricted Payments to the Parent (and in the cases of clause (A) and clause (B), to the other equity owners of the Parent Borrower) to the extent referred to in the relevant portion of such respective clause), in each case without duplication and taking into account any Taxes already paid or withheld:

(A) (1) with respect to any taxable period ending after the Effective Date (x) for which the Parent Borrower and/or any of its Subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state or local income Tax purposes of which the Parent or any holding company of the Parent is the common parent, or (y) for which the Parent Borrower is a partnership or disregarded entity for U.S. federal income tax purposes that is wholly owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local income Tax purposes, in an amount not to exceed the amount of any U.S. federal, state and/or local income Taxes that the Parent Borrower and/or its Subsidiaries, as applicable, would have paid for such taxable period had the Parent Borrower and/or its Subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group and (2) such amounts as are needed to pay any amounts owed by the Parent under the Tax Receivable Agreement but which shall not include any amounts required to be paid due to a change of control or any early termination payments ; provided that distributions pursuant to clause (A)(1) in respect of an Excluded Subsidiary shall be permitted only to the extent that cash distributions were made by such Excluded Subsidiary to the Parent Borrower or any other Subsidiary that is a Loan Party for such purpose;

(B) (1) with respect to any taxable period ending after the Effective Date for which the Parent Borrower is a partnership or disregarded entity for U.S. federal income Tax purposes (other than a partnership or disregarded entity described in clause (x)(A)(1)(y) above), distributions to its equity owners in amounts not to exceed (x) the taxable income of the Parent Borrower and its Subsidiaries for such taxable year (as determined based on such assumptions as may be made by the managing member (or equivalent governing body) of the Parent Borrower, including, without limitation, not taking into account for this purpose for any such taxable period any adjustments under Sections 743(b) of the Code), multiplied by (y) the highest combined federal, state and local tax rates applicable to the income of individuals or corporations that are residents of New York, New York, whichever is higher and (2) if payments to the Parent pursuant to the foregoing clause (1) are not sufficient for the Parent to pay its income tax liabilities

and also the amounts owed by the Parent under the Tax Receivable Agreement, such additional amounts as are needed to pay any amounts owed by the Parent under the Tax Receivable Agreement but which shall not include any amounts required to be paid due to a change of control or any early termination payments; provided that no payment may be made pursuant to both this subclause (B) and subclause (A) of this clause (x) with respect to any period; provided that distributions in respect of an Excluded Subsidiary shall be permitted only to the extent that cash distributions were made by such Excluded Subsidiary to the Parent Borrower or any other Subsidiary that is a Loan Party for such purpose;

(C) the proceeds of which shall be used to allow the Parent to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and other professional costs and expenses), in each case, to the extent attributable to the ownership or operation of the Parent Borrower and its Subsidiaries, in an aggregate amount not to exceed \$25,000,000 in any twelve (12) month period;

(D) [reserved];

(E) the proceeds of which shall be used to allow the Parent to pay customary fees and expenses (other than to Affiliates) related to any equity issuance or offering or debt issuance, incurrence or offering, Disposition or acquisition or investment transaction permitted by this Agreement, whether or not consummated;

(F) the proceeds of which shall be used to pay (x) fees and expenses (including franchise, real and personal property Taxes, and excise or similar taxes) required to maintain its corporate existence or good standing under applicable law and (y) long term incentive plan awards, and indemnities provided on behalf of, directors, officers, members of management, employees and consultants of the Parent, to the extent such fees, expenses, salaries, bonuses, other benefits and indemnities are attributable to the ownership and operation of the Parent Borrower and its Subsidiaries;

(G) the proceeds of which shall be used to pay interest (but not principal) payments on the Parent Convertible Notes, so long as (x) no Default or Event of Default then exists or would result from the making of such Restricted Payment and (y) (1) if prior to the Trigger Date, Total Liquidity immediately after giving Pro Forma Effect to such Restricted Payment is greater than or equal to \$150,000,000, or (2) if on or after the Trigger Date, the Loan Parties would be in compliance with Section 6.10 immediately after giving Pro Forma Effect to such Restricted Payment and the Consolidated Leverage Ratio immediately after giving Pro Forma Effect to such Restricted Payment is less than or equal to 2.50:1.00; and

(H) the proceeds of which shall be used by the Parent to make payments and consummate other transactions otherwise contemplated to be Restricted Payments permitted to be made by the Parent Borrower for the purposes set forth in this Section

6.05(a) (and shall be deemed to be a utilization of such capacity from and after such time); and

(xi) the Parent Borrower may make Restricted Payments in accordance with Article 9 of the Third Amended and Restated Limited Liability Company Agreement of the Parent Borrower, so long as such Restricted Payments are funded with Qualified Equity Interests of the Parent or, so long as no Default or Event of Default then exists or would result therefrom, the Available Equity Amount at the time such Restricted Payments are made.

(b) Each Loan Party will not, and will not permit any of its Subsidiaries to, make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of or otherwise optionally or voluntarily defease or segregate funds with respect to any Parent Convertible Notes or any Junior Debt (any of the foregoing, a “**Restricted Debt Payment**”) other than:

(i) refinancings of Junior Debt with the proceeds of Permitted Refinancing Indebtedness permitted in respect thereof under Section 6.01;

(ii) the conversion of any Junior Debt into Qualified Equity Interests of the Parent;

(iii) prepayments of intercompany Junior Debt permitted hereunder owed by the Parent Borrower or any Subsidiary to the Parent Borrower or any Subsidiary in the ordinary course of business to the extent permitted under the Intercompany Subordination Agreement; provided that no prepayment of any Junior Debt owed by any Loan Party to any Subsidiary that is not a Loan Party shall be permitted so long as a Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iv) Restricted Debt Payments in respect of Junior Debt not otherwise permitted under this Section 6.05(b), so long as (A) no Default or Event of Default then exists or would result therefrom, and (B) (x) if prior to the Trigger Date, Total Liquidity immediately after giving Pro Forma Effect to such Restricted Debt Payment is greater than or equal to \$150,000,000, or (y) if on or after the Trigger Date, the Loan Parties would be in compliance with Section 6.10 immediately after giving Pro Forma Effect to such Restricted Debt Payment and the Consolidated Leverage Ratio immediately after giving Pro Forma Effect to such Restricted Debt Payment is less than or equal to 2.50:1.00;

(v) Restricted Debt Payments consisting of regularly scheduled principal and interest when due in respect of Junior Debt;

(vi) so long as no Default or Event of Default then exists or would result therefrom, the conversion of any Parent Convertible Notes into Qualified Equity Interests of the Parent;

(vii) so long as no Default or Event of Default then exists or would result therefrom, refinancings of Parent Convertible Notes with the proceeds of Permitted Refinancing

Indebtedness; provided that the Indebtedness constituting such Permitted Refinancing Indebtedness shall (A) be unsecured and issued by the Parent and structurally subordinated to the Obligations, (B) not be guaranteed by or otherwise recourse to the Parent Borrower or any of its Subsidiaries, and (C) contain terms which (x) are customary for similar types of Indebtedness at such time (as reasonably determined by the Parent) and (y) are not more restrictive on the Parent and its Subsidiaries than this Agreement and do not contain any financial maintenance covenants;

(viii) the Parent may make Restricted Debt Payments in respect of the Parent Convertible Notes not otherwise permitted under this Section 6.05(b) solely from internally generated cash flow of the Parent and its Subsidiaries (for the avoidance of doubt, not including proceeds of any Revolving Loans), so long as (x) no Default or Event of Default then exists or would result therefrom and (y) Total Liquidity immediately after giving Pro Forma Effect to such Restricted Debt Payment is greater than or equal to \$750,000,000; and

(ix) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties may make Restricted Debt Payments not otherwise permitted under this Section 6.05(b) in an amount equal to the Available Equity Amount at the time such Restricted Debt Payments are made.

Notwithstanding anything to the contrary contained in this Section 6.05(b), in no event shall any payment in respect of subordinated Indebtedness be permitted if such payment is in violation of the subordination provisions of such subordinated Indebtedness.

(c) Each Loan Party will not, and will not permit any of its Subsidiaries to, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Junior Debt or any Parent Convertible Notes (in each case, other than any such amendment, modification, waiver or other change that would not materially and adversely affect the interests of the Lenders so long as no Event of Default has occurred and is continuing or would result therefrom).

Notwithstanding the foregoing, during the Specified Post-Closing Period, for purposes of this Section 6.05, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Loan Party”.

Section 6.06 Restrictive Agreements. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Parent Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or other Equity Interests or to make or repay loans or advances to the Parent Borrower or any other Subsidiary or of any Loan Party to Guarantee Indebtedness of the Parent Borrower or any other Subsidiary under the Loan Documents; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Effective Date identified on Schedule 6.06 (or to any

extension or renewal of, or any amendment or modification not materially expanding the scope of, any such restrictions or conditions taken as a whole), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets of the Parent or any Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary or assets to be sold and such sale is not prohibited hereunder, (iv) the foregoing shall not apply to any agreement or restriction or condition in effect at the time any Subsidiary becomes a Subsidiary of the Parent, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Parent, (v) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, (vi) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (vii) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, subleases and sublicenses and other contracts, (viii) the foregoing shall not apply to restrictions or conditions set forth in any agreement governing Indebtedness not prohibited by Section 6.01; provided that such restrictions and conditions are customary for such type of Indebtedness, and (ix) the foregoing shall not apply to restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business.

Section 6.07 Transactions with Affiliates. Each Loan Party will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than between or among the Parent and its Subsidiaries to the extent otherwise permitted hereunder), except (a) on terms and conditions not less favorable to the Parent or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) payment of customary directors' fees, reasonable out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers or other employees of the Parent or any of its Subsidiaries, (c) transactions approved by a majority of the disinterested directors of the Parent's board of directors or the audit committee thereof, (d) any transaction involving amounts less than, in the aggregate, the greater of (i) \$45,000,000 and (ii) 3.0% of the Total Assets at such time, (e) any Restricted Payment permitted by Section 6.05(a), (f) Cash Pooling Arrangements to the extent permitted under Sections 6.01 and 6.04, and (g) the agreements listed on Schedule 6.07 hereto.

Section 6.08 Use of Proceeds. The Borrowers will not request any Borrowing or Letter of Credit, and the Borrowers shall not use, and shall procure that their Subsidiaries and their and their Subsidiaries' respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Without limiting the foregoing, the provisions of Section 6.08 shall not be

interpreted to contravene, or require any notification to the Attorney General of Canada under, the Foreign Extraterritorial Measures (United States) Order, 1992, the Foreign Extraterritorial Measures Act (Canada) or any other applicable law in effect in Canada from time to time, by any Canadian Loan Party.

Section 6.09 Disposition of Property. Each Loan Party will not, and will not permit any of its Subsidiaries to, Dispose of any of its property, whether now owned or hereafter acquired, in each case, except:

(a) Dispositions of obsolete or worn out property in the ordinary course of business or property that is no longer used or useful in the Parent's or its Subsidiaries' business and the leasing or subleasing in the ordinary course of business of owned or leased properties which are excess properties or are no longer used or useful in the Parent's or its Subsidiaries' businesses;

(b) the sale of inventory and other immaterial assets in the ordinary course of business;

(c) (i) Dispositions to a Loan Party (other than the Parent), (ii) Dispositions by an Excluded Subsidiary to any other Excluded Subsidiary, and (iii) Dispositions by a Loan Party to an Excluded Subsidiary that are otherwise permitted under Section 6.04;

(d) (i) Dispositions that constitute Investments that are permitted under Section 6.04, (ii) Dispositions that constitute Restricted Payments that are permitted under Section 6.05(a), and (iii) Dispositions that constitute Liens that are permitted under Section 6.02;

(e) any sale, contribution, assignment or other transfer of Receivables Assets to a Receivables Subsidiary in a Permitted Receivables Facility or to any other Person in a Permitted Factoring Transaction;

(f) Dispositions permitted by clause (iii), (iv) or (vi) of Section 6.03(a);

(g) the grant in the ordinary course of business of any non-exclusive licenses of Intellectual Property, to the extent they do not materially interfere with the operation of the business of the Parent and its Subsidiaries (taken as a whole);

(h) the lapse, abandonment, or other Dispositions of Intellectual Property of the Parent or any of its Subsidiaries that, in the good faith determination of the Parent or such Subsidiary, is no longer economically desirable to maintain or useful in the conduct of the business of the such Person;

(i) the sale or issuance of any Subsidiary's Equity Interests to the Parent Borrower or any Loan Party that is a Wholly Owned Subsidiary (provided if such Subsidiary is a Domestic Subsidiary, such sale or issuance shall be to a U.S. Loan Party);

(j) so long as no Default or Event of Default then exists or would result therefrom, the Disposition of other property having a fair market value not to exceed \$15,000,000 in the aggregate for each fiscal year of the Parent;



(k) Dispositions of other property or assets; provided that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default or Event of Default exists or would result therefrom), no Default or Event of Default then exists or would result from such Disposition, (ii) such Disposition is for fair market value as reasonably determined by the Parent Borrower, and (iii) if the fair market value exceeds \$10,000,000 in the aggregate, not less than 75% of the total consideration for the asset or property sold in such Disposition shall be in the form of cash or Cash Equivalents (with (A) any debt secured by such property assumed by the purchaser of such property, (B) any consideration received in the form of Indebtedness that is converted into cash within 90 days after the Disposition of such property, and (C) aggregate non-cash consideration received by the Parent or applicable Subsidiary having an aggregate fair market value (determined for all Dispositions as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed in the aggregate the greater of (i) \$45,000,000 and (ii) 3.0% of the Total Assets at such time, in each case deemed to be cash for purposes of this provision);

(l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements, drag-along rights, put rights, call rights or similar arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(m) Dispositions, terminations or non-renewals of leases or subleases or licensing or sublicensing agreements (i) the Disposition, termination or non-renewal of which will not materially interfere with the business of the Parent and its Subsidiaries or (ii) which relate to closed facilities or the discontinuation of any product line to the extent such closing or discontinuation is permitted pursuant to the terms herein, or (iii) is made in the ordinary course of business;

(n) Dispositions of cash, Cash Equivalents and short-term marketable securities;

(o) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(p) Disposition of receivables in connection with the compromise, settlement or collection thereof;

(q) any surrender or waiver of contractual rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind that occur in the ordinary course of the Parent's or any Subsidiary's business; and

(r) Dispositions consisting of the transfer of contracts from a Loan Party to another Loan Party (other than the Parent), from an Excluded Subsidiary to a Loan Party (other than the Parent), or from an Excluded Subsidiary to another Excluded Subsidiary.

Notwithstanding the foregoing, during the Specified Post-Closing Period, for purposes of this Section 6.09, each direct or indirect Foreign Subsidiary of Parent Borrower described as a “Guarantor” on Schedule 3.13 hereto shall be deemed to be a “Loan Party”.

Section 6.10 Financial Covenants. The Loan Parties will not, and will not permit any of their Subsidiaries to, permit:

- (a) from the Amendment No. 3 Effective Date through and including December 31, 2025, Total Liquidity at any time to be less than \$150,000,000;
- (b) from and after January 1, 2026, (i) Total Liquidity at any time to be less than \$100,000,000 or (ii) the Consolidated Leverage Ratio as of the last day of any Measurement Period to exceed 3.50:1.00; or
- (c) at each Guarantor Coverage Test Date, the Loan Parties and their Subsidiaries to fail to be in compliance with the Guarantor Coverage Test determined as of such date.

Section 6.11 Swap Agreements. Neither any Borrower nor any Guarantor will enter into any Swap Agreement for purely speculative purposes.

Section 6.12 Permitted Activities of Parent. The Parent shall not:

- (a) incur any Indebtedness for borrowed money other than (i) Guarantees of Indebtedness or other obligations of the Parent Borrower and/or any Subsidiary, which Indebtedness or other obligations are otherwise permitted hereunder, (ii) Indebtedness owed to the Parent Borrower or any Subsidiary otherwise permitted hereunder, and (iii) the Parent Convertible Notes, so long as, in the case of this clause (iii), at the time of the incurrence of such Indebtedness (x) no Default or Event of Default then exists or would result therefrom and (y) the Loan Parties shall be in compliance with Section 6.10 immediately after giving Pro Forma Effect to the issuance of such Parent Convertible Notes and the application the proceeds thereof;
- (b) create or suffer to exist any Lien on any property or asset now owned or hereafter acquired by it other than (i) the Liens created under the Security Documents and (ii) Liens of the type permitted under Section 6.02 (other than in respect of Indebtedness for borrowed money not referred to in clause (a)(i) or (a)(ii) of this Section 6.12); or
- (c) engage in any material business activity or own any material assets other than (i) holding the Equity Interests of the Parent Borrower, and, indirectly, any other Subsidiary of the Parent Borrower (and/or any joint venture of any thereof) or Indebtedness owing by, the Parent Borrower, (ii) performing its obligations under the Loan Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder; (iii) issuing its own Equity Interests (including, for the avoidance of doubt, the making of any dividend or distribution on account of, or any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of, any shares of any class of Equity Interest permitted hereunder) and the maintenance and administration of equity subscriptions, stock option and stock ownership plans and activities incidental thereto; (iv) filing tax reports and paying Taxes,

including tax distributions made pursuant to Section 6.05(a)(x) and other customary obligations in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable laws; (vii) effecting any public offering of its Equity Interests; (viii) holding (A) cash, Cash Equivalents and other assets received in connection with permitted distributions or dividends received from, or permitted Investments or permitted Dispositions made by, any of its subsidiaries or permitted contributions to the capital of, or proceeds from the issuance of Equity Interest of, the Parent pending the application thereof, or otherwise received and held so long as such other assets are not “operated” and (B) the proceeds of Indebtedness permitted by Section 6.01; (ix) providing indemnification for its officers, directors, members of management, employees and advisors or consultants and other ordinary course obligations; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under any document, agreement and/or investment contemplated by the Transactions or otherwise not prohibited under this Agreement, including the preparation of financial statements and other reporting obligations required under this Agreement; (xii) complying with applicable laws (including with respect to the maintenance of its corporate existence and activities incidental thereto); (xiii) financing activities, including the receipt and payment of dividends and distributions and the making of certain other Restricted Payments, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Parent Borrower and the Parent Borrower’s Subsidiaries to the extent permitted hereunder; (xiv) activities incidental to acquisitions permitted hereunder or similar investments consummated by the Parent Borrower and/or any Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or investments incidental to such acquisitions permitted hereunder or similar investments; (xv) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes related to such maintenance); (xvi) any transaction expressly permitted pursuant to clauses (a), (b) and/or (d) of this Section 6.12, (xvii) the obtainment of, and the payment of any fees and expenses for, management, consulting, investment banking and advisory services to the extent otherwise permitted under this Agreement, (xviii) entry into Permitted Bond Hedge Transactions and Permitted Warrant Transactions, (xix) participation and the making of payments under the Tax Receivable Agreement, and (xx) activities incidental or reasonably related to any of the foregoing; or

(d) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise transfer all or substantially all of its assets to, any Person; provided that, so long as no Default or Event of Default exists or would result therefrom, the Parent may consolidate or amalgamate with, or merge with or into, any other Person (other than the Parent Borrower and any of its Subsidiaries) so long as (i) the Parent is the continuing or surviving Person or (ii) if the Person formed by or surviving any such consolidation, amalgamation or merger is not the Parent, (x) (A) the successor Person expressly assumes all obligations of the Parent under this Agreement and the other Loan Documents to which the Parent is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent and (B) the successor Person will be a Person organized or existing under the laws of the United States of America, any State of the United States or the District of Columbia or any territory

thereto, and (y) the Administrative Agent shall have received all documentation and other information required by regulatory authorities with respect to the successor Person under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the USA Patriot Act and the Proceeds of Crime Act, reasonably requested by the Lenders.

Section 6.13 Canadian Defined Benefit Plans. The Parent will not, and will not permit any of its Subsidiaries to, maintain, administer, contribute to or have any liability in respect of any Canadian Defined Benefit Plan or acquire an interest in a Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of any Canadian Defined Benefit Plan, in each case without the prior written consent of the Administrative Agent.

Section 6.14 Material Intellectual Property. Notwithstanding anything herein to the contrary, (a) no Subsidiary of the Parent incorporated or organized in a Covered Jurisdiction that owns or has an exclusive license to any Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole) (or that owns Equity Interests of any Subsidiary of the Parent which Subsidiary owns or has an exclusive license to Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole)) may constitute an Excluded Subsidiary, and (b) no Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole) (nor any Equity Interests of any Subsidiary of the Parent that owns or has an exclusive license to Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole)) may be transferred from, or contributed by, the Parent or any of its Subsidiaries to, or exclusively licensed by, (i) any Excluded Subsidiary or any other Subsidiary that is not a Loan Party, or (ii) any other Person that is an Affiliate of a Loan Party or an Affiliate of any Permitted Holder which Person is not also a Loan Party unless, in the case of this clause (ii), no Default or Event of Default then exists or would result therefrom and (A) such transfer is made on an arm’s length basis and the consideration paid or payable shall be in cash and in an amount not less than the fair market value of the Intellectual Property transferred, contributed or exclusively licensed, as the case may be or (B) such transfer is set forth on Schedule 6.14.

Section 6.15 No Flowback to Switzerland. No part of the proceeds of any Loan shall be used in a manner which would constitute a “use of proceeds in Switzerland” (*Mittelverwendung in der Schweiz*), as interpreted by the Swiss tax authorities for purposes of Swiss Withholding Tax, unless and until a written confirmation (e.g., a countersigned tax ruling) is obtained from the Swiss Federal Tax Administration confirming that such use of proceeds in Switzerland does not trigger Swiss Withholding Tax consequences.

## **ARTICLE 7 EVENTS OF DEFAULT**

Section 7.01 Events of Default. If any of the following events (each, an “**Event of Default**”) shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and

payable and in the Agreed Currency required hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under any of the Loan Documents, when and as the same shall become due and payable and in the Agreed Currency required hereunder, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party in this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), Section 5.03 (solely with respect to the Parent's or any Borrower's existence), Section 5.10, Section 5.16 or in Article 6;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any of the Loan Documents (other than those specified in clause (a), (b) or (d) of this Article of this Agreement), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrowers;

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) and such failure shall have continued after the applicable notice or cure period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both, but with all applicable grace periods in respect of such event or condition under the documentation representing such Material Indebtedness having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (w) any requirement to, or any offer, to repurchase, prepay or redeem Indebtedness of a Person acquired in an acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such acquisition, so long as such requirement is satisfied at the time of such acquisition, (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (y) any redemption, repurchase, conversion or settlement with respect to any convertible debt instrument including the Parent Convertible Notes (including any termination of any related Swap

Agreement) pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (z) an early payment requirement, unwinding or termination with respect to any Swap Agreement except (i) an early payment, unwinding or termination that results from a default or non-compliance thereunder by any Loan Party or any Subsidiary, or another event of the type that would constitute an Event of Default or (ii) an early termination of such Swap Agreement by the counterparty thereto;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) administration, liquidation, reorganization (by way of a voluntary arrangement, scheme or arrangement or otherwise), examinership, rescue process, judiciary management, or other relief in respect of any Loan Party or any Subsidiary or of a substantial part of its assets, under any Debtor Relief Law, (ii) the appointment of a receiver, interim receiver, liquidator, receiver and manager, administrative receiver, judicial manager, provisional liquidator, provisional supervisor, compulsory manager, trustee, monitor, custodian, administrative receiver, compulsory or interim manager, sequestrator, conservator, Australian Controller examiner, process advisor, restructuring official (*herstructureringsdeskundige*), observer (*observator*), administrator (*bewindvoerder*), silent administrator (*beoogd bewindvoerder*), or similar official for any Loan Party or any Subsidiary or for a substantial part of its assets and, in any such case, and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered, (iii) a suspension of payments, or (iv) a moratorium of any indebtedness;

(i) any Loan Party or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking administration, liquidation, reorganization (by way of a voluntary arrangement, scheme or arrangement or otherwise), examinership, rescue process, judiciary management or other relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of an administrator, receiver, interim receiver, liquidator, receiver and manager, administrative receiver, judicial manager, provisional liquidator, provisional supervisor, compulsory manager, trustee, monitor, custodian, administrative receiver, compulsory or interim manager, sequestrator, conservator, Australian Controller, examiner, process advisor, restructuring official (*herstructureringsdeskundige*), observer (*observator*), administrator (*bewindvoerder*), silent administrator (*beoogd bewindvoerder*) or similar official for any Loan Party or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) file a declaration under article 370(3) of the Dutch Bankruptcy Act (*Faillissementswet*), or files a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*), (vii) a suspension of payments, (viii) a moratorium of any indebtedness or (ix) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary shall become unable and admit in writing its inability or fail generally to pay its debts as they become due;

(k) any Loan Party or any Subsidiary incorporated or established in Germany is (i) unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of section 17 of the German Insolvency Code (*Insolvenzordnung*) or (ii) overindebted within the meaning of section 19 of the German Insolvency Code (*Insolvenzordnung*);

(l) one or more judgments for the payment of money in excess of \$25,000,000 in the aggregate shall be rendered against any Loan Party, any Subsidiary or any combination thereof (to the extent not paid or covered by a reputable and solvent independent third-party insurance company which has not disputed coverage) and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary to enforce any such judgment and such action shall not be stayed;

(m) one or more ERISA Events or Canadian Pension Events shall have occurred that would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, or a Lien (choate or inchoate) arises in connection with any Canadian Pension Plan (save for contribution amounts not yet due);

(n) a Change in Control shall occur;

(o) the guarantee contained in Article 9 shall cease, for any reason, to be in full force and effect or any Loan Party or any Subsidiary shall so assert, except the release thereof as provided in Section 10.17;

(p) any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the obligations hereunder or thereunder, ceases to be in full force and effect thereto; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Lien created by any of the Security Documents shall cease to be enforceable on a material portion of the Collateral and of the same effect and priority (subject to Liens permitted by Section 6.02) to be created thereby for any reason other than as expressly permitted hereunder or satisfaction in full in cash of all the Obligations; or

(q) a Loan Party is declared by the Minister for Finance of Singapore to be a company to which Part 9 of the Companies Act 1967 of Singapore applies;

then, and in every such event (other than an event with respect to any Borrower described in clause (h) or (i) of this Article and subject to Section 7.02), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrowers, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) Cash Collateralize any outstanding Letters of Credit and (iii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so

declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party; and in case of any event with respect to any Loan Party described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party.

#### Section 7.02 Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.01, but subject to Sections 7.02(b), 7.02(c) and 7.02(d), for the purpose of determining whether an Event of Default resulting from a failure to comply with Section 6.10(b)(ii) as of the last day of any fiscal quarter has occurred, the Borrowers may on one or more occasions, during the period from the commencement of the relevant fiscal quarter through the Cure Expiration Date (as defined below), designate any portion of the net cash proceeds from a sale or issuance of Equity Interests of Parent (which, in turn, will be contributed in cash to the common equity capital of the Parent Borrower) or the Parent Borrower or of any cash contribution to the equity capital of Parent (which, in turn, will be contributed in cash to the common equity capital of the Parent Borrower) or the Parent Borrower (the “**Cure Right**”), and upon the receipt by the Parent Borrower of such cash (the “**Cure Amount**”), pursuant to the exercise by the Borrowers of such Cure Right, as an increase to Consolidated EBITDA for the applicable fiscal quarter; provided that (i) such amounts to be designated are actually received by the Parent Borrower on or prior to the fifteenth Business Day after the date on which a certificate is or is required to be delivered pursuant to Section 5.01(c) with respect to such applicable fiscal quarter (the “**Cure Expiration Date**”), (ii) such amounts to be designated do not exceed the minimum aggregate amount necessary to cure any Event of Default resulting from a failure to comply with Section 6.10(b)(ii), as applicable, as of such date and (iii) the Borrowers shall have provided written notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent such notice is provided in advance of delivery of a certificate pursuant to Section 5.01(c) for the applicable period, the amount of such net cash proceeds that is designated as the Cure Amount may be lower than the amount specified in such notice to the extent that the amount actually necessary to cure any Event of Default resulting from a failure to comply with Section 6.10(b)(ii) is less than the full amount of such originally designated amount). The Cure Amount used to increase Consolidated EBITDA for the applicable fiscal quarter shall be used and included when calculating Consolidated EBITDA for each period that includes such fiscal quarter. The parties hereby acknowledge that the Cure Amount (1) may not be relied on for purposes of calculating Consolidated EBITDA other than as applicable to Section 6.10(b)(ii) (and shall not be included in Consolidated EBITDA for any other purposes (including determining any financial ratio-based conditions or basket amounts)) and (2) shall not result in any adjustment to any amounts (including the amount of Indebtedness or Total Liquidity) or increase in cash with respect to the fiscal quarter with respect to which such Cure Amount was



made. Notwithstanding anything to the contrary contained in Section 7.01, (A) upon designation of the Cure Amount by the Borrowers, to the extent applicable, Section 6.10(b)(ii) shall be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with Section 6.10(b)(ii), and any Event of Default resulting from a failure to comply with Section 6.10(b)(ii) (and any other Default as a result thereof) shall be deemed not to have occurred for purposes of the Loan Documents, and (B) neither the Administrative Agent nor any Lender may exercise any rights or remedies under this Agreement or any other Loan Document on the basis of any actual or purported Event of Default resulting from a failure to comply with Section 6.10(b)(ii) (and any other Default as a result thereof) with respect to the applicable period until and unless the Cure Expiration Date has occurred without the Cure Amount having been received by the Parent Borrower in at least the amount required to cure the applicable Event of Default, in which case such Event of Default shall be reinstated as though the Borrowers had not designated such Cure Amount. For the avoidance of doubt, no portion of any Cure Amount may be used to make a Restricted Payment.

(b) In each period of four consecutive fiscal quarters there shall be at least two fiscal quarters in which no cure set forth in Section 7.02(a) is made.

(c) The cure rights set forth in Section 7.02(a) may not be exercised with respect to more than four fiscal quarters during the term of this Agreement.

(d) Notwithstanding anything herein to the contrary, upon the designation of any Cure Amount until the receipt by the Parent Borrower thereof in an amount sufficient to cure the relevant Event of Default, the Borrowers shall not be permitted to request (and none of the Administrative Agent, the Lenders or the Issuing Banks shall be obligated to extend any Commitments or issue any Letters of Credit, as applicable) any Commitments (including any issuance or extension (including automatic renewals) of any Letter of Credit).

(e) To the extent a fiscal quarter in respect of which a Cure Amount for an Event of Default resulting from a failure to comply with Section 6.10(b)(ii) is received (such fiscal quarter a “**Cure Quarter**”) is included in the calculation of Consolidated EBITDA for a subsequent fiscal period, the Consolidated EBITDA attributable solely to such Cure Quarter shall be deemed permanently increased by such amount for purposes of calculating Consolidated EBITDA (without duplication) for a subsequent fiscal period including such Cure Quarter; provided, that the Cure Amount shall be included in the calculation of Consolidated EBITDA solely for the purpose of determining compliance with the financial covenant contained in Section 6.10(b)(ii) and not for any other purposes.

Section 7.03 Application of Proceeds. Any proceeds of Collateral of any Loan Party received by the Administrative Agent (i) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct or (ii) at any other time, not constituting (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower Representative), or (B) a mandatory prepayment (which shall be applied in accordance with Section 2.08(d)), shall (subject to the provisions of Section 10.21) be applied, as follows: (1) ratably first, to pay any fees, indemnities, or expense reimbursements then owing to the Administrative Agent and any

Issuing Bank from, or guaranteed by, such Loan Party under the Loan Documents (other than in connection with Specified Cash Management Agreements or Specified Swap Agreements); (2) second, to pay any fees or expense reimbursements then owing to the Lenders from, or guaranteed by, such Loan Party under the Loan Documents (other than in connection with Specified Cash Management Agreements or Specified Swap Agreements); (3) third, to pay interest due in respect of the Protective Advances owing by or guaranteed by such Loan Party; (4) fourth, to pay the principal of the Protective Advances owing by or guaranteed by such Loan Party; (5) fifth, to pay interest then due and payable on the Loans (other than the Protective Advances) and unreimbursed LC Disbursements, in each case owing or guaranteed by such Loan Party, ratably; (6) sixth, ratably, to pay principal on the Loans (other than the Protective Advances), to pay unreimbursed LC Disbursements owing or guaranteed by such Loan Party, to pay an amount to the Administrative Agent equal to 103% of the aggregate undrawn available balance of all outstanding Letters of Credit (105% of the aggregate undrawn available balance of any Letters of Credit denominated in a currency other than Dollars) issued on behalf of, or guaranteed by, such Loan Party, to be held as Cash Collateral for such Obligations, and to pay any amounts owing with respect to Obligations under any Specified Cash Management Agreements and Specified Swap Agreements owing or guaranteed by such Loan Party to any Person that is a currently Lender or an Affiliate of a Lender at such time, (7) seventh, to the payment of any amounts owing with respect to Obligations under any Specified Swap Agreements owing or guaranteed by such Loan Party to any other Approved Counterparty, ratably; (8) eighth, to the payment of any other Obligations owing to the Administrative Agent or any Lender by, or guaranteed by, such Loan Party, ratably, and (9) ninth, any balance remaining after the Obligations shall have been paid in full and no Letters of Credit shall be outstanding (other than Letters of Credit which have been Cash Collateralized in accordance with the foregoing) shall be paid over to the applicable Loan Party at its account designated for such purpose by written notice by such Loan Party to the Administrative Agent or to whomsoever else may be lawfully entitled to receive the same. The application of any payment pursuant to this Section 7.03 shall be made first, to ABR Loans and second, to Term Benchmark Loans and RFR Loans. Each of the Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations to maximize realization of the Collateral (it being understood that, notwithstanding the foregoing, in no event shall be payments be made pursuant to levels “seventh” or “eighth” above prior to the payment in full of all obligations described in levels “first” through “sixth” above). Notwithstanding the foregoing, no amount received from any Loan Party shall be applied to any Excluded Swap Obligation of such Loan Party.

## **ARTICLE 8 THE AGENTS**

Section 8.01 Appointment of Administrative Agent. Citibank, N.A. is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Citibank, N.A. to act as Administrative Agent in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article 8 are solely for the benefit of the Agents and Lenders and no Loan

Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Loan Party or any of its Subsidiaries. As of the Amendment No. 3 Effective Date, none of the Arrangers in such capacity shall have any obligations but shall be entitled to all benefits of this Article 8. The Arrangers may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrowers.

Section 8.02 Powers and Duties. Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein. For the avoidance of doubt, nothing in any Loan Document shall be construed so as to constitute an obligation of the Administrative Agent to perform any services which it would not be entitled to render pursuant to the provisions of the German Act on Rendering Legal Services (*Rechtsdienstleistungsgesetz*) or pursuant to the provisions of the German Tax Advisory Act (*Steuerberatungsgesetz*) or any other services that require an express official approval, licence or registration, unless the Administrative Agent holds the required approval, licence or registration.

Section 8.03 General Immunity.

(a) No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Loan Party to any Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans, the Revolving Credit

Exposures, the Total Revolving Extensions of Credit or the component amounts thereof or any Dollar Equivalent.

(b) No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.02) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Parent and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.02).

(c) The Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 8.03 and of Section 8.06 shall apply to any the Affiliates of the Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 8.03 and of Section 8.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such

rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 8.04 Administrative Agent Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Loan Parties or any of their respective Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Loan Parties or such Affiliates, as applicable, for services in connection herewith and otherwise without having to account for the same to Lenders.

Section 8.05 Lenders’ Representations, Warranties and Acknowledgment.

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Parent and its Subsidiaries in connection with Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Parent and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, an Assignment and Assumption or a Lender Joinder Agreement and funding its Loans on or after the Effective Date or by the funding of any New Loans, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Issuing Bank or Lender, as applicable on the Effective Date or as of the date of funding of such New Loans.

(c) The respective obligations of the Lenders under this Agreement are several and not joint and no Lender shall be responsible for the failure of any other Lender to satisfy its obligations hereunder.

Section 8.06 Right to Indemnity. Each Lender, in proportion to its Applicable Percentage, severally agrees to indemnify each Agent, to the extent that such Agent shall not

have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Applicable Percentage thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

Section 8.07 Successor Administrative Agent. The Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and the Borrowers. The Administrative Agent shall have the right to appoint a financial institution to act as the Administrative Agent hereunder, subject to the reasonable satisfaction of (i) except if an Event of Default has occurred and is continuing, the Parent Borrower and (ii) the Required Lenders, and the Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by the Parent Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, in consultation with the Parent Borrower, to appoint a successor Administrative Agent. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums held under the Loan Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the Loan Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided

above in this Article). After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 8 and Section 10.03 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

Section 8.08 Guaranty and Security Documents.

(a) Each Lender hereby further authorizes the Administrative Agent, on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty and the Loan Documents. Subject to Section 10.02, without further written consent or authorization from any Lender, the Administrative Agent may execute any documents or instruments necessary to release any Guarantor from the Guaranty pursuant to Section 10.17 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.02) have otherwise consented.

(b) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, the Administrative Agent and each Lender hereby agree that no Lender shall have any right individually to enforce the Guaranty or the Security Documents, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent, for the benefit of the Secured Parties, in accordance with the terms hereof and thereof.

(c) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) have been paid in full in cash and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw (or shall be otherwise Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), upon request of the Borrowers, the Administrative Agent shall take such actions as shall be required to release all guarantee obligations provided for in and Liens created by any Loan Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation, judicial management or reorganization of any Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, interim receiver, intervenor or conservator of, or trustee, monitor, examiner, process advisor, judicial manager or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(d) Without limiting the powers of the Administrative Agent, for the purposes of holding any Lien which may now or in the future be required to be granted by any Loan Party pursuant to the laws of the Province of Quebec to secure the prompt payment and performance of any and all Obligations, each Secured Party hereby irrevocably appoints and authorizes the Administrative Agent and, to the extent necessary, ratifies the appointment and authorization of the Administrative Agent, to act as the hypothecary representative of the present and future

Secured Parties as contemplated under Article 2692 of the Civil Code of Quebec (in such capacity, the “**Hypothecary Representative**”), and to enter into, to take and to hold on their

(e) behalf, and for their benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Hypothecary Representative under any related deed of hypothec and applicable laws (with the power to delegate any such rights or duties). The Hypothecary Representative shall (i) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Administrative Agent pursuant to any such deed of hypothec and applicable laws, and (ii) benefit from and be subject to all provisions hereof with respect to the Administrative Agent *mutatis mutandis*, including all such provisions with respect to the liability or responsibility to and indemnification by the Secured Parties and the Loan Parties. Any person who becomes a Secured Party shall, by its execution of an Assignment and Assumption, be deemed to have consented to and confirmed the Administrative Agent as the Hypothecary Representative holding the aforesaid hypothecs as aforesaid and to have ratified, as of the date it becomes a Secured Party, all actions taken by the Hypothecary Representative. The substitution of the Administrative Agent pursuant to the provisions of this Article 8 also constitutes the substitution of the Hypothecary Representative as aforesaid.

Section 8.09 Withholding Taxes. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 8.10 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule’s disclosure requirements for entities representing more than one creditor;



(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under Sections 2.09 and 10.03 allowed in such judicial proceeding); and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, assignee, trustee, monitor, liquidator, administrative receiver, compulsory or interim manager, sequestrator, Australian Controller, examiner, process advisor, judicial manager or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 10.03. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 10.03 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or the Issuing Banks may be entitled to receive in such proceeding whether in liquidation, judicial management or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### Section 8.11 Acknowledgment of Lenders and Issuing Banks.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient (and each of their respective successors and assigns), a “**Payment Recipient**”) that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a

payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 8.11 and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank, Secured Party or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.11(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 8.11(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 8.11(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Parent Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrowers or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrowers shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 8.11 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrowers or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or Secured Party, to the rights and interests of such Lender, Issuing Bank or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (provided that the Loan Parties’ Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 8.11 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Section 8.12 Authorization of the Administrative Agent under German Law.

For the purposes of any German Security, in addition to the provisions set out in this Article 8, the specific provisions set out in paragraph (a) through (h) below of this Section 8.12 shall be applicable. With respect to German Security, in the case of any inconsistency, the provisions set forth in this Section 8.12 shall prevail.

(a) Each of the Lenders and each Issuing Bank hereby appoints the Administrative Agent as trustee (*Treuhänder*) and administrator for the purpose of accepting and administering the German Security Documents for and on behalf of the Secured Parties and the Administrative Agent hereby accepts such appointment on the terms subject to the conditions set out in this Section 8.12.

(b) Subject to German law, with respect to any German Security which is a land charge, security assigned or transferred (*Sicherungseigentum/Sicherungsabtretung/Sicherungsgrundschuld*) or otherwise constituted by non-accessory (*nicht akzessorische*) security interests, the Administrative Agent shall hold, administer and, as the case may be, enforce or release such German Security in its own name, but for the account and as trustee (*Treuhänder*) of the Secured Parties.

(c) Subject to German law, the Administrative Agent shall administer and (subject to the same having become enforceable and to the terms of this Agreement) realise any German Security which is pledged (*Verpfändung*) to it and/or the Secured Parties (or any of them) under an accessory security right (*akzessorische Sicherheit*) for the benefit of the Secured Parties.

(d) If and when acting in its capacity as creditor of the Parallel Debt, the Administrative Agent shall hold:

(i) any German Security which is created in favour of the Administrative Agent as creditor of the Parallel Debt by way of a pledge (*Verpfändung*) or any other German law accessory security right (*akzessorische Sicherheit*);

(ii) any proceeds of such German Security; and

(iii) the benefit of this paragraph (c) and of the Parallel Debt,

as creditor in its own right but (also) for the benefit of the (other) Secured Parties in accordance with this Agreement.

(e) With regard to any Security Document creating any accessory (*akzessorische*) German Security and for the purposes of entering into any such Security Document, performing

the rights and obligations thereunder, amending, enforcing and/or releasing such Security Document, each Secured Party hereby instructs and authorizes the Administrative Agent to act as its agent (*Stellvertreter*), and releases the Administrative Agent from the restrictions imposed by Section 181 German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case (i) with the right of sub-delegation and the right to release the sub-delegates from the restrictions of such Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law and (ii) limited to the extent legally possible to such Secured Party. A Secured Party which is barred by its constitutional documents or bylaws from granting such exemption shall notify the Administrative Agent accordingly.

(f) At the request of the Administrative Agent, each Secured Party shall provide the Administrative Agent with a separate written power of attorney (*Spezialvollmacht*) for the purposes of executing any relevant agreements and documents on their behalf. Each Secured Party hereby ratifies and approves all acts previously done by the Administrative Agent on such Secured Party's behalf.

(g) The Administrative Agent accepts its appointment as agent and administrator of the German Security on the terms and subject to the conditions set out in this Agreement and the Secured Parties (other than the Administrative Agent), the Administrative Agent and all other parties to this Agreement agree that, in relation to the German Security, no Secured Party (other than the Administrative Agent) shall exercise any independent power to enforce any German Security or take any other action in relation to the enforcement of the German Security, or make or receive any declarations in relation thereto.

(h) Each Secured Party (other than the Administrative Agent) hereby instructs the Administrative Agent (with the right of sub-delegation and the right to release the sub-delegates from the restrictions of such Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law) to enter into any documents evidencing German Security and to make and accept all declarations and take all actions it considers necessary or useful in connection with any German Security on behalf of such Secured Party (other than the Administrative Agent). The Administrative Agent shall further be entitled to rescind, release, amend and/or execute new and different documents representing/relating to the German Security.

(i) If and to the extent that the Administrative Agent has already made any statements or declarations or taken any other actions (including, but not limited to, the granting of sub-powers of attorney (including any indemnifications, waivers and consents on behalf of each Secured Party as reasonably agreed upon by the Administrative Agent) and the release of any sub-representatives from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law) which fall within the scope of this Section 8.12, such statements, declarations and actions are hereby ratified and approved (*genehmigt*).

(j) It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by paragraph (a) above, the

relationship of the Secured Parties to the Administrative Agent in relation to any German Security shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Section 8.12 shall have full force and effect between the parties hereto.

Section 8.13 Appointment of Australian Security Trustee; Australian Security Trust Deed.

(a) Each Secured Party hereby, upon the execution, and in accordance with the terms, of the Australian Security Trust Deed, appoints Australian Security Trustee under the terms of the Australian Security Trust Deed to act as its trustee under and in relation to the Australian Security Documents and to hold the assets subject to the security created under the Australian Security Trust deed as trustee for the Secured Parties on trust and on the terms contained in the Australian Security Documents and each Secured Party authorizes the Australian Security Trustee under the terms of the Australian Security Trust Deed to exercise such rights, remedies, powers and discretions as are specifically delegated to Australian Security Trustee by the terms of the Australian Security Documents, together with all such rights, remedies, powers and discretions as are incidental thereto and Australian Security Trustee hereby accepts such appointment.

(b) Each Secured Party hereby:

(i) acknowledges that they are aware of, and consent to, the terms of the Australian Security Trust Deed;

(ii) agrees to comply with and be bound by the Australian Security Trust Deed as a Beneficiary (as that term is defined in the Australian Security Trust Deed);

(iii) acknowledges that it has received a copy of the Australian Security Trust Deed together with the other information which it has required in connection with the Australian Security Trust Deed and this Agreement;

(iv) without limiting the general application of paragraph (i) above:

(1) acknowledges and agrees that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with the Australian Security Documents; and

(2) provides the indemnities as specified in the Australian Security Trust Deed; and

(v) without limiting the general application of paragraph (i) above, for consideration received,

(1) irrevocably appoints as its attorney each person who under the terms of the Australian Security Trust Deed is appointed an attorney of a

Beneficiary (as defined in the Australian Security Trust Deed) on the same terms and for the same purposes as contained in the Australian Security Trust Deed; and

(2) irrevocably appoints the Australian Security Trustee as its nominee for the purposes of Section 153 of the Australian PPSA and authorizes the Australian Security Trustee to act on its behalf, in connection with a registration (in accordance with the Australian PPSA) of any Lien in favor of the Secured Party under a Loan Document.

(c) This Section is executed in favor of the Australian Security Trustee and each Beneficiary (as defined in the Australian Security Trust Deed) from time to time. The law of New South Wales governs this Section and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia in relation to this Section.

Section 8.14 Rights and remedies of Australian Security Trustee.

(a) In this Agreement, any rights and remedies exercisable by, any documents to be delivered to, or any other indemnities or obligations in favor of the Administrative Agent shall be, as the case may be, exercisable by, delivered to, or be indemnities or other obligations in favor of the Administrative Agent (or any other Person acting in such capacity) in its capacity as Australian Security Trustee to the extent that the rights, remedies, deliveries, indemnities or other obligations relate to, the Australian Subsidiary Guarantors, the Australian Security Documents or the security thereby created. Any obligations of the Administrative Agent (or any other Person acting in such capacity) in this Agreement shall be obligations of the Administrative Agent in its capacity as Australian Security Trustee or the security thereby created to the extent that such obligations relate to the Australian Security Documents or the security thereby created. Additionally, in its capacity as Australian Security Trustee, the Administrative Agent (or any other Person acting in such capacity) shall have:

(i) all the rights, remedies and benefits in favor of the Administrative Agent contained in the provisions of the whole of this Section 8 and Section 7;

(ii) all the powers of an absolute owner of the security constituted by the Australian Security Documents; and

(iii) all the rights, remedies and powers granted to it and be subject to all the obligations and duties owned by it under the Australian Security Documents.

Section 8.15 Administrative Agent regarding Swiss Security Documents.

(a) With regard to Swiss Security Documents, the Administrative Agent shall:

(i) hold and administer any non-accessory Liens (*nicht-akzessorische Sicherheiten*) created under or pursuant to the Swiss Security Documents in its own name but on a fiduciary basis for itself and for the benefit of the other Secured Parties; and



(ii) hold and administer any accessory Liens (*akzessorische Sicherheiten*) created under or pursuant to the Swiss Security Documents in its own name and as direct representative (*direkter Stellvertreter*) in the name and on behalf of the other Secured Parties.

(b) Each Secured Party (other than the Administrative Agent) hereby appoints the Administrative Agent as its direct representative (*direkter Stellvertreter*) and authorizes the Administrative Agent (whether or not by or through employees or agents):

(i) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Administrative Agent under Swiss Security Documents together with such powers and discretions as are reasonably incidental thereto;

(ii) to take such action on its behalf as may from time to time be authorized under or in accordance with the Swiss Security Documents; and

(iii) to accept, hold, administer, realize, enter into and execute as its direct representative (*direkter Stellvertreter*) any right of pledge (*Pfandrecht*) or other accessory Lien granted in favour of such Secured Party in connection with the Loan Documents and to agree to and execute in its name and on its behalf as its direct representative (*direkter Stellvertreter*) any amendments, confirmations and/or alterations to any Swiss Security Document which creates a pledge or any other accessory Lien (*akzessorische Sicherheit*) including the release or confirmation of release of such Lien.

(c) Each Secured Party which becomes a party to this Agreement after the date hereof ratifies and approves all acts, statements and declarations previously made by the Administrative Agent on behalf of such Secured Party in relation to the acceptance or creation of any right of pledge (*Pfandrecht*) or other accessory Lien (*akzessorische Sicherheit*) granted or expressed to be granted to such Lender under or pursuant to such Swiss Security Document.

#### Section 8.16 Authorization of the Administrative Agent under Taiwan Law.

For the purposes of any Taiwan security and Collateral, in addition to the provisions set out in this Article 8, the specific provisions set out in paragraph (a) through (b) below of this Section 8.16 shall be applicable. With respect to Taiwan security and Collateral, in the case of any inconsistency, the provisions set forth in this Section 8.16 shall prevail.

(a) In connection with any Taiwan security and Collateral being granted, or being expressed to be granted, over assets in Taiwan and/or expressed to be governed by the laws of the Republic of China (Taiwan) from time to time, the parties to this Agreement hereby agree that each of the Lenders shall be deemed a creditor jointly and severally with each other with respect to their rights and claims hereunder and the other Loan Documents against any Taiwan Guarantor pursuant to Article 283 of the Civil Code of the Republic of China (Taiwan) and shall be entitled to pursue all such claims against any Taiwan Guarantor, and that the security interests with respect to the Taiwan security and Collateral shall be created in favour of the Lenders as joint and several creditors and for the joint and several benefit of the Secured Parties; provided, however, that, each Lender and other Secured Party agrees not to claim or enforce such rights

(insofar as they relate to the Taiwan security and Collateral) unilaterally but shall exercise and enforce the Lenders' and Secured Parties' rights arising out of the Loan Documents (insofar as they relate to the Taiwan security and Collateral) in accordance with the Loan Documents and share among themselves any risks and benefits in relation thereto as provided under this Agreement. For the avoidance of doubt, the parties to this Agreement hereby agree that any new party which becomes a Lender or a Secured Party shall accede to this Agreement and each of the Taiwan Security Documents to become a joint and several creditor with the other Lenders and Secured Parties.

(b) It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by paragraph (a) above, the relationship of the Secured Parties to the Administrative Agent in relation to any Taiwan Security shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Section 8.16 shall have full force and effect between the parties hereto.

## **ARTICLE 9 GUARANTY**

### Section 9.01 Guaranty.

(a) Each Guarantor hereby irrevocably and unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the Obligations of each Person other than such Guarantor. Each Guarantor further agrees that the due and punctual payment of the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension or renewal of any Obligation.

(b) To the maximum extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from and protest to any Person of any of the Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Lender to assert any claim or demand or to enforce any right or remedy against any Person under the provisions of this Agreement, any other Loan Document, any Specified Swap Agreement or otherwise; (ii) any extension or renewal of any of the Obligations; (iii) any rescission, waiver, amendment or modification of, or release from, any of the terms or provisions of this Agreement or any other Loan Document or any Specified Swap Agreement or other agreement; (iv) the failure or delay of any Lender to exercise any right or remedy against any other guarantor of the Obligations; (v) the failure of any Lender to assert any claim or demand or to enforce any remedy under any Loan Document or any Specified Swap Agreement or any other agreement or instrument; (vi) any default, failure or delay, willful or otherwise, in the performance of the Obligations; or (vii) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of such Guarantor or otherwise operate as a discharge of such Guarantor as a matter of law or equity or which would impair or eliminate any right of any Guarantor to reimbursement or subrogation (other than payment in full of the Obligations (excluding contingent obligations as to which no claim has been made) or release pursuant to

Section 10.17). Each Guarantor acknowledges that it has the ability to keep itself informed about the creditworthiness of each Borrower and every other Guarantor, and about the condition, extent, and value of the Collateral, and agrees that neither the Administrative Agent nor any Lender has any obligation to disclose to the Guarantor any fact about such Borrower, other Guarantor, or Collateral that might vary the Guarantor's risk in connection with the guaranty hereunder.

(c) Each Guarantor further agrees that its guarantee hereunder constitutes a promise of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by any Lender or any Issuing Bank to any balance of any deposit account or credit on the books of any Lender or any Issuing Bank in favor of any Loan Party or any Subsidiary or any other Person.

(d) Except for the release or termination of a Guarantor's obligations hereunder as provided in Section 10.17, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason other than the payment in full in cash of the Obligations (excluding contingent obligations as to which no claim has been made), and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of the Obligations, any impossibility in the performance of the Obligations or otherwise.

(e) Each Guarantor further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Lender upon the bankruptcy or reorganization of any Loan Party or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Lender may have at law or in equity against any Guarantor by virtue hereof, upon the failure of any Person to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Administrative Agent, forthwith pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Lenders in cash an amount equal to the unpaid principal amount of such Obligation.

(g) Notwithstanding anything to the contrary in this Agreement, each Guarantor shall be liable under this Agreement only for amounts aggregating up to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provision of any other applicable law.

(h) Upon payment in full by any Guarantor of any Obligation of any Person, each Lender and Issuing Bank shall, in a reasonable manner, assign to such Guarantor the amount of such Obligation owed to such Lender or Issuing Bank and so paid, such assignment to be *pro tanto* to the extent to which the Obligation in question was discharged by such Guarantor, or make such disposition thereof as such Guarantor shall direct (all without recourse to any Lender or Issuing Bank and without any representation or warranty by any Lender or Issuing Bank).

Upon payment by any Guarantor of any sums as provided above, all rights of such Guarantor against such Person arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior payment in full of all the Obligations owed to the Lenders and Issuing Banks (it being understood that, after the discharge of all the Obligations owing to the Lenders and Issuing Banks, such rights may be exercised by such Guarantor notwithstanding that the Loan Parties may remain contingently liable for indemnity or other Obligations).

(i) Each Qualified Keepwell Provider hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of such Loan Party's obligations under this guarantee in respect of any obligation to pay or perform under any Swap Agreement (a "**Swap Obligation**") (provided, however, that each Qualified Keepwell Provider shall only be liable under this Section 9.01(i) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 9.01(i), or otherwise under this guarantee, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified Keepwell Provider under this Section 9.01(i) shall remain in full force and effect until termination of this Agreement. A "**Qualified Keepwell Provider**" means, in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or otherwise constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" with respect to such Swap Obligation at such time by entering into a keepwell or guarantee pursuant to Section 1a(18)(A)(v)(II) of the Commodity Exchange Act. Each Qualified Keepwell Provider intends that this Section 9.01(i) constitute, and this Section 9.01(i) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

#### Section 9.02 Additional Agreements.

(a) Until the Commitments have expired or terminated and all Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), each Guarantor covenants and agrees with the Administrative Agent for the benefit of the Secured Parties that it will be bound by each of the covenants contained herein to the extent applicable to such Guarantor.

(b) Each Guarantor hereby agrees that upon the occurrence of any Event of Default, any Indebtedness of any Borrower or any other Guarantor now or hereafter owing to it, whether heretofore, now or hereafter created (the "**Guaranty Subordinated Debt**"), is hereby subordinated to all of the Obligations under this Agreement and the Notes, and that, except as expressly permitted by this Agreement, the Guaranty Subordinated Debt shall not be paid in

whole or in part until such Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank) and this Agreement is terminated and of no further force or effect. No Guarantor shall accept any payment of or on account of any Guaranty Subordinated Debt at any time in contravention of the foregoing. Upon the occurrence and during the continuance of an Event of Default, any applicable Borrower and any applicable Guarantor shall pay to the Administrative Agent any payment of all or any part of the Guaranty Subordinated Debt and any amount so paid to the Administrative Agent shall be applied to payment of the Obligations as provided herein. Each payment on the Guaranty Subordinated Debt received in violation of any of the provisions hereof shall be deemed to have been received by the Guarantors as trustee for the Administrative Agent and the Lenders and shall be paid over to the Administrative Agent immediately on account of the Obligations, but without otherwise affecting in any manner the Guarantors' liability under this Agreement. Each Guarantor agrees to file all claims against any applicable Borrower or any applicable Guarantor in any bankruptcy or other proceeding in which the filing of claims is required by law in respect of any Guaranty Subordinated Debt, and the Administrative Agent shall be entitled to all of such Guarantor's rights thereunder. If for any reason any Guarantor fails to file such claim at least ten (10) Business Days prior to the last date on which such claim should be filed, such Guarantor hereby irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact and is hereby authorized to act as attorney-in-fact in such Guarantor's name to file such claim or, in the Administrative Agent's discretion, to assign such claim to and cause proof of claim to be filed in the name of the Administrative Agent or its nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Administrative Agent the full amount payable on the claim in the proceeding, and, to the full extent necessary for that purpose, each Guarantor hereby assigns to the Administrative Agent all of such Guarantor's rights to any payments or distributions to which such Guarantor otherwise would be entitled. If the amount so paid is greater than such Guarantor's liability hereunder, the Administrative Agent shall pay the excess amount to the party entitled thereto.

Section 9.03 Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any Lender will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 9.04 Guarantor Notices. All communications and notices to any Guarantor shall be given to it in care of the Parent Borrower as provided in Section 10.01.

Section 9.05 Termination. The Guarantees set forth in this Article 9 shall terminate when all the Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or

deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), and the Lenders have no further commitment to lend and the Issuing Banks has no further obligation to issue Letters of Credit.

Section 9.06 [Reserved].

Section 9.07 Additional Guarantors. It is understood and agreed that any Subsidiary of the Parent that is required to execute a counterpart of, or joinder to, this Agreement after the Effective Date pursuant to Section 5.11 shall become a Guarantor hereunder by (x) executing and delivering a guaranty supplement in the form of Exhibit E hereto and delivering the same to the Administrative Agent and (y) taking all actions as specified in this Agreement as would have been taken by such Guarantor had it been an original party to this Agreement, in each case with all documents and actions required to be taken above to be taken to the reasonable satisfaction of the Administrative Agent.

Section 9.08 Article 9 Severability. In the event any one or more of the provisions contained in this Article 9 should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Article 9 shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 9.09 Guaranty Limitation of the German Guarantors.

(a) Notwithstanding anything to the contrary in this Agreement, the Secured Parties agree not to enforce the guarantee against a Guarantor incorporated in Germany as a limited liability company (*GmbH*) (a “**German GmbH Guarantor**”), or as a limited partnership (*Kommanditgesellschaft*) with a limited liability company as sole general partner (*GmbH & Co. KG*) (the “**German GmbH & Co. KG Guarantor**”, together with any German GmbH Guarantor hereinafter referred to as a “**German Guarantor**”) if and to the extent that such Guarantee secures liabilities of direct or indirect shareholders of the German Guarantor or Subsidiaries of such shareholders (other than the German Guarantor and the German Guarantor’s Subsidiaries) and if and to the extent that such enforcement would:

- (i) reduce the German Guarantor’s net assets (*Nettovermögen*) (the “**Net Assets**”) to an amount less than its stated share capital (*Stammkapital*), or
- (ii) (if its Net Assets are already lower than its stated share capital) cause such amount to be further reduced,
- (iii) and thereby lead to the situation in which the German Guarantor’s assets which are required for the preservation of its stated share capital according to sections 30, 31 of the German Limited Liability Companies Act (*GmbHG*) are affected (each a “**Limitation Event**” or a “**Capital Impairment**”).

(b) The value of the Net Assets shall only take into account the sum of the values of the assets of the German Guarantor that are equivalent to those items listed in section 266 subsection (2) A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch*) less the German Guarantor's liabilities (the calculation of which shall only take into account the items listed in accordance with section 266 subsection (3) B, C (but, for the avoidance of doubt, disregarding any guarantee obligations to the extent that this is required in order to avoid a "double counting" of the effect of the actual enforcement of the Guarantee on the balance sheet of the German Guarantor for purposes of this paragraph (b)), D and E of the German Commercial Code (*Handelsgesetzbuch*)), in each case in accordance with the accounting principles consistently applied by the German Guarantor. For the purposes of the calculation of the Net Assets the following balance sheet items shall be adjusted as follows:

(i) the amount of any increase of the stated share capital after the Amendment No. 3 Effective Date (aa) that has been effected without the prior written consent of the Administrative Agent (acting on behalf of the Required Lenders) and (bb) that has been effected out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) shall be deducted from the stated share capital;

(ii) in case the registered share capital of the German Guarantor is not fully paid up (*nicht voll eingezahlt*), the amount which is not paid up shall be deducted from the relevant registered share capital (*Stammkapital*) to the extent that the not fully paid up amount is not shown as an asset in the balance sheet;

(iii) the amount of any loans and other contractual liabilities incurred in violation of the provisions of this Agreement shall be deducted from the company's liabilities; and

(iv) loans provided to the German Guarantor vis-à-vis any member of the Group or a Holding Company and other liabilities shall be disregarded to the extent such loans are, or would be, subordinated (including, for the avoidance of doubt, pursuant to section 39 subsection 1, no. 5 and/or subsection 2 of the German Insolvency Code (InsO)) to any financial indebtedness outstanding under this Agreement (including indebtedness in respect of guarantees for financial indebtedness which is so subordinated).

(c) In addition, in the event of enforcement of the Guarantee, the German Guarantor shall, within three months after a written request of the Administrative Agent, realize (including, if appropriate, by sale-and-lease-back), to the extent legally permitted any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the assets if, as a result of the enforcement of the guarantee, a Limitation Event would occur, unless the asset is indispensable for the German Guarantor's business (*betriebsnotwendig*). The Parent shall ensure that the person realizing the asset will, prior to such realization, assign its claim for the purchase price or other proceeds from the realisation to the Administrative Agent for security purposes (*Sicherungsabtretung*). After the expiry of the three-month period, the German Guarantor shall, within three Business Days, (i) notify the Administrative Agent of the amount of the net proceeds obtained from the relevant sale or other disposition by means of which the conversion into cash was effected and (ii) submit to the

Administrative Agent an updated Auditors' Determination (as defined in paragraph (g) below) in relation to the German Guarantor itself, taking into account such proceeds. Any such updated Auditors' Determination shall supersede that Auditors' Determination previously applicable for the limitations of the enforcement of the guarantee obligations.

(d) If the German Guarantor does not notify the Administrative Agent in writing that a Capital Impairment or a Liquidity Impairment (as defined in paragraph (i) below) would occur (setting out in reasonable detail to what extent a Capital Impairment or a Liquidity Impairment would occur) (the "**Management Notification**") within thirty (30) Business Days after the Administrative Agent notified such German Guarantor of its intention to demand payment under the Guarantee, then the restrictions set out in paragraph (a) above shall not apply, provided that the Administrative Agent shall (acting on the instructions of the Required Lenders) in any event be entitled to enforce the Guarantee for any amounts where such enforcement would, in accordance with the Management Notification, not cause a Capital Impairment or a Liquidity Impairment.

(e) Following the Administrative Agent's receipt of the Management Notification, any further enforcement of the guarantee (i.e. any enforcement to which the Administrative Agent is not already entitled pursuant to paragraph (d) above) shall be excluded pursuant to paragraph (a) above for a period of no more than thirty (30) Business Days only.

(f) If, upon the Administrative Agent's request, the Administrative Agent receives within such thirty (30) Business Day period the Auditors' Determination, the enforcement of the Guarantee shall be limited, if and to the extent such enforcement would, in accordance with the Auditors' Determination cause a Limitation Event or a Liquidity Impairment. The balance sheet and determination of the Net Assets shall be prepared in accordance with paragraph (b) above, taking into account the adjustments pursuant to paragraphs (b)(i), (b)(ii), (b)(iii), (b)(iv) and (b)(v) above.

(g) The determination by the auditors (as set forth above, the "**Auditors' Determination**") pertaining to the German Guarantor shall be up to date and in any event such Auditors' Determination shall have been prepared as of a date not earlier than 15 Business Days prior to the date of the enforcement of the guarantee. Should the German Guarantor fail to deliver such Auditors' Determination in the time period set out herein, the Administrative Agent shall be entitled to demand payment under the guarantee, without limitation.

(h) The limitation under paragraph (a) above does not apply if, at the time a demand or payment is made under this Agreement, (i) a domination agreement (*Beherrschungsvertrag*) is in force between the German Guarantor (with the German Guarantor as dominated entity) and the relevant Subsidiary or a holding company of the relevant Subsidiary (or an uninterrupted chain of domination agreements) is in force between the German Guarantor and the relevant obligor or a Holding Company of the relevant obligor (with the German Guarantor as dominated entity) whose obligations and liabilities are guaranteed, unless if and to the extent the payment under the guarantee or indemnity is not covered by a fully valuable counter-obligation vis-à-vis such Holding Company (*vollwertiger Gegenleistungsanspruch gegen die herrschende Gesellschaft gedeckt ist*), (ii) with respect to payments or transactions (*Leistungen*) that are



covered by a fully valuable counter-obligation vis-à-vis the relevant affiliate which claims are secured by the guarantee or indemnity (*die durch einen vollwertigen Gegenleistungs- oder Rückgewähranspruch gedeckt sind*), and (iii) the Administrative Agent demands payment under this Guaranty which relates to funds borrowed under a Loan Document which have been lent, on-lent or otherwise made available to the German Guarantor or any of its Subsidiaries and that are still outstanding.

(i) The enforcement of the guarantee and indemnity created hereunder against the German Guarantor shall be further excluded (*pactum de non petendo* it being understood, however, that the claims arising under such guarantee shall in all other aspects continue to exist due and payable both before and after the commencement of insolvency proceedings) to the extent that such enforcement would result in the German Guarantor becoming illiquid (*zahlungsunfähig*) (such situation hereinafter referred to as a “**Liquidity Impairment**”) and would for that reason constitute an unlawful payment within the meaning of paragraph 5 of section 15b of the German Insolvency Code (*Insolvenzordnung*) and therefore result in a personal liability of the directors of the German Guarantor.

(j) The Administrative Agent is not prevented from enforcing the guarantee due to the occurrence of a Liquidity Impairment if the German Guarantor does not make payments in accordance with the liquidity schedule referred to in paragraph (k) below or in accordance with any other payment schedule subsequently delivered to the Administrative Agent (on behalf of the Required Lenders).

(k) For the purpose of determination if and to which extent a payment under this Agreement would result in a Liquidity Impairment, the German Guarantor will deliver (within 30 days after receipt from the Administrative Agent of a notice stating that the Administrative Agent intends to demand payment under the guarantee) to the Administrative Agent:

(i) a liquidity status and a liquidity forecast for the next following 13 weeks together with a payment schedule showing at what times and in what instalments the German Guarantor will be able to make payments under this guarantee followed by weekly updates thereto;

(ii) evidence to the satisfaction of the Administrative Agent that all acceptable (*zumutbare*) measures have been taken or will promptly (*unverzüglich*) be taken in order to increase the German Guarantor’s liquidity, and

(iii) a confirmation by a firm of auditors of international standard and repute if and to which extent payment under this Agreement (taken into account payment by instalments) would result in a Liquidity Impairment.

(l) The limitations set out in paragraphs (a) and (i) above shall not apply:

(i) to any amounts due and payable under the Guarantee, which relate (A) to funds borrowed under a Loan Document which have been lent, on-lent or otherwise made available to the German Guarantor or any of its Subsidiaries and are still outstanding and (B) to

letters of credit or similar instruments to the extent issued for the benefit of the German Guarantor or any of its Subsidiaries and which are still outstanding, whereas the German Guarantor shall at any time upon the Administrative Agent's request produce evidence to the Administrative Agent (in form and substance satisfactory to the Administrative Agent acting reasonably) as to whether any monies borrowed under this Agreement have been on-lent or otherwise made available to it or any of its Subsidiaries; and

(ii) if and to the extent that, at the time of enforcement of the Guarantee, due to statutory law or according to case-law of the German Federal Court (*Bundesgerichtshof*), such limitations are not required to protect the managing directors of the German Guarantor from the risk of personal liability resulting from a violation of the German Guarantor's obligation to maintain its registered share capital due to the enforcement or from violation of obligations or similar provisions under the then applicable laws.

(m) The restrictions set out in this Section 9.09 do not affect the rights of the Secured Parties to claim any outstanding amount under the Guarantee again at a later point in time if and to the extent the restrictions set out in this Section 9.09 would allow such claim at that later point in time.

Section 9.10 Philippines Entities. It is understood and agreed that notwithstanding anything contrary in this Agreement, all references to the Guarantors under this Article 9 shall not include any Philippines Guarantors.

Section 9.11 Australian Ipso Facto provisions.

(a) Each Guarantor that is incorporated in Australia irrevocably and unconditionally jointly and severally undertakes with each Lender and the Administrative Agent that if an Ipso Facto Event has occurred, then immediately on demand that Guarantor shall pay all Obligations of the Borrowers as if it was the principal obligor.

(b) In this Section 9.11, 'Ipso Facto Event' means an Australian Loan Party is the subject of:

(i) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Australian Corporations Act; or

(ii) any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.

Section 9.12 Limitations for Swiss Loan Parties.

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the fulfilment of any obligation of, and the application of proceeds from the enforcement of any security interest or guarantee granted by, any Swiss Loan Party under this Agreement or under any other Loan Document to satisfy obligations of another Loan Party being

a direct or indirect parent company (up-stream liabilities) or sister company (cross-stream liabilities) of any of such Swiss Loan Party (i.e. other than obligations of any of that Swiss Loan Party's wholly-owned direct or indirect subsidiaries) where complying with such obligations would be restricted under then applicable Swiss corporate law (“**Swiss Restricted Obligations**”) shall be limited to the maximum amount of the Swiss Loan Party’s freely disposable equity at the time it becomes liable, as determined and permitted by applicable mandatory Swiss law at the time of fulfilment or enforcement (as the case may be) (“**Swiss Limitation**”).

(b) The Swiss Limitation shall not release any Swiss Loan Party from the fulfilment of its obligations or the application of enforcement proceeds in excess of the Swiss Limitation, but merely postpone the performance date thereof until such time as it is again permitted notwithstanding the Swiss Limitation and any and all indemnities, guarantees, subordination or other form of support of such Swiss Loan Party contained in any Loan Document shall be construed in a manner consistent with the provisions of this Section 9.12.

(c) Immediately after having been requested to perform the Swiss Restricted Obligations under this Agreement or under any other Loan Document, the Swiss Loan Party shall:

(i) perform any obligations which are not affected by the Swiss Limitation; and

(ii) in respect of any balance, if and to the extent requested by the Administrative Agent or required under then applicable Swiss law:

(A) provide the Administrative Agent with an interim balance sheet audited by the statutory auditors of the Swiss Loan Party setting out the maximum amount of the Swiss Limitation;

(B) take any further corporate and other action as may be required by the Administrative Agent (such as board and shareholder's approvals and the receipt of any confirmations from the Swiss Loan Party's statutory auditors) and other measures required to allow the Swiss Loan Party to make the payments agreed hereunder with a minimum of limitations; and

(C) immediately thereafter, pay up to the maximum amount of the Swiss Limitation to the Administrative Agent.

(d) Each Swiss Loan Party shall take all action and cause all action to be taken to enable the fulfilment of its obligations or the application of enforcement proceeds as soon as possible, in an amount as large as possible and with a minimum of limitations notwithstanding the Swiss Limitation. In particular, to the extent permitted by then applicable law and Swiss accounting standards and upon request by the Administrative Agent, each Swiss Loan Party shall:

(i) write up or sell any of its assets that are shown on its balance sheet with a book value that is significantly lower than the market value of the assets, in case of a sale, however, only if such assets are not necessary for the Swiss Loan Party's business (*nicht betriebsnotwendig*); and

(ii) reduce its share capital to the minimum allowed under then applicable law.

(e) To the extent that the fulfilment of any obligation or the application of proceeds from the enforcement of any security or guarantee to satisfy Swiss Restricted Obligations are subject to Swiss Withholding Tax, the Swiss Loan Party:

(i) shall:

(A) use its best efforts to procure that the fulfilment of such obligation or the application of such enforcement proceeds can be made without deduction of Swiss Withholding Tax by discharging the liability of such tax by notification pursuant to applicable law rather than payment of the tax;

(B) if the notification procedure pursuant to sub-paragraph (A) above does not apply, deduct the Swiss Withholding Tax at such rate (i) as in force from time to time or (ii) as provided by any applicable double tax treaties, from the respective amount to be paid and promptly pay any such Swiss Withholding Tax deducted to the Swiss Federal Tax Administration; and

(C) notify and provide the Administrative Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such Swiss Withholding Tax deducted has been paid to the Swiss Federal Tax Administration;

(ii) shall use its best efforts to procure that any person who is entitled to a full or partial refund of the Swiss Withholding Tax deducted pursuant to this paragraph (ii):

(A) requests a refund of the Swiss Withholding Tax under applicable law as soon as possible; and

(B) pays promptly to the Administrative Agent upon receipt any amount so refunded to cover any outstanding part of the Swiss Restricted Obligations;

(C) notwithstanding anything to the contrary in any Loan Document, shall not be required to gross up, indemnify or hold harmless any Lender or Issuing Bank for the deduction of Swiss Withholding Tax in an amount exceeding the Swiss Limitation, provided that this should not in any way limit any obligations of any other Loan Party under the Loan Documents to indemnify the Lenders and Issuing Banks in respect of the deduction of the Swiss Withholding Tax.

Section 9.13 Irish Law Guarantee Limitations.

(a) Notwithstanding anything to the contrary in this Agreement, and any other provisions in the Security Documents to the contrary, the guarantee obligations of any Guarantor incorporated under the laws of Ireland or having its registered office in Ireland under this Agreement and any Security Document shall be deemed not to have been undertaken or incurred to the extent that if they apply to a liability the same would constitute unlawful financial assistance within the meaning of Section 82 of the Irish Companies Act or would result in a breach of Section 239 of the Irish Companies Act.

## **ARTICLE 10 MISCELLANEOUS**

### Section 10.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing (including electronic communications) and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic communications, as follows:

(i) if to any Loan Party, in care of the Parent Borrower (including in its capacity as the Borrower Representative) at:

Fluence Energy, LLC  
4601 Fairfax Drive, Suite 600  
Arlington, VA 22203  
United States  
Attention: Ahmed Pasha and Jie Yuan  
Email: [Ahmed.pasha@fluenceenergy.com](mailto:Ahmed.pasha@fluenceenergy.com) and [Jie.Yuan@fluenceenergy.com](mailto:Jie.Yuan@fluenceenergy.com)

With copies (which shall not constitute notice) to:

McGuireWoods LLP  
201 N. Tryon Street  
Charlotte, NC 28202  
Attention: Kyle Luebke  
Email: [kluebke@mcguirewoods.com](mailto:kluebke@mcguirewoods.com)

(ii) if to the Administrative Agent, to it at:

Citibank, N.A.  
1 Penns Way, OPS 2/2  
  
New Castle, DE 19720  
Email: [usagencyservicing@citi.com](mailto:usagencyservicing@citi.com)

With copies (which shall not constitute notice) to:

Paul Hastings LLP  
695 Town Center Drive, Seventeenth Floor  
Costa Mesa, CA 92626  
Attention: Katherine Bell  
Email: katherinebell@paulhastings.com

- (iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.
- (iv) With respect to any Issuing Bank, at its address provided by notice to the other parties hereto.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Parent Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(d) The Loan Parties agree that the Administrative Agent may make the Communications (as defined below) available to the Lenders and the Issuing Banks by posting the Communications on Debt Domain, IntraLinks, Syndtrak, or another similar electronic system (the "**Platform**"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly

disclaim liability for errors or omissions in the communications effected thereby (the “**Communications**”). No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) be responsible or liable for damages arising from the unauthorized use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Agent Party (as determined in a final, non-appealable judgment by a court of competent jurisdiction).

#### Section 10.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Loan Party in any case shall entitle such Loan Party to any other or further notice or demand in similar or other circumstances. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.11(b) and (d), Section 10.02(c) and Section 10.02(d) below, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders or by the Loan Parties and the Administrative Agent with the consent of the Required Lenders; provided, however, that no such amendment, waiver or consent shall: (i) amend the definition of “Applicable Percentage” without the consent of each Lender, or extend or increase the Commitment of any Lender without the written consent of such Lender, or modify the definition of “Revolving Loan Cap” without the written consent of each Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby; provided, however, that notwithstanding clause (ii) or (iii) of this Section 10.02(b), only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrowers

to pay interest at the default rate set forth in Section 2.10(e), (iv) change Section 2.15(b), Section 2.15(c) or any other Section hereof providing for the ratable treatment of the Lenders (including, without limitation, the provisions providing for the ratable treatment of the Lenders set forth in Section 2.06(c) and Section 2.08(b)), in each case in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the Guarantors or the value of the Guaranty or release all or substantially all of the Collateral, without the written consent of each Lender, except to the extent the release of any Guarantor or the Collateral is permitted pursuant to Article 8 or Section 10.17 (in which case such release may be made by the Administrative Agent acting alone), (vi) change any of the provisions of this Section or the percentage referred to in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vii) subordinate all or any portion of the Administrative Agent’s Liens on all or any of the Collateral, or contractually subordinate all or any portion of the Obligations in right of payment or otherwise adversely affect the priority of payment of all or any portion of the Obligations, in each case without the written consent of each Lender, (viii) amend Section 7.03 without the written consent of the Administrative Agent and each Lender adversely affected thereby, (ix) amend the definition of “Alternative Currency” without the written consent of the Administrative Agent and each Lender adversely affected thereby, or (x) amend the Super-Priority Covenant without the written consent of the Supermajority Lenders. Notwithstanding anything to the contrary herein, no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or any Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank, as the case may be.

(c) This Agreement may be amended (i) as contemplated by Section 2.18 to effect New Commitments pursuant to a Lender Joinder Agreement with the consent only of the Administrative Agent, the Borrower Representative and the New Lenders providing New Commitments and (ii) as contemplated by the Agreed Security Principles with the consent only of the Administrative Agent, the Collateral Agent and the Borrower Representative to the extent necessary to reflect any requirements of applicable local laws in any relevant jurisdiction and to include guarantee limitations applicable to any Foreign Loan Party in accordance with the requirements of the Agreed Security Principles in each relevant jurisdiction. If the Administrative Agent and the Borrower Representative acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower Representative shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

(d) Except as provided in Section 5.11 or Section 9.07, no provision of Article 9 may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into between the Administrative Agent and each Guarantor with respect to which such waiver, amendment or modification is to apply, in accordance with this Section 10.02.



Section 10.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented fees, disbursements and other charges of one firm of primary counsel for all such Persons taken as a whole, one firm of local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons) in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, any other Loan Document or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) costs, expenses, Taxes, assessments and other charges incurred by the Administrative Agent or any Lender in connection with any filing, registration, recording, or perfection of any security interest contemplated by this Agreement, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iv) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including the fees, disbursements and other charges of one firm of primary counsel for all such Persons taken as a whole, one firm of local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons), in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Each Loan Party, jointly and severally, shall indemnify the Administrative Agent, the Arrangers, any Issuing Bank and each Lender, any Australian Controller appointed by the Australian Security Trustee, and each Related Party, successor or assign of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented out-of-pocket fees, charges and disbursements of one firm of primary counsel for all such Persons taken as a whole, one firm of local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty

counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons) for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned, leased or operated by the Parent or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Parent, the Parent Borrower or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available, (x) with respect to Taxes and amounts relating thereto (other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim), the indemnification for which shall be governed solely and exclusively by Section 2.14, (y) to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence, willful misconduct or material breach of the Loan Documents by such Indemnitee or (z) to the extent that such losses, claims, damages, liabilities or related expenses arise from any proceeding that does not involve the Parent, the Parent Borrower or any of their respective Affiliates and that is brought by an Indemnitee against any other Indemnitee, other than any proceeding against the Administrative Agent or any Arranger, in each case acting in such capacity.

(c) To the extent that any Loan Party fails to pay any amount required to be paid by it to the Administrative Agent or any Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent and the applicable Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or such Issuing Bank in their capacity as such; provided, further, that, notwithstanding anything to the contrary herein, no Lender shall be liable for any portion of any such unreimbursed expenses or indemnified loss, claim, damage, liability or related expense, as the case may be, of the Administrative Agent and/or the Issuing Banks (or, in each case, any Affiliate thereof) as a result

of the bad faith, gross negligence or willful misconduct of the relevant Person or Persons, as determined by a court of competent jurisdiction by a final or non-appealable judgment.

(d) Without limiting in any way the indemnification obligations of the Loan Parties pursuant to Section 10.03(b) or of the Lenders pursuant to Section 8.06, to the extent permitted by applicable law, each party hereto shall not assert, and hereby waives, any claim against any Indemnitee or any Loan Party or any of its Subsidiaries, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this clause (d) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

#### Section 10.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void), (ii) no Guarantor shall have the right to assign or transfer any of its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (but not to any Loan Party or an Affiliate thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its

Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Parent Borrower; provided that no consent of the Parent Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and *provided further* that the Parent Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, an Affiliate of a Lender, or an Approved Fund; and

(C) each Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or a greater amount that is an integral multiple of \$1,000,000) unless each of the Parent Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Parent Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, including, for greater certainty, such assigning Lender's obligation to make Loans and other extensions of credit available to all Borrowers in each Agreed Currency;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Parent, the Parent Borrower and their respective Affiliates or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws;

(E) no such assignment shall be made to (i) any Loan Party nor any Affiliate of a Loan Party, and (ii) any Defaulting Lender or any of its subsidiaries, or any Person, who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this subsection (E)(ii);

(F) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Parent Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs; and

(G) no assignment shall be made to any Disqualified Lender; provided that notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or potential Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.12, Section 2.13, Section 2.14 and Section 10.03);

provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and amounts (including interest) on the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive (absent manifest error), and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Loans (including principal and interest) are registered obligations and the right, title, and interest of any Lender or its assigns in and to such Loans shall be transferable only upon notation of such transfer in the Register.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04(b), Section 2.15(d) or Section 8.06, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, any Borrower or the Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (but not to any Loan Party, an Affiliate thereof or a Disqualified Lender) (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender

sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15(c), as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Sections 2.12 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant except to the extent such entitlement to receive a greater payment results from a Change in Law requiring a payment under Section 2.12 that occurs after the Participant acquired the applicable participation. Participants entitled to the benefits of Sections 2.12, 2.13 and 2.14 are entitled to such benefits subject to the requirements and limitations therein, including the requirements under Section 2.14(g) (it being understood that the documentation required under Section 2.14(g) shall be delivered to the participating Lender).

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (and, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.05 Survival. All covenants, agreements, representations and warranties made by any of the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement, the other Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding or subject to any pending draw and so long as the Commitments have not expired or terminated. The provisions of Section 2.12, Section 2.13, Section 2.14 and Section 10.03 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, the resignation of the Administrative Agent, the replacement of any Lender, or the termination of this Agreement or any provision hereof.

Section 10.06 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 10.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an “**Ancillary Document**”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Loan Document



and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) agrees that the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Person for any liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as a result of the failure of any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 10.07 Severability. Subject to Section 9.08, any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be

limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held by, and other obligations (in whatever currency) at any time owing by such Lender or Affiliate to or for the credit or the account of any Loan Party against any of and all the obligations of the Loan Parties now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the foregoing, to the extent prohibited by applicable law as described in the definition of “Excluded Swap Obligation,” no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

Section 10.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) Subject to Section 8.13, this Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Federal court of the United States of America sitting in New York County, Borough of Manhattan (or, in the event such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank

or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.10 Waiver Of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Confidentiality.

(a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below) and to not use the Information for any purpose except in connection with the Loan Documents, except that Information may be disclosed (i) to its and its Affiliates' directors, shareholders, officers, employees, controlling Persons, representatives and agents, including accountants, legal counsel and other professionals, experts or advisors or to any credit insurance provider relating to any Loan Party and its obligations, in each case whom it reasonably determines needs to know such information in connection with this Agreement and the transactions contemplated hereby and who are informed of the confidential nature of such Information and instructed to keep such Information confidential, (ii) to the extent requested by any regulatory authority, examiner regulating banks or banking, or other self-regulatory authority having oversight over the Administrative Agent, any Issuing Bank, any Lender or any of their respective Affiliates, (iii) pursuant to the order of

any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable laws or regulations or by any subpoena or similar legal process based on the advice of counsel (in which case the Administrative Agent, such Issuing Bank or such Lender, as applicable, agrees, to the extent practicable and not prohibited by applicable law and other than with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising routine examinations or regulatory authority, to inform the Borrowers promptly thereof), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or prospective Participant in, any of its rights or obligations under this Agreement, or (B) any actual or prospective counterparty (or its advisors) to any swap, derivative or securitization transaction relating to any Loan Party and its obligations, (vii) with the consent of the Parent Borrower, (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section, (B) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than the Borrowers or (C) is independently developed by the Administrative Agent, an Issuing Bank or a Lender without use of or reference to any such confidential information and otherwise without violating this Section 10.12, (ix) on a confidential basis to any rating agency in connection with rating any Borrower or any of its Subsidiaries or the Loans hereunder, (x) to the CUSIP bureau, solely to the extent such confidential information is necessary to obtain CUSIP numbers and in consultation with the Borrower Representative, or (xi) for purposes of establishing a “due diligence” defense. In addition, the Administrative Agent, the Issuing Banks and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the Issuing Banks and the Lenders in connection with the administration of this Agreement, the other Loan Documents, the Letters of Credit and the Loans. For the purposes of this Section, “**Information**” means all memoranda or other information received from or on behalf of any Loan Party or any of its Subsidiaries relating to any Loan Party or any Subsidiary or any of their respective business that is identified by the Borrowers as confidential, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any of its Subsidiaries. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 10.12(A) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE LOAN PARTIES AND THEIR AFFILIATES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE

PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY ANY LOAN PARTY OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE LOAN PARTIES AND THEIR AFFILIATES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE LOAN PARTIES AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 10.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.14 No Advisory or Fiduciary Responsibility. In connection with all aspects of each Transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Loan Parties acknowledge and agree, and acknowledge their respective Subsidiaries’ understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders are arm’s-length commercial transactions between the Loan Parties and their Affiliates, on the one hand, and the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders, on the other hand, (ii) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Loan Documents; (b) (i) each of the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Subsidiaries, or any other Person and (ii) neither the Administrative Agent, any Arranger, any Issuing Bank, nor any Lender has any obligation to any

Loan Party or any of its Affiliates with respect to the Transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders and their respective Affiliates may have economic interests that may conflict with those of the Loan Parties and their Affiliates and may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and neither the Administrative Agent, any Arranger, any Issuing Bank, nor any Lender has any obligation to disclose any of such interests to any Loan Party or its Affiliates. Each Loan Party, on behalf of itself and each of its Subsidiaries, agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, any Arranger, any Issuing Bank or any Lender, on the one hand, and any Loan Party, any of its Subsidiaries, or its stockholders or affiliates, on the other.

Section 10.15 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state or provincial laws based on the Uniform Electronic Transactions Act.

Section 10.16 USA Patriot Act. Each Lender and each Issuing Bank that is subject to the requirements of the USA Patriot Act hereby notifies each Borrower and each Guarantor that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Borrower and each Guarantor, which information includes the name and address of each Borrower and each Guarantor and other information that will allow such Lender or such Issuing Bank to identify each Borrower and each Guarantor in accordance with the USA Patriot Act. Each Borrower and each Guarantor shall, promptly following a request by the Administrative Agent, any Issuing Bank or any Lender, provide all documentation and other information that the Administrative Agent, such Issuing Bank or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act.

Section 10.17 Releases of Guarantors and Liens.

(a) In the event that (i) all the Equity Interests in any Guarantor (other than the Parent) are sold, transferred or otherwise disposed of to a Person (other than any Loan Party or its Subsidiaries) in a transaction permitted under this Agreement, or (ii) a Guarantor (other than the Parent) ceases to be a Subsidiary or becomes a non-Wholly Owned Subsidiary, in each case, as a result of a transaction permitted under this Agreement, in the case of this clause (ii), so long as such transaction is consummated to a bona fide third party that is not an Affiliate of any Loan Party, the consideration received for such transaction is at least fair market value and the primary purpose of such transaction is not the release of any guarantee or Lien, then (x) such Guarantor

shall be immediately, automatically and irrevocably released from its guarantee under the Loan Documents without any action of any Person and (y) the Administrative Agent shall, at the Loan Parties' expense, promptly take such action and execute such documents as the Borrowers may reasonably request to terminate the guarantee of such Guarantor and to release the Collateral owned by such Guarantor from the Liens created by the Security Documents.

(b) If (i) any of the Collateral shall be sold, transferred or otherwise disposed of by any Loan Party to a Person (other than any Loan Party) in a transaction that is permitted under Section 6.09 of this Agreement and is not prohibited under any other provision of this Agreement, (ii) any of the Collateral is owned by a Guarantor that is released from the Guaranty in accordance with the terms hereof or (iii) otherwise approved, authorized or ratified in writing in accordance with Section 10.02, then (x) the Lien on such Collateral in favor of the Administrative Agent pursuant to the Loan Documents shall be immediately, automatically and irrevocably terminated and released without any action of any Person and (y) the Administrative Agent shall, at the Loan Parties' expense, promptly take such action and execute such documents as the Borrowers may reasonably request to release the Liens created by the Security Documents on such Collateral.

(c) At such time as (i) all Obligations (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) have been paid in full in cash, (ii) all Specified Swap Agreements have expired or been terminated (or other arrangements made to the satisfaction of the Approved Counterparties to such Specified Swap Agreements, in their sole discretion) and any Obligations owing thereunder have been paid in full and (iii) all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(d) The Administrative Agent may subordinate or release any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by clauses (c), (d) and (r) of Section 6.02 to the extent the documents governing such Indebtedness do not permit any other Lien (or any senior Lien, as applicable) on such property, and consent to and enter into (and execute documents permitting the filing and recording, where appropriate) the grant of easements and covenants and subordination rights with respect to real property, conditions, restrictions and declarations on customary terms, and subordination, non-disturbance and attornment agreements on customary terms reasonably requested by the Borrowers with respect to leases entered into by any Loan Party and its Subsidiaries, to the extent requested by the Borrowers and reasonably acceptable to the Administrative Agent.

Section 10.18 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;



(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.20 Parallel Debt (Covenant to pay the Administrative Agent).

(a) Each Loan Party, by way of an independent payment obligation, hereby irrevocably and unconditionally undertakes to pay to the Administrative Agent, as creditor in its own right and not as representative of the other Secured Parties, amounts equal to and in the currency of each amount payable by such Loan Party to each of the Secured Parties under any Loan Document as and when that amount falls due for payment under the relevant Loan Document or would have fallen due but for any discharge from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting that Loan Party, to preserve its entitlement to be paid that amount (each such payment undertaking by such Loan Party, a “**Parallel Debt**”).

(b) The Parallel Debt of each Loan Party will become due and payable as and when and to the extent the relevant Obligations become due and payable. An Event of Default shall constitute a default with respect to the Parallel Debts without any notice being required.

(c) Each Loan Party and the Administrative Agent acknowledge that the obligations of each Loan Party under paragraph (a) above are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Loan Party to any Secured Party under any Loan Document (its “**Corresponding Debt**”) nor shall the amounts for which each Loan Party is liable under paragraph (a) above (its Parallel Debt) be limited or affected in any way by its Corresponding Debt; provided that: (i) the Administrative Agent shall not demand payment with regard to the Parallel Debt of any Loan Party to the extent that such Loan Party’s Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and (ii) neither the Administrative Agent nor any Secured Party shall demand payment with regard to the Corresponding Debt of any Loan Party to the extent that such Loan Party’s Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged.

(d) For the purpose of this Section 10.20, the Administrative Agent acts in its own name and not as a trustee, and it shall have its own independent right to demand payment of the amounts payable by each Loan Party under this Section 10.20, irrespective of any discharge of such Loan Party’s obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting that Loan Party, to preserve their entitlement to be paid those amounts.

(e) The rights of the Secured Parties (other than the Administrative Agent) to receive payment of amounts payable by each Loan Party under the Loan Documents are several and are separate and independent from, and without prejudice to, the rights of the Administrative Agent to receive payment under this Section 10.20.

(f) Without limiting or affecting the Administrative Agent's rights against the Loan Parties (whether under this Section 10.20 or under any other provision of the Loan Documents), each Loan Party acknowledges that: (i) nothing in this Section 10.20 shall impose any obligation on the Administrative Agent to advance any sum to any Loan Party or otherwise under any Loan Document, except in its capacity as a Lender (other than as Administrative Agent); and (ii) for the purpose of any vote taken under any Loan Document, the Administrative Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender (other than as Administrative Agent).

Section 10.21 [Reserved].

Section 10.22 Restricted Lender.

(a) In relation to each Lender resident in Germany (*Inländer*) within the meaning of section 2 paragraph 15 German Foreign Trade Law (*Außenwirtschaftsgesetz*) or that otherwise notifies the Administrative Agent that it is a "Restricted Lender" for the purpose of this Section 10.22 (each a "**Restricted Lender**"), the representations and undertakings under Section 3.15, 3.16 and 5.09 and any other existing or future provision relating to sanctions in this Agreement or any other Loan Document (together, the "**Sanctions Provisions**") shall only apply for the benefit of that Restricted Lender to the extent that it would not result in any violation of, conflict with or liability under (i) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1) a no 3 German Foreign Trade Law (*Außenwirtschaftsgesetz*), (ii) any provision of the Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom and/or (iii) any other applicable anti-boycott laws or regulations.

(b) In connection with any amendment, waiver, determination or direction relating to any part of a Sanctions Provision of which a Restricted Lender does not have the benefit pursuant to paragraph (a) above, the Commitments of that Restricted Lender will be excluded for the purpose of determining whether the consent of the Required Lenders has been obtained or whether the determination or direction by the Required Lenders has been made.

Section 10.23 Canadian Anti-Money Laundering Legislation.

(a) Each Loan Party acknowledges that, pursuant to the Proceeds of Crime Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Secured Parties may be required to obtain, verify and record information regarding the Loan Parties and their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Loan Parties, and the transactions

contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Secured Party or any prospective assignee or participant of a Secured Party, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Administrative Agent has ascertained the identity of any Loan Party or any authorized signatories of any Loan Party for the purposes of applicable AML Legislation, then the Administrative Agent:

(i) shall be deemed to have done so as an agent for each Secured Party, and this Agreement shall constitute a "written agreement" in such regard between each Secured Party and the Administrative Agent within the meaning of the applicable AML Legislation; and

(ii) shall provide to each Secured Party copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Secured Parties agrees that the Administrative Agent has no obligation to ascertain the identity of the Loan Parties or any authorized signatories of the Loan Parties on behalf of any Secured Party, or to confirm the completeness or accuracy of any information it obtains from any Loan Party or any such authorized signatory in doing so.

[Remainder of page intentionally left blank; signature pages follow]

**EXHIBIT B**

**UCC-3 Assignments**

**CERTIFICATION**

I, Julian Nebreda, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fluence Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2024

Fluence Energy, Inc.

By: /s/ Julian Nebreda

Julian Nebreda

*Chief Executive Officer and President*

*(Principal Executive Officer)*

**CERTIFICATION**

I, Ahmed Pasha, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fluence Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 7, 2024

Fluence Energy, Inc.

By: /s/ Ahmed Pasha

Ahmed Pasha

*Senior Vice President and Chief Financial Officer (Principal  
Financial Officer)*



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Fluence Energy, Inc. (the “Company”) for the quarter ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Julian Nebreda, Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 7, 2024

By: /s/ Julian Nebreda  
Julian Nebreda  
*Chief Executive Officer and President (Principal  
Executive Officer)*

