UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

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

For the fiscal year ended September 30, 2021
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	**87-1304612**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
4601 Fairfax Drive, Suite 600 Arlington, Virginia	**22203**
(Address of Principal Executive Offices)	(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

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No x

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 o No x

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted 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 such files). Yes x No o

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	o	Accelerated filer	o
Non-accelerated filer	x	Smaller reporting company	o
		Emerging growth company	x

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. o

Indicate by check mark whether the registrant has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. o

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

As of March 31, 2021, the last business day of the registrant’s most recently completed second fiscal quarter, the registrant did not have a public float because there was no established public market for the registrant’s common stock.

As of December 13, 2021, the registrant had 54,143,275 shares of Class A common stock outstanding and 117,173,390 shares of Class B-1 common stock outstanding.

Documents Incorporated by Reference

Portions of the registrant's Definitive Proxy Statement relating to the Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such Definitive Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended September 30, 2021.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

Certain statements in this Annual report on Form 10-K (this "Annual Report"), excluding historical information, contain or may contain forward-looking statements. 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, or the Exchange Act. Statements regarding our future results of operations and financial position, business strategy and plans, and objectives of management for future operations, including, among others, statements regarding expected growth, future capital expenditures and debt service obligations, are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "intends," "targets," "projects," "contemplates," "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.

Factors that could cause our actual results to differ materially from those indicated in these forward-looking statements, including, but are not limited to, the following:

- our future financial performance, including our ability to achieve or maintain profitability;
- our ability to successfully execute our business and growth strategy;
- the sufficiency of our cash and cash equivalents to meet our liquidity needs;
- our ability to attract and retain customers;
- our ability to develop new offerings and services, including digital applications;
- our ability to optimize sales channels and market segmentation;
- our ability to compete with existing and new competitors in existing and new markets and offerings;
- the continued impact of the COVID-19 pandemic on our ground operations at project sites, our manufacturing facilities and our suppliers and vendors;
- our ability to maintain customer contracts due to events and incidents relating to storage, delivery, installation, operation and shutdowns of our energy storage products, including events and incidents outside of our control;
- our ability to prevent defects, errors, or bugs in hardware or software of our products and technology as well as any product liability or other claims;
- our expectations regarding the effects of existing and developing laws and regulations;
- our expectations regarding our global growth;
- our expectations regarding the size and growth of our existing and future markets in which we compete;
- our expectations concerning our relationships with third parties;
- our ability to maintain, protect, and enhance our intellectual property;
- the increased expenses associated with being a public company;
- the continued listing of our securities on the Nasdaq Global Market;
- the significant influence the Continuing Equity Owners (as defined herein) have over us, including control over decisions that require the approval of stockholders; and
- other factors detailed under the heading "Risk Factors" in Part I, Item 1A. of this Annual Report.

The foregoing factors should not be construed as exhaustive and should be read together with the other cautionary statements included in this Annual 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 of our forward-looking statements 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

ITEM 1. BUSINESS

Inception and Organization

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 Annual Report.

On December 27, 2020, Fluence Energy, LLC entered into an agreement with QIA Florence Holdings LLC ("QFH" or the "Blocker Company") for a $125.0 million investment to accelerate our growth and the global deployment of our offerings. QFH is an affiliate of the Qatar Investment Authority ("QIA"), the sovereign wealth fund of Qatar, and its subsidiaries and affiliates. Following the completion of the transaction on June 9, 2021, Siemens Industry, AES Grid Stability and QFH (collectively, the "Original LLC Owners") held 43.2%, 43.2% and 13.6%, respectively, of the limited liability interests (the "LLC Interests") of Fluence Energy, LLC.

Except where the content clearly indicates otherwise, any reference in this Annual Report to "Fluence," "we," "us," "our" or "the Company" refers to Fluence Energy, Inc. and all of its direct and indirect subsidiaries, including Fluence Energy, LLC. When used in a historical context that is prior to the completion of our IPO (defined below) on November 1, 2021, "we," "us," "our" or "the Company" refer to Fluence Energy, LLC and its subsidiaries.

Initial Public Offering and Related Transactions

On November 1, 2021, the Company completed an initial public offering (the "IPO") in which it issued and sold 35,650,000 shares of its Class A common stock, par value $0.00001 per share, at the public offering price of $28.00 per share, which includes the exercise by the underwriters of their option to purchase an additional 4,650,000 shares of the Company's Class A common stock. The net proceeds to the Company from the IPO were $948.0 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company.

We consummated the following transactions in connection with the IPO (collectively with the IPO, the "Transactions"):

- we amended and restated the existing limited liability company agreement of Fluence Energy, LLC, which became effective prior to the consummation of the IPO, to, among other things, (1) recapitalize all existing ownership interests in Fluence Energy, LLC into 135,666,665 LLC Interests and (2) appoint Fluence Energy, Inc. as the sole managing member of Fluence Energy, LLC upon its acquisition of LLC Interests;
- we amended and restated Fluence Energy, Inc.'s certificate of incorporation to, among other things, provide (1) for Class A common stock, with each share of our Class A common stock entitling its holder to one vote per share on all matters presented to our stockholders generally, (2) for Class B-1 common stock, with each share of our Class B-1 common stock entitling its holder to five votes per share on all matters presented to our stockholders generally, (3) for Class B-2 common stock, with each share of our Class B-2 common stock entitling its holder to one vote per share on all matters presented to our stockholders generally, and that shares of our Class B-1 and Class B-2 common stock may only be held by the Founders and their respective permitted transferees;
- we acquired, by means of one or more mergers (the "Blocker Mergers"), the Blocker Company and issued to its owner, Qatar Holding LLC (the "Blocker Shareholder"), 18,493,275 shares of our Class A common stock as consideration in the Blocker Mergers;
- we issued 117,173,390 shares of our Class B-1 common stock to the Founders, which is equal to the number of LLC Interests held by such Founders, for nominal consideration;
- we used the net proceeds from the IPO to purchase 35,650,000 newly issued LLC Interests directly from Fluence Energy, LLC at a price per unit equal to the initial public offering price per share of Class A common stock in the IPO 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 under our existing Line of Credit and the Promissory Notes (each as defined in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources"), and intends to use the remainder for working capital and other general corporate purposes;

- AES Grid Stability, Siemens Industry, and the Blockers Shareholder (collectively, the "Continuing Equity Owners") and Fluence Energy, Inc. have entered into (1) the Stockholders Agreement and the (2) the Registration Rights Agreement, and Fluence Energy, Inc., Fluence Energy, LLC, and the Founders entered into a tax receivable agreement (the "Tax Receivable Agreement"). See "Item 7. 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.

Immediately following the consummation of the Transactions:

- Fluence Energy, Inc. became a holding company and its principal asset consists of LLC Interests it purchases directly from Fluence Energy, LLC and acquired indirectly from the Blocker Shareholder;
- Fluence Energy, Inc. became the sole managing member of Fluence Energy, LLC and controls the business and affairs of Fluence Energy, LLC and its direct and indirect subsidiaries;
- Fluence Energy, Inc. owns, directly or indirectly, 54,143,275 LLC Interests, representing approximately 31.6% of the economic interest in Fluence Energy, LLC;
- the Founders own (1) 117,173,390 LLC Interests, representing approximately 68.4% of the economic interest in Fluence Energy, LLC and (2) 117,173,390 shares of Class B-1 common stock of Fluence Energy, Inc., representing approximately 91.5% of the combined voting power of all of Fluence Energy, Inc.'s common stock;
- the Blocker Shareholder owns (1) 18,493,275 shares of Class A common stock of Fluence Energy, Inc., representing approximately 2.9% of the combined voting power of all of Fluence Energy, Inc.'s common stock and approximately 34.2% of the economic interest in Fluence Energy, Inc., (2) directly and indirectly through Fluence Energy, Inc.'s ownership of LLC Interests, approximately 10.8% of the economic interest in Fluence Energy, LLC;
- the investors in our IPO own (1) 35,650,000 shares of Class A common stock of Fluence Energy, Inc., representing approximately 5.6% of the combined voting power of all of Fluence Energy, Inc.'s common stock and approximately 65.8% of the economic interest in Fluence Energy, Inc., and (2) through Fluence Energy, Inc.'s ownership of LLC Interests, indirectly hold approximately 20.8% of the economic interest in Fluence Energy, LLC; and
- we have 23,988,372 shares of Class A common stock reserved for issuance pursuant to awards under our incentive compensation plans.

Overview

Fluence is a leading global provider of energy storage products and services and artificial intelligence (AI)-enabled digital applications ("Fluence IQ") for renewables and storage. Our energy storage products are built on our sixth-generation technology stack ("Tech Stack"), which combines our modular, factory-built hardware ("Fluence Cube") with a proprietary edge-based controls system ("Fluence OS"). Our service offerings include delivery services and recurring operational services, as well as financing structuring services, such as energy-storage-as-a-service ("ESaaS"). The Fluence IQ Digital Platform includes the Fluence Bidding Application, which delivers AI-powered market bidding optimization for solar, wind, and energy storage assets, including non-Fluence energy storage systems.

As of September 30, 2021, we had 1.0 gigawatts ("GW") of energy storage assets deployed and 2.7 GW of contracted backlog across 29 markets with a gross global pipeline of 14.2 GW. As of September 30, 2021, our global operational and maintenance ("O&M") services team was providing services for 0.8 GW of energy storage assets, with a further 1.9 GW of contracted backlog. See the "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Operating Metrics" for additional information regarding our deployed assets, contracted backlog and pipeline.

In October 2020, we acquired the software and digital intelligence platform of Advanced Microgrid Solutions ("AMS"), a leading artificial intelligence-enabled optimized bidding software for utility-scale storage and renewable generation assets, which became the Fluence Bidding Application. As of September 30, 2021, we had an aggregate of 3.1 GW of renewable energy assets using the Fluence Bidding Application and 1.6 GW of contracted backlog related to renewable and energy storage assets. We expect our services and Fluence IQ digital applications, including the Fluence Bidding Application, to expand meaningfully over the next five years and contribute increasingly to our bottom-line growth.

Our Industry and Market Opportunity

Climate change is an existential threat. Severe weather events and broader awareness of the financial implications of climate change are driving a systemic global transition away from fossil fuels towards sustainable energy systems. However, renewable generation, unlike fossil fuel generation, has no inherent storage capacity and can only be used in favorable wind and solar conditions. Energy storage is therefore a critical enabler of large-scale adoption of 24/7 renewable energy. Furthermore, accelerating electrification of industries such as transportation is driving demand for more generation. Energy storage can help both serve and smooth additional peak demand, improving grid reliability and managing energy requirements.

As the first truly digital asset on the electric grid, energy storage is also a uniquely flexible tool for grid planners, operators, and power providers. We believe energy storage sits at the epicenter of the global clean energy transition and represents the backbone of a massive change in our energy market infrastructure driven by three key trends: Grid modernization, decarbonization, and digitalization. The energy transformation will require $100 trillion of investment through 2050 based on the midpoint of Bloomberg New Energy Finance's ("BloombergNEF") NEO 2020 clean electricity and green hydrogen pathway.

Energy Storage Market Opportunity

The energy storage market is comprised of three components:

• ***Energy storage products*** — the components (including batteries), professional services, and labor required to manufacture, assemble, and install products. The energy storage products market is driven by the deployment of new energy storage products globally, and its addressable market is comprised of the annual spend associated with the manufacturing, delivery, and installation of new energy storage products. According to BloombergNEF, global annual energy storage capacity installations, excluding the residential market, grew from 0.6 GW a year in 2015 to 3.8 GW a year in 2020, and are expected to grow to 34.2 GW a year by 2030. We believe most forecasts for the energy storage sector, including BloombergNEF's, understate the size and market opportunity as forecasts generally only account for spend associated with the physical energy storage asset and do not account for the associated service and digital spend.

• ***Services*** — recurring operational and maintenance services that energy storage products require, management services that are provided by third parties when asset owners outsource the operations of their systems, and the provision of ESaaS. The services market is driven by the growth in installed energy storage products globally, and its addressable market is comprised of the recurring annual service spend across the entire fleet of energy storage products, which is continuing to grow through new product installations. According to BloombergNEF, global installed energy storage capacity, excluding the residential market, grew 57% per annum between 2015 and 2020, and the installed base is expected to grow at a 31% annual growth rate through 2030. BloombergNEF forecasts that global installed energy storage capacity will reach 193.7 GW by 2030, excluding the residential market.

• ***Digital applications and solutions*** — operating systems, applications, such as trading platforms that allow system owners to manage their grid participation, and dynamic capacity services, such as virtual power plants ("VPPs"). These trading platforms and VPPs can be deployed on both energy storage assets and renewable and conventional generation assets. The digital applications and solutions sector is driven by the growth in installed energy storage products and renewable and conventional generation assets, and its addressable market is comprised of the total global installed fleet of energy storage products and renewable and conventional generation assets. The digital applications and solutions economic model is primarily structured as (i) $/kilowatt ("kW") recurring fixed fees, and in some cases (ii) $/kW performance-based incentive fees both calculated based on the GWs of storage and generation assets on which digital applications and solutions service offerings are deployed. We believe there is an opportunity to not only deploy digital applications and solutions on individual assets but also across entire energy storage fleets and portfolios of generation assets to improve their collective performance and economic output, and to reduce the overall carbon footprint of the electric grid by optimizing the interactions between different asset types.

We believe there are multiple factors driving continued growth in the energy storage sector, including:

• The accelerating transition from fossil to renewable generation is expected to require significant increases in energy storage capacity to both offset potential grid instability caused by intermittent renewable resources and enable the use of power from renewable generation assets at times when the natural resource is unavailable.

• Growing capacity constraints on existing power grids that were not designed to support distributed and renewable generation infrastructure or technologies such as electric vehicles are positioning energy storage assets as a key solution.

• A forecasted reduction in the battery cost, estimated by BloombergNEF to be approximately 8% annually from 2020 to 2030, is expected to improve the economics of energy storage and support the development of larger energy storage systems.

• The levelized cost of storage ("LCOS") of battery storage has decreased from an estimated $324/MWh in 2018 to an estimated $192/MWh in 2020, according to the Lazard Levelized Cost of Storage Analysis. This reduction in cost makes battery storage economically competitive with the gas peaking power plants which are estimated in 2020 to have a levelized cost of energy ("LCOE") range of $151/MWh to $198/MWh, according to the Lazard Levelized Cost of Energy Analysis.

• Environmental responsibility has become a priority for major companies and investors, with over 300 major companies having pledged to source 100% of their energy from renewables as part of the RE100, a global corporate renewable energy initiative.

• Governments across the globe have announced policies to support the transition from fossil fuels to low-carbon forms of energy.

Our Products and Services

Our offerings include energy storage products and delivery services, recurring operational services and digital solutions and applications for energy storage and other power assets. We have repeatedly pioneered new use cases for grid-scale energy storage. Some of the uses we have supported include frequency regulation, generation enhancement, capacity peak power, energy cost control, microgrids/islands, renewable integration, virtual dams, T&D enhancement, and critical power.

Energy Storage Products

We sell highly configurable energy storage products with integrated hardware, software and digital intelligence. We offer three energy storage products built on our sixth-generation Tech Stack foundation, which are optimized for common customer use cases but can be configured for specific use cases:

- *Gridstack*™: grid-scale, industrial-strength energy storage product designed for demanding market applications with industry-leading reliability, scalability, and safety. Its design is built for applications including flexible peaking capacity, frequency regulation, renewable integration, transmission, and distribution enhancement and more.
- *Sunstack*™: designed to optimize solar capture and delivery. Its product architecture unites batteries and PV on the same side of the DC bus to take advantage of higher PV-to-inverter ratios, maximize solar yield, and simplify the interconnection process.
- *Edgestack*™: commercial energy storage product that discharges when needed to flatten a facility's energy load profile, resulting in significantly reduced demand charges. The fully integrated product is available in smaller-size building blocks that can be easily configured to meet the needs of individual facilities and aggregated across fleets or locations without time-consuming redesigns.

We also offer comprehensive engineering and delivery services to support the deployment of our storage products. Customers can select from a range of delivery service, from project design to full-wrap turnkey installation.

We have designed our energy storage products to allow for licensing to third-party partners, and plan to offer the ability to license Fluence products, services, and digital applications to partners targeting specific geographies and market use cases.

Sixth-Generation Technology Stack

The Tech Stack, which is comprised of our Fluence Cube, Fluence OS, and Fluence IQ, builds upon 13 years of development in prior generations, reflecting ongoing safety and design improvements. The Fluence Cube is a modular, factory-built, approximately 8'x8'x8' building block that delivers safe, scalable, cost-effective products. Our battery and supplier-agnostic system architecture allows us to deliver optimized solutions for our customers on a global scale while incorporating the latest technology components. Fluence OS is a fully integrated edge controls platform with comprehensive control, asset management and system visibility across single sites or entire fleets. The Fluence IQ Digital Platform supports applications to improve revenue generation, system decision-making, asset performance, and operations.

Services

Operational & Maintenance Services

In addition to energy storage products, our offerings include delivery services and recurring operational services. Our recurring O&M services are designed around customer business needs, in-house capabilities, performance requirements, and risk profiles. We offer four operational services packages: Guided Services, Shared Services, Complete Services and Asset Management. These packages provide varying levels of training, maintenance, guarantees, warranties, and support to address our customers' desired level of active system management. The service levels range from providing comprehensive training for customers to performing full asset operation and management on behalf of the customer. Fluence services help secure products with back-to-back original equipment manufacturer ("OEM") equipment warranties and extensive claims support. We help safeguard customer asset revenue potential over project life with degradation, capacity, and availability guarantees. Preventive and reactive maintenance services maintain equipment and optimal operating conditions, backed by 24/7 support and what we believe to be the most experienced team in the industry.

Energy Storage-as-a-Service

Fluence, working with third-party financial partners, including Siemens Financial Services, offers financing structuring services to customers. For instance, ESaaS enables customers to access the benefits of energy storage without upfront investment or technical expertise.

We are continuously innovating new service offerings for our customers, including providing support for Fluence products, services, and digital applications to channel partners such as Siemens.

Digital Applications and Solutions

Our team is continuously expanding the digital applications we offer to customers. Those applications may include internally developed applications as well as third-party applications offered through the Fluence IQ Digital Platform.

Our proprietary operations platform, Fluence OS, enables asset owners to manage storage system operations according to pre-set modes and access real-time information through cloud-based data. It is an integral part of all our energy storage product sales. Fluence IQ encompasses proprietary artificial intelligence and data science technologies to enable the advanced capabilities of our digital applications. Fluence IQ leverages terabytes of data gathered from Fluence OS and external sources to inform price forecasting, anomaly detection, and system size optimization. Fluence OS controls software enables Fluence energy storage products to deliver critical grid services such as primary frequency regulation, secondary frequency response, fast frequency response, peak shaving, voltage regulation, power factor regulation, non-spinning reserves, capacity peak power, solar energy time-shifting, firm solar export, energy arbitrage, and more. Fluence also delivers stacking of grid services, allowing storage assets to perform multiple services simultaneously and increase revenue-generating opportunities. In addition to Fluence OS, we offer specialized digital applications, such as the Fluence Bidding Application.

The Fluence Bidding Application, which we acquired from AMS in 2020, is an artificial intelligence-enabled bidding software for utility-scale storage and renewable and conventional generation assets, enabling customers to optimize asset trading in wholesale electricity markets. One of the goals of the AMS acquisition is to combine Fluence's insights from deep experience operating energy storage products globally with the Fluence Bidding Application's optimized market participation capabilities.

The Fluence Bidding Application provides energy traders with a range of optimization solutions:

- ***Advanced Price Prediction:*** State-of-the-art machine learning techniques, producing an ensemble of price forecasts (P10 to P90) for each product across day-ahead and real-time markets;
- ***Optimized Bidding:*** Stochastic optimization that captures technical constraints and business objectives to produce bids across energy and ancillary services in day-ahead and real-time markets; and
- ***Automated Trading*:** System-generated complete bid files (with option for customer override) for seamless transmission to market operators and real-time review of market results.

Our Bidding Application is technology-agnostic (it can be applied to wind and solar assets as well as energy storage assets) and vendor-agnostic (it is available to optimize non-Fluence storage products), and is delivered using cloud-based software-as-a-service, avoiding requirements for onsite hardware or software installations. Our pricing strategy is based on a volume-based subscription fee with the ability to start with a smaller scale and increase the number of assets covered by the software as customers build out their fleets, along with the potential for performance-based revenue-sharing structures.

In addition to the existing Fluence Bidding Application, we plan to develop a suite of market-agnostic Fluence IQ digital applications that will increase our addressable market by accelerating our entry into U.S. regulated power markets, expanding our existing presence in U.S. wholesale power markets, and enabling our entry into wholesale power markets in Europe and Asia. This includes potentially incorporating carbon optimization into digital applications such as a bidding app, a dispatch app, a manage app and an invest app that can be modified by the customer for any organized market and any renewable asset type.

We are also planning to introduce improvements and additional functionality to our digital applications, enabling customers to select an optimized set of features to fit their needs. Developing new digital capabilities and applications enables us to innovate new business models, like virtual power plants or structuring an ESaaS offering to support a faster and more efficient clean energy transition.

Our Growth Strategy

Our growth strategy includes leveraging our global scale, technology leadership, and market share position to help transform the way we power our world for a more sustainable future. We intend to further develop energy products, services and digital applications into solutions that solve our customers' energy challenges, and expand our services with additional value-add offerings. We aim to create an optimized production organization, develop mass manufacturing facilities globally, and continue to secure partnerships with key battery suppliers. We are also focused on expanding standardized offerings that are optimized for each of our sales channels and moving to a more localized, regional organizational structure to better support customers and sales channels, improve logistics, and enhance market focus. Furthermore, we continue to explore disruptive digitally driven business models, including ESaaS, wide-ranging dynamic capacity, virtual storage, asset- and revenue-sharing models, and other offerings.

We will continue leveraging our partnerships with AES and Siemens, which provide built-in and growing customer bases and an international sales channel, as well our sponsor relationship with QIA, that may help us to form relationships with additional technology partners, customers and suppliers. Furthermore, we have made, and expected to continue to make acquisitions in order to achieve synergies and capture cross-selling opportunities. For example, we acquired AMS in October 2020 and have fully integrated the team and technology into Fluence and grown adoption of the Fluence Bidding Application software by 1.7 GW.

Our Customers

We have deployed energy storage products in 29 markets on six continents. We sell our products to a wide range of customers around the world, including utilities / load-serving entities, independent power producers, developers, conglomerates, and commercial & industrial ("C&I") customers. In fiscal year 2021, our five largest customers represented approximately 76% of our revenues. As of September 30, 2021, we had a gross global pipeline of 14.2 GWs, and customers in the United States composed the largest portion of our gross global pipeline at 7.5 GWs or 53%, with the United Kingdom following at 1.5 GWs or 10%, and Germany at 0.6 GWs or 4%.

Environmental, Social, and Governance

We are a purpose-built, purpose-driven company on a mission to transform the way we power our world for a more sustainable future. We support the clean energy transition by enabling greater adoption of renewable energy and decarbonized technologies such as electric vehicles and reduced use of thermal generation resources. Our offerings enable more sustainable, reliable, and resilient electric grids in a repeatable, scalable way.

We endeavor to go beyond the inherent environmental aspects of our technology and implement sustainable and ethical processes throughout our organization. Our supplier code of conduct is at the core of our compliance expectations, and addresses environmental protection, child labor, conflict minerals, and anti-corruption, among other areas. In addition, we only purchase raw materials and minerals from trusted suppliers. In sourcing cobalt for example, we request that suppliers provide an official cobalt statement disclosing its origin, and we only buy cobalt battery chemistry from suppliers who are part of a sustainable cobalt sourcing initiative. In 2021, our supply chain sustainability coordinator engaged the Carbon Disclosure Project to conduct an audit of our supply chain's carbon footprint.

We are committed to implementing responsible environmental and ethical practices in our corporate offices as well as our supply chain. Our offices are internationally certified to ISO 14001, which requires an organization to implement and demonstrate compliance with an effective environmental management system to identify and control the environmental impact of its activities, products, and services; continually improve environmental performance; and implement a systematic approach to setting environmental objectives and targets.

We plan to report how we oversee and manage environmental, social, and governance ("ESG") factors material to our business under the sector-specific ESG standards recommended by the Sustainability Accounting Standards Board (the "SASB"), including an annual sustainability report. As part of our plan to provide ESG disclosures pursuant to SASB standards, we will evaluate aligning our internal sustainability goals with certain United Nations Sustainable Development Goals.

Human Capital Management

We believe our workforce is critical to our success and we strive to create a positive, equitable, and safe work environment. A survey of employees during the pandemic revealed that most people prefer to work remotely rather than in the office, so Fluence has moved to a 75% remote work policy permanently and offers employees a stipend for home office equipment. To create a culture of transparency, we maintain a regular cadence of communications from the executive leadership team to employees, including emails, quarterly all hands meetings, Q&A sessions, and employee resource groups with executive sponsors.

As of September 30, 2021, we had approximately 450 full-time employees. None of our employees in the United States are represented by a labor union. As of September 30, 2021, approximately 86 of our employees in Germany were represented by a works council. We have not experienced any employment-related work stoppages, and we consider relations with our employees to be good.

Our purpose-driven culture has fostered a work environment in which employees feel supported, empowered to develop in their careers, and fulfilled in their work. Initiatives driven by this culture include a partnership with Inova through which we provide free professional and wellness services to employees and professional development courses made available to all employees. To assess and continually improve employee sentiment, we conduct regular employee surveys soliciting feedback on topics such as work/life balance, working remotely, career development, and mentorship.

Fluence is internationally certified to ISO 9001, a quality management standard that ensures a commitment to customer satisfaction, purpose-driven leadership, and equitable involvement for all employees. Fluence is also internationally certified to ISO 45001, an occupational health and safety standard which requires certain proactive measures to ensure employee safety and reduce workplace risks. Fluence's corporate headquarters is certified to SA8000, which demonstrates our commitment to the elimination of unethical and discriminatory labor practices, while affirming workers' rights, livable wages, and treating all people with dignity.

Fluence is committed to fostering a culture of diversity and inclusion that makes our employees feel safe and engaged. We have conducted trainings for hiring managers on how to avoid bias in the interview process and formed a diversity and inclusion working group to identify and address areas for improvement. Our workforce includes citizens of 38 countries. Women represent 24% of our total workforce and 40% of our key corporate management roles.

Manufacturing

Our manufacturing strategy is designed to meet our key objectives: limit capital-intensive and low value-added activities that can be outsourced to other companies; maintain a capital light business model; minimize labor content where possible; minimize the amount of assembly our customers are required to do at the site; and minimize material movement both from vendors to us and within factories.

Mass manufacturing is a cornerstone of our product delivery approach and a key to driving down product cost and delivering at scale. We aim to create an optimized production organization, develop mass manufacturing capabilities globally through contract manufacturing, and continue to secure partnerships with key battery suppliers. We believe that enhancing our product-focused model and supply chain leverage will support our global growth objectives and result in superior unit economics.

We have entered outsourcing contracts for the assembly and production of our Fluence Cube, which ship directly from our contract manufacturers to job sites or designated warehouses. By using regional contract manufacturers, we can drop ship products directly to our customers' sites, which improves working capital turnover, quality, and inventory management. The Fluence Cube is currently manufactured in Asia, and we intend to expand manufacturing to sites in North America and Europe.

We have developed a global supply chain with an evolving regionally focused operational model with the objective of allowing us to assemble products in proximity to major markets to minimize material movement, working capital investment, and costs of goods sold. Additionally, we believe that the volume of key components we purchase, such as lithium-ion batteries, provides us preferential pricing, terms, and availability from our suppliers, creating a competitive advantage. We recently entered into a technology co-development and supply agreement with Northvolt that expands our battery supply chain into Europe. Pursuant to this agreement, we have a license to develop, manufacture and commercialize an optimized battery subsystem that is significantly more energy dense than today's standard solutions. The agreement also enables us to deploy a battery management system that can be integrated with other vendors to extend our value chain, develop battery competencies, and lower total cost of ownership.

Intellectual Property

The success of our business depends, in part, on our ability to maintain and protect our proprietary technologies, information, processes and know-how. We rely primarily on patent, trademark, copyright and trade secret laws, confidentiality agreements and procedures, and other contractual arrangements to protect our technology. Fluence also has a perpetual license (terminable in the event of an uncured material breach) to certain patents and other intellectual property that belong to AES and Siemens, including methods for cooling inverters, overvoltage protections, and transfer of large amounts of data (methodology).

We rely on trade secret protection and confidentiality agreements to safeguard our interests with respect to proprietary know-how and software that is not patented and processes for which patents are difficult to enforce. We believe that many elements of our manufacturing processes involve proprietary know-how, technology or data that are not covered by patents or patent applications, including technical processes, test equipment designs, algorithms, and procedures.

We require our customers and business partners to enter into confidentiality agreements before we disclose any sensitive aspects of our technology or business plans.

Seasonality

We experience seasonality and typically see increased order intake in our third and fourth fiscal quarters, driven by demand in the Northern Hemisphere to install energy storage products before the summer of the following year. Combined third and fourth fiscal quarter order intake generally accounted for 80% or more of our total intake each year. As a result, revenue recognition is typically stronger in our third and fourth fiscal quarters. Cash flows historically have been negative in our first and second fiscal quarters, neutral to positive in our third fiscal quarter, and positive in our fourth fiscal quarter. Our services and digital application offerings do not experience the same seasonality given their recurring nature.

Competition

Our products, services, and digital applications are highly specialized and specific to the clean energy industry. The unique expertise required to design these offerings as well as customers' reluctance to try unproven products has confined the number of firms that produce such products to a relatively small number, particularly in the segments we are targeting. In addition, we are continuously engaging in developing new use cases and opening new market segments, which are often less contested.

Our principal competitors include Tesla and Wartsila, but competition varies by geography, grid service or customer segment. A key differentiator is our ability to identify customer needs and deliver customer-centric products, services, and use cases that can compete in the market either as packages or standalone offerings. We believe we compete favorably based on performance and value-creation, including low total cost of ownership, long-term reliability, varied service options, and convenient and efficient sales and delivery processes.

Government Regulation and Compliance

Governments across the globe have announced policies to support the transition from fossil fuels to low-carbon forms of energy. For example, the United States recently rejoined the Paris Agreement, an international climate change agreement among almost 200 nations that calls for countries to set their own greenhouse gas ("GHG") emissions targets and be transparent about the measures each country will use to achieve these targets, and proposed a tax incentive for standalone energy storage projects as part of President Biden's American Jobs Plan. Internationally, the European Union has proposed legislation targeting achieving net-zero emissions by 2050, Australia announced a targeted two thirds reduction in the emissions intensity of its economy by 2030, and India pledged to achieve a 33 – 35% reduction in emissions intensity by 2030.

Current and future legislation or regulations that may be adopted to address climate change could make lower GHG-emitting energy sources, such as solar and wind, more desirable than higher GHG-emitting energy sources, such as coal and natural gas. As a result, such climate change regulatory and legislative initiatives with more stringent limitations on GHG emissions would potentially increase the demand for energy storage products.

There are varying policy frameworks across the United States and abroad designed to support and accelerate adoption of clean and/or reliable distributed generation technologies. These policy initiatives come in the form of tax incentives, cash grants, performance incentives, and/or electric tariffs.

Our energy storage products are currently installed or in delivery in Arizona, California, Colorado, Indiana, Maryland, Massachusetts, New York, New Jersey, North Carolina, Ohio, Pennsylvania, Texas, and West Virginia, each of which has its own enabling policy framework. Some states have utility procurement programs and/or renewable portfolio standards for which our technology is eligible. Many states, including California, Massachusetts, and New York, offer tax exemptions or other customer incentives. These policy provisions are subject to change.

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. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. In the United States, governments continuously modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different rates for commercial (and residential) customers on a regular basis. These changes can have a positive or negative impact on our ability to deliver cost savings to customers for the purchase of electricity.

Several states have an energy storage mandate or policies designed to encourage the adoption of storage. For example, Virginia has a mandate for 3.1 GW of energy storage by 2035, California offers a cash rebate for storage installations through the Self Generation Incentive Program, and Massachusetts and New York offer performance-based financial incentives for storage. Storage installations also are supported in certain states by state public utility commission policies that require utilities to consider alternatives such as storage before they can build new generation. In February 2018, the Federal Energy Regulatory Commission ("FERC") issued Order 841 directing regional transmission operators and independent system operators to remove barriers to the participation of storage in wholesale electricity markets and to establish rules to help ensure storage resources are compensated for the services they provide. An appeal of Order 841 filed by utility trade associations and other parties challenging the extent of FERC's jurisdiction over storage resources connected to distribution systems (among other issues) is currently pending before the U.S. Court of Appeals for the D.C. Circuit. In September 2020, the FERC issued Order 2222 opening U.S. wholesale energy markets to aggregations of distributed energy resources like rooftop solar, "behind the meter" batteries and electric vehicles.

Energy storage products require interconnection agreements from the applicable authorities having jurisdiction to operate. In almost all cases, interconnection agreements are standard form agreements that have been pre-approved by the local public utility commission or other regulatory body with jurisdiction over interconnection agreements. As such, no additional regulatory approvals are typically required once interconnection agreements are signed.

Permits and Approvals

Each of our installations or customer installations must be designed, constructed, and operated in compliance with applicable federal, state, and local regulations, codes, standards, guidelines, policies, and laws. To install and operate energy storage products on our platform, we, our customers, or our partners, as applicable, are required to obtain applicable permits and approvals from local authorities having jurisdiction to install energy storage products and to interconnect the products with the local electrical utility.

Government Incentives

The U.S. Congress is considering a variety of proposals for tax incentives that will benefit the energy storage industry, including in the form of tax credits. IRS private letter ruling 201809003 clarified that energy storage is eligible for federal tax credits if charged primarily by qualifying renewable resources. In December 2020, the U.S. Congress passed a spending bill that includes $35 billion in energy research and development programs, a two-year extension of the Investment Tax Credit ("ITC") for solar power, a one-year extension of the Production Tax Credit for wind power projects, and an extension through 2025 for offshore wind tax credits. In June 2021, the White House announced that it will look into dramatically expanding U.S. production of lithium batteries, rare earth minerals, and semiconductors, and seek to stimulate demand for domestically manufactured batteries by expanding federal energy storage procurement, expanding the ITC to include stationary energy storage as a standalone resource, and instituting power transmission regulatory reform to support renewable power and stationary energy storage. Also in June, the Senate passed a $250 billion bipartisan technology and manufacturing bill whose provisions included: (i) provide $52 billion to support domestic semiconductor manufacturing; and (ii) authorize $16.9 billion for the Department of Energy from FY22 to FY26 for research and development and energy-related supply chains in key technology areas. Proposals being considered by Congress include: (i) the establishment of an ITC for standalone energy storage (i.e., products not paired with a renewable resource); (ii) extension of the federal solar energy ITC for ten (10) more years, keeping the credit at 30% through 2029; (iii) the consolidation of 44 federal energy tax incentives into three provisions to award credits for clean electricity, lower-emitting transportation fuels and energy efficient offices and homes; and (iv) the allowance of renewable electricity production and investment tax credits to be transferred on a limited basis to any entity involved in a renewable energy project, regardless of whether they have taxable income. There can be no assurance that all or any of the above proposals will be adopted by the U.S. Congress.

Corporate Information

We file or furnish periodic reports and amendments thereto, including our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, proxy statements and other information with the Securities and Exchange Commission ("SEC"). In addition, the SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically. Our website is located at https://fluenceenergy.com and our reports, amendments thereto, proxy statements and other information are also made available, free of charge, on our investor relations website at https://ir.fluenceenergy.com as soon as reasonably practicable after we electronically file or furnish such information with the SEC. The information posted on our website is not incorporated by reference into this Annual Report or any of our other securities filings unless specifically incorporated herein by reference.

ITEM 1A. RISK FACTORS

You should carefully consider the risks and uncertainties described below, together with all of the other information set forth in this Annual Report, which could materially affect our business, financial conditions and future results. The risks described below are not the only risk facing our company. Risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business, financial condition and operating results. See "Cautionary Statement Regarding Forward-Looking Statements."

Risk Factors Summary

The following is a summary of the principal risks that could adversely affect our business, operations and financial results.

Our ability to execute our strategy is also subject to certain risks. The risks described under the heading "Risk Factors" included elsewhere in this Annual Report may cause us not to realize the full benefits of our strengths or may cause us to be unable to successfully execute all or part of our strategy. Some of the most significant challenges and risks we face include the following:

- our limited operating and revenue history as an independent entity and our nascent industry make evaluating our business and future prospects difficult;
- if we are unable to attract new customers and retain existing customers, our revenue growth will be adversely affected;
- we have experienced and may continue to experience delays, disruptions, or quality control problems in our manufacturing operations in part due to our third-party manufacturer concentration;
- we have experienced and may continue to experience exposure to risks associated with construction, utility interconnection, cost overruns, and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations;
- the interruption of the flow of components and materials from international vendors could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs, and other charges on imports and exports;
- significant changes in the cost of raw materials or to logistic cost could adversely affect our financial performance;
- if any energy storage products provided to our customers contain manufacturing defects, our business and financial results could be adversely affected;
- a loss of one or more of our significant customers, their inability to perform under their contracts, or their default in payment could harm our business and negatively impact revenue, results of operations, and cash flow;
- if we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges;
- we depend on our senior management team and other key employees, and the loss of one or more of these employees or an inability to attract and retain other highly skilled employees could harm our business;
- if renewable energy technologies are not suitable for widespread adoption or sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate, our sales may decline and we may be unable to achieve or sustain profitability;
- if we are unable to obtain, maintain, and enforce intellectual property protection for our technology or if the scope of our intellectual property protection is not sufficiently broad, others may be able to develop and commercialize technology substantially similar to ours, and our ability to successfully commercialize our technology may be adversely affected;
- we have made and expect to continue to make acquisitions, and if we fail to successfully select, execute, or integrate our acquisitions, then our business and operating results could be harmed and our stock price could decline;
- we are controlled by the Continuing Equity Owners, whose interests may differ from those of our public stockholders;
- the Tax Receivable Agreement we have entered into with the Founders requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that such payments will be substantial; and
- the services that we receive from the Founders may not be sufficient for us to operate our business, and we would likely incur significant incremental costs if we lost access to our Founders' services

Risk Factors

Risks Related to Our Business

Our limited operating and revenue history as an independent entity and our nascent industry make evaluating our business and future prospects difficult.

We were established in January 2018 as a joint venture between Siemens and AES. Since then, we have continued to evolve, including through acquisitions. While both AES and Siemens had approximately ten years of experience in battery-based energy storage before combining those businesses to create Fluence, and we benefit from the industry experience and substantial support AES and Siemens provide, we have a limited history operating our business and generating revenue as an independent entity, and therefore a limited history upon which you can base an investment decision.

Our future growth is dependent on rising demand for clean electric power solutions that can provide electric power with lower carbon emissions and replacement of conventional generation sources and the adoption speed of digital software applications to modernize the efficiency of power assets and the electric grid. Among other renewable energy market trends, we expect our business results to be driven by declines in the cost of generation of renewable power, decreases in the cost of manufacturing battery pack products, customer needs for services and digital applications, commercial, legal and political pressure for the reduced use of fossil fuels and electric power generation that relies on fossil or other non-renewable fuels, and a rapidly growing energy storage market driven by increasing demand from C&I customers, utilities, and grid operators. However, predicting our future revenue and appropriately budgeting for our expenses is difficult, and we have limited insight into trends that may emerge and affect our business.

If we are unable to attract new customers and retain existing customers, our revenue growth will be adversely affected.

To increase our revenue, our business strategy depends on our ability to attract new customers and retain existing customers. We face competition from other energy storage and digital application providers in the recruitment of potential customers. If we are unable to convince potential customers of the benefits of our services or if potential or existing customers prefer the product and service offerings of one of our competitors, we may not be able to effectively implement our growth strategy. Additionally, a significant portion of our annual sales were direct sales to AES or a result of our Siemens sales relationship. If we fail to maintain those relationships, or if AES or Siemens decide to reduce their energy storage activities in the future, it could impact our sales and our growth would be even more reliant on our ability to recruit new customers. Our inability to recruit new customers and retain existing customers would harm our ability to execute our growth strategy and may have a material adverse effect on our business operations and financial position.

We have experienced and may continue to experience delays, disruptions, or quality control problems in our manufacturing operations in part due to our third-party manufacturer concentration.

Our product development, manufacturing and testing protocols are complex and require significant technological and production process expertise, and we currently depend on a limited number of third-party manufacturers, including for key components of our products. As of today, we have one major contract manufacturer for the Fluence Cube and are planning to expand our set of partners in the near term. As we introduce new products, we plan to expand our regional manufacturing capabilities to further support customers in APAC, EMEA, and the Americas. While the risk of relying on a single vendor will diminish with regional and footprint optimization, expansion may be delayed by the process of vetting and qualifying new manufacturing partners. Further, any vendor delay or disruption could cause a delay or disruption in our ability to meet customer requirements which may result in a loss of customers. Such processes involve a number of precise steps from design to production.

Any change in our processes could cause one or more production errors, requiring a temporary suspension or delay in our production line until the errors can be researched, identified, and properly addressed and rectified. This may occur particularly as we introduce new products, modify our engineering and production techniques, and/or expand our capacity. In addition, our failure to maintain appropriate quality assurance processes could result in increased product failures, loss of customers, increased warranty reserve, or increased production and logistics costs, and delays. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations.

We have experienced and may continue to experience exposure to risks associated with construction, utility interconnection, cost overruns, and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations.

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. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, and the rules surrounding the interconnection of customer-owned electricity generation for specific technologies. In the U.S., governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes, or in some cases a lack of change, in any of the laws, regulations, ordinances, or other rules that apply to customer installations and new technology could make it more costly for our customers to install and operate our energy storage products on particular sites, and in turn could negatively affect our ability to deliver cost savings to customers for the purchase of electricity.

The installation and operation of our energy storage products at a particular site are also generally subject to oversight and regulation in accordance with national, state, and local laws and ordinances relating to building codes, safety, environmental protection, and related matters, and typically require obtaining and keeping in good standing various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. It is difficult and costly to track the requirements of every individual authority having jurisdiction over energy storage product installations, to design our energy storage products to comply with these varying standards, and for our customers to obtain all applicable approvals and permits. We cannot predict whether or when all permits required for a given customer's project will be granted or whether the conditions associated with the permits will be achievable. The denial of a permit or utility connection essential to a project or the imposition of impractical conditions would impair our customer's ability to develop the project. In addition, we cannot predict whether the permitting process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay our customers' abilities to develop that project or increase the cost so substantially that the project is no longer attractive to our customers. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our energy storage products and could therefore adversely affect the timing of the recognition of revenue related to hardware acceptance by our customer, which could adversely affect our operating results in a particular period.

The production and installation of our energy storage products also involves the incurrence of various project costs and can entail project modifications. We have policies and procedures regarding the approval of project costs and modifications. In connection with our limited operating history and our significant growth, we have in the past experienced and may in the future experience incurrence of project costs without proper documentation or adhering to our policies and procedures. We have implemented additional training on our policies and procedures in this regard. In addition, disagreements with our customers and suppliers have arisen and may in the future arise with respect to project schedules, work and modifications, which can result in the need to find different suppliers, loss of future business, additional costs to us and not realizing the anticipated profit from the project.

In addition, the successful installation of our energy storage products is dependent upon the availability of and timely connection to the local electric grid. Our customers may be unable to obtain the required consent and authorization of local utilities to ensure successful interconnection to energy grids to enable the successful discharge of renewable energy. Any delays in our customers' ability to connect with utilities, delays in the performance of installation-related services, or poor performance of installation-related services will have an adverse effect on our results and could cause operating results to vary materially from period to period.

The interruption of the flow of components and materials from international vendors could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs, and other charges on imports and exports.

We purchase some of our components and materials outside of the United States through arrangements with various vendors, and have experienced delays in obtaining these components and materials as a result of the COVID-19 pandemic. Political, social, or economic instability in these regions, or in other regions where our products are made, could cause future disruptions in trade. Actions in various countries have created uncertainty with respect to tariff impacts on the costs of some of our components and materials. The degree of our exposure is dependent on (among other things) the type of materials, rates imposed, and timing of the tariffs. Other events that could also cause disruptions to our supply chain include:

- the imposition of additional trade law provisions or regulations;
- the imposition of additional duties, tariffs and other charges on imports and exports, including as a result of the escalating trade war between China and the United States;
- quotas imposed by bilateral trade agreements;
- foreign currency fluctuations;
- logistics and shipping constraints;
- natural disasters;

- public health issues and epidemic diseases, their effects (including any disruptions they may cause) or the perception of their effects;
- theft;
- restrictions on the transfer of funds;
- the financial instability or bankruptcy of vendors; and
- significant labor disputes, such as dock strikes.

We cannot predict whether the countries in which our components and materials are sourced, or may be sourced in the future, will be subject to new or additional trade restrictions imposed by the United States or other foreign governments, including the likelihood, type, or effect of any such restrictions. Trade restrictions, including new or increased tariffs or quotas, border taxes, embargoes, safeguards, and customs restrictions against certain components and materials, as well as labor strikes and work stoppages or boycotts, could increase the cost or reduce or delay the supply of components and materials available to us and adversely affect our business, financial condition or results of operations.

Significant changes in the cost of raw materials or to logistic cost could adversely affect our financial performance.

We are subject to risk from fluctuating market prices of certain commodity raw materials, including steel and aluminum, that are used in the components from suppliers that are inputs into our products. Prices of these raw materials may be affected by supply restrictions or other logistic costs market factors from time to time. As we are not the direct buyer of these raw materials, we do not enter into hedging arrangements to mitigate commodity risk. Significant price changes for these raw materials could reduce our operating margins if suppliers increase component prices and we are unable to recover such increases from our customers, and could harm our business, financial condition, and results of operations.

Failure by our vendors or our component or raw material suppliers to use ethical business practices and comply with applicable laws and regulations may adversely affect our business.

We do not control our vendors or suppliers or their business practices. Accordingly, we cannot guarantee that they follow ethical business practices, such as fair wage practices and compliance with environmental, safety, and other local laws. A lack of demonstrated compliance could lead us to seek alternative manufacturers or suppliers, which could increase our costs and result in delayed delivery of our products, product shortages, or other disruptions of our operations. Violation of labor or other laws by our manufacturers or suppliers or the divergence of a supplier's labor or other practices from those generally accepted as ethical in the U.S. or other markets in which we do business could also attract negative publicity for us and harm our business.

We face supply chain competition and, in some instances, have entered into long-term supply agreements that could result in insufficient inventory and negatively affect our results of operations.

We have entered into long-term supply agreements with certain suppliers and contract manufacturers of batteries, inverters, and other components of our energy storage products. Some of these supply agreements provide for fixed or inflation-adjusted pricing, substantial prepayment obligations, and commitments to continue purchasing certain levels of components in future periods regardless of the level of demand we receive from customers. If our suppliers provide insufficient inventory at the level of quality required to meet customer demand, or if our suppliers are unable or unwilling to provide us with the contracted quantities, as we have limited alternatives for supply in the short term, our results of operations could be materially and negatively impacted. If our customers do not provide sufficient demand to purchase the levels of inventory we have committed to purchasing in future periods, our ability to generate revenue or cash flows may be limited.

Further, we face significant specific counterparty risk under long-term supply agreements when dealing with certain suppliers without a long, stable production and financial history. Given the uniqueness of our product, many of our suppliers do not have a long operating history and may not have substantial capital resources. In the event any such supplier experiences financial difficulties, it may be difficult or may require substantial time and expense to replace such supplier. We do not know whether we will be able to maintain long-term supply relationships with our critical suppliers, or secure new long-term supply agreements. Additionally, many of the battery storage products and components of our energy storage products are procured from foreign suppliers, which exposes us to risks including unforeseen increases in costs or interruptions in supply arising from changes in applicable international trade regulations, such as taxes, tariffs, or quotas. Any of the foregoing could materially adversely affect our business, financial condition, and results of operations.

Certain of our suppliers also supply products and components to other businesses, including businesses engaged in the production of electric vehicles, consumer electronics and other industries unrelated to energy storage products. As a relatively low-volume purchaser of certain of these parts and materials, we may be unable to procure a sufficient supply of the items on favorable terms or at all, in the event that our suppliers fail to produce sufficient quantities to satisfy the demands of all of their customers, which could materially adversely affect our business, financial condition, and results of operations.

If any energy storage products provided to our customers contain manufacturing defects, our business and financial results could be adversely affected.

The energy storage products we develop are complex energy solutions. We rely on our component OEM suppliers and contract manufacturers to control the quality of certain components that make up the energy storage products sold to our customers. We do not manufacture the batteries or other components of the energy storage products. As a result, our ability to seek recourse for liabilities and recover costs from our component OEM suppliers and contract manufacturers depends on our contractual rights as well as the financial condition and integrity of such component OEM suppliers and contract manufacturers that supply us with the batteries and other components of our energy storage products. Such products may contain undetected or latent errors or defects. We provide installation, construction and commissioning services for our customers that purchase our products. In the past, we have from time to time discovered latent defects in energy storage products and have experienced defects in workmanship. In connection with such defects in the future, we could incur significant expenses or disruptions of our operations. Any manufacturing defects or other failures of our energy storage products to perform as expected could cause us to incur significant re-engineering costs, divert the attention of our personnel from operating and maintenance efforts, expose us to adverse regulatory action, and significantly and adversely affect customer satisfaction, market acceptance, and our business reputation. Furthermore, our component OEM suppliers and contract manufacturers may be unable to correct manufacturing defects or other failures of any energy storage products in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance, and our business reputation.

On rare occasions, lithium-ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion batteries. This faulty result could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time consuming and expensive. For example, in April 2019, the McMicken energy storage facility in Arizona experienced a thermal event and subsequent explosion, injuring several first responders and making the facility inoperable. The facility was built by AES prior to the creation of Fluence and was under a maintenance contract with Fluence. The response and investigation required significant expense and the devotion of significant management time. Also, negative public perceptions regarding the suitability of lithium-ion batteries for energy applications or any future incident involving lithium-ion batteries, such as a plant, vehicle or other fire, even if such incident does not involve hardware provided by us, could adversely affect our business and reputation.

A loss of one or more of our significant customers, including but not limited to AES and Siemens, their inability to perform under their contracts, or their default in payment could harm our business and negatively impact revenue, results of operations, and cash flow.

We are dependent on a relatively small number of customers for our sales, and a small number of customers have historically accounted for a material portion of our revenue. The loss of any one of the Company's significant customers, their inability to perform under their contracts, or their default in payment could have a materially adverse effect on the revenues and profits of the Company. For the near future, we may continue to derive a significant portion of our net sales from a small number of customers. For the fiscal year ended September 30, 2021, our top five customers, in the aggregate, accounted for approximately 76% of our revenue. Accordingly, loss of a significant customer or a significant reduction in pricing or order volume from a significant customer could materially reduce net sales and operating results in any reporting period.

If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service, or adequately address competitive challenges.

We have experienced significant growth in recent periods. We intend to continue to expand our business significantly within existing and new market segments. This growth has placed, and any future growth may place, a significant strain on our management, operational, and financial infrastructure. In particular, we will be required to expand, train, and manage our growing employee base and scale and otherwise improve our IT infrastructure in tandem with that headcount growth. Our management will also be required to maintain and expand our relationships with customers, suppliers, channel partners, and other third parties and attract new customers and suppliers, as well as manage multiple geographic locations. Our current and planned operations, personnel, IT, and other systems and procedures might be inadequate to support our future growth and may require us to make additional unanticipated investment in our infrastructure. Our success and ability to further scale our business will depend, in part, on our ability to manage these changes in a cost-effective and efficient manner. If we cannot manage our growth, we may be unable to take advantage of market opportunities, execute our business strategies, or respond to competitive pressures. This could also result in declines in quality or customer satisfaction, increased costs, difficulties in introducing new offerings, or other operational difficulties. Any failure to effectively manage growth could adversely impact our business and reputation.

If we are not able to maintain and enhance our reputation and brand recognition, our business and results of operations will be harmed.

We believe that maintaining and enhancing our reputation and brand recognition is critical to our relationships with customers. The promotion of our brand may require us to make substantial investments, and we anticipate that, as our market becomes increasingly competitive, these marketing initiatives may become increasingly difficult and expensive. Our marketing activities may not be successful or yield increased revenue, and to the extent that these activities yield increased revenue, the increased revenue may not offset the expenses we incur, and our results of operations could be harmed. In addition, any factor that diminishes our reputation or that of our management, including failing to meet the expectations of or provide quality products and services to our customers, or any adverse publicity or litigation involving or surrounding us, one of our centers, or our management, could make it substantially more difficult for us to attract new customers. If we do not successfully maintain and enhance our reputation and brand recognition, our business may not grow, and we could lose our relationships with customers, which would harm our business, results of operations, and financial condition.

Our growth depends in part on the success of our relationships with third parties.

We rely on third-party general contractors to install energy storage products at our customers' sites. We currently work with a limited number of general contractors, which has impacted and may continue to impact our ability to facilitate customer installations as planned. Our work with contractors or their subcontractors may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation, and other union requirements, which can add costs and complexity to an installation project. The timeliness, thoroughness, and quality of the installation-related services performed by our general contractors and their subcontractors in the past have not always met our expectations or standards and in the future may not meet our expectations and standards, and it may be difficult to find and train third-party general contractors that meet our standards at a competitive cost.

In addition, a key component of our growth strategy is to develop or expand our relationships with third parties. For example, we are investing resources in establishing strategic relationships with market players across a variety of industries, including large renewable project developers, to generate new customers. These programs may not roll out as quickly as planned or produce the results we anticipated. A significant portion of our business depends on attracting new counterparties and retaining existing counterparties. Negotiating relationships with our counterparties, investing in due diligence efforts with potential counterparties, training such third parties and contractors, and monitoring them for compliance with our standards requires significant time and resources and may present greater risks and challenges than expanding a direct sales or installation team. If we are unsuccessful in establishing or maintaining our relationships with these third parties, our ability to grow our business and address our market opportunity could be impaired. Even if we are able to establish and maintain these relationships, we may not be able to execute on our goal of leveraging these relationships to meaningfully expand our business, brand recognition and customer base. Such circumstance would limit our growth potential and our opportunities to generate significant additional revenue or cash flows.

We depend on our senior management team and other key employees, and the loss of one or more of these employees or an inability to attract and retain other highly skilled employees could harm our business.

Our success depends largely upon the continued services of our senior management team and other key employees. We rely on our leadership team in the areas of sales and operations, information technology and security, marketing, and general and administrative functions. From time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. Our executive officers and other key personnel are not subject to any restrictions that would require them to continue to work for us for any specified period and, therefore, they could terminate their employment with us at any time. The loss of one or more of the members of our senior management team, or other key employees, could harm our business. Changes in our executive management team may also cause disruptions in, and harm to, our business. See "—We must attract and retain highly qualified personnel in order to execute our growth plan."

We must attract and retain highly qualified personnel in order to execute our growth plan.

Competition for highly qualified personnel is intense. We have, from time to time, experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we have. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached certain legal obligations, resulting in a diversion of our time and resources. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be harmed.

Our products and technology could have undetected defects, errors, or bugs in hardware or software which could reduce market adoption, damage our reputation with current or prospective customers and/or expose us to product liability and other claims that could materially and adversely affect our business.

We may be subject to claims that our hardware and software-enabled services have malfunctioned and persons were injured or purported to be injured. Any insurance that we carry may not be sufficient or it may not apply to all situations. Similarly, to the extent that such malfunctions are related to components obtained from third-party vendors, such vendors may not assume responsibility for such malfunctions. In addition, our customers could be subjected to claims as a result of such incidents and may bring legal claims against us to attempt to hold us liable. Any of these events could adversely affect our brand, relationships with customers, operating results, or financial condition. For example, 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 installed the facility, which was completed earlier in fiscal year 2021. No injuries were reported from the incident. The facility has been taken offline as teams from Fluence, our customer, and the battery manufacturer investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products.

Furthermore, our products and technology platform are complex and developed by many employees with various components of hardware and software sourced from third parties. Our products and software have contained design and manufacturing-related defects and errors and may in the future contain undetected defects or errors. Our installation and construction work have contained and in the future may contain workmanship errors. We are continuing to evolve the features and functionality of our products and technology platform through updates and enhancements, and as we do, we may introduce additional defects or errors that may not be detected until after deployment to customers through our hardware. In addition, if our hardware and software-enabled services, including any updates or patches, are not implemented or used correctly or as intended, inadequate performance, data breaches, and disruptions in service may result.

In particular, the Fluence Bidding Application delivers artificial intelligence-enabled bidding software for utility-scale storage and renewable generation assets, enabling customers to optimize asset trading in wholesale electricity markets. While we generally are not regulated as a utility or a broker-dealer, customers of the Fluence Bidding Application are regulated utilities. We could experience scrutiny from regulators for providing the Fluence Bidding Application to our customers.

Any defects or errors in product or services offerings, or the perception of such defects or errors, or other performance problems could result in any of the following, each of which could adversely affect our business, financial condition, and results of operations:

- expenditure of significant financial and product development resources, including recalls, in efforts to analyze, correct, eliminate, or work around errors or defects;
- loss of existing or potential customers or partners;
- interruptions or delays in sales;
- delayed or lost revenue;
- delay or failure to attain market acceptance;
- delay in the development or release of new functionality or improvements;
- negative publicity and reputational harm;
- sales credits or refunds;
- security vulnerabilities, data breaches, and exposure of confidential or proprietary information;
- diversion of development and customer service resources;
- breach of warranty claims;
- legal claims under applicable laws, rules, and regulations; and
- the expense and risk of litigation.

Although we have contractual protections, such as warranty disclaimers and limitation of liability provisions, in many of our agreements with customers, resellers, and other business partners, such protections may not be uniformly implemented in all contracts and, where implemented, may not fully or effectively protect from claims by customers, resellers, business partners or other third parties. Any insurance coverage or indemnification obligations of suppliers may not adequately cover all such claims, or cover only a portion of such claims. A successful product liability, warranty, or other similar claim could have an adverse effect on our business, financial condition, and operating results. In addition, even claims that ultimately are unsuccessful could result in expenditure of funds in litigation, divert management’s time and other resources, and cause reputational harm.

Compromises, interruptions, or shutdowns of our systems, including those managed by third parties, whether intentional or inadvertent, could lead to delays in our business operations and, if significant or extreme, affect our results of operations.

From time to time, our systems require modifications and updates, including by adding new hardware, software, and applications; maintaining, updating, or replacing legacy programs; and integrating new service providers and adding enhanced or new functionality. Although we are actively selecting systems and vendors and implementing procedures to enable us to maintain the integrity of our systems when we modify them, there are inherent risks associated with modifying or replacing systems, and with new or changed relationships, including accurately capturing and maintaining data, realizing the expected benefit of the change, and managing the potential disruption of the operation of the systems as the changes are implemented. Potential issues associated with implementation of these technology initiatives could reduce the efficiency of our operations in the short term. The efficient operation and successful growth of our business depends upon our information technology systems. The failure of our information technology systems and the third-party systems we rely on to perform as designed, or our failure to implement and operate them effectively, could disrupt our business or subject us to liability and thereby have a material adverse effect on our business, financial condition, results of operations, and prospects.

Our current and planned foreign operations could subject us to additional business, financial, regulatory, and competitive risks.

We sell our products in a number of different countries, including the United States, the United Kingdom, multiple EU countries, Australia, and the Philippines. We have in the past, and may in the future, evaluate opportunities to expand into new geographic markets and introduce new product offerings and services that are a natural extension of our existing business. We also may from time to time engage in acquisitions of businesses or product lines with the potential to strengthen our market position, enable us to enter attractive markets, expand our technological capabilities, or provide synergy opportunities.

Our success operating in these new geographic or product markets, or in operating any acquired business, will depend on a number of factors, including our ability to develop solutions to address the requirements of the battery energy storage industry, our timely qualification and certification of new products, our ability to manage increased manufacturing capacity and production, and our ability to identify and integrate any acquired businesses.

Further, any additional markets that we may enter could have different characteristics from the markets in which we currently sell products, and our success will depend on our ability to adapt properly to these differences. These differences may include regulatory requirements, including tax laws, trade laws, labor regulations, tariffs, export quotas, customs duties, or other trade restrictions, limited or unfavorable intellectual property protection, international, political, or economic conditions, restrictions on the repatriation of earnings, longer sales cycles, warranty expectations, product return policies, and cost, performance, and compatibility requirements. In addition, expanding into new geographic markets will increase our exposure to presently existing and new risks, such as fluctuations in the value of foreign currencies and difficulties and increased expenses in complying with United States and foreign laws, regulations, and trade standards, including the Foreign Corrupt Practices Act of 1977, as amended.

Tax laws and regulations in various jurisdictions where we currently operate or may operate in the future also could result in additional tax liabilities for us or otherwise adversely affect us. See the discussion under “—Changes in tax laws or regulations that are applied adversely to us or our customers could materially adversely affect our business, financial condition, results of operations and prospects.” below.

Failure to develop and introduce new products successfully into the market, to successfully integrate acquired businesses or to otherwise manage the risks and challenges associated with our potential expansion into new product and geographic markets, could adversely affect our revenues and our ability to sustain profitability.

Amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits.

Information about our pipeline and contracted backlog included in this Annual Report is based on numerous assumptions and limitations, are calculated using our internal data that have not been independently verified by third parties and may not provide an accurate indication of our future or expected results. Pipeline and contracted backlog are internal management metrics that we construct from market information reported by our global sales force. We monitor and track our pipeline and contracted backlog, but they are not maintained or audited in accordance with U.S. GAAP. Although the amount of contracted backlog includes signed purchase orders or other contractual commitments and the amount of pipeline includes potential future orders, we cannot guarantee that our pipeline or contracted backlog will result in actual revenue in the originally anticipated period or at all. Our customers operate in a relatively new industry and have based their commitments to us on assumptions about future energy prices, demand levels, regulatory obligations and incentives, among other factors. Further, certain of those customers may need to obtain financing to fulfill their commitments to us. If the market does not grow as expected, the regulatory environment changes, or customers fail to obtain necessary financial backing, customers may fail to satisfy their minimum purchase commitments to us and we would fail to realize our contracted backlog. In that event, our revenue and profitability could be adversely affected. Our pipeline or contracted backlog may not generate margins equal to our historical operating results. We have only recently begun to track our pipeline and contracted backlog on a consistent basis, 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 or backlog fails to result in revenue at all or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity. See the sections titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Operating Metrics” for additional information regarding our pipeline and contracted backlog.

Our hardware and software-enabled services involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis it could adversely affect our business, financial condition, and results of operations.

Our sales cycle is typically three to twelve months for our hardware and software-enabled services but can vary considerably. In order to make a sale, we must typically provide a significant level of education to prospective customers regarding the use and benefits of our hardware and software-enabled services.

The period between initial discussions with a potential customer and the sale of even a single energy storage product typically depends on a number of factors, including the potential customer’s budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. Prospective customers often undertake a significant evaluation process, which may further extend the sales cycle. This lengthy sales and installation cycle is subject to a number of significant risks over which we have little or no control. Because of both the long sales and installation cycles, we may expend significant resources without having certainty of generating a sale.

These lengthy sales and installation cycles increase the risk that our customers may fail to satisfy their payment obligations, cancel orders before the completion of the transaction, or delay the planned date for installation. Cancellation rates may be impacted by factors outside of our control including an inability to install an energy storage product at the customer’s chosen location because of permitting or other regulatory issues, unanticipated changes in the cost or availability of alternative sources of electricity available to the customer, or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and many of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business, financial condition, and results of operations could be adversely affected.

Additionally, we have long-term, multi-year service contracts with some of our customers. If those contracts are terminated or if we are unable to continue to fulfill the obligations under such contracts, our business, financial condition, and results of operations could be adversely affected.

Any failure to offer high-quality technical support services may adversely affect our relationships with our customers and adversely affect our financial results.

Our customers depend on our support organization to resolve any technical issues relating to our hardware and software-enabled services. In addition, we have, in some instances, provided performance guarantees for our products and services to our customers. Any failure meet such guarantees or to maintain high-quality and highly-responsive technical support, or a market perception that we do not maintain high-quality and highly-responsive support, could adversely affect our reputation, our ability to sell our products to existing and prospective customers, and our business, financial condition, and results of operations.

We offer technical support services with our hardware and software-enabled services and may be unable to respond quickly enough to accommodate short-term increases in demand for support services, particularly as we increase the size of our customer base. We also may be unable to modify the format of our support services to compete with changes in support services provided by competitors. It is difficult to predict demand for technical support services and if demand increases significantly, we may be unable to provide satisfactory support services to our customers. Additionally, increased demand for these services, without corresponding revenue, could increase costs and adversely affect our business, financial condition, and results of operations.

We may experience difficulties in establishing mass manufacturing capacity and estimating potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities.

While our manufacturing output achieved to date is already at commercial scale, it is a fraction of what we expect will be necessary to fully meet the demand we see in the market for our products. The manufacturing process for our expected full commercial scale is still being refined and improved. There are risks associated with scaling up manufacturing to larger commercial volumes including, among others, technical or other problems with process scale-up, process reproducibility, stability issues, quality consistency, timely availability of raw materials, cost overruns, and adequate definitions or qualifications for safety, reliability, and quality. In addition, in connection with our limited operating history and our significant growth, we have in the past experienced and may in the future experience incurrence of project costs without proper documentation or adhering to our policies and procedures. There is no assurance that our manufacturers will be successful in establishing a larger-scale commercial manufacturing process that achieves our objectives for manufacturing capacity and cost per battery, in a timely manner or at all. If we are unable to produce sufficient quantities of product on a timely basis and in a cost-effective manner, the Company's commercialization efforts would be impaired which could materially affect our business, financial condition, results of operations, and growth prospects.

If our estimates of useful life for our energy storage products and related hardware and software-enabled services are inaccurate or if our component OEM suppliers do not meet service and performance warranties and guarantees, our business and financial results could be adversely affected.

We sell hardware and software-enabled services to our customers. Our software-enabled services are essential to the operation of these hardware products. Our pricing of services contracts is based upon the value we expect to deliver to our customers, including considerations such as the useful life of the energy storage product and prevailing electricity prices. We also provide warranties and guarantees covering the efficiency and performance of certain of our products and digital applications, in some cases up to 25 years in length. We do not have a long history with a large number of field deployments, and our estimates may prove to be incorrect. Failure to meet these performance warranties and guarantee levels may require us to refund our service contract payments to the customer or require us to make cash payments to the customer based on actual performance, as compared to expected performance.

As part of growing our business, we have made and expect to continue to make acquisitions. If we fail to successfully select, execute, or integrate our acquisitions, then our business and operating results could be harmed and our stock price could decline.

We will continuously evaluate potential acquisitions to add new product lines and technologies, gain new sales channels, or enter into new sales territories. For example, in 2020, we acquired AMS' software and digital intelligence platform, which became the Fluence Bidding Application. Acquisitions involve numerous risks and challenges, including but not limited to the following:

- integrating the companies, assets, systems, products, sales channels, and personnel that we acquire;
- higher than anticipated acquisition and integration costs and expenses;
- reliance on third parties to provide transition services for a period of time after closing to ensure an orderly transition of the business;
- growing or maintaining revenues to justify the purchase price and the increased expenses associated with acquisitions;
- entering into territories or markets with which we have limited or no prior experience;
- establishing or maintaining business relationships with customers, vendors, and suppliers who may be new to us;
- overcoming the employee, customer, vendor, and supplier turnover that may occur as a result of the acquisition;
- disruption of, and demands on, our ongoing business as a result of integration activities including diversion of management's time and attention from running the day to day operations of our business;
- inability to implement uniform standards, disclosure controls and procedures, internal controls over financial reporting, and other procedures and policies in a timely manner;
- inability to realize the anticipated benefits of or successfully integrate with our existing business the businesses, products, technologies or personnel that we acquire; and
- potential post-closing disputes.

As part of undertaking an acquisition, we may also significantly revise our capital structure or operational budget, such as issuing common stock that would dilute the ownership percentage of our stockholders, assuming liabilities or debt, utilizing a substantial portion of our cash resources to pay for the acquisition, or significantly increasing operating expenses. In addition, our effective tax rate in any particular quarter may also be impacted by acquisitions. Following the closing of an acquisition, we may also have disputes with the seller regarding contractual requirements and covenants, purchase price adjustments, contingent payments, or for indemnifiable losses. Any such disputes may be time consuming and distract management from other aspects of our business. In addition, if we increase the pace or size of acquisitions, we will have to expend significant management time and effort into the transactions and integrations, and we may not have the proper human resources bandwidth to ensure successful integrations and accordingly, our business could be harmed or the benefits of our acquisitions may not be realized.

As part of the terms of an acquisition, we may commit to pay additional contingent consideration if certain revenue or other performance milestones are met. We are required to evaluate the fair value of such commitments at each reporting date and adjust the amount recorded if there are changes to the fair value.

We cannot ensure that we will be successful in identifying, selecting, executing, and integrating acquisitions. Failure to manage and successfully integrate acquisitions could materially harm our business and operating results. In addition, if stock market analysts or our stockholders do not support or believe in the value of the acquisitions that we choose to undertake, our stock price may decline.

Our customer relationships, business, financial results and reputation may be adversely impacted due to events and incidents relating to storage, delivery, installation, operation, maintenance and shutdowns of our energy storage products.

Our customer relationships, business, financial results, and reputation may be adversely impacted due to events and incidents relating to storage, delivery, installation, operation and shutdowns of our energy storage products, including events and incidents outside of our control. We are subject to various risks as a result of the size, weight, nature and sophisticated nature of our energy storage products, including exposure to production, delivery, supply chain, inventory, installation and maintenance issues. Such issues may, and from time to time have, result in financial losses, including losses resulting from our failure to deliver or install our energy storage products on a contractually agreed timeframe, or losses resulting from agreed warranty or indemnity terms. Furthermore, issues and incidents involving our customers or their facilities at which our energy storage products are located, whether or not attributable to our energy storage products, may have an adverse effect on our reputation and customer relationships. Any of these developments could have a material adverse effect on our business, financial condition, and results of operations.

We may acquire companies for both strategic and financial reasons but may not realize a return on our investments.

We have acquired, and plan to continue to seek to acquire, other companies to further our strategic objectives and support our key business initiatives. These investments may include acquiring equity or debt instruments of public or private companies which may be non-marketable at the time of our initial investment. We do not restrict the types of companies which we might seek to acquire. These companies may range from early-stage companies that are often still defining their strategic direction to more mature companies with established revenue streams and business models. We must also analyze tax, accounting, and legal issues when making these acquisitions. If we do not structure these acquisitions properly, we may be subject to certain unfavorable accounting or tax impact.

We face risks related to actual or threatened health epidemics, such as the COVID-19 pandemic, and other outbreaks, which could significantly disrupt our suppliers' manufacturing and our operations.

Our business has been and could in the future be adversely impacted by the effects of a widespread outbreak of contagious disease, including the COVID-19 pandemic. Any widespread outbreak of contagious diseases, and other adverse public health developments, could cause disruption to, among other things, our ground operations at project sites, our manufacturing facilities and our suppliers and vendors located in the United States, Asia and elsewhere and have a material and adverse effect on our business operations. Our ground operations at project sites, our manufacturing facilities and our suppliers and vendors could be disrupted by worker absenteeism, quarantines, shortage of COVID-19 test kits and personal protection equipment for employees, office and factory closures, disruptions to ports and other shipping infrastructure, or other travel or health-related restrictions. If our ground operations at project sites, our manufacturing facilities and our suppliers or vendors are so affected, our supply chain, manufacturing and product shipments will be delayed, which could adversely affect our business, operations, and customer relationships. For example, our suppliers and vendors in Asia have been affected by business closures and disruptions to ports and other shipping infrastructure. In addition, the macroeconomic effects of the COVID-19 pandemic in the United States and other markets have resulted in a widespread health crisis that has adversely affected the economies and financial markets of many countries, resulting in an economic downturn that could affect demand for our products and impact our operating results.

Given the ongoing and dynamic nature of the circumstances, it is difficult to predict the full impact of the COVID-19 pandemic on our business. The extent of such impact will depend on future developments, which are highly uncertain, including when the COVID-19 pandemic can be controlled and abated. Further, while jurisdictions in which we operate have gradually allowed the reopening of businesses and other organizations and removed the sheltering restrictions, it is premature to assess whether doing so will result in a meaningful increase in economic activity and the impact of such actions on further the COVID-19 pandemic cases.

Overall, our revenue for fiscal year 2021 has been negatively affected by impacts related to the COVID-19 pandemic, such as delays in shipping energy storage products and temporary closures of customer construction sites. We have encountered and could encounter in the future project delays and resulting liquidated damages claims from customers due to impacts on suppliers, customers, or others. The duration and intensity of these impacts and resulting disruption to our operations is uncertain and continues to evolve. The extent to which these events may impact our business will depend on future developments, which are highly uncertain and cannot be predicted at this time. Accordingly, management will continue to monitor the impact of the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce.

To the extent the COVID-19 pandemic adversely affects our financial condition, operating results, and cash flows, it may also have the effect of heightening many of the other risks described in this "Risk Factors" section, such as those relating to our high level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

Risks Related to Our Industry

If renewable energy technologies are not suitable for widespread adoption or sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate, our sales may decline, and we may be unable to achieve or sustain profitability.

The market for renewable, distributed energy generation is emerging and rapidly evolving, and its future success is uncertain. If renewable energy generation proves unsuitable for widespread commercial deployment or if demand for our renewable energy hardware and software-enabled services fails to develop sufficiently, we would be unable to achieve sales and market share.

Many factors may influence the widespread adoption of renewable energy generation and demand for our hardware and software-enabled services, including, but not limited to, the cost-effectiveness of renewable energy technologies as compared with conventional and competitive technologies, the performance and reliability of renewable energy products as compared with conventional and non-renewable products, fluctuations in economic and market conditions that impact the viability of conventional and competitive alternative energy sources, increases or decreases in the prices of oil, coal and natural gas, continued deregulation of the electric power industry and broader energy industry, and the availability or effectiveness of government subsidies and incentives. You should consider our prospects in light of the risks and uncertainties emerging companies encounter when introducing new products and services into a nascent industry.

The growth and profitability of our business is dependent upon the continued decline in the cost of battery storage. Over the last decade the cost of battery storage products, particularly lithium-ion based battery storage products, have declined significantly. This lower cost has been driven by advances in battery technology, maturation of the battery supply chain, the scale of battery production by the leading manufacturers and other factors. The growth of our hardware sales and related software-enabled services is dependent upon the continued decrease in the price and efficiency of battery storage products of our component OEM suppliers. If for any reason our component OEM suppliers are unable to continue to reduce the price of their battery storage products, our business and financial condition will be negatively impacted.

If the estimates and assumptions we use to determine the size of our total addressable market are inaccurate, our future growth rate may be affected, and the potential growth of our business may be limited.

Market estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The assumptions relating to our market opportunity include, but are not limited to, the following: (i) according to BloombergNEF, global energy storage capacity grew 63% per annum between 2015 and 2020 and is expected to grow at a further 41% annual growth rate through 2025; (ii) declines in lithium-ion battery costs and in the cost of renewable generation; (iii) growing demand for renewable energy; and (iv) increased complexity of the electrical grid. Our market opportunity is also based on the assumption that our existing and future offerings will be more attractive to our customers and potential customers than competing products and services. If these assumptions prove inaccurate, our business, financial condition, and results of operations could be adversely affected. For more information regarding our estimates of market opportunity and the forecasts of market growth included herein, see the section entitled "Business."

The economic benefit of our energy storage products to our customers depends on the cost of electricity available from alternative sources, including local electric utility companies, which cost structure is subject to change.

The economic benefit of our energy storage products to our customers includes, among other things, the benefit of reducing such customer's payments to the local electric utility company. The rates at which electricity is available from a customer's local electric utility company is subject to change and any changes in such rates may affect the relative benefits of our energy storage products. Further, the local electric utility may impose "departing load," "standby" or other charges on our customers in connection with their acquisition of our energy storage products, the amounts of which are outside of our control and which may have a material impact on the economic benefit of our energy storage products to our customers. Changes in the rates offered by local electric utilities and/or in the applicability or amounts of charges and other fees imposed by such utilities on customers acquiring our energy storage products could adversely affect the demand for our energy storage products.

Existing electric utility industry policies and regulations, and any subsequent changes, may present technical, regulatory, and economic barriers to the purchase and use of energy storage products that may significantly reduce demand for our products or harm our ability to compete.

Federal, state, local, and foreign government regulations and policies concerning the broader electric utility industry, as well as internal policies and regulations promulgated by electric utilities and organized electric markets with respect to fees, practices, and rate design, heavily influence the market for electricity generation products and services. These regulations and policies often affect electricity pricing and the interconnection of generation facilities, and can be subject to frequent modifications by governments, regulatory bodies, utilities, and market operators. For example, changes in fee structures, electricity pricing structures, and system permitting, interconnection, and operating requirements can deter purchases of renewable energy products by reducing anticipated revenues or increasing costs or regulatory burdens for would-be system purchasers. The resulting reductions in demand for energy products could harm our business, prospects, financial condition, and results of operations.

A significant recent development in renewable-energy pricing policies in the U.S. occurred on July 16, 2020, when the Federal Energy Regulatory Commission ("FERC") issued a final rule amending regulations that implement the Public Utility Regulatory Policies Act ("PURPA"). Among other requirements, PURPA mandates that electric utilities buy the output of certain renewable generators below established capacity thresholds. PURPA also requires that such sales occur at a utility's "avoided cost" rate. FERC's PURPA reforms include modifications (1) to how regulators and electric utilities may establish avoided cost rates for new contracts; (2) that reduce from 20 MW to 5 MW the capacity threshold above which a renewable-energy qualifying facility is rebuttably presumed to have nondiscriminatory market access, thereby removing the requirement for utilities to purchase its output; (3) that require regulators to establish criteria for determining when an electric utility incurs a legally enforceable obligation to purchase from a PURPA facility; and (4) that reduce barriers for third parties to challenge PURPA eligibility. In general, FERC's PURPA reforms have the potential to reduce prices for the output from certain new renewable generation projects while also narrowing the scope of PURPA eligibility for new projects. These effects could reduce demand for PURPA-eligible battery energy storage products and could harm our business, prospects, financial condition, and results of operations.

Changes in other current laws or regulations applicable to us or the imposition of new laws, regulations, or policies in the U.S., Europe, or other jurisdictions in which we do business could have a material adverse effect on our business, financial condition, and results of operations. Any changes to government, utility, or electric market regulations or policies that favor electric utilities or other market participants could reduce the competitiveness of battery energy storage products and cause a significant reduction in demand for our products and services and adversely impact our growth. In addition, changes in our products or changes in export and import laws and implementing regulations may create delays in the introduction of new products in international markets, prevent our customers from deploying our products internationally or, in some cases, prevent the export or import of our products to certain countries altogether. Any such event could have a material adverse effect on our business, financial condition, and results of operations.

An increase in interest rates or a reduction in the availability of tax equity or project debt capital in the global financial markets could make it difficult for end customers to finance the cost of a renewable energy system and could reduce the demand for our products.

Many end users depend on financing to fund the initial capital expenditure required to purchase our products and services. As a result, an increase in interest rates or a reduction in the supply of project debt or tax equity financing could reduce the number of customer projects that receive financing or otherwise make it difficult for our customers or their customers to secure the financing necessary to construct a renewable energy system on favorable terms, or at all, and thus lower demand for our products, which could limit our growth or reduce our net sales. In addition, we believe that a significant percentage of end-users construct renewable energy systems as an investment, funding a significant portion of the initial capital expenditure with financing from third parties. An increase in interest rates could lower an investor's return on investment, increase equity requirements, or make alternative investments more attractive relative to our products and services and, in each case, could cause these end users to seek alternative investments.

Changes in tax laws or regulations that are applied adversely to us or our customers could materially adversely affect our business, financial condition, results of operations, and prospects.

Changes in corporate tax rates, tax incentives for renewable energy projects, the realization of net deferred tax assets relating to our U.S. operations, the taxation of foreign earnings, and the deductibility of expenses under future tax reform legislation could have a material impact on the value of our deferred tax assets, could result in significant one-time charges in the current or future taxable years, and could increase our future U.S. tax expense, which could have a material adverse effect on our business, financial condition, results of operations, and prospects.

Governmental agencies in the jurisdictions in which we and our affiliates do business, as well as the Organization for Economic Cooperation and Development (the "OECD"), have recently focused on issues related to the taxation of multinational business, including issues relating to "base erosion and profit shifting," where profits are reported as earned for tax purposes in relatively low-tax jurisdictions or payments are made between affiliates in jurisdictions with different tax rates. The OECD has released several components of its comprehensive plan to create an agreed set of international rules for addressing base erosion and profit shifting, and governmental authorities from various jurisdictions (including the United States) continue to discuss potential legislation and other reforms, including proposals for global minimum tax rates.

As we operate in numerous jurisdictions, the application of tax laws can be subject to diverging and sometimes conflicting interpretations by tax authorities of these jurisdictions. It is not uncommon for taxing authorities in different countries to have conflicting views, for instance with respect to whether a permanent establishment exists in a particular jurisdiction, the manner in which an arm's length standard is applied for transfer pricing purposes, or with respect to the valuations of intellectual property. For example, if a taxing authority in one country where we operate were to reallocate income from another country where we operate, and if the taxing authority in the second country did not agree with the reallocation asserted by the first country, then we could be subject to tax on the same income in both countries, resulting in double taxation. If taxing authorities were to allocate income to a higher tax jurisdiction, subject our income to double taxation or assess interest and penalties, our tax liabilities could increase, which could adversely affect our business, financial condition, and results of operations.

Due to the potential for changes to tax laws and regulations or changes to the interpretation thereof (including regulations and interpretations pertaining to recent and proposed potential tax reforms in the United States), the ambiguity of tax laws and regulations, the subjectivity of factual interpretations, the complexity of our intercompany arrangements, uncertainties regarding the geographic mix of earnings in any particular period, and other factors, our estimates of effective tax rate and income tax assets and liabilities may be incorrect and our financial statements could be adversely affected, and the resulting impacts may vary substantially from period to period.

In particular, in the United States, there have been multiple significant changes recently proposed (including by the Biden administration and by members of Congress) to the taxation of business entities, including, among other things, an increase in the U.S. federal corporate income tax rate, a transition to graduated rates, an increase in the tax rate applicable to global intangible low-taxed income and elimination of certain exemptions, and various other changes to the U.S. international tax regime. These and other proposals are currently being discussed, but the likelihood of these changes being enacted or implemented is not yet clear. We are currently unable to predict whether such changes will occur and, if so, when they would be effective or the ultimate impact on us or our business. To the extent that such changes have a negative impact on us or our business, these changes may materially and adversely impact our business, financial condition, and results of operations.

In addition, the amounts of taxes we pay are subject to current or future audits by taxing authorities in the United States and all other jurisdictions in which we operate. If audits result in additional payments or assessments different from our reserves, our future results may include unfavorable adjustments to our tax liabilities, and our financial statements could be adversely affected.

We may incur obligations, liabilities, or costs under environmental, health, and safety laws, which could have an adverse impact on our business, financial condition, and results of operations.

We are required to comply with national, state, local, and foreign laws and regulations regarding the protection of the environment, health, and safety. We may incur expenses, or be subject to liability, related to the transportation, storage, or disposal of lithium-ion batteries. Adoption of more stringent laws and regulations in the future could require us to incur substantial costs to come into compliance with these laws and regulations. In addition, violations of, or liabilities under, these laws and regulations may result in restrictions being imposed on our operating activities or in our being subject to adverse publicity, substantial fines, penalties, criminal proceedings, third-party property damage or personal injury claims, cleanup costs, or other costs. Liability under these laws and regulations can be imposed on a joint and several basis and without regard to fault or the legality of the activities giving rise to the claim. In addition, future developments such as more aggressive enforcement policies or the discovery of presently unknown environmental conditions may require expenditures that could have an adverse effect on our business, financial condition, and results of operations.

The reduction, elimination, or expiration of government incentives for, or regulations mandating the use of, renewable energy could reduce demand for energy storage products and harm our business.

Federal, state, local, and foreign government bodies provide incentives to owners, end users, distributors, system integrators and manufacturers of renewable energy products to promote renewable electricity in the form of rebates, tax credits and other financial incentives.

The range and duration of these incentives varies widely by jurisdiction. Our customers typically use our products for grid-connected applications wherein power is sold under a power purchase agreement or into an organized electric market. The reduction, elimination, or expiration of government incentives for grid-connected electricity may negatively affect the competitiveness of our offerings relative to conventional renewable sources of electricity and could harm or halt the growth of our industry and our business. These subsidies and incentives may expire on a particular date, end when the allocated funding is exhausted or be reduced or terminated as renewable energy adoption rates increase or as a result of legal challenges, the adoption of new statutes or regulations, or the passage of time. These reductions or terminations may occur without warning.

Revenue from any projects we support may be adversely affected if there is a decline in public acceptance or support of renewable energy, or regulatory agencies, local communities, or other third parties delay, prevent, or increase the cost of constructing and operating customer projects.

Certain persons, associations and groups could oppose renewable energy projects in general or our customers' projects specifically, citing, for example, misuse of water resources, landscape degradation, land use, food scarcity or price increase, and harm to the environment. Moreover, regulation may restrict the development of renewable energy plants in certain areas. In order to develop a renewable energy project, our customers are typically required to obtain, among other things, environmental impact permits or other authorizations and building permits, which in turn require environmental impact studies to be undertaken and public hearings and comment periods to be held during which any person, association, or group may oppose a project. Any such opposition may be taken into account by government officials responsible for granting the relevant permits, which could result in the permits being delayed or not being granted or being granted solely on the condition that our customers carry out certain corrective measures to the proposed project.

Severe weather events, including the effects of climate change, are inherently unpredictable and may have a material adverse effect on our financial results and financial condition.

Our business, including our customers and suppliers, may be exposed to severe weather events and natural disasters, such as tornadoes, tsunamis, tropical storms (including hurricanes), earthquakes, windstorms, hailstorms, severe thunderstorms, wildfires, and other fires, which could cause operating results to vary significantly from one period to the next. We may incur losses in our business in excess of: (1) those experienced in prior years, (2) the average expected level used in pricing, or (3) current insurance coverage limits. The incidence and severity of severe weather conditions and other natural disasters are inherently unpredictable. Climate change may affect the occurrence of certain natural events, such as an increase in the frequency or severity of wind and thunderstorm events, and tornado or hailstorm events due to increased convection in the atmosphere; more frequent wildfires and subsequent landslides in certain geographies; higher incidence of deluge flooding; and the potential for an increase in severity of the hurricane events due to higher sea surface temperatures. Additionally, climate change may adversely impact the demand, price, and availability of insurance. Due to significant variability associated with future changing climate conditions, we are unable to predict the impact climate change will have on our business.

Risks Related to Our Financial Condition and Liquidity

Our order intake and cash flows have been highly seasonal, which could make our future performance difficult to predict and could cause our results of operations for a particular period to fluctuate from quarter to quarter or fall below expectations, resulting in a decline in the price of our Class A common stock.

Our quarterly results of operations are difficult to predict and may fluctuate significantly in the future. We experience seasonality and typically see increased order intake in our third and fourth fiscal quarters, driven by demand in the Northern Hemisphere to install energy storage products before the summer of the following year. Combined third and fourth fiscal quarter order intake for energy storage products in fiscal year 2021, 2020 and fiscal year 2019 accounted for 80% or more of our total intake each year. As a result, revenue recognition is significantly stronger in our third and fourth fiscal quarters. Cash flows historically have been negative in our first and second fiscal quarters, neutral to positive in our third fiscal quarter, and positive in our fourth fiscal quarter. Significant fluctuations in our order intake and cash flows could make our future performance difficult to predict and could cause our results of operations for a particular period to fluctuate from quarter to quarter or fall below expectations, resulting in a decline in the price of our Class A common stock.

We have a history of net losses, we anticipate increasing expenses in the future, and we may not be able to achieve or maintain profitability.

We have incurred net losses on an annual basis since our inception. We incurred net losses of $162.0 million and $46.7 million for the fiscal years ended September 30, 2021 and 2020, respectively. We expect our aggregate costs will increase substantially in the foreseeable future and our losses will continue as we expect to invest heavily in increasing our customer base, expanding our operations, hiring additional employees, and operating as a public company. These efforts may prove more expensive than we currently anticipate, and we may not succeed in increasing our revenue sufficiently to offset these higher expenses. To date, we have financed our operations with equity contributions from AES Grid Stability, Siemens Industry, and QFH, cash and cash equivalents, negative working capital, and short-term borrowings. Our net cash flow from operations was negative for the fiscal years ended September 30, 2021 and 2020. We may not generate positive cash flow from operations or profitability in any given period, and our limited operating history may make it difficult for you to evaluate our current business and our future prospects.

We have encountered and will continue to encounter risks and difficulties frequently experienced by growing companies in rapidly changing industries, including increasing expenses as we continue to grow our business. We expect our operating expenses to increase significantly over the next several years as we continue to hire additional personnel, expand our operations and infrastructure, and continue to expand to reach more customers. In addition to the expected costs to grow our business, we also expect to incur additional legal, accounting, and other expenses as a newly public company. These investments may be more costly than we expect, and if we do not achieve the benefits anticipated from these investments, or if the realization of these benefits is delayed, they may not result in increased revenue or growth in our business. If our growth rate were to decline significantly or become negative, it could adversely affect our financial condition and results of operations. If we are not able to achieve or maintain positive cash flow in the long term, we may require additional financing, which may not be available on favorable terms or at all and/or which would be dilutive to our stockholders. If we are unable to successfully address these risks and challenges as we encounter them, our business, results of operations and financial condition would be adversely affected. Our failure to achieve or maintain profitability could negatively impact the value of our common stock.

Our revolving credit facility imposes certain restrictions that may affect our ability to operate our business and make payments on our indebtedness.

We entered into a $190.0 million secured revolving credit facility (the “Revolver”) on November 1, 2021. The 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 (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reaches a certain specified threshold and we make an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Revolving Credit Facility” for further discussion of the Revolver. The 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 Fluence Energy LLC Agreement 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. These 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. In connection with the Revolver, we granted the lenders party thereto a security interest in substantially all of our assets.

Our ability to meet these restrictive covenants can be impacted by events beyond our control and we may be unable to do so. Our Revolver and related security agreements provides 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 would have the right to proceed against the assets we provided as collateral pursuant to the Revolver and related security agreement. If the debt under our Revolver was to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay it, which would have an immediate adverse effect on our business and operating results. This could potentially cause us to cease operations and result in a complete loss of your investment in our Class A common stock.

Moreover, the 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.

Our future capital needs are uncertain and we may need to raise additional funds in the future, and such funds may not be available on acceptable terms or at all.

We believe that our current cash and cash equivalents, including the net proceeds from the IPO, together with our expected cash from operations, will be sufficient to meet our projected operating requirements for the foreseeable future. However, continued expansion of our business will be expensive, and we may seek additional funds from public and private stock offerings, borrowings under our existing or new credit facilities or other sources which we may not be able to maintain or obtain on acceptable or commercially reasonable terms, if at all. Our capital requirements will depend on many factors, including:

- market acceptance of our offerings;
- the revenue generated by sales of our offerings;
- the costs associated with expanding our sales and marketing efforts;
- the expenses we incur in manufacturing and selling our products;
- the costs of developing and commercializing new products or technologies;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the cost of enforcing or defending against non-competition claims;
- the number and timing of acquisitions and other strategic transactions;
- the costs associated with our planned international expansion; and
- unanticipated general and administrative expenses.

As a result of these factors, we may seek to raise additional capital to, among others:

- maintain appropriate product inventory levels;
- continue our research and development and protect our intellectual property rights;
- defend claims, in litigation or otherwise;
- expand our geographic reach;
- commercialize our new products; and
- acquire companies and license products or intellectual property.

Such capital may not be available on favorable terms, or at all. Furthermore, if we issue equity or debt securities to raise additional capital, our existing stockholders may experience dilution, and the new equity or debt securities may have rights, preferences, and privileges senior to those of our existing stockholders. In addition, if we raise additional capital through collaboration, licensing, or other similar arrangements, it may be necessary to relinquish valuable rights to our products, potential products, or proprietary technologies, or grant licenses on terms that are not favorable to us. Historically, we have relied on parent corporate guarantees from our affiliates to support project sales. If we are unable to rely on our standalone credit quality or utilize such parent corporate guarantees going forward, it may impact our ability to sell products or establish supplier relationships going forward. If we cannot raise capital on acceptable terms, we may not be able to develop or enhance our products, execute our business plan, take advantage of future opportunities, or respond to competitive pressures, changes in our supplier relationships, or unanticipated customer requirements. Any of these events could adversely affect our ability to achieve our development and commercialization goals, which could have a material adverse effect on our business, results of operations, and financial condition.

Risks Related to Our Intellectual Property and Technology

If we are unable to obtain, maintain and enforce intellectual property protection for our technology or if the scope of our intellectual property protection is not sufficiently broad, others may be able to develop and commercialize technology substantially similar to ours, and our ability to successfully commercialize our technology may be adversely affected.

Our business depends on internally developed technology, including hardware, software, databases, confidential information and know-how, the protection of which is crucial to the success of our business. We rely on a combination of trademark, trade-secret, and copyright laws and confidentiality procedures and contractual provisions to protect our intellectual property rights in our internally developed technology. We may, over time, increase our investment in protecting our intellectual property through additional trademark, patent, and other intellectual property filings that could be expensive and time-consuming. Effective trademark, trade-secret, and copyright protection is expensive to develop and maintain, both in terms of initial and ongoing registration requirements and the costs of defending our rights. These measures, however, may not be sufficient to offer us meaningful protection. If we are unable to protect our intellectual property and other rights, our competitive position and our business could be harmed, as third parties may be able to commercialize and use technologies and software products that are substantially the same as ours without incurring the development and licensing costs that we have incurred. Any of our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed, or misappropriated, our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties, or our intellectual property rights may not be sufficient to permit us to take advantage of current market trends or otherwise to provide us with competitive advantages, which could result in costly redesign efforts, discontinuance of certain offerings, or other competitive harm.

Monitoring unauthorized use of our intellectual property is difficult and costly. From time to time, we seek to analyze our competitors' services, and may in the future seek to enforce our rights against potential infringement. However, the steps we have taken to protect our intellectual property rights may not be adequate to prevent infringement or misappropriation of our intellectual property. We may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Any inability to meaningfully protect our intellectual property rights could result in harm to our ability to compete and reduce demand for our technology. Moreover, our failure to develop and properly manage new intellectual property could adversely affect our market positions and business opportunities. Also, some of our services rely on technologies and software developed by or licensed from third parties, and we may not be able to maintain our relationships with such third parties or enter into similar relationships in the future on reasonable terms or at all.

Uncertainty may result from changes to intellectual property legislation and from interpretations of intellectual property laws by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to obtain and maintain the intellectual property rights necessary to provide us with a competitive advantage. Our failure to obtain, maintain and enforce our intellectual property rights could therefore have a material adverse effect on our business, financial condition, and results of operations.

We may be sued by third parties for infringement, misappropriation, dilution, or other violation of their intellectual property or proprietary rights.

Internet, advertising, and e-commerce companies frequently are subject to litigation based on allegations of infringement, misappropriation, dilution, or other violations of intellectual property rights. Some internet, advertising, and e-commerce companies, including some of our competitors, as well as non-practicing entities, own large numbers of patents, copyrights, trademarks, and trade secrets, which they may use to assert claims against us.

Third parties may in the future assert, that we have infringed, misappropriated, diluted, or otherwise violated their intellectual property rights. For instance, the use of our technology to provide our offerings could be challenged by claims that such use infringes, dilutes, misappropriates, or otherwise violates the intellectual property rights of a third party. In addition, we may in the future be exposed to claims that content published or made available through our apps or websites violates third-party intellectual property rights.

As we face increasing competition and as a public company, the possibility of intellectual property rights claims against us grows. Such claims and litigation may involve patent holding companies or other adverse intellectual property rights holders who have no relevant product revenue, and therefore our own pending patents and other intellectual property rights may provide little or no deterrence to these rights holders in bringing intellectual property rights claims against us. There may be intellectual property rights held by others, including issued or pending patents and trademarks, that cover significant aspects of our technologies, content, branding, or business methods, and we cannot assure that we are not infringing or violating, and have not violated or infringed, any third-party intellectual property rights or that we will not be held to have done so or be accused of doing so in the future. We expect that we may receive in the future notices that claim we or our partners, or clients using our solutions and services, have misappropriated, or misused other parties' intellectual property rights, particularly as the number of competitors in our market grows and the functionality of applications amongst competitors overlaps.

Any claim that we have violated intellectual property or other proprietary rights of third parties, with or without merit, and whether or not it results in litigation, is settled out of court or is determined in our favor, could be time-consuming and costly to address and resolve, and could divert the time and attention of management and technical personnel from our business. Furthermore, an adverse outcome of a dispute may result in an injunction and could require us to pay substantial monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property rights. Any settlement or adverse judgment resulting from such a claim could require us to enter into a licensing agreement to continue using the technology, content, or other intellectual property that is the subject of the claim; restrict or prohibit our use of such technology, content, or other intellectual property; require us to expend significant resources to redesign our technology or solutions; and require us to indemnify third parties. Royalty or licensing agreements, if required or desirable, may be unavailable on terms acceptable to us, or at all, and may require significant royalty payments and other expenditures. We may also be required to develop alternative non-infringing technology, which could require significant time and expense. There also can be no assurance that we would be able to develop or license suitable alternative technology, content, or other intellectual property to permit us to continue offering the affected technology, content, or services to our partners or clients. If we cannot develop or license technology for any allegedly infringing aspect of our business, we would be forced to limit our product or service offerings and may be unable to compete effectively. Any of these events could materially harm our business, financial condition, and results of operations.

If our trademarks and trade names are not adequately protected or protectable, we may not be able to build name recognition in our markets of interest, and our competitive position may be harmed.

The registered or unregistered trademarks or trade names that we own may be challenged, infringed, circumvented, declared generic, lapsed, or determined to be infringing on or dilutive of other marks. We may not be able to protect our rights in these trademarks and trade names, which we need in order to build name recognition with potential members, partners, and clients. In addition, third parties may file for registration of trademarks similar or identical to our trademarks, thereby impeding our ability to build brand identity and possibly leading to market confusion. If they succeed in registering or developing common-law rights in such trademarks, and if we are not successful in challenging such third-party rights, we may not be able to use these trademarks to develop brand recognition of our technologies, products, or services. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered or unregistered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

We may not be able to enforce our intellectual property rights throughout the world.

We may also be required to protect our proprietary technology and content in an increasing number of jurisdictions, a process that is expensive and may not be successful, or which we may not pursue in every location. Filing, prosecuting, maintaining, defending, and enforcing intellectual property rights on our products, services, and technologies in all countries throughout the world could be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. We do not own and have not registered or applied for intellectual property registrations in all countries outside the United States. Competitors may use our technologies in jurisdictions where we have not obtained protection to develop their own products and services and, further, may export otherwise violating products and services to territories where we have protection but enforcement is not as strong as that in the United States. These products and services may compete with our solutions and services, and our intellectual property rights may not be effective or sufficient to prevent them from competing. In addition, the laws of some foreign countries do not protect certain proprietary rights to the same extent as the laws of the United States, and many companies have encountered significant challenges in establishing and enforcing certain of their proprietary rights outside of the United States. These challenges can be caused by the absence or inconsistency of the application of rules and methods for the establishment and enforcement of intellectual property rights outside of the United States. For instance, there is no uniform worldwide policy regarding patentable subject matter or the scope of claims allowable for business methods. As such, we do not know the degree of future protection that we will have on our technologies, products, and services.

In addition, the legal systems of some countries, particularly developing countries, do not favor the enforcement of certain intellectual property protection. This could make it difficult for us to stop the misappropriation or other violation of certain of our other intellectual property rights. Accordingly, we may choose not to seek protection in certain countries, and we will not have the benefit of protection in such countries. Proceedings to enforce our intellectual property rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our products, services, and other technologies and the enforcement of intellectual property. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects.

We may be subject to claims that our employees, consultants, or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.

Many of our employees, consultants, and advisors are currently or were previously employed at other companies in our field, including our competitors or potential competitors. Although we try to ensure that our employees, consultants, and advisors do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or these individuals have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects.

Our business depends on our ability to effectively invest in, implement improvements to and properly maintain the uninterrupted operation and data integrity of our information technology and other business systems.

Our business is highly dependent on maintaining effective information systems as well as the integrity and of the data we use to serve our customers and operate our business. Because of the large amount of data that we collect and manage, it is possible that hardware failures or errors in our systems could result in data loss or corruption or cause the information that we collect to be incomplete or contain inaccuracies that our partners regard as significant. If our data were found to be inaccurate or unreliable due to fraud or other error, or if we, or any of the third-party service providers we engage, were to fail to maintain information systems and data integrity effectively, we could experience operational disruptions that may impact our operations and hinder our ability to provide services, establish appropriate pricing for services, establish reserves, report financial results timely and accurately and maintain regulatory compliance, among other things. If any such failure of our data integrity were to result in the theft, corruption or other harm to the data of our customers, our ability to retain and attract partners or customers may be harmed.

We must continue to invest in long-term solutions that will enable us to anticipate customer needs and expectations, enhance the customer experience, act as a differentiator in the market, and protect against cybersecurity risks and threats. Despite our implementation of reasonable security measures, our IT systems, like those of other companies, are vulnerable to damages from computer viruses, natural disasters, fire, power loss, telecommunications failures, personnel misconduct, human error, unauthorized access, physical or electronic security breaches, cyber-attacks (including malicious and destructive code, phishing attacks, ransomware, and denial of service attacks), and other similar disruptions. Such attacks or security breaches may be perpetrated by bad actors internally or externally (including computer hackers, persons involved with organized crime, or foreign state or foreign state-supported actors). Cybersecurity threat actors employ a wide variety of methods and techniques that are constantly evolving, increasingly sophisticated, and difficult to detect and successfully defend against. We have experienced such incidents in the past, and any future incidents could expose us to claims, litigation, regulatory or other governmental investigations, administrative fines, and potential liability. Any system failure, accident, or security breach could result in disruptions to our operations. A material network breach in the security of our IT systems could include the theft of our trade secrets, customer information, human resources information, or other confidential data, including but not limited to personally identifiable information.

Although past incidents have not had a material effect on our business operations or financial performance, to the extent that any disruption or security breach results in a loss or damage to our data, or an inappropriate disclosure of confidential, proprietary or customer information, it could cause significant damage to our reputation, affect our relationships with our customers and strategic partners, lead to claims against us from governments and private plaintiffs, and adversely affect our business. We cannot guarantee that future cyberattacks, if successful, will not have a material effect on our business or financial results.

Many governments have enacted laws requiring companies to provide notice of cyber incidents involving certain types of data, including personal data. These laws may be subject to alterations and revisions, and if we fail to comply with our obligations under such laws in the jurisdictions in which we operate, we could be subject to regulatory action and lawsuits. If an actual or perceived cybersecurity breach of security measures, unauthorized access to our system or the systems of the third-party vendors that we rely upon, or any other cybersecurity threat occurs, we may incur liability, costs, or damages, contract termination, our reputation may be compromised, our ability to attract new customers could be negatively affected, and our business, financial condition, and results of operations could be materially and adversely affected. Any compromise of our security could also result in a violation of applicable domestic and foreign security, privacy or data protection, consumer protection, and other laws, regulatory or other governmental investigations, enforcement actions, and legal and financial exposure, including potential contractual liability. In addition, we may be required to incur significant costs to protect against and remediate damage caused by these disruptions or security breaches in the future.

We utilize open-source software, which may pose particular risks to our proprietary software and solutions.

We use open-source software in our solutions and will use open-source software in the future. Companies that incorporate open-source software into their solutions have, from time to time, faced claims challenging the use of open-source software and compliance with open-source license terms. Some licenses governing the use of open-source software contain requirements that we make available source code for modifications or derivative works we create based upon the open-source software, and that we license such modifications or derivative works under the terms of a particular open-source license or other license granting third parties certain rights of further use. By the terms of certain open-source licenses, we could be required to release the source code of our proprietary software, and to make our proprietary software available under open-source licenses to third parties at no cost, if we combine our proprietary software with open-source software in certain manners. Although we monitor our use of open-source software, we cannot assure you that all open-source software is reviewed prior to use in our solutions, that our developers have not incorporated open-source software into our solutions, or that they will not do so in the future. Additionally, the terms of many open-source licenses to which we are subject have not been interpreted by U.S. or foreign courts. There is a risk that open-source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to market or provide our solutions as currently marketed or provided. Companies that incorporate open-source software into their products have, in the past, faced claims seeking enforcement of open-source license provisions and claims asserting ownership of open-source software incorporated into their product. If an author or other third party that distributes such open-source software were to allege that we had not complied with the conditions of an open-source license, we could incur significant legal costs defending ourselves against such allegations. In the event such claims were successful, we could be subject to significant damages or be enjoined from the distribution of our software. In addition, the terms of open-source software licenses may require us to provide source code that we develop using such open-source software to others on unfavorable license terms. As a result of our current or future use of open-source software, we may face claims or litigation, be required to release our proprietary source code, pay damages for breach of contract, re-engineer our solutions, discontinue making our solutions available in the event re-engineering cannot be accomplished on a timely basis, or take other remedial action. Any such re-engineering or other remedial efforts could require significant additional research and development resources, and we may not be able to successfully complete any such re-engineering or other remedial efforts. Further, in addition to risks related to license requirements, use of certain open-source software can lead to greater risks than use of third-party commercial software, as open-source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a negative effect on our business, financial condition, and results of operations.

If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages, and we could lose license rights that are critical to our business. If we fail to comply with our obligations under license and technology agreements with AES and Siemens, we could lose license rights, including to patents and patent applications, which may prove to be material to our business.

We license certain intellectual property, including patents, technologies, and software from third parties, including AES and Siemens, that is important to our business, and in the future, we may enter into additional agreements that provide us with licenses to valuable intellectual property or technology. If we fail to comply with any of the obligations under our license agreements, we may be required to pay damages and the licensor may have the right to terminate the license. Termination by the licensor would cause us to lose valuable rights, and could prevent us from selling our products and services, or adversely impact our ability to commercialize future solutions and services. Our business would suffer if any current or future licenses terminate, if the licensors fail to abide by the terms of the license, if the licensors fail to enforce licensed patents against infringing third parties, if the licensed intellectual property is found to be invalid or unenforceable, if the licensed intellectual property expires or if we are unable to enter into necessary licenses on acceptable terms. In addition, our rights to certain intellectual property, technologies, and software, are licensed to us on a non-exclusive basis. The owners of these non-exclusively licensed technologies are therefore free to license them to third parties, including our competitors, on terms that may be superior to those offered to us, which could place us at a competitive disadvantage. Moreover, our licensors may own or control intellectual property that has not been licensed to us and, as a result, we may be subject to claims, regardless of their merit, that we are infringing or otherwise violating the licensor's rights. In addition, the agreements under which we license intellectual property or technology from third parties are generally complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement. Any of the foregoing could harm our competitive position, business, financial condition, results of operations, and prospects.

If we cannot license rights to use technologies on reasonable terms, we may not be able to commercialize new solutions or services in the future.

In the future, we may identify additional third-party intellectual property we may need to license in order to engage in our business, including to develop or commercialize new products or services. However, such licenses may not be available on acceptable terms or at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources, and greater development or commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. Even if such licenses are available, we may be required to pay the licensor substantial royalties based on sales of our products and services. Such royalties are a component of the cost of our products or services and may affect the margins on our products and services. In addition, such licenses may be non-exclusive, which could give our competitors access to the same intellectual property licensed to us. If we are unable to enter into the necessary licenses on acceptable terms or at all, if any necessary licenses are subsequently terminated, if our licensors fail to abide by the terms of the licenses, if our licensors fail to prevent infringement by third parties, or if the licensed intellectual property rights are found to be invalid or unenforceable, or if the licensed intellectual property rights expire, our business, financial condition, results of operations, and prospects could be affected. If licenses to third-party intellectual property rights are or become required for us to engage in our business, the rights may be non-exclusive, which could give our competitors access to the same technology or intellectual property rights licensed to us. Moreover, we could encounter delays and other obstacles in our attempt to develop alternatives. Defense of any lawsuit or failure to obtain any of these licenses on favorable terms could prevent us from commercializing solutions and services, which could harm our competitive position, business, financial condition, results of operations, and prospects.

Risks related to Ownership of our Class A Common Stock

Certain provisions of Delaware law and antitakeover provisions in our organizational documents could delay or prevent a change of control.

Certain provisions of Delaware law, our amended and restated certificate of incorporation, amended and restated bylaws, and our Stockholders Agreement may have an antitakeover effect and may delay, defer, or prevent a merger, acquisition, tender offer, takeover attempt, or other change of control transaction 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 held by our stockholders. These provisions provide for, among other things:

- the ability of our board of directors to issue one or more series of preferred stock;
- advance notice for nominations of directors by stockholders and for stockholders to include matters to be considered at our annual meetings;
- certain limitations on convening special stockholder meetings;
- prohibit cumulative voting in the election of directors;
- that certain provisions of amended and restated certificate of incorporation may be amended only by the affirmative vote of at least 66 2/3% of the voting power represented by our then-outstanding common stock;

- the right of each of AES Grid Stability, Siemens Industry, and the Blocker Shareholder to nominate certain of our directors;
- the shares of our Class B-1 common stock held by our Founders entitle them to five votes per share on all matters presented to our stockholders generally; and
- the consent rights of the Continuing Equity Owners in the Stockholders Agreement.

These antitakeover provisions could make it more difficult for a third party to acquire us, even if the third party's offer may be considered beneficial by many of our stockholders. As a result, our stockholders may be limited in their ability to obtain a premium for their shares.

In addition, we have opted out of Section 203 of the General Corporation Law of the State of Delaware, which we refer to as the DGCL, but our amended and restated certificate of incorporation will provide that engaging in any of a broad range of business combinations with any "interested" stockholder (any stockholder with 15% or more of our voting stock) for a period of three years following the date on which the stockholder became an "interested" stockholder is prohibited, subject to certain exceptions.

The JOBS Act will allow us to postpone the date by which we must comply with certain laws and regulations intended to protect investors and to reduce the amount of information we provide in our reports filed with the SEC. We cannot be certain if this reduced disclosure will make our Class A common stock less attractive to investors.

The JOBS Act is intended to reduce the regulatory burden on "emerging growth companies." As defined in the JOBS Act, a public company whose initial public offering of common equity securities occurs after December 8, 2011, and whose annual net revenues are less than $1.07 billion will, in general, qualify as an emerging growth company until the earliest of:

- the last day of its fiscal year following the fifth anniversary of the date of its initial public offering of common equity securities;
- the last day of its fiscal year in which it has annual gross revenue of $1.07 billion or more;
- the date on which it has, during the previous three-year period, issued more than $1.0 billion in non-convertible debt; and
- the date on which it is deemed to be a "large accelerated filer," which will occur at such time as the company (1) has an aggregate worldwide market value of common equity securities held by non-affiliates of $700 million or more as of the last business day of its most recently completed second fiscal quarter, (2) has been required to file annual and quarterly reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, for a period of at least 12 months, and (3) has filed at least one annual report pursuant to the Exchange Act.

Under this definition, we are an emerging growth company and may remain an emerging growth company until as late as September 30, 2026. However, we anticipate no longer being an emerging growth company as soon as September 30, 2022. For so long as we are an emerging growth company, we are, among other things:

- not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act;
- not be required to hold a nonbinding advisory stockholder vote on executive compensation pursuant to Section 14A(a) of the Exchange Act;
- not be required to seek stockholder approval of any golden parachute payments not previously approved pursuant to Section 14A(b) of the Exchange Act;
- be exempt from the requirement of the Public Company Accounting Oversight Board, or PCAOB, regarding the communication of critical audit matters in the auditor's report on the financial statements; and
- be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements.

In addition, Section 107 of the JOBS Act provides that an emerging growth company can use the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. This permits an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to use this extended transition period and, as a result, our consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies.

We cannot predict if investors will find our Class A common stock less attractive as a result of our decision to take advantage of some or all of the reduced disclosure requirements above. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile.

Because we have no current plans to pay regular cash dividends on our Class A common stock for the foreseeable future, you may not receive any return on investment unless you sell your Class A common stock for a price greater than that which you paid for it.

We do not anticipate paying any regular cash dividends on our Class A common stock in the foreseeable future. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, general and economic conditions, our results of operations and financial condition, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax and regulatory restrictions, and such other factors that our board of directors may deem relevant. In addition, our ability to pay dividends is, and may be, limited by covenants of any future outstanding indebtedness we or our subsidiaries incur. Therefore, any return on investment in our Class A common stock is solely dependent upon the appreciation of the price of our Class A common stock on the open market, which may not occur.

We cannot predict the effect our multiple class structure may have on the market price of our Class A common stock.

We cannot predict whether our multiple class structure will result in a lower or more volatile market price of our Class A common stock, in adverse publicity, or other adverse consequences. For example, certain index providers have announced restrictions on including companies with multiple-class share structures in certain of their indices. In July 2017, FTSE Russell announced that it plans to require new constituents of its indices to have greater than 5% of the company's voting rights in the hands of public stockholders, and S&P Dow Jones announced that it will no longer admit companies with multiple-class share structures to certain of its indices. Affected indices include the Russell 2000 and the S&P 500, S&P MidCap 400, and S&P SmallCap 600, which together make up the S&P Composite 1500. Also in 2017, MSCI, a leading stock index provider, opened public consultations on their treatment of no-vote and multi-class structures and temporarily barred new multi-class listings from certain of its indices and in October 2018, MSCI announced its decision to include equity securities "with unequal voting structures" in its indices and to launch a new index that specifically includes voting rights in its eligibility criteria. Under such announced policies, the multiple class structure of our stock would make us ineligible for inclusion in certain indices and, as a result, mutual funds, exchange-traded funds, and other investment vehicles that attempt to track those indices would not invest in our Class A common stock. These policies are relatively new, and it is unclear what effect, if any, they will have on the valuations of publicly traded companies excluded from such indices, but it is possible they may depress valuations, compared to similar companies that are included. Given the sustained flow of investment funds into passive strategies that seek to track certain indices, exclusion from certain stock indices would likely preclude investment by many of these funds and could make our Class A common stock less attractive to other investors. As a result, the market price of our Class A common stock could be adversely affected.

We are a "controlled company" within the meaning of the Nasdaq rules and, as a result, are qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You may not have the same protections afforded to stockholders of companies that are subject to such corporate governance requirements.

Our Continuing Equity Owners have more than 50% of the voting power for the election of directors, and, as a result, we are considered a "controlled company" for the purposes of the Nasdaq rules. As such, we qualify for, and intend to rely on, exemptions from certain corporate governance requirements, including the requirements to have a majority of independent directors on our board of directors, an entirely independent compensation committee or to have director nominations be made, or recommended to the full board of directors, by its independent directors or by a nominations committee that is composed entirely of independent directors. The corporate governance requirements and, specifically, the independence standards are intended to ensure directors who are considered independent are free of any conflicting interest that could influence their actions as directors.

Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the Nasdaq rules. Our status as a controlled company could make our Class A common stock less attractive to some investors or otherwise harm our stock price.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, and 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, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our amended and restated certificate of incorporation provides (A) (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our amended and restated 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 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 Exchange Act. The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation.

Our amended and restated certificate of incorporation provides that the doctrine of "corporate opportunity" does not apply with respect to any director or stockholder who is not employed by us or our subsidiaries.

The doctrine of corporate opportunity generally provides that a corporate fiduciary may not develop an opportunity using corporate resources, acquire an interest adverse to that of the corporation or acquire property that is reasonably incident to the present or prospective business of the corporation or in which the corporation has a present or expectancy interest, unless that opportunity is first presented to the corporation and the corporation chooses not to pursue that opportunity. The doctrine of corporate opportunity is intended to preclude officers or directors or other fiduciaries from personally benefiting from opportunities that belong to the corporation. Our amended and restated certificate of incorporation provides that the doctrine of "corporate opportunity" will not apply with respect to any director or stockholder who is not employed by us or our subsidiaries. Any director or stockholder who is not employed by us or our subsidiaries, therefore, has no duty to communicate or present corporate opportunities to us, and has the right to either hold any corporate opportunity for their (and their affiliates') own account and benefit or to recommend, assign or otherwise transfer such corporate opportunity to persons other than us, including to any director or stockholder who is not employed by us or our subsidiaries.

As a result, certain of our stockholders, directors, and their respective affiliates, including AES Grid Stability, Siemens Industry, the Blocker Shareholder, and any of our directors nominated by them that is not employed by us or our subsidiaries, are not prohibited from operating or investing in competing businesses. We, therefore, may find ourselves in competition with certain of our stockholders, directors, or their respective affiliates, and we may not have knowledge of, or be able to pursue, transactions that could potentially be beneficial to us. Accordingly, we may lose a corporate opportunity or suffer competitive harm, which could negatively impact our business, operating results, and financial condition.

If securities analysts do not publish research or reports about our business or if they downgrade our stock or our sector, or if there is any fluctuation in our credit rating, our stock price and trading volume could decline.

The trading market for our Class A common stock relies in part on the research and reports that industry or financial analysts publish about us or our business. We do not control these analysts. Securities and industry analysts do not currently, and may never, publish research on our company. If no securities or industry analysts commence coverage of us, the trading price of our shares would likely be negatively impacted. Furthermore, if one or more of the analysts who do cover us downgrade our stock or our industry, or the stock of any of our competitors, or publish inaccurate or unfavorable research about our business, the price of our stock could decline. If one or more of these analysts stops covering us or fails to publish reports on us regularly, we could lose visibility in the market, which, in turn, could cause our stock price or trading volume to decline.

Additionally, any fluctuation in the credit rating of us or our subsidiaries may impact our ability to access debt markets in the future or increase our cost of future debt, which could have a material adverse effect on our operations and financial condition, which in return may adversely affect the trading price of shares of our Class A common stock.

Future sales, or the perception of future sales, by us or our existing stockholders in the public market could cause the market price for our Class A common stock to decline.

The sale of shares of our Class A common stock in the public market, or the perception that such sales could occur, could harm the prevailing market price of shares of our Class A common stock. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

We have outstanding a total of 54,143,275 shares of Class A common stock. Of the outstanding shares, 35,650,000 shares are freely tradable without restriction or further registration under the Securities Act, other than any shares held by our affiliates. In addition, the shares of Class A common stock issued to the Blocker Shareholder in the Transactions will be eligible for resale pursuant to Rule 144 without restriction or further registration under the Securities Act, other than affiliate restrictions under Rule 144. Any shares of Class A common stock held by our affiliates will be eligible for resale pursuant to Rule 144 under the Securities Act, subject to the volume, manner of sale, holding period and other limitations of Rule 144.

Our directors and executive officers, and substantially all of our stockholders, entered into lock-up agreements with the underwriters prior to the commencement of the IPO pursuant to which each of these persons or entities, subject to certain exceptions, for a period of 180 days after the date of the IPO prospectus, may not, without the prior written consent of J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC on behalf of the underwriters, (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Class A common stock or any securities convertible into or exercisable or exchangeable for Class A common stock; or (2) file any registration statement with the Securities and Exchange Commission relating to the offering of any Class A common stock or any securities convertible into or exercisable or exchangeable for Class A common stock; or (3) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Class A common stock, whether any such transaction described in clauses (1), (2), or (3) is to be settled by delivery of Class A common stock or such other securities, in cash or otherwise. See “Underwriting.”

In addition, we have granted options to acquire shares of Class A common stock pursuant to equity incentives issued pursuant to the 2020 Unit Option Plan of Fluence Energy, LLC (the “Existing Equity Plan”), of which approximately 12,158,379 are outstanding as of November 30, 2021. Further, we have granted phantom shares conveying the right to receive cash or equity based upon the value of Class A common stock, of which 2,201,605 are outstanding as of November 30, 2021. Finally, we have reserved 9,500,000 shares of Class A common stock for issuance under the Fluence Energy, Inc. 2021 Incentive Award Plan (the “2021 Equity Plan”), of which 664,838 have been granted in the form of restricted stock units (“RSUs”) and are outstanding as of November 30, 2021. Any additional Class A common stock that we issue under the 2021 Plan or other equity incentive plans that we may adopt in the future would be dilutive to Class A common stockholders.

As restrictions on resale end or if these stockholders exercise their registration rights, the market price of our shares of Class A common stock could drop significantly if the holders of these shares sell them or are perceived by the market as intending to sell them. These factors could also make it more difficult for us to raise additional funds through future offerings of our shares of Class A common stock or other securities.

In the future, we may also issue securities in connection with investments, acquisitions or capital raising activities. In particular, the number of shares of our Class A common stock issued in connection with an investment or acquisition, or to raise additional equity capital, could constitute a material portion of our then-outstanding shares of our Class A common stock. Any such issuance of additional securities in the future may result in additional dilution to our Class A common stockholders, or may adversely impact the price of our Class A common stock.

Risks Related to Our Existing Shareholders

Our articles of incorporation limit our Continuing Equity Owners’ and their directors’ and officers’ liability to us or you for breach of fiduciary duty and could also prevent us from benefiting from corporate opportunities that might otherwise have been available to us.

Our articles of incorporation provides that, subject to any contractual provision to the contrary, our Continuing Equity Owners will have no obligation to refrain from:

- engaging in the same or similar business activities or lines of business as we do;
- doing business with any of our clients, customers, vendors or lessors;
- employing or otherwise engaging any of our officers or employees; or
- making investments in any property in which we may make investments.

Under our articles of incorporation, neither Continuing Equity Owners nor any officer or director of Continuing Equity Owners, except as provided in our articles of incorporation, will be liable to us or to our stockholders for breach of any fiduciary duty by reason of any of these activities.

Any interests or expectancy in corporate opportunities which become known to (i) any of our directors or officers who are also directors, officers, employees or other affiliates of Continuing Equity Owners or their affiliates (except that we and our subsidiaries shall not be deemed affiliates of Continuing Equity Owners or its affiliates for the purposes of the provision), or dual persons, or (ii) our Continuing Equity Owners themselves, and which relate to the business of Fluence or may constitute a corporate opportunity for both our Continuing Equity Owners and us. Generally, neither our Continuing Equity Owners nor our directors or officers who are also dual persons will be liable to us or our stockholders for breach of any fiduciary duty by reason of the fact that any such person pursues or acquires any corporate opportunity for the account of our Continuing Equity Owners or their affiliates, directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to Our Continuing Equity Owners or its affiliates, or does not communicate information regarding such corporate opportunity to us. The corporate opportunity provision may exacerbate conflicts of interest between our Continuing Equity Owners and us because the provision effectively permits one of our directors or officers who also serves as a director, officer, employee, or other affiliate of Our Continuing Equity Owners to choose to direct a corporate opportunity to our Continuing Equity Owners instead of us.

Our Continuing Equity Owners are not restricted from competing with us in the energy storage business, including as a result of acquiring a company that operates an energy storage business. Due to the significant resources of our Continuing Equity Owners, including their intellectual property (all of which our Continuing Equity Owners retain and certain of which they license to us under the IP License Agreements), financial resources, name recognition and know-how resulting from the previous management of our business, our Continuing Equity Owners could have a significant competitive advantage over us should it decide to utilize these resources to engage in the type of business we conduct, which may cause our operating results and financial condition to be materially adversely affected.

We are controlled by the Continuing Equity Owners, whose interests may differ from those of our public stockholders.

The Continuing Equity Owners control approximately 94.4% of the combined voting power of our common stock through their ownership of both Class A common stock and Class B-1 common stock. The Continuing Equity Owners will, for the foreseeable future, have the ability to substantially influence us through their ownership position over corporate management and affairs. The Continuing Equity Owners are able to, subject to applicable law, and the voting arrangements, elect a majority of the members of our board of directors and control actions to be taken by us and our board of directors, including amendments to our certificate of incorporation and bylaws and approval of significant corporate transactions, including mergers and sales of substantially all of our assets. The directors so elected will have the authority, subject to the terms of our indebtedness and applicable rules and regulations, to issue additional stock, implement stock repurchase programs, declare dividends and make other decisions. It is possible that the interests of the Continuing Equity Owners may in some circumstances conflict with our interests and the interests of our other stockholders, including you. For example, the Continuing Equity Owners may have different tax positions from us, especially in light of the Tax Receivable Agreement, that could influence our decisions regarding whether and when to dispose of assets, whether and when to incur new or refinance existing indebtedness, and whether and when we should terminate the Tax Receivable Agreement and accelerate its obligations thereunder. In addition, the determination of future tax reporting positions and the structuring of future transactions may take into consideration the Continuing Equity Owners' tax or other considerations, which may differ from the considerations of us or our other stockholders.

Certain of our officers and directors may have actual or potential conflicts of interest because of their positions with our Continuing Equity Owners.

Julian Nebreda, Lisa Krueger, Barbara Humpton, Emma Falck, Axel Meier, Chris Shelton and Simon Smith serve on our board of directors and retain their positions with AES, Siemens, or QIA, as applicable. These individuals' holdings in and compensation from the Continuing Equity Owners may be significant for some of these persons. Their positions at AES, Siemens, or QIA, their compensation from AES, Siemens or QIA and the ownership of any equity or equity awards in AES, Siemens, or QIA, as applicable, may create the appearance of conflicts of interest when these individuals are faced with decisions that could have different implications for our Continuing Equity Owners than the decisions have for us.

We rely on our access to our Founders' brands and reputation, some of our Founders' relationships, and the brands and reputations of unaffiliated third parties.

We believe the association with our Founders has contributed to our building relationships with our customers due to their recognized brands and products, as well as resources such as their intellectual property and access to third parties' intellectual property. Any perceived loss of our Founders' scale, capital base and financial strength as a result of the IPO, or any actual loss in the future, may prompt business partners to reprice, modify or terminate their relationships with us. In addition, our Founders' reduction of their ownership of our company may cause some of our existing agreements and licenses to be terminated. We cannot predict with certainty the effect that the IPO will have on our business.

Third parties may seek to hold us responsible for liabilities of our Founders, which could result in a decrease in our income.

Third parties may seek to hold us responsible for our Founders' liabilities. If those liabilities are significant and we are ultimately held liable for them, we cannot assure that we will be able to recover the full amount of our losses from our Founders.

We may be required to pay additional taxes as a result of partnership tax audit rules.

We may be required to pay additional taxes as a result of partnership audit rules under U.S. federal and other applicable income tax law. The Bipartisan Budget Act of 2015 changed the rules applicable to U.S. federal income tax audits of partnerships, including entities such as Fluence Energy, LLC. Under these rules (which generally are effective for taxable years beginning after December 31, 2017), subject to certain exceptions, audit adjustments to items of income, gain, loss, deduction, or credit of an entity (and any holder's share thereof) are determined, and taxes, interest, and penalties attributable thereto, are assessed and collected, at the partnership level. Although there is uncertainty about how these rules will continue to be implemented, it is possible that they could result in Fluence Energy, LLC (or any of its subsidiaries that are or have been treated as partnerships for U.S. federal income tax purposes) being required to pay additional taxes, interest, and penalties as a result of an audit adjustment, and we, as an owner of Fluence Energy, LLC (or as an indirect owner of such other entities), could be required to indirectly bear the economic burden of those taxes, interest, and penalties even if they relate to periods prior to the IPO and even though we may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment.

We may incur certain tax liabilities attributable to the Blocker Company as a result of the Transactions.

In connection with the Transactions, and pursuant to the Blocker Mergers, the Blocker Company merged with and into us. As the successor to the Blocker Company, we will generally succeed to and be responsible for any outstanding or historical liabilities, including tax liabilities, of the Blocker Company, including any liabilities that might be incurred as a result of the Blocker Mergers. Any such liabilities for which we are responsible could have an adverse effect on our liquidity and financial condition.

We may not achieve some or all of the anticipated benefits of being a standalone public company.

We may not be able to achieve all of the anticipated strategic and financial benefits expected as a result of being a standalone public company, or such benefits may be delayed or not occur at all. These anticipated benefits include the following:

- allowing investors to evaluate the distinct merits, performance and future prospects of our business, independent of our Founders' other businesses;
- improving our strategic and operational flexibility and increasing management focus as we continue to implement our strategic plan and allowing us to respond more effectively to the competitive environment for our business;
- allowing us to adopt a capital structure better suited to our financial profile and business needs, without competing for capital with our Founders' other businesses;
- creating an independent equity structure that will facilitate our ability to effect future acquisitions utilizing our capital stock; and
- facilitating incentive compensation arrangements for employees more directly tied to the performance of our business, and enhancing employee hiring and retention by, among other things, improving the alignment of management and employee incentives with performance and growth objectives of our business.

We may not achieve the anticipated benefits of being a standalone public company for a variety of reasons, and it could adversely affect our operating results and financial condition.

The services that we receive from our Founders may not be sufficient for us to operate our business, and we would likely incur significant incremental costs if we lost access to our Founders' services.

Because we have not operated as an independent company, we have obtained, and will need to continue to obtain, services from our Founders relating to many important corporate functions including the support we receive from AES relating to clean energy project development and the access Siemens provides to its global sales channels, among various others. We will pay our Founders mutually agreed-upon fees for these services, which will be based on their costs of providing the services.

If we lost access to the services provided to us by certain of our Founders, we would need to replicate or replace certain functions, systems, and infrastructure. We may also need to make investments or hire additional employees to operate without the same access to our Founders' existing operational infrastructure and wide-ranging support. These initiatives may be costly to implement. Due to the scope and complexity of the underlying projects relative to these efforts, the amount of total costs could be materially higher than our estimate, and the timing of the incurrence of these costs could be subject to change.

We may not be able to replace these services or enter into appropriate third-party agreements on terms and conditions, including cost, comparable to those that we have received in the past and will continue to receive from our Founders. Additionally, if the agreements pursuant to which such services are provided are terminated, we may be unable to sustain the services at the same levels or obtain the same benefits as when we were receiving such services and benefits from our Founders. If we have to operate these functions separately, if we do not have our own adequate systems and business functions in place or if we are unable to obtain them from other providers, we may not be able to operate our business effectively or at comparable costs, and our profitability may decline. In addition, we have historically received informal support from certain of our Founders. The level of this informal support could diminish or be eliminated.

While we are controlled by our Continuing Equity Owners, we may not have the leverage to negotiate amendments to our agreements with our Founders, if required, on terms as favorable to us as those we would negotiate with an unaffiliated third party.

Risks Related to Our Organizational Structure

Our principal asset is our interest in Fluence Energy, LLC, and, as a result, we depend on distributions from Fluence Energy, LLC to pay our taxes and expenses, including payments under the Tax Receivable Agreement. Fluence Energy, LLC's ability to make such distributions may be subject to various limitations and restrictions.

We are a holding company and have no material assets other than our ownership of LLC Interests. As such, we have no independent means of generating revenue or cash flow, and our ability to pay our taxes and operating expenses or declare and pay dividends in the future, if any, are dependent upon the financial results and cash flows of Fluence Energy, LLC and its subsidiaries and distributions we receive from Fluence Energy, LLC. There can be no assurance that Fluence Energy, LLC and its subsidiaries will generate sufficient cash flow to distribute funds to us or that applicable state law and contractual restrictions, including negative covenants in our debt instruments, will permit such distributions. The Revolver limits, and our future debt agreements may similarly limit, our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, Fluence Energy, Inc.'s equity and other restricted payments.

Fluence Energy, LLC continues to be treated as a partnership for U.S. federal income tax purposes and, as such, generally is not subject to any entity-level U.S. federal income tax. Instead, any taxable income of Fluence Energy, LLC will be allocated to holders of LLC Interests, including us. Accordingly, we incur income taxes on our allocable share of any net taxable income of Fluence Energy, LLC. We expect to use distributions from Fluence Energy, LLC to fund any payments that we are required to make under the Tax Receivable Agreement. Under the terms of the Fluence Energy LLC Agreement, Fluence Energy, LLC is obligated, subject to various limitations and restrictions, including with respect to our debt agreements, to make tax distributions to holders of LLC Interests, including us, although tax distributions may not be paid in whole or in part in certain circumstances, including if Fluence Energy, LLC does not have available cash to make such distributions. In addition to tax expenses, we will also incur expenses related to our operations, including payments under the Tax Receivable Agreement, which we expect could be significant. We intend, as its managing member, to cause Fluence Energy, LLC to make cash distributions to the holders of LLC Interests in an amount sufficient to (1) fund all or part of their tax obligations in respect of taxable income allocated to them and (2) cover our operating expenses, including payments under the Tax Receivable Agreement. However, Fluence Energy, LLC's ability to make such distributions may be subject to various limitations and restrictions, such as restrictions on distributions that would either violate any contract or agreement to which Fluence Energy, LLC is then a party, including debt agreements, or any applicable law, or that would have the effect of rendering Fluence Energy, LLC insolvent. If we do not have sufficient funds to pay tax or other liabilities, or to fund our operations (including, if applicable, as a result of an acceleration of our obligations under the Tax Receivable Agreement), we may have to borrow funds, which could materially and adversely affect our liquidity and financial condition, and subject us to various restrictions imposed by any lenders of such funds. 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. In addition, if Fluence Energy, LLC does not have sufficient funds to make distributions, our ability to declare and pay cash dividends will also be restricted or impaired. See "—Risks related to ownership of our Class A common stock".

As a result of (1) potential differences in the amount of net taxable income allocable to us and to Fluence Energy, LLC's other equity holders, (2) the lower tax rate applicable to corporations as opposed to individuals, and (3) certain tax benefits that we anticipate from (a) future redemptions or exchanges of LLC Interests from the Founders, (b) payments under the Tax Receivable Agreement and (c) certain other transactions, tax distributions to us may be in amounts that exceed our tax liabilities. Our board of directors will determine the appropriate uses for any excess cash so accumulated, which may include, among other uses, the payment of obligations under the Tax Receivable Agreement. We have no obligation to distribute such cash (or other available cash) to our stockholders. No adjustments to the redemption or exchange ratio or price for LLC Interests and corresponding shares of Class B-1 or Class B-2 common stock will be made as a result of any cash distribution by us or any retention of cash by us. To the extent we do not distribute such excess cash as dividends on our Class A common stock, we may take other actions with respect to such excess cash, for example, holding such excess cash, or lending it (or a portion thereof) to Fluence Energy, LLC or its subsidiaries, which may result in shares of our Class A common stock increasing in value relative to the value of LLC Interests. The holders of LLC Interests may benefit from any value attributable to such cash balances or loan receivables if they acquire shares of Class A common stock in exchange for their LLC Interests or otherwise exercise their rights to redeem or exchange their LLC Interests, notwithstanding that such holders may have participated previously as holders of LLC Interests in distributions by Fluence Energy, LLC that resulted in the excess cash balances.

The Tax Receivable Agreement with the Founders requires us to make cash payments to them in respect of certain tax benefits to which we may become entitled, and we expect that such payments will be substantial.

We have entered into a Tax Receivable Agreement with Fluence Energy, LLC and the Founders. Under the Tax Receivable Agreement, we are required to make cash payments to such 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 future 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. We anticipate funding ordinary course payments under the Tax Receivable Agreement from cash flow from operations of our subsidiaries, available cash or available borrowings under any future debt agreements. We expect that the amount of the cash payments we will be required to make under the Tax Receivable Agreement will be substantial. We estimate our Founders will be entitled to receive payments under the Tax Receivable Agreement totaling approximately $681.3 million. Any payments made by us to the Founders under the Tax Receivable Agreement will not be available for reinvestment in our business and will generally reduce the amount of overall cash flow that might have otherwise been available to us and have a substantial negative impact on our liquidity. To the extent that we are unable to make timely payments under the Tax Receivable Agreement for any reason, the unpaid amounts 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. The payments under the Tax Receivable Agreement are not conditioned upon continued ownership of us by the redeeming or exchanging Founders. Furthermore, our future obligation to make payments under the Tax Receivable Agreement could make us a less attractive target for an acquisition, particularly in the case of an acquirer that cannot use some or all of the tax benefits that are the subject of the Tax Receivable Agreement. The actual increase in tax basis, and the actual utilization of any resulting tax benefits, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors: including the timing of redemptions of exchanges by the Founders; the price of shares of our Class A common stock at the time of the exchange; the extent to which such redemptions or exchanges are taxable; the amount of gain recognized by such Founders; the amount and timing of the taxable income allocated to us or otherwise generated by us in the future; the portion of our payments under the Tax Receivable Agreement constituting imputed interest; and the federal and state tax rates then applicable.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Founders that will not benefit holders of our Class A common stock to the same extent that it will benefit the Founders.

Our organizational structure, including the Tax Receivable Agreement, confers certain benefits upon the Founders that will not benefit the holders of our Class A common stock to the same extent that it will benefit such Founders. We have entered into the Tax Receivable Agreement with Fluence Energy, LLC and certain Founders, which provides for the payment by us to such Founders of 85% of the amount of tax benefits, if any, that we actually realize, or in some 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 future 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. Although we will retain 15% of the amount of such tax benefits, this and other aspects of our organizational structure may adversely impact the future trading market for the Class A common stock.

In certain cases, payments under the Tax Receivable Agreement may be accelerated or significantly exceed any actual benefits we realize in respect of the tax attributes subject to the Tax Receivable Agreement.

The Tax Receivable Agreement provides that if (1) we materially breach any of our material obligations under the Tax Receivable Agreement and the Continuing Equity Owners elect an early termination of the Tax Receivable Agreement, (2) certain mergers, asset sales, other forms of business combinations or other changes of control were to occur after the consummation of the IPO and the Continuing Equity Owners elect an early termination of the Tax Receivable Agreement, or (3) we elect, at any time, an early termination of the Tax Receivable Agreement, then our obligations, or our successor’s obligations, under the Tax Receivable Agreement to make payments would be based on certain assumptions, including an assumption that we would have sufficient taxable income to fully utilize all potential future tax benefits that are subject to the Tax Receivable Agreement.

As a result of the foregoing, we would be required to make an immediate cash payment equal to the present value of the anticipated future tax benefits that are the subject of the Tax Receivable Agreement, based on certain assumptions, which payment may be made significantly in advance of the actual realization, if any, of such future tax benefits. We could also be required to make cash payments to the Founders that are greater than the specified percentage of any actual benefits we ultimately realize in respect of the tax benefits that are subject to the Tax Receivable Agreement. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative impact on our liquidity and could have the effect of delaying, deferring, or preventing certain mergers, asset sales, other forms of business combinations or other changes of control. There can be no assurance that we will be able to fund or finance our obligations 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. We may need to incur debt to finance payments under the Tax Receivable Agreement to the extent our cash resources are insufficient to meet our obligations under the Tax Receivable Agreement as a result of timing discrepancies or otherwise.

We will not be reimbursed for any payments made under the Tax Receivable Agreement in the event that any tax benefits are disallowed.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine, and the U.S. Internal Revenue Service, or the IRS, or another tax authority, may challenge all or part of the tax basis increases or other tax benefits we claim, as well as other related tax positions we take, and a court could sustain such challenge. If the outcome of any audit of us or our subsidiaries is reasonably expected to adversely affect the rights and obligations of the Continuing Equity Owners under the Tax Receivable Agreement in a material respect, then we will notify the Continuing Equity Owners of such audit, keep them reasonably informed with respect thereto, provide them with a reasonable opportunity to provide information and other input concerning the audit or the relevant portion thereof and consider such information and other input in good faith. The interests of such Founders in any such challenge may differ from or conflict with our interests and your interests, and the Founders may exercise their rights relating to any such challenge in a manner adverse to our interests and your interests. We will not be reimbursed for any cash payments previously made under the Tax Receivable Agreement in the event that any tax benefits initially claimed by us and for which payment has been made are subsequently challenged by a taxing authority and are ultimately disallowed. Instead, any excess cash payments made by us will be netted against any future cash payments we might otherwise be required to make to the applicable Founder under the terms of the Tax Receivable Agreement. However, we might not determine that we have effectively made an excess cash payment to a Founder for a number of years following the initial time of such payment and, if any of our tax reporting positions are challenged by a taxing authority, we will not be permitted to reduce any future cash payments under the Tax Receivable Agreement until any such challenge is finally settled or determined. Moreover, the excess cash payments we made previously under the Tax Receivable Agreement could be greater than the amount of future cash payments against which we would otherwise be permitted to net such excess. The applicable U.S. federal income tax rules for determining applicable tax benefits we may claim are complex and factual in nature, and there can be no assurance that the IRS or a court will not disagree with our tax reporting positions. As a result, payments could be made under the Tax Receivable Agreement significantly in excess of any actual cash tax savings that we realize in respect of the tax attributes that are the subject of the Tax Receivable Agreement.

Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our results of operations and financial condition.

We are subject to taxes by the U.S. federal, state, local, and foreign tax authorities. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- allocation of expenses to and among different jurisdictions;
- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany restructurings;
- changes in tax laws, tax treaties, regulations or interpretations thereof; or
- lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other taxes by U.S. federal, state, and local, and foreign taxing authorities. Outcomes from these audits could have an adverse effect on our operating results and financial condition.

If we were deemed to be an investment company under the Investment Company Act of 1940, as amended, or the 1940 Act, including as a result of our ownership of Fluence Energy, LLC, applicable restrictions could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

Under Sections 3(a)(1)(A) and (C) of the 1940 Act, a company generally will be deemed to be an “investment company” for purposes of the 1940 Act if (1) it is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities, or (2) it engages, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities and it owns or proposes to acquire investment securities having a value exceeding 40% of the value of its total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. We do not believe that we are an “investment company,” as such term is defined in either of those sections of the 1940 Act.

We and Fluence Energy, LLC intend to conduct our operations so that we will not be deemed an investment company. As the sole managing member of Fluence Energy, LLC, we will control and operate Fluence Energy, LLC. On that basis, we believe that our interest in Fluence Energy, LLC is not an "investment security" as that term is used in the 1940 Act. However, if we were to cease participation in the management of Fluence Energy, LLC, or if Fluence Energy, LLC itself becomes an investment company, our interest in Fluence Energy, LLC could be deemed an "investment security" for purposes of the 1940 Act.

We and Fluence Energy, LLC intend to conduct our operations so that we will not be deemed an investment company. If it were established that we were an unregistered investment company, there would be a risk that we would be subject to monetary penalties and injunctive relief in an action brought by the SEC, that we would be unable to enforce contracts with third parties and that third parties could seek to obtain rescission of transactions undertaken during the period it was established that we were an unregistered investment company. If we were required to register as an investment company, restrictions imposed by the 1940 Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated and could have a material adverse effect on our business.

General Risk Factors

We will incur significant costs as a result of operating as a public company.

As public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of Nasdaq and other applicable securities laws and regulations. The expenses incurred by public companies generally for reporting and corporate governance purposes have been increasing. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more difficult, time-consuming, and costly, although we are currently unable to estimate these costs with any degree of certainty. We also expect that being a public company and being subject to new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These laws and regulations could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as our executive officers. Furthermore, if we are unable to satisfy our obligations as a public company, we could be subject to delisting of our Class A common stock, fines, sanctions, and other regulatory action and potentially civil litigation. These factors may, therefore, strain our resources, divert management's attention, and affect our ability to attract and retain qualified board members.

As a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting in order to comply with Section 404 of the Sarbanes-Oxley Act. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in us and, as a result, the value of our common stock. In addition, because of our status as an emerging growth company, you will not be able to depend on any attestation from our independent registered public accountants as to our internal control over financial reporting for the foreseeable future.

As a public company, we are required by Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting as of the year ending September 30, 2022. The process of designing and implementing internal control over financial reporting required to comply with this requirement is time-consuming, costly, and complicated. If during the evaluation and testing process we identify one or more other material weaknesses in our internal control over financial reporting or determine that existing material weaknesses have not been remediated, our management will be unable to assert that our internal control over financial reporting is effective. In addition, if we fail to achieve and maintain the adequacy of our internal controls, as such standards are modified, supplemented, or amended from time to time, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act.

Even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may issue a report that is qualified if it is not satisfied with our controls or the level at which our controls are documented, designed, operated, or reviewed. However, our independent registered public accounting firm is not required to attest formally to the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act until the later of the filing of our second annual report following the completion of our IPO or the date we are no longer an "emerging growth company," as defined in the JOBS Act. Accordingly, you will not be able to depend on any attestation concerning our internal control over financial reporting from our independent registered public accountants for the foreseeable future.

As of September 30, 2021, a material weakness in the internal control over revenue recognition process has not been remediated. The design and implementation of controls did not sufficiently interpret ASC 606 and its application to in-transit, uninstalled or delivered equipment, as well as liquidated damages. We are in the process of remediating the material weakness which includes, without limitation, i) hiring additional experienced accounting, financial reporting and internal control personnel, ii) implementing controls to enhance our review of significant accounting transactions and other new technical accounting and financial reporting issues and preparing and reviewing accounting memoranda addressing these issues, and iii) implementing controls to enable an effective and timely review of account analyses and account reconciliations. We have recently hired additional resources, and we have engaged with a third-party consulting firm to assist us with our formal internal control plan and provide staff augmentation.

The material weaknesses will not be considered remediated until management designs and implements effective controls that operate for a sufficient period of time and management has concluded, through testing, that these controls are effective.

We and our independent registered public accounting firm were not required to, and did not, perform an evaluation of our internal control over financial reporting as of September 30, 2021, in accordance with Section 404(b) of the Sarbanes-Oxley Act. Accordingly, we cannot assure you that we have identified all, or that we will not in the future have additional, material weaknesses. Material weaknesses may still exist when we report on the effectiveness of our internal control over financial reporting as required under Section 404 of the Sarbanes-Oxley Act.

We cannot be certain as to the timing of completion of our evaluation, testing, and any remediation actions or the impact of the same on our operations. If we are not able to implement the requirements of Section 404 of the Sarbanes-Oxley Act in a timely manner or with adequate compliance, our independent registered public accounting firm may issue an adverse opinion due to ineffective internal controls over financial reporting, and we may be subject to sanctions or investigation by regulatory authorities, such as the SEC. As a result, there could be a negative reaction in the financial markets due to a loss of confidence in the reliability of our financial statements. In addition, we may be required to incur costs in improving our internal control system and the hiring of additional personnel. Any such action could negatively affect our results of operations and cash flows.

Our management team has limited experience managing a public company.

Most members of our management team have limited experience managing a publicly traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage us as a public company that is subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, results of operations and financial condition. See "—We will incur significant costs as a result of operating as a public company."

Future litigation or administrative proceedings could have a material adverse effect on our business, financial condition, and results of operations.

We have been and continue to be involved in legal proceedings, administrative proceedings, claims, and other litigation. In addition, since our energy storage product is a new type of product in a nascent market, we have in the past needed and may in the future need to seek the amendment of existing regulations or, in some cases, the creation of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation. Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products and services, such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, financial condition, and results of operations. In addition, settlement of claims could adversely affect our financial condition and results of operations.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our corporate headquarters are in Arlington, Virginia, and consist of approximately 17,000 square feet of office space. We lease our corporate headquarters. We also have offices in Alpharetta, Georgia; San Francisco, California; Erlangen, Germany; Melbourne, Australia; and Taguig City, Philippines. Our Erlangen office includes an energy storage testing facility.

We believe that our existing properties are in good condition and are sufficient and suitable for the conduct of our business for the foreseeable future. To the extent our needs change as our business grows, we expect that additional space and facilities will be available.

We have gone through rigorous certification processes at several of our offices and are actively pursuing additional certification at others. The corporate office space and the testing facility in Erlangen are ISO 9001, ISO 14001, and ISO 45001 certified (quality, environmental and safety certifications, respectively). Our Melbourne office is ISO 9001 certified, and our U.S. Arlington office is SA8000 certified which is a standard of ethical and decent working conditions.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we may be involved in litigation relating to claims that arise out of our operations and businesses and that cover a wide range of matters, including, among others, intellectual property matters, contract disputes, insurance and property damage claims, 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 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 and litigation.

For a description of our material pending legal contingencies, please see Note 13- *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our Class A common stock has been listed on the Nasdaq Global Select Market under the symbol "FLNC." since October 28, 2021. Prior to that date, there was no public market for our Class A common stock.

Our class B-1 common stock and class B-2 common stock are not traded in any public market.

Holders

As of November 30, 2021, there were 3 holders of our Class A common stock, two holders of our Class B-1 common stock, and no holders of our Class B-2 common stock. However, because many of our outstanding shares of Class A common stock are held in accounts with brokers and other institutions, we believe we have more beneficial owners.

Dividends

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business, and therefore we do not anticipate declaring or paying any cash dividends on our Class A common stock in the foreseeable future. Holders of our Class B-1 and Class B-2 common stock are not entitled to participate in any dividends declared by our board of directors.

Furthermore, because we are a holding company, our ability to pay cash dividends on our Class A common stock depends on our receipt of cash distributions from Fluence Energy, LLC and, through Fluence Energy, LLC, cash distributions and dividends from our other direct and indirect subsidiaries.

Assuming Fluence Energy, LLC makes distributions out of earnings and profits (other than tax distributions and other distributions to pay expenses) to its members in any given year, we currently expect, subject to the determination of our board of directors, to pay dividends on our Class A common stock out of the portion of such distributions remaining after our payment of taxes, Tax Receivable Agreement payments and expenses, and subject to Delaware law. Our ability to pay dividends may be restricted by the terms of any future credit agreement or any future debt or preferred equity securities of us or our subsidiaries. Any future determination as to the declaration and payment of dividends, if any, will be at the discretion of our board of directors and subject to compliance with contractual restrictions and covenants in the agreements governing our future indebtedness. Any such determination will also depend upon our business prospects, results of operations, financial condition, cash requirements and availability and other factors that our board of directors may deem relevant.

Common Stock

Class A Common Stock

We are authorized to issue 1,200,000,000 shares of common stock, with a par value of $0.00001 per share. There were 54,143,275 shares of class A common stock issued and outstanding as the date of this filing. 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 will be 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

We are authorized to issue 300,000,000 shares of Class B-1 common stock, par value $0.00001 per share. There were 117,173,390 shares of our Class B-1 common stock issued and outstanding as the date of this filing. We are authorized to issue 300,000,000 shares of Class B-2 common stock, par value $0.00001 per share. There was no Class B-2 common stock issued and outstanding as the date of this filing.

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.

Holders of shares of our Class B-1 and Class B-2 common stock will 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 amended and restated certificate of incorporation described below or as otherwise required by applicable law or the amended and restated certificate of incorporation.

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 will be no redemption or sinking fund provisions applicable to the Class B-1 or Class B-2 common stock. Any amendment of our amended and restated certificate of incorporation 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.

Our Articles of Incorporation, our Bylaws, and the applicable statutes of the state of Delaware contain a more complete description of the rights and liabilities of holders of our securities.

Securities Authorized for Issuance under Equity Compensation Plans

Information regarding securities authorized for issuance under our equity compensation plans is incorporated herein by reference to Item 12, “Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters” of Part III of this Annual Report.

Preferred Stock

We are authorized to issue 10,000,000 shares of preferred stock, par value $0.00001 per share. We have no shares of preferred stock outstanding.

Recent Sales of Unregistered Equity Securities

In connection with the consummation of our IPO, the Company issued (i) 117,173,390 shares of Class B-1 common stock of the Company, par value $0.00001 per share, consisting of 58,586,695 shares issued to AES Grid Stability and 58,586,695 shares issued to Siemens Industry, on a one-to-one basis equal to the number of LLC Interests they own, respectively, in exchange for nominal consideration and (ii) 18,493,275 shares of the Common Stock to Qatar Holding LLC, as consideration in the Blocker Mergers undertaken in connection with the IPO, in exchange for the LLC Interests the Blocker Company held prior to the Blocker Merger (the “Exchange”) .

No underwriters were involved in the issuance and sale of the shares of Class B-1 common stock or the issuance of shares of Common Stock pursuant to the Exchange. The shares of Class B-1 common stock and shares of Common Stock issued to Qatar Holding LLC pursuant to the Exchange were issued in reliance upon an exemption from registration pursuant to Section 4(a)(2) of the Securities Act on the basis that the transaction did not involve a public offering.

Use of Proceeds

On November 1, 2021, we completed our IPO, in which we issued and sold 35,650,000 shares of our Class A common stock at a price to the public of $28.00 per share. We raised net proceeds of $948.0 million, after deducting the underwriting discount and offering expenses. All shares sold in the IPO were registered pursuant to our Registration Statement on Form S-1, as amended (Reg. No. 333-259839), which was declared effective by the SEC on October 27, 2021 (the “IPO Registration Statement”). J.P. Morgan Securities LLC, Morgan Stanley, Barclays Capital Inc., and BofA Securities acted as joint lead book-running managers for the IPO.

The net proceeds from our 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 under our existing Line of Credit and the Promissory Notes, and the remainder will be for working capital and other general corporate purposes.

There has been no material change in the expected use of net proceeds from the IPO as described in the IPO Registration Statement.

Issuer Purchases of Equity Securities

None.

Performance Graph

Not applicable.

ITEM 6. SELECTED FINANCIAL DATA

The selected financial data previously required by Item 301 of Regulation S-K has been omitted in reliance on SEC Release No. 33-10890.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the financial statements and related notes included elsewhere in this Annual Report. This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under Part I, Item 1A. "Risk Factors" or in other parts of this Annual Report.

Upon the completion of our IPO on November 1, 2021, Fluence Energy, Inc. became a holding company whose sole material assets are 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 will be 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. will pay income taxes with respect to their allocable shares of its net taxable income. As of September 30, 2021, Fluence Energy, LLC had subsidiaries including Fluence Energy GmbH in Germany, Fluence Energy Pty Ltd. in Australia, Fluence Energy Inc. in the Philippines, and other subsidiaries yet to commence operations. Except where the content clearly indicates otherwise, reference to "Fluence," "we," "us," "our" or "the Company" refers to Fluence Energy, Inc. and all of its direct and indirect subsidiaries, including Fluence Energy, LLC. When used in a historical context that is prior to the completion of the IPO, "we," "us," "our" or "the Company" refer to Fluence Energy, LLC and its subsidiaries.

Our fiscal year begins on October 1 and ends on September 30. References to "fiscal year 2020", "fiscal year 2021" and "fiscal year 2022" refer to the fiscal years ended September 30, 2020, September 30, 2021 and September 30, 2022, respectively.

Presentation of Financial Information

Fluence Energy, LLC is the accounting predecessor of Fluence Energy, Inc. for financial reporting purposes. Fluence Energy, Inc. will be the audited financial reporting entity for future filings. Accordingly, this Annual Report contains the following historical financial statements:

- **Fluence Energy, Inc**. The historical financial information of Fluence Energy, Inc. has not been included in this Annual Report as it is a newly incorporated entity, has no business transactions or activities to date and had no assets or liabilities during the periods presented in this Annual Report.
- **Fluence Energy, LLC**. Because Fluence Energy, Inc. has no interest in any operations other than those of Fluence Energy, LLC and its subsidiaries, the historical consolidated financial information included in this Annual Report is that of Fluence Energy, LLC and its subsidiaries.

Overview

Since our inception, we have focused on international growth and to further develop our energy storage product and delivery services, the operational services, and digital applications. We have incurred net operating losses each year since our inception. As of September 30, 2021, we have financed our operations with equity contributions from AES Grid Stability, Siemens Industry, and QFH, cash and cash equivalents, negative working capital, and short-term borrowings.

As of September 30, 2021, we deployed cumulative 971 MW of energy storage products, compared to 460 MW as of September 30, 2020. New energy storage product contracts executed during fiscal year 2021 represented total contracted power of approximately 1,311 MW compared to 844 MW for fiscal year 2020. We recognized total revenue of $680.8 million, representing an increase of $119.4 million, or 21.3%, in fiscal year 2021 compared to fiscal year 2020 as we expanded our sales in terms of the number of energy storage products sold as well as geographic footprint. Revenue generated from operations in the United States increased from $318.9 million in fiscal year 2020 to $468.4 million in fiscal year 2021, representing a 46.9% increase. Revenue generated from international operations decreased from $242.4 million in fiscal year 2020 to $212.4 million in fiscal year 2021, representing a (12.4)% decrease. Our revenue in fiscal year 2021 has been negatively affected by impacts related to the COVID-19 pandemic, such as delays in shipping energy storage products and temporary closures of customer construction sites. Such delays may continue in fiscal year 2022.

We had a gross loss of $69.1 million and gross profit margin of negative (10.2)% in fiscal year 2021, compared to a gross profit of $7.9 million and gross profit margin of 1.4% in fiscal year 2020. The gross loss in fiscal year 2021 has been negatively impacted by (i) capacity constraints within the shipping industry and increased shipping costs, both of which are caused primarily as a result of the COVID-19 pandemic, and (ii) cost overruns and delays we are experiencing in some projects currently under construction. Some of those costs overruns and delays are occurring in the first Generation 6 product deliveries.

Adjusted gross profit was $15.0 million and adjusted gross profit margin was 2.2% in fiscal year 2021, compared to adjusted gross profit of $8.9 million and adjusted gross profit margin of 1.6% in fiscal year 2020, representing an increase of $6.1 million, or 68.6%, in adjusted gross profit as we expanded our sales in energy storage products in 2021.

General and administrative, research and development, sales and marketing expenses increased $20.2 million, $11.9 million, and $6.4 million, or 112.7%, 103.1%, and 39.3%, respectively, in fiscal year 2021, compared to fiscal year 2020 as we have been investing heavily in our human capital, technology, products and services to support significant increases in our operations and related revenues. We expect these expenses to increase for the foreseeable future as we experience continuing substantial growth and mature as a public company.

We believe the proceeds received from our IPO along with cash flows from operations, short-term borrowing, and our June 2021 investment from QFH will be sufficient to meet our expense and capital requirements for the next twelve months following the filing of this Annual Report.

Impact of the COVID-19 Pandemic

On March 11, 2020, the World Health Organization declared the outbreak of a strain of novel coronavirus disease, the COVID-19 pandemic, a global pandemic. Governments in affected areas and countries in which we operate have imposed a number of measures designed to contain the outbreak, including business closures, travel restrictions, quarantines, and cancellations of gatherings and events. We have implemented operational and protective measures to ensure the safety, health, and welfare of our employees and stakeholders. This includes implementing work from home policies for all office employees. We have also ensured that all employees and visitors that visit our facilities have access to personal protective equipment, and we strictly enforce social distancing. Many of the sites where our products and services are delivered have been declared critical infrastructure and remained open following the respective safety protocols. However, many of our customers' project sites have experienced shutdowns and delays related to COVID-19. We continue to maintain these precautions and procedures until the COVID-19 pandemic is under adequate control. Overall, our revenue for fiscal year 2021 has been negatively affected by impacts related to the COVID-19 pandemic, such as delays in shipping energy storage products and temporary closures of customer construction sites. If these situations continue or there are additional disruptions in our supply chain, it could materially and adversely impact our operating results and financial condition. We continue to actively manage through these temporary supply chain disruptions.

The full impact of the COVID-19 pandemic on our financial condition and results of operations will depend on future developments, such as the ultimate duration and scope of the pandemic, its impact on our employees, customers, and vendors, in addition to how quickly normal economic conditions and operations resume and whether the pandemic impacts other risks disclosed in Part I, Item 1A. "Risk Factors" within this Annual Report. Even after the pandemic has subsided, we may continue to experience adverse impacts to our business from any economic recession or depression that may occur as a result of the pandemic. Therefore, we cannot reasonably estimate the impact at this time. We continue to actively monitor the pandemic and may decide to take further actions that alter our business operations as may be required by federal, state, or local authorities or that we determine to be in the best interests of our employees, customers, vendors, and shareholders.

2021 Cargo Loss Incident

On April 28, 2021, the Company was notified of an emergency aboard a vessel carrying Fluence inventory. This incident (the "Cargo Loss Incident") resulted in damage to a portion of our cargo aboard the vessel. Our best estimate of the net realizable value of the cargo that was destroyed is $13.0 million. In addition to the inventory losses, we have incurred and expect to incur incremental expenses related to the incident, primarily consisting of inspection costs, project cost overruns due to logistical changes, legal fees, and fees to dispose of the damaged cargo. The amount of these incremental expenses incurred during fiscal year 2021 were approximately $9.4 million, and we expect to incur at least an additional $2.9 million during fiscal year 2022. We expect insurance proceeds of at least $10.0 million related to non-disputed claims, of which $7.5 million was collected in October 2021 and the remainder is probable of collection. We recorded a net loss of $12.4 million in "Cost of goods and services" in the Company's consolidated statements of operations and comprehensive loss in fiscal year 2021.

The Company has notified the marine cargo insurers of the incident and also notified each affected customer of this event, which under relevant supply contracts, provides the Company an extension of the relevant schedule due to the resulting battery supply delays. We believe this event qualifies as force majeure under the contracts with our customers. However, if the incident ultimately is determined not to constitute a force majeure event, the Company estimates potential liquidated damages exposure of approximately $15.0 million.

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. The Company served as the energy storage technology provider and installed the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility has been taken offline as teams from Fluence, our customer, and the battery manufacturer investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products.

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.

Key Factors and Trends

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 in Part I, Item 1A. "Risk Factors" within this Annual Report.

Expected Decrease in Lithium-ion Battery Cost

Our revenue growth is directly tied to the continued adoption of energy storage products 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. According to BloombergNEF, the component costs for lithium-ion battery packs are expected to fall from $161 per kilowatt hour ("kWh") in 2020 to $73/kWh in 2030, an 8% annual reduction over this period. The market for energy storage is rapidly evolving, and while we believe costs will continue to decline, there is no guarantee that they will decline or decline at the rates we expect. If costs do not continue to decline, this could adversely affect our ability to increase our revenue or grow 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 over the next 10 years. Energy storage is critical to reducing the intermittency and volatility of solar and wind generation.

Competition

The market for our products is competitive, and we may face increased competition as new and existing competitors introduce energy storage solutions and components. Furthermore, as we expand our services and digital applications in the future, we may face other competitors including software providers and some hardware manufacturers that offer software solutions. If our market share declines due to increased competition, our revenue and ability to generate profits in the future may be adversely affected.

Seasonality

We experience seasonality and typically see increased order intake in our third and fourth fiscal quarters (April – September), driven by demand in the Northern Hemisphere to install energy storage products before the summer of the following year. Combined third and fourth fiscal quarter order intake generally accounted for 80% or more of our total intake each year. As a result, revenue generation is typically significantly stronger in our third and fourth fiscal quarters as we provide the majority of our products to customers during these periods. Cash flows historically have been negative in our first and second fiscal quarters, neutral to positive in our third fiscal quarter, and positive in our fourth fiscal quarter. Our services and digital applications and solutions offerings do not experience the same seasonality given their recurring nature.

Key Components of Our Results of Operations

The following discussion describes certain line items in our Consolidated Statements of Operations and comprehensive loss.

Total Revenue

We generate revenue from the sale of energy storage products, service agreements with customers to provide operational services related to battery-based energy storage products, and from digital application contracts after the acquisition of AMS in fiscal year 2021. Fluence enters into contracts with utility companies, developers, and commercial and industrial customers. We derive the majority of our revenues from selling energy storage products. When we sell a battery-based energy storage product, we enter into a contract with our customers covering the price, specifications, delivery dates and warranty for the products being purchased, among other things.

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.

Our revenue growth is dependent on continued growth in the amount of battery-based energy storage products projects constructed each year and our ability to increase our share of demand in the geographies 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. 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 (Loss) and Gross Profit Margin

Gross profit (loss) 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 method, warranty costs, and seasonality.

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, benefits, sales commissions, and payroll taxes. 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 primarily of personnel-related expenses, including salaries, benefits, and payroll taxes, for engineers engaged in the design and development of products and technologies, as well as products, materials, and third-party services used in our research and development process. We expect research and development expenses to increase in future periods to support our growth and as we continue to invest in research and development 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, benefits, amortization of sales commissions, and payroll taxes, for our sales and marketing organization, consultants and other third-party vendors. We expect to increase our sales and marketing personnel as we expand into new geographic markets. We intend 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, benefits, and payroll taxes, for our executives, sales, 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. We expect general and administrative expenses to increase in the future as we scale our headcount with the growth of our business. We also expect that we will incur additional audit, tax, accounting, legal and other costs related to compliance with applicable securities and other regulations, as well as additional insurance, investor relations and other costs associated with being a public company.

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 Expense

Interest expense consists primarily of interest incurred on our Line of Credit and Promissory Notes.

Other Income, Net

Other income, net consists of income (expense) from foreign currency exchange adjustments for monetary assets and liabilities.

Tax Expense

Historically, Fluence Energy, LLC was not subject to U.S. federal or state income tax. As such, Fluence Energy, LLC did not pay U.S. federal or state income tax, as taxable income or loss will be included in the U.S. tax returns of its members. Fluence Energy LLC is subject to income taxes, including withholding taxes, outside the U.S. and our income tax expense (benefit) on the consolidated statements of operations primarily relates to income taxes from foreign operations, withholding taxes on intercompany royalties and changes in valuation allowances related to deferred tax assets of certain foreign subsidiaries. After our IPO, we are now 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 we will be taxed at the prevailing corporate tax rates. We will continue to be subject to foreign income taxes with respect to our foreign subsidiaries and our expectations are valuation allowances will be needed 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.

Key Operating Metrics

The following tables present our key operating metrics as of September 30, 2021 and 2020, and for the fiscal years ended September 30, 2021 and 2020.

	September 30,			
(amounts in MW)	**2021**	**2020**	**Change**	**Change %**
Energy Storage Products				
Deployed	971	460	511	111.1 %
Contracted Backlog	2,679	1,879	800	42.6 %
Pipeline	14,161	11,320	2,841	25.1 %
Service Contracts				
Asset under Management	772	276	496	179.7 %
Contracted Backlog	1,918	455	1,463	321.5 %
Pipeline	10,930	7,889	3,041	38.5 %
Digital Contracts				
Asset under Management	3,108	—	3,108	N/A
Contracted Backlog	1,629	—	1,629	N/A
Pipeline	3,301	—	3,301	N/A

	Fiscal Year Ended September 30,			
(amounts in MW)	**2021**	**2020**	**Change**	**Change %**
Energy Storage Products				
Contracted	1,311	844	467	55.3 %
Service Contracts				
Contracted	1,959	232	1,727	744.4 %
Digital Contracts				
Contracted	2,744	—	2,744	N/A

Deployed or Asset Under Management

Deployed represents cumulative energy storage products that have achieved substantial completion and are not decommissioned.

Asset under management for service contracts represents our long-term service contracts with customers associated with our completed energy storage system products. We start providing maintenance, monitoring, or other operational services after the storage product projects are completed.

Asset under management for digital software contracts represents the amount of MWs under signed digital application contracts, including Fluence Trading Platform after the acquisition of AMS in fiscal year 2021.

Contracted Backlog and Contracted

For our energy storage products 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.

Contracted represents new energy storage product contracts, new service contracts and new digital contracts signed during each fiscal year presented.

Pipeline

Pipeline represents our uncontracted, potential revenue from energy storage products, service, and digital software contracts currently in process, which have a reasonable likelihood of contract execution within 24 months. Pipeline is monitored by management to understand the growth of our Company and our estimated future revenue related to customer contracts for our battery-based energy storage products and services.

We cannot guarantee that our contracted backlog or pipeline will result in actual revenue in the originally anticipated period or at all. Contracted backlog and pipeline may not generate margins equal to our historical operating results. We have only recently begun to track our contracted backlog and pipelines 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 and pipeline fail to result in revenue at all or in a timely manner, we could experience a reduction in revenue, profitability, and liquidity. Pipeline is an internal management metric that we construct from market information reported by our global sales force. We monitor and track our pipeline, but it is not audited.

Non-GAAP Financial Measures

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

Adjusted EBITDA is calculated from the consolidated statements of operations using net income (loss) adjusted for (i) interest income (expense), net, (ii) income taxes, (iii) depreciation and amortization, (iv) equity-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 (Loss) is calculated using gross profit (loss), adjusted to exclude certain non-recurring income or expenses. Adjusted Gross Profit Margin is calculated using Adjusted Gross Profit (Loss) divided by total revenue.

Adjusted Net Loss is calculated using net loss, adjusted to exclude (i) amortization of intangibles, (ii) equity-based compensation, (iii) other non-recurring income or expenses, and (iv) tax impact of these adjustments.

Free Cash Flow is calculated from the consolidated statements of cash flows and is defined as net cash provided by 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 present these non-GAAP measures because we believe they assist investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use certain of these non-GAAP measures (i) as factors in evaluating management's performance when determining incentive compensation and (ii) to evaluate the effectiveness of our business strategies.

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.

	Fiscal Year Ended September 30,			
($ in thousands)	**2021**	**2020**	**Change**	**Change %**
Net loss	$ (162,003)	$ (46,710)	$ (115,293)	(246.8)%
Add (deduct):				
Interest expense (income), net	1,429	(379)	1,808	477.0
Income tax expense	1,829	6,421	(4,592)	(71.5)
Depreciation and amortization	5,112	3,018	2,094	69.4
Non-recurring expenses[(a)]	88,959	1,767	87,192	4,934.5
Adjusted EBITDA	$ (64,674)	$ (35,883)	$ (28,791)	(80.2)%

(a) Amount in 2021 included $23.6 million related to non-recurring excess shipping costs and $48.2 million of project charges which are compounding effects of the COVID-19 pandemic, $12.4 million related to the 2021 cargo loss incident, and $4.8 million non-recurring IPO-related expenses which did not qualify for capitalization. Amount in 2020 included $0.8 million of costs associated with the AMS acquisition and a $1.0 million expense associated with a safety incident in 2019.

($ in thousands)	Fiscal Year Ended September 30, 2021	2020	Change	Change %
Total Revenue	$ 680,766	$ 561,323	119,443	21.3 %
Cost of goods and services	749,910	553,400	196,510	35.5
Gross profit (loss)	(69,144)	7,923	(77,067)	(972.7)
Add (deduct):				
Non-recurring expenses[(a)]	84,153	978	83,175	8504.6
Adjusted Gross Profit	$ 15,009	$ 8,901	$ 6,108	68.6 %
Adjusted Gross Profit Margin %	2.2 %	1.6 %		

(a) Amount in 2021 included $23.6 million related to non-recurring excess shipping costs and $48.2 million of project charges which are compounding effects of the COVID-19 pandemic, and $12.4 million related to the 2021 cargo loss incident. Amount in 2020 included a $1.0 million expense associated with a safety incident in 2019.

($ in thousands)	Fiscal Year Ended September 30, 2021	2020	Change	Change %
Net loss	$ (162,003)	$ (46,710)	$ (115,293)	(246.8)%
Add (deduct):				
Amortization of intangible	$ 3,552	$ 2,484	1,068	43.0
Non-recurring expenses[(a)]	88,959	1,767	87,192	4934.5
Adjusted Net Loss	$ (69,492)	$ (42,459)	$ (27,033)	(63.7)%

(a) Amount in 2021 included $23.6 million related to non-recurring excess shipping costs and $48.2 million of project charges which are compounding effects of the COVID-19 pandemic, $12.4 million related to the 2021 cargo loss incident, and $4.8 million non-recurring IPO-related expenses which did not qualify for capitalization. Amount in 2020 included $0.8 million of costs associated with the AMS acquisition and a $1.0 million expense associated with a safety incident in 2019.

($ in thousands)	Fiscal Year Ended September 30, 2021	2020	Change	Change %
Net cash (used in) provided by operating activities	$ (265,269)	$ (14,016)	$ (251,253)	(1792.6)%
Less: Purchase of property and equipment	(4,292)	(1,780)	(2,512)	141.1
Free Cash Flows	$ (269,561)	$ (15,796)	$ (253,765)	(1606.5)%

Results of Operations

Comparison of the Fiscal Year Ended September 30, 2021 to the Fiscal Year Ended September 30, 2020

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

	Fiscal Year Ended September 30,			
($ in thousands)	**2021**	**2020**	**Change**	**Change %**
Total revenue	$ 680,766	$ 561,323	$ 119,443	21.3 %
Costs of goods and services	749,910	553,400	196,510	35.5
Gross profit (loss)	(69,144)	7,923	(77,067)	(972.7)
Gross Profit %	(10.2)%	1.4 %		
Operating expenses				
Research and development	23,427	11,535	11,892	103.1
Sales and marketing	22,624	16,239	6,385	39.3
General and administrative	38,162	17,940	20,222	112.7
Depreciation and amortization	5,112	3,018	2,094	69.4
Interest expense	1,435	128	1,307	1021.1
Other (expense) income, net	(270)	648	(918)	(141.7)
Loss before income taxes	(160,174)	(40,289)	(119,885)	(297.6)
Income tax expense (benefit)	1,829	6,421	(4,592)	(71.5)
Net loss	$ (162,003)	$ (46,710)	$ (115,293)	(246.8)%

Total Revenue

Total revenue increased from $561.3 million in fiscal year 2020 to $680.8 million in fiscal year 2021. The $119.4 million or 21.3% increase was mainly from the sales of our battery energy storage products as we expanded our business, particularly in the Americas and EMEA regions. While we continued our growth in fiscal year 2021, our revenue in fiscal year 2021 has been negatively affected by impacts related to the COVID-19 pandemic, such as delays in shipping energy storage products and temporary closures of customer construction sites.

Costs of Goods and Services

Cost of goods and services increased from $553.4 million in fiscal year 2020 to $749.9 million in fiscal year 2021. The $196.5 million, or 35.5%, increase was primarily from materials and supplies associated with the sale of our battery energy storage products due to increased sales volume, as well as $23.6 million of increased shipping costs primarily attributable to the COVID-19 pandemic. Furthermore, our cost of goods and services for fiscal year 2021 includes $12.4 million related to the Cargo Loss Incident.

Gross Profit (Loss) and Gross Profit Margin

Gross loss was $69.1 million, and gross profit margin was negative (10.2)%, in fiscal year 2021, compared to a gross profit of $7.9 million, and a gross profit margin of 1.4%, in fiscal year 2020. The gross loss in fiscal year 2021 has been negatively impacted by (i) capacity constraints within the shipping industry and increased shipping costs, both of which are caused primarily as a result of the COVID-19 pandemic, (ii) cost overruns, delays and other project charges we are experiencing in some projects currently under construction, and (iii) the Cargo Loss Incident. Some of those costs overruns and delays are occurring in the first Generation 6 product deliveries.

Research and Development Expenses

Research and development expenses increased from $11.5 million in fiscal year 2020 to $23.4 million in fiscal year 2021. The $11.9 million, or 103.1%, increase in fiscal year 2021 compared to fiscal year 2020 was mainly related to increased salaries and personnel-related costs due to higher headcount to support the growth of the Company.

Sales and Marketing Expenses

Sales and marketing expenses increased from $16.2 million in fiscal year 2020 to $22.6 million in fiscal year 2021. The increase of $6.4 million, or 39.3%, is related to increased personnel-related expenses for our sales and marketing organization, consultants and other third-party vendors, including the increase in sales and marketing expense in global markets.

General and Administrative Expenses

General and administrative expenses increased from $17.9 million in fiscal year 2020 to $38.2 million in fiscal year 2021. The increase of $20.2 million, or 112.7%, was mainly related to increases in personnel-related expenses including corporate, executive, finance, and other administrative functions, as well as expenses for outside professional services as we have been expanding our personnel headcount rapidly to support our growth.

Depreciation and Amortization

Depreciation and amortization increased from $3.0 million in fiscal year 2020 to $5.1 million in fiscal year 2021. The increase was attributable to $1.2 million amortization related to intangible assets from the AMS acquisition and $0.9 million depreciation from increased fixed assets.

Interest expense

Interest expense was $1.4 million in fiscal year 2021, compared to $0.1 million in fiscal year 2020. The increase was due to the increased short-term borrowings from the Promissory Notes and Line of Credit in fiscal year 2021.

Other (Expense) Income, Net

Other expense was $0.3 million in fiscal year 2021, compared to other income of $0.6 million in fiscal year 2020. The change was mainly a result of foreign currency exchange adjustments for monetary assets and liabilities.

Income Tax Expense

Income tax expense decreased from $6.4 million in fiscal year 2020 to $1.8 million in fiscal year 2021. The effective income tax rate was (1.1)% and (15.9)% for fiscal year 2021 and fiscal year 2020, respectively. The decrease in income tax expense and change in effective tax rate were primarily due to an increase in global pre-tax loss in fiscal year 2021 compared to fiscal year 2020. Furthermore, the income tax expense in fiscal year 2020 included an increase in the valuation allowance recorded on deferred tax assets.

Net Loss

Net loss increased from $46.7 million in fiscal year 2020 to $162.0 million in fiscal year 2021. The increase in net loss was mainly driven by (i) capacity constraints within the shipping industry and increased shipping costs, both of which are caused primarily as a result of the COVID-19 pandemic, (ii) cost overruns and delays we are experiencing in some projects currently under construction, (iii) the Cargo Loss Incident, and (iv) increased expenses in general and administrative, sales and marketing and research and development due to the expansion of our business and the build out of our corporate functions.

Comparison of the Fiscal Year Ended September 30, 2020 to the Fiscal Year Ended September 30, 2019

For a discussion of our results of operations for the fiscal year ended September 30, 2020 compared to the fiscal year ended September 30, 2019, see the section entitled “Management Discussion and Analysis of Financial Condition and Results of Operations” in our Registration Statement on Form S-1 (Registration No. 333-259839). The registration statement was filed in connection with the IPO and was declared effective by the SEC on October 27, 2021.

Liquidity and Capital Resources

Since inception and through September 30, 2021, our principal sources of liquidity were our cash and cash equivalents, short-term borrowings, capital contributions from AES Grid Stability and Siemens Industry, proceeds from the QFH investment and supply chain financing.

We received a $6.3 million capital contribution from Siemens Industry and a $2.5 million capital contribution from AES Grid Stability in fiscal years 2021 and 2020, respectively.

On December 27, 2020, we entered into an agreement with QFH for a $125.0 million investment. The transaction completed on June 9, 2021, with the proceeds used to accelerate our growth.

The Company entered into an Uncommitted Line of Credit Agreement ("Line of Credit') with Citibank, N.A. ("Citibank") on January 29, 2019, which allowed us to borrow an amount in aggregate not to exceed $2.0 million, from time to time, until January 29, 2021 ("Expiration Date"). The Line of Credit was further amended to increase the aggregate borrowing amount to $10.0 million, $30.0 million, and $50.0 million on May 13, 2020, August 7, 2020, and December 23, 2020, respectively. The Expiration Date for the Line of Credit was extended to March 31, 2023, on June 2, 2021. The Company had $50.0 million outstanding under the Line of Credit as of September 30, 2021. Borrowings under the Line of Credit were repaid on November 1, 2021 using proceeds from the IPO.

Additionally, we funded our liquidity through borrowings from AES Grid Stability and Siemens Industry. On August 11, 2021, Fluence Energy, LLC entered into a promissory note with each of Siemens Industry and AES Grid Stability, under which Fluence Energy, LLC received a bridge financing of an aggregate of $50.0 million. In connection with the bridge financing, Fluence Energy, LLC issued a $25.0 million promissory note to each of Siemens Industry and AES Grid Stability (together, the "Promissory Notes"). The Promissory Notes bear interest at a rate of 2.86%. The Promissory Notes were repaid on November 1, 2021 using proceeds from the IPO.

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. As of September 30, 2021, AES and Siemens issued guarantees of $30.0 million each, for a total of $60.0 million, to the SCF Bank on our behalf. As of September 30, 2021, one supplier was actively participating in the supply chain financing program, and we had $58.4 million of payables outstanding subject to the program. All outstanding payments owed under the program are recorded within Accounts payable in our Consolidated Balance Sheets.

Initial Public Offering

On November 1, 2021, the Company completed the IPO in which it issued and sold 35,650,000 shares of its Class A common stock at the public offering price of $28.00 per share. The net proceeds to the Company from the IPO were $948.0 million, after deducting underwriting discounts and commissions and offering expenses payable by the Company. The net proceeds from the IPO have been 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 under our existing Line of Credit and the Promissory Notes, and the remainder will be used for working capital and other general corporate purposes.

Revolving Credit Facility

We entered into 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 Revolver is 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 initial aggregate amount of commitments is $190.0 million from the lenders party including JP Morgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., Bank of America, N.A., Barclays Bank PLC, and five other banks. The maturity date of the Revolver is November 1, 2025.

The interest rate is either (i) the Adjusted LIBOR or Adjusted EURIBO Rate (each as defined in the Revolver) plus 3.0 % or (ii) the Alternate Base Rate (as defined in the Revolver) plus 2.0 % (subject to customary LIBOR replacement provisions and alternative benchmark rates including customary spread adjustments with respect to borrowings in foreign currency), at the option of Fluence Energy, LLC. Fluence Energy, LLC is 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, which will be the four-year anniversary of the closing date of the Revolver. The Revolver also provides for up to $190.0 million in letter of credit issuances, which will require 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.

The Revolver contains covenants that, among other things, will restrict our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; make dividends, distributions, or other restricted payments; and engage in affiliate transactions. The Revolver limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, Fluence Energy, Inc.'s equity and other restricted payments. In addition, we are required to maintain (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reaches $150.0 million for the most recent four fiscal quarters and we make an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. Such covenants will be tested on a quarterly basis.

Tax Receivable Agreement

In connection with the IPO, we entered into the Tax Receivable Agreement with Fluence Energy, LLC and the Founders which obligates the Company to make payments to the Founders of 85% of the amount of certain tax benefits that Fluence Energy, Inc. actually realizes, or in some circumstances is deemed to realize, arising from the Basis Adjustments (as defined below) and certain other tax benefits arising from payments made under the Tax Receivable Agreement. Fluence Energy, LLC will have in effect an election under Section 754 of the Code effective for each taxable year in which a redemption or exchange (including deemed exchange) of LLC Interests for Class A common stock or cash occurs or when Fluence Energy, LLC makes (or is deemed to make) certain distributions. These Tax Receivable Agreement payments are not conditioned upon one or more of the Founders maintaining a continued ownership interest in Fluence Energy, LLC. If a Founder transfers LLC Interests but does not assign to the transferee of such units its rights under the Tax Receivable Agreement, such Founder generally will continue to be entitled to receive payments under the Tax Receivable Agreement arising in respect of a subsequent exchange of such LLC Interests. In general, the Founders' rights under the Tax Receivable Agreement may not be assigned, sold, pledged, or otherwise alienated or transferred to any person, other than certain permitted transferees, without our prior written consent (not to be unreasonably withheld) and such person's becoming a party to the Tax Receivable Agreement and agreeing to succeed to the applicable Founder's interest therein.

Subsequent redemptions or exchanges of LLC Interests are expected to result in increases in the tax basis of the assets of Fluence Energy, LLC and certain of its subsidiaries. Increases in tax basis and tax basis adjustments generated over time may increase (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. Fluence Energy, Inc.'s allocable share of tax basis and the anticipated tax basis adjustments upon redemptions or exchanges of LLC Interests may also decrease gains (or increase losses) on future dispositions of certain assets to the extent tax basis is allocated to those assets. Actual tax benefits realized by Fluence Energy, Inc. may differ from tax benefits calculated under the Tax Receivable Agreement as a result of the use of certain assumptions in the Tax Receivable Agreement, including the use of an assumed state and local income tax rate to calculate tax benefits. 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. The actual and hypothetical tax liabilities determined in the Tax Receivable Agreement will be calculated using the actual U.S. federal income tax rate in effect for the applicable period and an assumed state and local income tax rate (along with the use of certain other assumptions). The term of the Tax Receivable Agreement will continue until all such tax benefits have been utilized or expired, unless Fluence Energy, Inc. exercises its right to terminate the Tax Receivable Agreement early, certain changes of control occur or Fluence Energy, Inc. breaches any of its material obligations under the Tax Receivable Agreement, in which case, all obligations generally (and in the case of such a change of control or such breach, only if the Founders elect) will be accelerated and due as if Fluence Energy, Inc. had exercised its right to terminate the Tax Receivable Agreement. The payment to be made upon an early termination of the Tax Receivable Agreement will generally equal the present value of payments to be made under the Tax Receivable Agreement using certain assumptions. Estimating the amount of payments that may be made under the Tax Receivable Agreement is by its nature imprecise, insofar as the calculation of amounts payable depends on a variety of factors. The tax basis adjustments upon the redemption or exchange of LLC Interests, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending upon a number of factors, including the timing of purchases or exchanges, the price of shares of our Class A common stock at the time of the purchase or exchange, the extent to which such purchases or exchanges do not result in a basis adjustment, the amount of tax attributes, changes in tax rates and the amount and timing of our income.

We expect that as a result of the anticipated tax basis adjustment of the assets of Fluence Energy, LLC and its subsidiaries upon the redemption or exchange of LLC Interests and our possible utilization of certain tax attributes, the payments that we may make under the Tax Receivable Agreement will be substantial. If all of the Founders were to exchange or redeem their LLC Interests for Class A common stock pursuant to the terms of the Fluence Energy LLC Agreement, we estimate our Founders will be entitled to receive payments under the Tax Receivable Agreement totaling approximately $681.3 million; assuming, among other factors, (i) all exchanges occurred on the same day; (ii) a price of $28.00 per share of Class A common stock; (iii) a constant corporate tax rate of 27%; (iv) we will have sufficient taxable income to fully utilize the tax benefits; (v) Fluence Energy, LLC is able to fully depreciate or amortize its assets; and (vi) 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 for the factors discussed above, 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, and such payments are not anticipated to be dependent upon the availability of proceeds of the IPO.

We believe that our current cash and cash equivalents, cash flows from operations, short-term borrowing, and recent investments from QIA through QFH, combined with the proceeds of our IPO, will be sufficient to meet our capital expenditure and working capital requirements for the foreseeable future.

Historical Cash Flows

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

	Fiscal Year Ended September 30,			
($ in thousands)	**2021**	**2020**	**Change**	**Change %**
Net cash used in operating activities	$ (265,269)	$ (14,016)	(251,253)	(1792.6)%
Net cash (used in) provided by investing activities	$ (22,292)	$ 18,220	(40,512)	(222.3)%
Net cash provided by financing activities	$ 231,126	$ 2,500	228,626	9145.0 %

Net cash flows used in operating activities were $265.3 million in fiscal year 2021 compared $14.0 million in fiscal year 2020. The increase in net operating cash outflows was mainly due to increased purchases of inventory for our energy storage products, partially offset by increased accounts payables.

Net cash flows used in investing activities was $22.3 million in fiscal year 2021, which included $18.0 million related to the business acquisition and $4.3 million of purchases of property and equipment. Net cash flows provided by investing activities was $18.2 million in fiscal year 2020, which included $20.0 million cash inflows from the release of bank deposits that were collateralized for outstanding bank guarantees, net of $1.8 million purchases of property and equipment.

Cash flows provided by financing activities of $231.1 million in fiscal year 2021 was primarily due to $125.0 million proceeds from issuance of Class B membership units to QFH, $6.3 million capital contribution from Siemens Industry, $50.0 million net borrowings under the Line of Credit, and $50.0 million net borrowings from the Promissory Notes. Cash flows provided by financing activities of $2.5 million in fiscal year 2020 was from a capital contribution from AES Grid Stability.

Credit Support and Reimbursement Agreement

We are party to an Amended and Restated Credit Support and Reimbursement Agreement 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. Pursuant to the 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 and reimbursement for all amounts paid to our lenders or other counterparties, payable upon demand. The Credit Support and Reimbursement Agreement will not provide any credit support from September 30, 2026, provided that either AES or Siemens Industry will be permitted to terminate the agreement upon six months prior notice.

Critical Accounting Policies and Use of Estimates

Our financial statements have been prepared in accordance with 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. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

Revenue Recognition

We determine our revenue recognition through the following steps: (i) identification of the contract or contracts with a customer, (ii) identification of the performance obligations within the contract, (iii) determination of the transaction price, (iv) allocation of the transaction price to the performance obligations within the contract, and (v) recognition of revenue as the performance obligation has been satisfied.

Our revenue was generated primarily from sale of battery-based energy storage products, providing operational services related to energy storage products, and providing digital applications and solutions.

Sale of Energy Storage Products

The Company enters into contracts with utility companies, developers, and C&I 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. We determine the transaction price based on the consideration expected to be received which includes estimates for project execution risks and other variable considerations, including liquidated damages. 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, our contracts to design and build battery-based storage solutions are determined to have one performance obligation. We believe that the prices negotiated with each individual customer are representative of the stand-alone selling price of the energy storage products.

We recognize revenue over time as a result of the continuous transfer of control of our energy storage products to the customer. This continuous 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 and is for products that do not have an alternative use to us and/or the project is built on the customer's land that is under the customer's control.

Revenue from the contracts is recognized using the percentage of completion method based on cost incurred as a percentage of total estimated contract costs. 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 the facts and changes in circumstance become known. Due to the uncertainties inherent in the estimation process, it is reasonably possible that these estimates will be revised in a different 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.

Our contracts generally provide our customers the right to liquidated damages ("LDs") against Fluence in the event specified milestones are not met on time, or equipment is not delivered according to contract specifications. LDs 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 improbable that a significant reversal in the amount of cumulative revenue recognized will occur when the uncertainty is resolved. 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 judgements 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. If Fluence has a claim against the customer for amount not specified in the contract, such claim is recognized as an increase to contract price when it is legally enforceable, which is usually upon signing a respective change order or equivalent document confirming the claim acceptance by customer.

Services

The Company also enters into long-term service agreements with customers to provide operational services related to purchased battery-based energy storage products. The services include maintenance, monitoring, and other minor services. We account for the services as a single performance obligation as the services are substantially the same and have the same pattern of transfer to the customers. We recognize revenue over time using a straight-line recognition method for these types of services. We believe using a time-based method to measure progress is appropriate as the performance obligations are satisfied evenly over time based on the fact that customers receive the services evenly and the cost pattern does not change significantly over the service period. Revenue is recognized by dividing the total transaction price over the service period.

Some of the agreements also provide capacity guarantees which stand for a commitment to perform certain augmentation activities to maintain the level of battery capacity specified in the agreement. Augmentation activities would typically be represented by installation of additional batteries, and other components as needed, to compensate for partially lost capacity due to degradation of batteries over time. These services are treated as service-type warranties and are accounted for as separate performance obligations from other services discussed above. Performance obligations of the services are satisfied over time. Percentage of completion revenue recognition method is applied for service type warranties as the cost pattern changes significantly with little to no operating costs incurred in the earlier years and larger costs incurred in later years when augmentation is required to restore the required capacity, for example, adding more batteries or changing some existing modules with declined capacity.

For both products and service contracts where there are multiple performance obligations in a single contract, we allocate the consideration to the various obligations in the contract based on the relative standalone selling price method. Standalone selling prices are estimated based on estimated costs plus margin or using market data for comparable products when estimated costs are not imputable.

Digital Applications and Solutions

In October 2020, Fluence Energy, LLC acquired the AMS software and digital intelligence platform, which became the Fluence Trading Platform. Contracts involving the Fluence Trading Platform are generally entered into with commercial entities that control utility-scale storage and renewable generation assets. Fluence Trading Platform arrangements consist of a promise to provide access to proprietary cloud-based Software-as-a-Service (“SaaS”) to promote enhanced financial returns on the utility-scale storage and renewable generation assets. The Fluence Trading Platform is a hosted service that delivers automated, market-compliant bids to local electricity market operators. Customers do not receive legal title or ownership of the software as a result of these arrangements. The term of Fluence’s contracts with Trading Platform customers is generally five years, which may include certain renewal options to extend the initial contract term or certain termination options to reduce the initial contract term.

The Fluence Trading Platform is technology- and vendor-agnostic (i.e. it can be utilized for wind and solar assets as well as non-Fluence systems). The Fluence Trading Platform is separately identifiable from other promises that the Company offers to its customers (i.e. it is not highly interrelated or integrated with other solutions). As such, we determined that the Fluence Trading Platform should be accounted for as a separate performance obligation. Revenue from the Fluence Trading Platform includes an integration fee and a monthly subscription fee. We consider the access to the Fluence Trading 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 recognized revenue overtime using a straight-line recognition method.

Refer to Note 2—*Summary of Significant Accounting Policies and Estimates* for further discussion of other critical accounting policies and estimates including income taxes, goodwill, and loss contracts.

Emerging Growth Company Status

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012. As an emerging growth company, we may take advantage of certain reduced reporting requirements that are otherwise applicable generally to public companies. We currently intend to take advantage of several of these reduced reporting requirements, including the extended transition periods for complying with new or revised accounting standards. See “Risk Factors— Risks related to Ownership of our Class A Common Stock” for certain risks related to our status as an emerging growth company.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Market risk is the potential loss that may result from market changes associated with our business or with an existing or forecasted financial transactions. We are exposed to various market risks in the ordinary course of our business which are discussed below.

Credit Risk

Credit risk refers to the risk that a counterparty may default on its contractual obligations resulting in a loss to us. Our counterparties for sale of our energy storage products and delivery service are customers including conglomerates, utilities / load-serving entities, independent power producers, developers, and C&I customers in the United States and other countries. A loss of one or more of our significant customers, their inability to perform under their contracts, or their default in payment could harm our business and negatively impact revenue, results of operations, and cash flows. Credit policies have been approved and implemented to govern our portfolio of counterparties with the objective of mitigating credit losses. These policies establish guidelines, controls, and limits to manage credit risk within approved tolerances by mandating an appropriate evaluation of the financial condition of existing and potential counterparties, monitoring agency credit ratings, and by implementing credit practices that limit exposure according to the risk profiles of the counterparties. In addition, customers are required to make milestone payments based on their project's progress. We may also, at times, require letters of credit, parent guarantees or cash collateral when deemed necessary.

Our overall exposure may be affected positively or negatively by macroeconomic or regulatory changes that impact our counterparties to one extent or another. As of September 30, 2021, the COVID-19 pandemic has not had a material impact on our credit risk exposure to our counterparties. Currently, management does not anticipate a material adverse effect in our financial position or results of operations as a consequence of counterparty non-performance. We continuously monitor the creditworthiness of all our counterparties.

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, and the Swiss Franc in our current foreign markets could create significant fluctuations in earnings and cash flows. To date, we have not had material exposure to foreign currency fluctuations and have not had material hedging instruments to hedge the foreign currency risks.

Commodity Price Risk

We are subject to risk from fluctuating market prices of certain commodity raw materials, including steel and aluminum, that are used in the components from suppliers that are inputs into our products. Prices of these raw materials may be affected by supply restrictions or other logistic costs market factors from time to time. As we are not the direct buyer of these raw materials, we do not enter into hedging arrangements to mitigate commodity risk. Significant price changes for these raw materials could reduce our operating margins if suppliers increase component prices and we are unable to recover such increases from our customers and could harm our business, financial condition, and results of operations.

Customer Concentration and Emerging Market Exposure Risk

We deliver products and services in developed economies, including the United States, the United Kingdom, Chile, Ireland, Switzerland, Australia, Germany, and other developed countries. We also deliver products and services in the Philippines, which represent 20% and 34% of revenue for the fiscal year 2021 and 2020, respectively. Macroeconomic conditions in developing economies are usually more volatile than in developed economies and entail certain risks and uncertainties. Changes in the United States trade environment, including the imposition of import tariffs, could adversely affect the amount or timing of our revenues, results of operations or cash flows. The interruption of the flow of components and materials from international vendors could disrupt our supply chain, including as a result of the imposition of additional duties, tariffs and other charges on imports and exports.

Interest Rate Risk

We are exposed to interest rate risk in connection with borrowings under the Line of Credit and Revolver, which bear interest at floating rates. As of September 30, 2021, the outstanding borrowing from Line of Credit was $50.0 million which was paid off on November 1, 2021. We entered into the Revolver on November 1, 2021, which bears a variable interest rate based on the Adjusted LIBOR, the Adjusted EURIBO Rate or the Alternate Base Rate (each as defined in the Revolver). As of September 30, 2021, we have no borrowings under the Revolver.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Fluence Energy, LLC and subsidiaries

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Fluence Energy, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Fluence Energy, LLC (the Company) as of September 30, 2021 and 2020, the related consolidated statements of operations and comprehensive loss, members' (deficit) equity and cash flows for each of the three years in the period ended September 30, 2021, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at September 30, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended September 30, 2021, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2018.

Tysons, VA

December 14, 2021

FLUENCE ENERGY, LLC
CONSOLIDATED BALANCE SHEETS
(U.S. Dollars in Thousands, except per unit amounts)

	September 30, 2021	September 30, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 36,829	$ 93,815
Trade receivables	46,664	32,097
Unbilled receivables	101,975	100,037
Receivables from related parties	33,362	52,452
Advances to suppliers	9,741	2,876
Inventory, net	389,787	37,310
Other current assets	43,157	8,886
Total current assets	661,515	327,473
Non-current assets:		
Property and equipment, net	8,206	5,170
Intangible assets, net	36,057	26,298
Goodwill	9,176	4,731
Deferred income tax asset	1,184	—
Other non-current assets	1,537	353
Total non-current assets	56,160	36,552
Total assets	$ 717,675	$ 364,025
Liabilities, mezzanine equity, and members' equity (deficit)		
Current liabilities:		
Accounts payable	$ 158,366	$ 78,132
Deferred revenue	71,365	123,841
Borrowing from line of credit	50,000	—
Borrowing from related parties	50,000	—
Personnel related liabilities	12,861	8,534
Accruals and provisions	186,143	137,696
Payables and deferred revenue with related parties	227,925	22,464
Taxes payable	12,892	5,937
Other current liabilities	1,941	1,636
Total current liabilities	771,493	378,240
Non-current liabilities:		
Personnel related liabilities	1,607	1,829
Accruals and provisions	257	257
Deferred income tax liability	—	163
Other non-current liabilities	517	761
Total non-current liabilities	2,381	3,010
Total liabilities	773,874	381,250
Commitments and Contingencies (Note 13)		
Mezzanine equity (18,493,275 and 0 Class B units issued and outstanding as of September 30, 2021 and 2020, respectively)	117,235	—
Total mezzanine equity	117,235	—
Members' equity (deficit):		
Capital contributions (117,173,390 Class A units issued and outstanding as of September 30, 2021 and 2020, respectively)	106,152	99,872
Accumulated other comprehensive (loss) income	(285)	201
Deficit	(279,301)	(117,298)
Total members' equity (deficit)	(173,434)	(17,225)
Total liabilities, mezzanine equity, and members' equity (deficit)	$ 717,675	$ 364,025

The accompanying notes are an integral part of these statements

FLUENCE ENERGY, LLC
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(U.S. Dollars in Thousands, except unit and per unit data)

	Fiscal Year Ended September 30,		
	2021	2020	2019
Revenue	$ 594,055	$ 401,676	$ 44,982
Revenue from related parties	86,711	159,647	47,169
Total Revenue	680,766	561,323	92,151
Cost of goods and services	749,910	553,400	100,068
Gross (loss) profit	(69,144)	7,923	(7,917)
Operating expenses:			
Research and development	23,427	11,535	9,871
Sales and marketing	22,624	16,239	14,963
General and administrative	38,162	17,940	13,950
Depreciation and amortization	5,112	3,018	2,891
Interest expense	1,435	128	7
Other (expenses) income, net	(270)	648	1,840
Loss before income taxes	(160,174)	(40,289)	(47,759)
Income tax expense (benefit)	1,829	6,421	(778)
Net loss	$ (162,003)	$ (46,710)	$ (46,981)
Loss Per Unit			
Basic and Diluted	$ (1.38)	$ (0.40)	$ (0.40)
Weighted Average Number of Units			
Basic and Diluted	117,173,390	117,173,390	117,173,390
Foreign currency translation (loss) gain, net of income tax benefit (expense) of $0 in each period	(614)	1,270	(691)
Actuarial gain (loss) on pension liabilities, net of income tax (expense) benefit of $0 in each period	128	210	(263)
Total other comprehensive (loss) income	(486)	1,480	(954)
Total comprehensive loss	$ (162,489)	$ (45,230)	$ (47,935)

The accompanying notes are an integral part of these statements

FLUENCE ENERGY, LLC
CONSOLIDATED STATEMENTS OF CHANGES IN MEMBERS' EQUITY (DEFICIT)
(U.S. Dollars in Thousands except Member Units)

	Mezzanine Equity		Members' Equity (Deficit)				
			Limited Members' Capital		Accumulated Other Comprehensive		Total Members'
	Units	Amount	Units	Amount	Income (Loss)	(Deficit)	Equity(Deficit)
Balance September 30, 2018	—	$ —	117,173,390	$ 87,372	$ (325)	$ (23,607)	$ 63,440
Capital contribution	—	—	—	10,000	—	—	10,000
Net loss	—	—	—	—	—	(46,981)	(46,981)
Other comprehensive loss, net of income tax benefit of $0	—	—	—	—	(954)	—	(954)
Balance September 30, 2019	—	—	117,173,390	$ 97,372	$ (1,279)	$ (70,588)	$ 25,505
Capital contribution	—	—	—	2,500	—	—	2,500
Net loss	—	—	—	—	—	(46,710)	(46,710)
Other comprehensive income, net of income tax expense of $0	—	—	—	—	1,480	—	1,480
Balance September 30, 2020	—	—	117,173,390	$ 99,872	$ 201	$ (117,298)	$ (17,225)
Capital contribution	—	—	—	6,280	—	—	6,280
Issuance of Class B membership units, net	18,493,275	117,235	—	—	—	—	—
Net loss	—	—	—	—	—	(162,003)	(162,003)
Other comprehensive loss, net of income tax benefit of $0	—	—	—	—	(486)	—	(486)
Balance September 30, 2021	18,493,275	$ 117,235	117,173,390	$ 106,152	$ (285)	$ (279,301)	$ (173,434)

The accompanying notes are an integral part of these statements

FLUENCE ENERGY, LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
(U.S. Dollars in Thousands)

	Fiscal Year Ended September 30,		
	2021	2020	2019
Operating activities			
Net loss	$ (162,003)	$ (46,710)	$ (46,981)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation and amortization	5,112	3,018	2,891
Inventory provision	14,197	—	—
Deferred income taxes	(1,346)	1,900	(843)
Provision (benefit) on loss contracts	27,161	(2,946)	5,966
Changes in operating assets and liabilities:			
Trade receivables	(14,567)	(25,149)	(3,450)
Unbilled receivables	(1,938)	(90,333)	(4,634)
Receivables from related parties	15,901	(45,781)	(2,940)
Advances to suppliers	(6,865)	1,160	1,272
Inventory	(366,674)	(26,626)	(9,839)
Other current assets	(32,369)	(4,420)	(2,102)
Other non-current assets	(1,184)	2,468	(1,484)
Accounts payable	73,914	63,086	12,433
Payables and deferred revenue with related parties	205,461	(41,147)	24,543
Deferred revenue	(52,476)	70,861	40,909
Current accruals and provisions	21,286	122,840	4,329
Taxes payable	6,955	762	2,676
Other current liabilities	4,632	4,069	2,915
Other non-current liabilities	(466)	(1,068)	2,021
Net cash (used in) provided by operating activities	(265,269)	(14,016)	27,682
Investing activities			
Proceeds from (purchases of) short-term investments	—	20,000	(20,000)
Cash paid for business acquisition	(18,000)	—	—
Purchase of property and equipment	(4,292)	(1,780)	(2,736)
Net cash (used in) provided by investing activities	(22,292)	18,220	(22,736)
Financing activities			
Capital contribution from Members	6,280	2,500	10,000
Proceeds from issuance of Class B membership units	125,000	—	—
Borrowing from promissory notes – related parties	125,000	—	—
Repayment of promissory notes – related parties	(75,000)	—	—
Borrowing from line of credit	100,000	14,500	—
Repayment of line of credit	(50,000)	(14,500)	—
Payment of equity issuance costs	(3,343)	—	—
Other	3,189	—	—
Net cash provided by financing activities	231,126	2,500	10,000
Effect of exchange rate changes on cash and cash equivalents	(547)	1,327	(815)
Net (decrease) increase in cash and cash equivalents	(56,982)	8,031	14,131
Cash, cash equivalents, and restricted cash as of the beginning of the period	95,051	87,020	72,889
Cash, cash equivalents, and restricted cash as of the end of the period	$ 38,069	$ 95,051	$ 87,020
Supplemental disclosure of cash flow information			
Interest paid	$ 1,229	$ —	$ —
Cash paid for income taxes	$ 6,416	$ 2,197	$ 851

The accompanying notes are an integral part of these statements

FLUENCE ENERGY, LLC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Operations

Fluence Energy, LLC, a Delaware limited liability company, was formed on June 30, 2017, and commenced operations on January 1, 2018 (the ‘‘Effective Date’’). Fluence Energy, LLC, with its wholly owned subsidiaries including Fluence Energy GmbH in Germany, Fluence Energy Pty Ltd. in Australia, and Fluence Energy Inc. in the Philippines, as well as other subsidiaries yet to commence operations, is primarily engaged in the construction and sale of battery-based energy storage products and provides related operational services. As of September 30, 2021, AES Grid Stability, LLC (“AES Grid Stability”) holds 58,586,695 Class A units, or 43.2% of our limited liability interest, Siemens Industry, Inc. (“Siemens Industry”) holds 58,586,695 Class A units, or 43.2% of our limited liability interest, and QIA Florence Holdings LLC (“QFH”), an affiliate of the Qatar Investment Authority (“QIA”), holds 18,493,275 Class B units, or 13.6% of our limited liability interests. Except where the content clearly indicates otherwise, “Fluence,” “we,” “us,” “our” or the “Company” refers to Fluence Energy, LLC and its wholly owned subsidiaries.

In October 2021, the existing limited liability company agreement of Fluence Energy, LLC was amended and restated which recapitalized all existing interests in the Company on the basis of a 14.79-for-1 split. All unit and per unit information has been retroactively adjusted to give effect to the recapitalization for all periods presented, unless otherwise indicated.

The Company’s fiscal year begins on October 1 and ends on September 30.

2. Summary of Significant Accounting Policies and Estimates

Principles of Accounting and Consolidation

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

Emerging Growth Company Status

The Company is an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012 (the ‘‘JOBS Act’’), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, reduced disclosure obligations regarding executive compensation in its periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. The JOBS Act also provides that emerging growth companies can elect to adopt new or revised accounting standards issued subsequent to the enactment of the JOBS Act under private company effective dates.

The Company has elected to use this extended transition period to adopt new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that it is (i) no longer an emerging growth company or (ii) affirmatively and irrevocably opts out of the extended transition period provided in the JOBS Act. As a result, the consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the accompanying consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates. Items subject to such estimates and assumptions include: the carrying amount and estimated useful lives of long-lived assets; impairment of goodwill and long-lived assets; valuation allowances for inventories; deferred tax assets; revenue recognized under the percentage-of-completion method; accrued bonuses; and various project related provisions including but not limited to estimated losses, warranty obligations, and liquidated damages.

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.

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 in "Other current assets" on the Company's consolidated balance sheets.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash as shown in the Company's consolidated statements of cash flows:

	September 30,	
in thousands	**2021**	**2020**
Cash and cash equivalents	$ 36,829	$ 93,815
Restricted cash included in "Other current assets"	1,240	1,236
Total cash, cash equivalents and restricted cash shown in the statements of cash flows	$ 38,069	$ 95,051

Restricted cash included in "Other current assets" on the consolidated balance sheets as of September 30, 2021 consists of $0.9 million collateral for credit card program (2020: $0.9 million) and $0.3 million of collateral for outstanding bank guarantee (2020: $0.3 million).

Trade Receivables

Trade receivables represent actual billings that are generally due within 30 days from the invoice date, and do not bear interest. Receivables are carried at amortized cost. The Company periodically assesses collectability of accounts receivable and records an allowance for doubtful accounts for the estimated uncollectible amount when deemed appropriate. As of September 30, 2021 and 2020, allowance for doubtful accounts was insignificant.

Advances to Suppliers

Advances are given to suppliers based on the contract terms of respective agreements and are presented on a separate line on the consolidated balance sheets. These advances are recovered through the receipt of goods and services mainly used in the production of battery-based energy storage products.

Foreign Currency Transactions

An entity's functional currency is the currency of the primary economic environment in which the entity operates and is generally the currency in which the entity generates and expends cash. The reporting currency of the Company is the U.S. dollar. Monetary and non-monetary assets and liabilities denominated in foreign currencies are remeasured into U.S. dollars using the year-end exchange rates, while revenues and expenses denominated in foreign currencies are remeasured at weighted average exchange rates prevailing during the year. Resultant foreign currency exchange adjustments for monetary assets and liabilities are recorded in earnings on the accompanying consolidated statements of operations and comprehensive loss. Adjustments arising from the translation of the balance sheets of subsidiaries that have a functional currency other than the U.S. dollar are recorded as a component of members' (deficit) equity in accumulated other comprehensive income (loss).

Business Combinations

A business combination is an acquisition of a business from an entity not under common control and is accounted for using the acquisition method. Identifiable assets acquired and liabilities assumed are recognized at fair value on the acquisition date. Goodwill is calculated as the excess of the fair value of the consideration transferred over the fair value of the net assets recognized and represents the future economic benefits arising from the other net assets acquired that could not be individually identified and separately recognized. Fair value measurements may require us to make significant estimates and assumptions. A measurement period, which could be up to one year from the date of the acquisition, exists to identify and measure the assets acquired and liabilities assumed. During the measurement period, provisional amounts may be recognized, and those amounts may subsequently be prospectively adjusted to reflect any new information about facts and circumstances that existed at the acquisition date that, if known, would have affected the measurement of these amounts. At the end of the measurement period, any subsequent changes would not be recognized under the acquisition method but would instead follow other accounting principles, which would generally impact earnings.

Revenue and Cost Recognition

The Company commenced operations on January 1, 2018 and immediately adopted Accounting Standards Updated (''ASU'') 2014-09, *Revenue from Contracts with Customers* and all related amendments (collectively known as Accounting Standards Codification 606, or ''ASC 606''). The Company's revenue recognition policy included herein is based on the application of ASC 606. As of September 30, 2021, the Company's revenue was generated primarily from sale of energy storage products, providing operational services, and digital applications and solutions.

Revenue from Sale of Energy Storage Products: 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 or other variable consideration that are included in the transaction price in accordance with ASC 606. 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. The Company believes that the prices negotiated with each individual customer are representative of the stand-alone selling price of the product.

The Company recognizes revenue over time as a result of the continuous transfer of control of our product to the customer. This continuous 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 the project is built on customer's land that is under the customer's control.

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. 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 the facts and changes in circumstance become known. Due to the uncertainties inherent in the estimation process, it is reasonably possible that these estimates will be revised in a different 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 ("LDs") against Fluence in the event specified milestones are not met on time, or equipment is not delivered according to contract specifications. LDs 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 improbable that a significant reversal in the amount of cumulative revenue recognized will occur when the uncertainty is resolved. 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 judgements 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. If Fluence has a claim against the customer for amount not specified in the contract, such claim is recognized as an increase to contract price when it is legally enforceable, which is usually upon signing a respective change order or equivalent document confirming the claim acceptance by customer.

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. The services include maintenance, monitoring, and other minor services. The Company accounts for the services as a single performance obligation as the services are substantially the same and have the same pattern of transfer to the customers. We recognized revenue overtime using a straight-line recognition method for these types of services. The Company believes using a time-based method to measure progress is appropriate as the performance obligations are satisfied evenly over time based on the fact that customers receive the services evenly. Revenue is recognized by dividing the total transaction price over the service period.

Some of the agreements also provide capacity guarantees which stand for a commitment to perform certain augmentation activities to maintain the level of battery capacity specified in the agreement. Augmentation activities would typically be represented by installation of additional batteries, and other components as needed, to compensate for partially lost capacity due to degradation of batteries over time. These services are treated as service-type warranties and are accounted for as separate performance obligations from other services discussed above. Performance obligations of the services are satisfied over time. The percentage of completion revenue recognition method is applied for service type warranties as the cost pattern is expected to change significantly with little to no operating costs incurred in the earlier years and larger costs incurred in later years when augmentation is required to restore the required capacity, for example, adding more batteries or changing some existing modules with declined capacity.

Revenue from Digital Applications and Solutions: In October 2020, Fluence Energy, LLC acquired the Advanced Microgrid Solutions ("AMS") software and digital intelligence platform, which became the Fluence Trading Platform. Contracts involving the Fluence Trading Platform are generally entered into with commercial entities that control utility-scale storage and renewable generation assets. Fluence Trading Platform arrangements consist of a promise to provide access to proprietary cloud-based Software-as-a-Service ("SaaS") to promote enhanced financial returns on the utility-scale storage and renewable generation assets. The Fluence Trading Platform is a hosted service that delivers automated, market-compliant bids to local electricity market operators. Customers do not receive legal title or ownership of the software as a result of these arrangements. The term for Fluence's contracts with Trading Platform customers is generally 5 years, which may include certain renewal options to extend the initial contract term or certain termination options to reduce the initial contract term.

The Fluence Trading Platform is technology- and vendor-agnostic (i.e., it can be utilized for wind and solar assets as well as non-Fluence systems). The Fluence Trading Platform is separately identifiable from other promises that the Company offers to its customers (i.e., it is not highly interrelated or integrated with other solutions). As such, we determined that the Fluence Trading Platform is accounted for as a separate performance obligation. Revenue from the Fluence Trading Platform includes an integration fee and a monthly subscription fee. We consider the access to the Fluence Trading 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.

For our sale of energy storage products, services, and digital applications and solutions contracts where there are multiple performance obligations in a single contract, the Company allocates the consideration to the various obligations in the contract based on the relative standalone selling price method. Standalone selling prices are estimated based on estimated costs plus margin.

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

Cost of Goods and Services: 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.

Unbilled Receivables: Unbilled receivables represent the excess of revenues recognized over billings to date on certain contracts.

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 contact 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 which is recorded 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.

Warranty Costs: 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 three years after the commercial operation date. The warranties are considered assurance-type warranties which provide a guarantee of quality of the products. The Company accrues for expected warranty costs based on historical activity and expectations of future costs at the time of commercial operation date. Periodically, the Company evaluates and adjusts warranty costs to the extent that actual warranty costs materially differ from the original estimates. Extended warranties that customers purchase separately from the related products and services are accounted for as separate performance obligations. Both warranty fees and associated costs are accounted for after the commercial operation date of the related battery product.

Inventory, Net

Inventory consists of batteries and equipment, cases, 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 market conditions.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of its property and equipment, and intangible assets whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. The assets are considered impaired when their fair value is less than their carrying value. Impairment charges are calculated as the difference between the discounted expected future cash flows, or other accepted valuation techniques to determine fair value and the assets' carrying amount at the date of the triggering event.

Intangible Assets

Intangible assets are stated at their historical cost and amortized on a straight-line basis over their expected useful lives.

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. As of September 30, 2021, AES and Siemens issued guarantees of $30.0 million each, for a total of $60.0 million, to the SCF Bank on our behalf.

As of September 30, 2021, one supplier was actively participating in the supply chain financing program, and we had $58.4 million of payables outstanding subject to the program. All outstanding payments owed under the program are recorded within Accounts payable in our Consolidated Balance Sheets.

Accruals and Provisions

Expenses are recognized on an accrual basis. Provisions are recognized when it is probable that a liability has been incurred and the amount of liability could be reasonably estimated.

Operating Expenses

Operating expenses include research and development, sales and marketing, general and administrative expenses, and depreciation and amortization. Research and development expenses represent personnel costs of the technology team, and costs of materials and services procured for research and development projects. Sales and marketing expenses represent personnel costs of the sales team and all marketing expenses. General and administrative expenses represent personnel costs, rent, IT expenses insurance, and external providers for payroll, accounting, consulting, and others. Depreciation and amortization are expenses associated with property and equipment and intangible assets.

Unit-Based Compensation

Employees, directors, consultants, and other independent contractors are eligible to receive equity awards and other forms of compensation under the 2020 Unit Option Plan ("the Option Plan") and the Phantom Equity Incentive Plan ("the Incentive Plan"). Units awarded under the Option Plan are subject to a service condition and a performance condition (i.e., a liquidity event), as defined within the plan, both of which are required for vesting. Units awarded under the Incentive Plan vest subject to a liquidity event, as defined within the plan. As a liquidity event had not occurred as of September 30, 2021, no compensation costs were recorded under either plan in the periods presented.

The Company recognizes the costs associated with granting unit-based awards using a fair value-based measure in accordance with the requirements of Accounting Standards Codification 718, *Compensation - Stock Compensation (ASC 718)*. The Company estimates the fair value of the unit-based awards, including unit options and phantom awards, using the Black-Scholes option-pricing model. Determining the fair value of unit-based awards requires the use of highly subjective assumptions, including the fair value of the unit underlying the award, the expected term of the award and expected unit price volatility.

The assumptions used in determining the fair value of unit-based awards represent management's estimates, which involve inherent uncertainties and the application of management judgment. As a result, if factors change, and different assumptions are employed, unit-based compensation could be materially different in the future. The risk-free interest rates are based on the U.S. Treasury yield curve in effect at the time of grant, with maturities approximating the expected life of the unit options. The Company uses historical volatility of a selected group of guideline publicly traded entities as the expected volatility assumption.

The Company has made a policy election to account for forfeitures as they occur. If there are any modifications of the underlying invested securities or the terms of the unit option or phantom unit, it may be necessary to accelerate or increase any remaining unamortized unit-based compensation expense.

Earnings (Loss) per Unit

As of September 30, 2021, the Company has three Classes of Membership Interest units, Class A, Class A-1 and Class B. Earnings (loss) per unit is calculated and reported under the "two-class" method. The "two-class" method is an earnings allocation method under which earnings (loss) per unit is calculated for each class of common LLC member units considering both distributions declared or accumulated and participation rights in undistributed earnings as if all such earnings (loss) had been distributed during the period. Class B unit holders have a liquidation preference equal to their initial investment and do not have an obligation to fund losses of the business. When calculating the loss per unit in the current period, the Class B units are not allocated any losses.

The Company calculates basic earnings (loss) per common LLC member unit by dividing net income (loss) by the average number of common LLC member unit outstanding during the period, excluding Class B units because of their liquidation preference. Diluted earnings per unit is calculated after consideration of the potential dilutive effect of common LLC member unit equivalents on the average number of common LLC member units outstanding during the period. Dilution is not considered when a net loss is reported. Common LLC member unit equivalents that have an antidilutive effect are excluded from the computation of diluted earnings per common LLC member unit. As of September 30, 2021, the Company had common LLC member unit equivalents in the form of unit options and phantom units.

In October 2021, the existing limited liability company agreement of Fluence Energy, LLC was amended and restated which recapitalized all existing interests in the Company on the basis of a 14.79-for-1 split. All units and per unit information has been retroactively adjusted to give effect to the recapitalization for all periods presented, unless otherwise indicated.

Income Taxes

The Company is treated as a partnership for U.S. federal income tax purposes. As such, the members are individually liable for their own distributable share of taxable income or loss. No provision has been made in the accompanying consolidated financial statements for U.S. federal, state, or local income taxes.

Foreign subsidiaries of the Company account for income taxes and the related accounts in accordance with ASC 740, *Income Taxes*. Under ASC 740, deferred tax assets and liabilities are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse.

The Company recognizes the tax benefits from uncertain tax positions if it is more likely than not that the position will be sustained on examination by the taxing authorities. The Company recognizes interest and penalties related to unrecognized tax benefits as a component of income tax expense.

The preparation of income tax returns requires the use of management's estimates and interpretations which may be subjected to review by the respective taxing authorities and may result in an assessment of additional taxes, penalties, and interest.

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 any recurring Level 3 fair value measurements.

The Company's cash equivalents include term deposits with original maturity of less than three months and are recorded at amortized cost. Fair value of cash equivalents approximates the carrying amount using Level 2 inputs. The carrying amounts of trade receivables, accounts payable and short-term debt obligations approximate fair values due to their short maturities using Level 2 inputs.

Recent Accounting Standards Adopted

The following table presents accounting standards adopted in 2021:

Standard	Description	Date of adoption	Effect on the financial statements and other significant matters
ASU 2017-04, *Simplifying the Test for Goodwill Impairment*	In January 2017, the Financial Accounting Standards Board ("FASB") issued ASU 2017-04, which removes step 2 of the quantitative goodwill impairment test. Under the amended guidance, a goodwill impairment charge is recognized for the amount by which the carrying value of a reporting unit exceeds its fair value, not to exceed the carrying amount of goodwill.	October 1, 2020	The adoption of the standard did not have a material impact on our financial statements.
ASU 2018-07, *Compensation—Stock Compensation (Topic 718)*—Improvements to Nonemployee Share-Based Payment Accounting	In June 2018, the FASB issued ASU 2018-07, which expands the scope of Topic 718, "Compensation—Stock Compensation," to include equity-based awards granted to non-employees in exchange for goods or services. The accounting for employees and non-employees will be substantially aligned.	October 1, 2020	The adoption of the standard did not have a material impact on our financial statements.
ASU 2018-13, *Fair Value Measurement (Topic 820)*—Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement	In August 2018, the FASB issued ASU 2018-13, which amends ASC 820 to add, remove, and modify fair value measurement disclosure requirements. New disclosures required for public companies under ASU 2018-13 include Level 3 changes in unrealized gains or losses and Level 3 range and weighted average used to develop significant unobservable inputs.	October 1, 2020	The adoption of the standard did not have a material impact on our financial statements.

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 2016-02, *Leases (Topic 842)*	In February 2016, the FASB issued ASU 2016-02, which supersedes existing guidance on accounting for leases in ASC 840, *Leases*. This standard requires all leases to be recognized on the consolidated balance sheet. The FASB has issued several amendments to ASU 2016-02, including ASU 2018-11, *Leases (Topic 842)*: Targeted Improvements that introduced an additional transition method permitting an entity to initially apply the new lease standard at the adoption date and recognize a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. ASU 2016-02 includes optional practical expedients intended to reduce the cost and complexity to implement the new lease standard, such as an option to maintain the current lease classification for all existing lease arrangements and the option to use hindsight in evaluating lessee options to extend or terminate a lease. Early application is permitted.	As an emerging growth company, the Company is permitted to defer adoption until the non-public company adoption date, i.e., annual periods starting after December 15, 2021.	The Company's existing lease population is mainly comprised of operating leases for office space. The Company is currently evaluating the impact of adoption on its consolidated financial statements.
ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326)*	In February 2016, the FASB issued ASU 2016-13, which updates the impairment model for financial assets measured at amortized cost, known as the Current Expected Credit Loss ("CECL") model. For trade and other receivables, held-to-maturity debt securities, loans and other instruments, entities will be required to use a new forward-looking "expected loss" model that generally will result in the earlier recognition of allowance for losses. There are various transition methods available upon adoption. Early adoption is permitted.	As an EGC, the Company is permitted to defer adoption until the non-public company adoption date, i.e., annual periods starting after December 15, 2022.	The Company is currently evaluating the impact of adoption on its consolidated financial statements.
ASU 2019-12, *Income Taxes (Topic 740)*: Simplifying the Accounting for Income Taxes	In December 2019, the FASB issued ASU 2019-12, which removes certain exceptions related to the approach for intraperiod tax allocations, the methodology for calculating income taxes in an interim period, and the recognition of deferred tax liabilities for outside basis differences. The guidance also clarifies and simplifies other areas of ASC 740. Certain amendments must be applied on a prospective basis, certain amendments must be applied on a retrospective basis, and certain amendments must be applied on a modified retrospective basis through a cumulative-effect adjustment to retained earnings/(deficit) in the period of adoption. Early adoption is permitted.	As an EGC, the Company is permitted to defer adoption until the non-public company adoption date, i.e., annual periods starting December 15, 2021, and for interim periods beginning after December 15, 2022.	The Company is currently evaluating the impact of adoption on its consolidated financial statements.

Standard	Description	Required date of adoption	Effect on the financial statements and other significant matters
ASU 2020-04, *Facilitation of the Effects of Reference Rate Reform on Financial Reporting (Topic 848)*	In March 2020, the FASB issued ASU 2020-04, which provides optional expedients and exceptions for applying U.S. GAAP to transactions affected by reference rate (e.g., LIBOR) reform if certain criteria are met, for a limited period of time to ease the potential burden in accounting for (or recognizing the effects of) reference rate reform on financial reporting.	The ASU is effective as of March 12, 2020 through December 31, 2022.	The Company is currently evaluating transactions or contract modifications occurring as a result of reference rate reform and determining whether to apply the optional guidance on an ongoing basis. The ASU is currently not expected to have a material impact on our consolidated financial statements.

3. Revenue from Contracts with Customers

Disaggregation of revenue

The following table presents the Company's revenues disaggregated by contract type:

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Revenue from sale of energy storage products	$ 673,754	$ 556,681	$ 88,830
Revenue from services	5,706	3,773	2,326
Revenue from digital applications and solutions	952	—	—
Other	354	869	995
Total	$ 680,766	$ 561,323	$ 92,151

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

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Americas (North, Central and South America)[(a)]	$ 487,572	$ 336,610	$ 48,569
APAC (Asia Pacific)	134,874	192,679	10,673
EMEA (Europe, Middle-East and Africa)	58,320	32,034	32,909
Total	$ 680,766	$ 561,323	$ 92,151

(a) Revenue from United states of America was $468.4 million, $318.9 million and $41.7 million for 2021, 2020 and 2019 , respectively.

Customer Concentration

For each of the fiscal years ended September 30, 2021, 2020 and 2019, the Company had three customers that each accounted for 10% or more of total revenue.

For the fiscal year ended September 30, 2021, our top five customers, in the aggregate, accounted for approximately 76% of our revenue.

The Company has a limited number of suppliers of batteries, which is a major component of energy storage products.

Deferred revenue

Deferred revenue represents the excess billings over the amount of revenue recognized to date. Deferred revenue from related parties is included in payables and deferred revenue with related parties on the Company's consolidated balance sheets. The following table provides information about deferred revenue from contracts with customers:

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Deferred revenue beginning of period	$ 123,841	$ 52,980	$ 12,071
Additions	69,289	120,852	51,129
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(121,765)	(49,991)	(10,220)
Deferred revenue end of period	$ 71,365	$ 123,841	$ 52,980

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Deferred revenue from related parties beginning of period	$ 11,425	$ 60,968	$ 36,895
Additions	212,344	10,464	46,922
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(3,647)	(60,007)	(22,849)
Deferred revenue from related parties end of period	$ 220,122	$ 11,425	$ 60,968

Remaining performance obligations

The Company's remaining performance obligations ("backlog") represent the unrecognized revenue value of its contract 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 contract commitments and the backlog may fluctuate with currency movements. In addition, the Company's customers have the right, under some circumstances, to terminate contracts or defer the timing of its services and their payments to the Company.

As of September 30, 2021, the Company had $1,362.1 million of remaining performance obligations related to its battery storage product contracts, the majority of which we expect to recognize in revenue in the next 12 months.

As of September 30, 2021, the Company had $256.0 million of remaining performance obligations related to operational service contracts including maintenance, monitoring, and other minor services, of which we expect to recognize 42% within the next five years and the remainder after five years, and $55.0 million remaining performance obligations related to capacity guarantees, 35% of which is expected to be recognized within the next five years and the remainder after five years.

As of September 30, 2021, our remaining performance obligations related to digital application and solution contracts is $4.3 million, which we expect to recognize $3.4 million within the next five years and the remainder after five years.

Costs to obtain a contract

The Company recognizes the incremental costs incurred to obtain or fulfill a contract with a customer as an asset when these costs are recoverable. These costs consist primarily of sales commissions.

As of September 30, 2020, we recorded costs to obtain or fulfill a contract of $2.1 million within "Other current assets" on the Company's consolidated balance sheets. The amount was insignificant as of September 30, 2021.

Amortization related to costs to obtain or fulfill a contract was $1.6 million, $0.8 million and $0.4 million for fiscal year ended September 30, 2021, 2020 and 2019, respectively, which was recorded within "Sales and marketing" on the Company's consolidated statements of operations and comprehensive loss.

Variable consideration

As of September 30, 2021 and 2020, our transaction prices have been reduced to reflect variable consideration of $52.8 million and $1.3 million, respectively.

4. Business Combination

During October 2020, the Company acquired the assets and assumed the liabilities of a US based software and digital intelligence platform. The Company expects the acquisition will offer new capabilities, amplify and extend the Company's energy storage product line, enabling customers to maximize the value of energy storage and renewables while accelerating grid decarbonization. The acquisition price of $18.0 million was fully paid with cash, and was adjusted for an immaterial amount to account for changes in net working capital adjustments. The acquisition represents a business combination. the Company included the financial results of the acquisition in its consolidated financial statements from the date of acquisition. Transaction costs associated with the acquisition were not significant and were expensed as incurred. The following table summarizes the aggregate fair values and estimated useful lives of the assets acquired and liabilities assumed, as of the date of the acquisition.

in thousands	Fair Value	Estimated Useful Life
Intangible assets - Developed technology	$ 12,600	12 years
Intangible assets - Customer relationships	780	6 years
Property and equipment	171	Various
Goodwill	4,449	
Cash paid for acquisition	$ 18,000	

The fair value of developed technology was determined using the multi-period excess earnings method as developed technology is considered to be the primary revenue-generating identifiable intangible asset acquired in the acquisition. The fair value assigned to assets acquired and liabilities assumed are based on management's estimates and assumptions.

The goodwill is primarily attributed to the expanded market opportunities when integrating the acquired entity's technology with the Company's technology and the assembled workforce. The excess of the acquisition price over the fair value of assets acquired and liabilities assumed was recorded to goodwill. The Company expects such goodwill to be deductible for income tax purposes. Purchase accounting adjustments related to the acquisition have been completed.

5. Inventory, Net

Inventory consisted of the following:

	September 30, 2021			September 30, 2020		
in thousands	Cost	Provision	Net	Cost	Provision	Net
Cubes, batteries, and other equipment [(a)]	$ 402,157	$ (12,980)	$ 389,177	$ 37,214	$ —	$ 37,214
Shipping containers and spare parts	1,857	(1,247)	610	126	(30)	96
Total	$ 404,014	$ (14,227)	$ 389,787	$ 37,340	$ (30)	$ 37,310

(a) Provision as of September 30, 2021 included $13.0 million loss recognized for inventory damaged in transit related to the 2021 cargo loss incident. Refer to Note 13 - Commitments and Contingencies for a detail discussion of the 2021 cargo loss incident.

6. Other Current Assets

Other current assets consisted of the following amounts:

	September 30,	
in thousands	2021	2020
Taxes recoverable	$ 14,049	$ 2,167
Receivable from insurance [(a)]	10,000	—
Deferred equity issuance costs	7,103	590
Advance payments	3,601	—
Prepaid expenses	2,480	1,261
Restricted cash	1,240	1,236
Contract acquisition cost	—	2,083
Other	4,684	1,549
Total	$ 43,157	$ 8,886

(a) Receivable from insurance of $10.0 million as of September 30, 2021 represents insurance recoveries that are probable of collection related to the 2021 cargo loss incident. Refer to Note 13 - Commitments and Contingencies for a detail discussion of the 2021 cargo loss incident.

7. Property and Equipment, Net

Property and equipment are stated at amortized cost and consisted of the following:

	September 30, 2021			September 30, 2020		
in thousands	Cost	Accumulated Depreciation	Net	Cost	Accumulated Depreciation	Net
Machinery and Equipment	$ 4,642	$ 976	$ 3,666	$ 1,865	$ 510	$ 1,355
Construction in Progress	855	—	855	2,689	—	2,689
IT Equipment	1,296	424	872	687	191	496
Furniture and Fixtures	1,239	271	968	254	89	165
Leasehold Improvements	1,268	510	758	730	286	444
Other	1,415	328	1,087	27	6	21
Total	$ 10,715	$ 2,509	$ 8,206	$ 6,252	$ 1,082	$ 5,170

Total depreciation expense was $1.4 million, $0.5 million and $0.4 million for the fiscal year ended September 30, 2021, 2020 and 2019, respectively.

Property and equipment are depreciated over the estimated useful lives of the respective assets on a straight-line basis. The range of estimated lives for the respective assets is as follows:

Machinery and equipment	10 years
IT equipment	5 years
Furniture and fixtures	5 years
Leasehold Improvements	10 years, or lease term if shorter
Other	2 years

8. Intangible Assets, Net

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

		September 30, 2021			September 30, 2020		
in thousands	Weighted Average Estimated Useful Lives	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization	Net
Patents and licenses	14 years	$ 32,982	$ 9,207	$ 23,775	$ 33,100	$ 6,851	$ 26,249
Developed technology [(a)]	12 years	12,600	1,050	11,550	—	—	—
Other [(a)]	6 years	894	162	732	65	16	49
Total		$ 46,476	$ 10,419	$ 36,057	$ 33,165	$ 6,867	$ 26,298

(a) The developed technology intangible asset and other intangible asset as of September 30, 2021 included $12.6 million and $0.8 million , respectively, related to the acquisition of AMS discussed in Note 4 - Business Combinations.

Intangible assets are amortized over the estimated useful lives of the respective assets on a straight-line basis. Total amortization expense was $3.6 million, $2.5 million, and $2.5 million for the fiscal year ended September 30, 2021, 2020 and 2019, respectively.

Total future amortization expense for finite-lived intangible assets was estimated as follows:

In thousands	Future Amortization Expenses
2022	$ 3,676
2023	3,667
2024	3,659
2025	3,659
2026	3,232
Thereafter	18,164
Total	$ 36,057

9. Goodwill

Goodwill is assessed for impairment annually each year during the Company's fourth quarter, or when impairment indicators exist. Historically, we assessed the recoverability of our goodwill as of the last day of our fourth quarter. In 2021 we changed the date of our annual goodwill impairment assessment to the first day of our fourth quarter to allow for operational expediency. The Company believes this change does not represent a material change to a method of applying an accounting principle, even though the carrying value of goodwill is material to the Company's consolidated financial statements. This voluntary change in accounting principle, applied prospectively, is preferable as it aligns the annual goodwill impairment test date more closely with our internal budgeting process and did not delay, accelerate, or avoid an impairment of our goodwill. No impairment was recognized for the fiscal year ended September 30, 2021 or 2020.

The following table presents the goodwill activity:

	Fiscal Year Ended September 30,	
in thousands	**2021**	**2020**
Goodwill, Beginning of the period [(a)]	$ 4,731	$ 4,698
Foreign currency adjustment	(4)	33
Acquisition related goodwill [(b)]	4,449	
Goodwill, End of the period	$ 9,176	$ 4,731

(a) On January 1, 2018, $4.7 million of goodwill was recognized upon the formation of the Company.
(b) Refer to Note 4 - Business Combination for a further discussion of acquisition related goodwill.

10. Accruals and Provisions

Accruals mainly represent not yet invoiced milestones for inventory such as batteries, enclosures, and inverters. According to master supply agreements between the Company, and suppliers of the inventory, vendor bills are issued according to contracted billing schedules with some 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:

	September 30,	
in thousands	**2021**	**2020**
Accruals	$ 155,963	$ 133,899
Provisions for expected project losses	30,180	3,019
Other project related provisions	257	1,035
Total	186,400	137,953
Less: non-current portion	(257)	(257)
Current portion	$ 186,143	$ 137,696

11. Short-term borrowing and Line of Credit

The Company had an Uncommitted Line of Credit Agreement with Citibank originally signed on January 29, 2019, which allowed the Company to borrow an amount in aggregate not to exceed $2.0 million, from time to time, until January 29, 2021. The Line of Credit was further amended to increase the aggregate borrowing amount to $10.0 million, $30.0 million and $50.0 million on May 13, 2020, August 7, 2020 and December 23, 2020, respectively. The expiration date for the Line of Credit was extended to March 31, 2023 on June 2, 2021.

The Company's uncommitted line of credit available at September 30, 2021 and 2020 was as follows. The $50.0 million outstanding borrowing from the line of credit at September 30, 2021 was paid off on November 1, 2021 using proceeds from the IPO.

	September 30,	
in thousands	**2021**	**2020**
Uncommitted line of credit	$ 50,000	$ 30,000
Less: Outstanding borrowing from line of credit	(50,000)	—
Total	$ —	$ 30,000
Weighted average annual interest rate of borrowing	2.83 %	—

Refer to Note 14 - *Related-Party Transactions* for borrowing from related parties

12. Income Taxes

The following table presents the components of loss before income tax (in thousands):

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Domestic	$ (158,876)	$ (34,929)	$ (35,391)
Foreign	(1,298)	(5,360)	(12,368)
Loss before income taxes	$ (160,174)	$ (40,289)	$ (47,759)

The major components of income tax expense/(benefit) were as follows:

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Current income tax expense (benefit):			
Foreign	$ 3,079	$ 1,099	$ —
Deferred income tax expense (benefit):			
Foreign	(1,346)	1,900	(843)
Withholding income tax expense:			
Foreign	96	3,422	65
Total income tax expense (benefit)	$ 1,829	$ 6,421	$ (778)

The following table summarizes a reconciliation of the U.S. statutory federal income tax rate to the Company's effective tax rate.

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Statutory rate	21.0 %	21.0 %	21.0 %
Flow-through losses	(20.8)%	(18.2)%	(15.6)%
Foreign rate differential	0.5 %	1.4 %	2.5 %
Withholding taxes	(0.1)%	(8.5)%	(0.1)%
Valuation allowance	(2.4)%	(10.0)%	(6.1)%
Permanent differences	0.8 %	(1.2)%	— %
Other items, net	(0.1)%	(0.4)%	(0.1)%
Effective Tax Rate	(1.1)%	(15.9)%	1.6 %

Deferred income tax is generated by its foreign subsidiaries and is comprised of the following:

	September 30,	
in thousands	**2021**	**2020**
Deferred Tax Assets		
Inventory	$ 2,687	$ 1,530
Deferred revenue	9,081	1,074
Tax loss carryforwards	11,545	7,879
Trade receivables	9	1,607
Unrealized foreign exchange losses	1,060	—
Total deferred tax assets	24,382	12,090
Valuation allowance	(11,632)	(8,014)
Net deferred tax assets	12,750	4,076
Deferred Tax Liabilities		
Trade receivables	(5,240)	—
Intangible assets	(150)	(151)
Accrued and other liabilities	(6,176)	(3,775)
Unrealized foreign exchange gains/losses	—	(313)
Total deferred tax liabilities	$ (11,566)	$ (4,239)
Total net deferred tax assets (liabilities)	$ 1,184	$ (163)

The foreign net operating loss carryforwards as of September 30, 2021 are approximately $66.9 million (2020: $46.8 million). The majority of the net operating loss carryforwards are attributable to the Company's German subsidiary. The net operating loss carryforwards have an unlimited carryforward period.

As of September 30, 2021 and 2020, the Company had recorded a valuation allowance of $11.6 million and $8.0 million against deferred tax assets of the Company's German and Australian subsidiaries, respectively. The Company determined that based on the weight of available evidence, including cumulative losses, it is more-likely-than-not that the net deferred tax assets at its German and Australian entities will not be realized and recorded a valuation allowance against such deferred tax assets.

As of September 30, 2021 and 2020, the Company has not recognized tax benefits relating to uncertain tax positions. The period from January 1, 2018 until September 30, 2021 remains subject to examination by foreign, federal and state taxing authorities.

13. Commitments and Contingencies

Operating Leases

The Company has entered into operating lease agreements to rent office space. As of September 30, 2021, the future minimum lease payments for the next five fiscal years and thereafter are as follows:

in thousands	Future Lease Payments
2022	$ 1,786
2023	1,533
2024	479
2025	229
2026 and thereafter	38
Total	$ 4,065

For the fiscal year ended September 30, 2021, the Company incurred $1.7 million (2020: $1.1 million) in lease expenses.

Guarantees

As of September 30, 2021, the Company had outstanding bank guarantees issued as performance security arrangements for several projects. Performance security is a precondition to receive any payment from the customer and is reduced in stages according to the project completion status.

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

Purchase Commitments

The Company has commitments for minimum volumes of purchases of batteries under a master supply agreement. Liquidated damages apply if the minimum purchase volumes are not met. The Company expects to meet the minimum committed volumes of purchases. The following presents our future minimum purchase commitments by fiscal year, primarily for batteries, and liquidated damages if the minimum purchase volumes are not met as of September 30, 2021.

in thousands	Purchase Commitments	Liquidated Damages
2022	$ 730,291	$ 175,542
2023	1,131,140	136,505
2024	762,318	118,339
2025	112,492	22,498
2026 and thereafter	—	—
Total	$ 2,736,241	$ 452,884

Legal Contingencies

From time to time, the Company may be involved in litigation relating to claims that arise out of our operations and businesses and that cover a wide range of matters, including, among others, intellectual property matters, contract and employment claims, personal injury claims, product liability 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 be decided unfavorably to the Company and could require the Company to pay damages or make expenditures in amounts that could be material. In aggregate, the Company estimates the range of potential losses, where estimable, related to reasonably possible material contingencies to be between $0 million and $5 million.

The following discusses certain potential loss contingencies as of September 30, 2021:

2021 Cargo Loss Incident

On April 28, 2021, the Company was notified of an emergency aboard a vessel carrying Fluence inventory. This incident resulted in damage to a portion of our cargo aboard the vessel. Our best estimate of the net realizable value of the cargo that was destroyed is $13.0 million. In addition to the inventory losses, we have incurred and expect to incur incremental expenses related to the incident, primarily consisting of inspection costs, project cost overruns due to logistical changes, legal fees and fees to dispose of the damaged cargo. We expect insurance proceeds of at least $10.0 million related to non-disputed claims, of which $7.5 million was collected in October 2021 and the remainder is probable of collection.

The Company has notified the marine cargo insurers of the incident and has also notified each affected customer of this event, which under relevant supply contracts, provides the Company an extension of the relevant schedule due to the resulting battery supply delays. We believe this event qualifies as force majeure under the contracts with our customers. However, if the incident ultimately is determined not to constitute a force majeure event, the Company estimates potential liquidated damages exposure of approximately $15.0 million.

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. The Company served as the energy storage technology provider and installed the facility, which was completed earlier in fiscal year 2021. No injuries were reported from the incident. The facility has been taken offline as teams from Fluence, our customer, and the battery manufacturer investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products.

14. Related-Party Transactions

Related parties are represented by Members, their respective subsidiaries and other entities under common control with Members.

Capital Contributions from Members

In June 2021, Siemens made $6.3 million capital contribution in cash to the Company in exchange for certain amendments to the Company's limited liability company agreement. In January 2020, AES made a $2.5 million capital contribution in cash.

Borrowings from Related Parties

On April 28, 2021, and June 3, 2021, the Company borrowed $25.0 million and $25.0 million from AES Grid Stability, respectively, in the form of one-year subordinated promissory notes, each bearing an annual interest at 2.86 %. Both borrowings were paid off in June 2021.

On May 3, 2021, the Company borrowed $25.0 million from Siemens Industry in the form of a one-year subordinated promissory note with an annual interest rate of 2.86%. The borrowing was paid off in June 2021.

On August 11, 2021, the Company borrowed $25.0 million and $25.0 million from AES Grid Stability and Siemens Industry, respectively, in the form of subordinated promissory notes, each bearing an annual interest at 2.86%. Each note was outstanding as of September 30, 2021, and has a maturity date within a year of its issuance.

All related party borrowings were for general working capital needs.

Sales Contracts with Related Parties

The Company signs back-to-back battery-based energy storage product and related service contracts with AES, Siemens and their subsidiaries (collectively referred to as affiliates) in relation to execution of the affiliates' contracts with external customers and also direct contracts signed with affiliates of the Members. The contract price is similar to the price charged to third-party customers. Revenue from contracts with affiliates is included in revenue from related parties on the Company's consolidated statements of operations and comprehensive loss.

In addition, The Company purchases material and supplies from its affiliates and records the costs in cost of goods and services on the Company's consolidated statements of operations and comprehensive loss.

Service Agreements with Affiliates

Fluence Energy, LLC and its affiliates have signed service agreements under which the affiliates provide certain management and administrative services to the Company. The services include but are not limited to, treasury, information technology services, payroll and human resources services, sales and marketing services, and research and development. Cost of services are accrued monthly and included in payables to related parties, and general and administrative sales and marketing or research and development on the Company's consolidated balance sheets and statements of operations and comprehensive loss, respectively.

Contract Performance Guarantees

Fluence Energy, LLC paid performance guarantee fees to its affiliates in exchange for guaranteeing the Company's performance obligations in certain contracts with customers. The Company paid guarantee fees to its affiliates under contractual arrangements and the fees are based on parent costs with a markup. The guarantee fees are included in costs of goods and services on the Company's consolidated statements of operations and comprehensive loss.

The following table presents the components of receivables from related parties and payable to related parties on the Company's consolidated balance sheets:

	September 30,	
in thousands	**2021**	**2020**
Accounts receivable	$ 26,292	$ 14,216
Unbilled receivables	7,070	38,236
Total receivables from related parties	$ 33,362	$ 52,452
Accounts payable	$ 4,510	$ 9,461
Deferred revenue	220,122	11,425
Accrued liabilities	3,293	1,578
Total payables and deferred revenue with related parties	$ 227,925	$ 22,464

Unbilled receivables represent the excess of revenues recognized over billings to date on sales or service contracts with related parties. Deferred revenue represents the excess billings to date over the amount of revenue recognized to date on sales or service

contracts with related parties. Receivables from related parties and payables and deferred revenue 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.

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

	Fiscal Year Ended September 30,		
in thousands	2021	2020	2019
Revenue	$ 86,711	$ 159,647	$ 47,169
Cost of goods and services	(27,673)	(14,399)	(5,603)
Research and development expenses	(356)	(511)	(995)
Sales and marketing expenses	(1,991)	(2,105)	(2,529)
General and administrative expenses	(1,172)	(1,656)	(1,111)

In addition, the Company had purchases from related parties capitalized as assets of $1.5 million, $1.9 million and $1.9 million for the fiscal year ended September 30, 2021, 2020 and 2019, respectively.

15. Employee Benefit Plan

The Company maintains a 401(k) plan covering all eligible U.S. payroll employees. The 401(k) plan provides that eligible employees may make contributions subject to IRS limitations. Under terms of the 401(k) plan, the Company matches an employee's contributions at a rate of 100% up to 5% of the employee's annual salary. For the fiscal years ended September 30, 2021, 2020 and 2019, the Company contributed approximately $1.9 million, $0.9 million and $0.6 million to the 401(k) plan, respectively.

16. Unit-Based Compensation

In October 2020, the Company's Board of Directors approved an equity-based employee deferred compensation scheme. The plan authorizes the Company to issue unit options and phantom units. The Compensation Committee of the Company's Board of Directors determines the types of awards to be granted to individual participants as well as the terms and conditions of the awards. A summary of the unit-based awards granted during the fiscal year ended September 30, 2021 is presented below:

Unit Options

Unit option awards vest with the satisfaction of the following two criteria, assuming both conditions are met within 10 years: (1) a service requirement of three years, and (2) a performance condition, which is the occurrence of a liquidity event such as a change in control or an initial public offering. Unit option awards granted to foreign employees and non-employee directors in certain countries will require cash settlement. The awards which require cash settlement are considered liability awards. The remainder of the options include a contingent cash settlement option outside the control of the holder and as such are considered equity awards.

In April 2021, we granted 12,421,416 class A-1 unit options. The grant date fair value of each option was calculated to be $0.60 on the date of grant using a Black-Scholes option valuation model. The following assumptions were used in the model:

Unit Price (reflects 10% discount for lack of marketability)	$ 2.20
Volatility	30 %
Expected term	6 years
Risk-free Rate	1.14 %
Exercise Price	$ 2.45

The expected volatility is based on the historical volatility of a selected group of guideline publicly traded entities over the most recent period corresponding to the expected life as of the grant date. The risk-free interest rate for periods during the contractual life of the option is based on the U.S. Treasury yield curve in effect at the time of valuation.

Subsequent to the April 2021 grants, the Company granted an additional 501,537 unit options. Management is finalizing the valuation of these awards.

The following table presents information concerning the outstanding options granted by the Company:

	Number (Units)	Weighted Average Exercise Price (U.S.Dollars)	Weighted Average Estimated Useful Life (Years)
Outstanding – As of the inception of the Unit Option Plan	—	—	—
Granted	12,922,953	$ 2.45	6
Forfeited	(478,014)	2.45	
Outstanding – As of September 30, 2021	12,444,939	$ 2.45	6
Exercisable as of September 30, 2021	—	—	—

As of September 30, 2021, the Company has approximately $7.5 million unrecognized compensation expense related to unit options which would be recognized commencing with the period in which the performance condition is deemed probable of achievement. This assumes 1) the fair value of cash-settled awards as of September 30, 2021 is equal to their grant date fair value, as there was no market for our class A-1 shares as of that date, and 2) the grant date fair value of the 501,537 option units granted subsequent to April 2021, for which the valuation is not yet complete, is equal to the grant date fair value of the 12,421,416 option units granted during April 2021.

Phantom Units

During the fiscal year ended September 30, 2021, we granted 2,620,867 class A-1 phantom units to certain employees and non-employees. All units granted vest upon the satisfaction of a performance condition, if the condition is met before the awards' expiration date. The performance condition is satisfied upon the occurrence of a liquidity event, which is the earlier of either six months after the effective date of a registration statement for our IPO or a change in control. The grant date fair value of the phantom units was $2.20 per unit. Phantom units granted to foreign employees in certain countries will require cash settlement. As such, the awards which require cash settlement are classified as liability awards. The remainder of the phantom units include a contingent cash settlement option outside the control of the holder and as such are classified as equity.

The following table presents information concerning the outstanding phantom units granted by the Company:

	Number (Units)	Weighted Average Exercise Price (U.S.Dollars)	Weighted Average Estimated Useful Life (Years)
Outstanding – As of the inception of the Phantom Unit Plan	—	—	—
Granted	2,620,867	—	2
Forfeited	(399,899)	—	
Outstanding – As of September 30, 2021	2,220,968	—	2
Exercisable as of September 30, 2021	—	—	—

As of September 30, 2021, the Company has approximately $4.9 million unrecognized compensation expense related to phantom units, which would be recognized commencing with the period in which the performance condition is deemed probable of achievement. This assumes the fair value of cash-settled awards as of September 30, 2021 is equal to their grant date fair value, as there was no market for our class A-1 shares as of that date.

As of September 30, 2021, the Company determined that the achievement of the performance condition was not probable and therefore, there was no expense recognized for these unit options or phantom units for the year ended September 30, 2021.

17. Mezzanine Equity

On December 27, 2020, the Company entered into a subscription agreement with QFH for the issuance of 18,493,275 Class B units for a total value of $125.0 million. Pursuant to the subscription agreement, QFH has certain rights that may allow it to cause the Company to repurchase the units at fair value for five years from the completion of the transaction under conditions outside of the control of the Company. QFH's redemption rights are contingent upon the Company not completing a qualified IPO within a specified time period. The Company does not consider QFH's investment probable of becoming redeemable as it is not probable that the company does not complete a qualified IPO by the end of the IPO notice period, which is defined as nine months after QFH provides notice. QFH cannot provide notice until five years after the effective date of the subscription agreement. This investment was initially recognized at fair value, which approximated the amount of proceeds received, net of issuance costs. At September 30, 2021 the investment is recognized at the carrying value, rather than the redemption value.

18. Collaborative Arrangement

In 2021, the Company executed a development agreement with a service provider to design integrated energy storage products. Under the agreement, the Company makes periodic payments for development activities that will be performed over a three-year period. After development completion, the parties will each hold a license to commercialize certain products developed under the arrangement in exchange for annual royalty payments to the other party. We recorded $3.6 million of expense related to this agreement within "Research and development expense" on the Company's consolidated statements of operations and comprehensive loss for the year ended September 30, 2021.

19. Subsequent Events

Initial Public Offering and Related Transactions

On November 1, 2021, Fluence Energy, Inc. completed an IPO in which it issued and sold 35,650,000 shares of its Class A common stock at the public offering price of $28.00 per share, which includes the exercise by the underwriters of their option to purchase an additional 4,650,000 shares of the Company's Class A common stock. The net proceeds from the IPO were $948.0 million, after deducting underwriting discounts and commissions and offering expenses payable by the company.

Fluence Energy, Inc. has consummated the following transactions in connection with the IPO:

- amended and restated the existing limited liability company agreement of Fluence Energy, LLC, which became effective prior to the consummation of the IPO, to, among other things, (1) recapitalize all existing ownership interests in Fluence Energy, LLC into 135,666,665 LLC Interests and (2) appoint Fluence Energy, Inc. as the sole managing member of Fluence Energy, LLC upon its acquisition of LLC Interests;
- amended and restated Fluence Energy, Inc.'s certificate of incorporation to, among other things, provide (1) for Class A common stock, with each share of our Class A common stock entitling its holder to one vote per share on all matters presented to our stockholders generally, (2) for Class B-1 common stock, with each share of our Class B-1 common stock entitling its holder to five votes per share on all matters presented to our stockholders generally, (3) for Class B-2 common stock, with each share of our Class B-2 common stock entitling its holder to one vote per share on all matters presented to our stockholders generally, and that shares of our Class B-1 and Class B-2 common stock may only be held by the Founders and their respective permitted transferees;
- acquired, by means of one or more mergers, the Blocker Company and issued to the Blocker Shareholder 18,493,275 shares of our Class A common stock as consideration in the Blocker Mergers;
- issued 117,173,390 shares of our Class B-1 common stock to the Founders, which is equal to the number of LLC Interests held by such Founders, for nominal consideration;
- used the net proceeds from the IPO to purchase 35,650,000 newly issued LLC Interests directly from Fluence Energy, LLC at a price per unit equal to the initial public offering price per share of Class A common stock in the IPO 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 under our existing Line of Credit and the Promissory Notes, and the remainder for working capital and other general corporate purposes;
- Fluence Energy, Inc. and the Continuing Equity Owner have entered into (1) the Stockholders Agreement and the (2) the Registration Rights Agreement, and Fluence Energy, Inc., Fluence Energy, LLC, and the Founders entered into the Tax Receivable Agreement.

Immediately following the consummation of the aforementioned transactions:

- Fluence Energy, Inc. became a holding company and its principal asset consists of LLC Interests it purchases directly from Fluence Energy, LLC and acquires indirectly from the Blocker Shareholder;
- Fluence Energy, Inc. became the sole managing member of Fluence Energy, LLC and controls the business and affairs of Fluence Energy, LLC and its direct and indirect subsidiaries;
- Fluence Energy, Inc. owns, directly or indirectly, 54,143,275 LLC Interests, representing approximately 31.6% of the economic interest in Fluence Energy, LLC;

- the Founders own (1) 117,173,390 LLC Interests, representing approximately 68.4% of the economic interest in Fluence Energy, LLC and (2) 117,173,390 shares of Class B-1 common stock of Fluence Energy, Inc., representing approximately 91.5% of the combined voting power of all of Fluence Energy, Inc.'s common stock;
- the Blocker Shareholder owns (1) 18,493,275 shares of Class A common stock of Fluence Energy, Inc., representing approximately 2.9% of the combined voting power of all of Fluence Energy, Inc.'s common stock and approximately 34.2% of the economic interest in Fluence Energy, Inc., (2) directly and indirectly through Fluence Energy, Inc.'s ownership of LLC Interests, approximately 10.8% of the economic interest in Fluence Energy, LLC;
- the investors in our IPO own (1) 35,650,000 shares of Class A common stock of Fluence Energy, Inc., representing approximately 5.6% of the combined voting power of all of Fluence Energy, Inc.'s common stock and approximately 65.8% of the economic interest in Fluence Energy, Inc., and (2) through Fluence Energy, Inc.'s ownership of LLC Interests, indirectly hold approximately 20.8% of the economic interest in Fluence Energy, LLC; and
- Fluence Energy, Inc. has 23,988,372 shares of Class A common stock reserved for issuance pursuant to awards under our incentive compensation plans.

Tax Receivable Agreement

In October, 2021, in connection with the Transactions and IPO, Fluence Energy, Inc. entered a Tax Receivable Agreement with Fluence Energy, LLC and the Founders, which obligates Fluence Energy, Inc. to make payment to the Founders of 85% of the amount of tax benefits that Fluence Energy, Inc. actually realizes (or in some circumstances is deemed to realize) as a result of (1) increases in our proportionate share of the tax basis of the assets of Fluence Energy, LLC and its subsidiaries resulting from future redemptions or exchanges (or deemed exchanges in certain circumstances) of LLC Interests by the Founders for Class A common stock or cash from the sale of newly issued shares of Class A common stock and certain distributions by Fluence Energy, LLC; and (2) certain additional tax benefits arising from payments made under the Tax Receivable Agreement.

Equity-Based Compensation

Fluence Energy, Inc. has adopted the 2021 Incentive Award Plan in connection with the IPO in order to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of the company and certain of its affiliates and to enable the company to obtain and retain services of these individuals, which we believe is essential to our long-term success. At inception, there were 9,500,000 shares of Class A common stock available for issuance under the 2021 Incentive Award Plan. No more than 9,500,000 shares of common stock may be issued upon the exercise of incentive stock options under the 2021 Plan. Shares issued under the 2021 Plan may be authorized but unissued shares, shares purchased in the open market or treasury shares. Subsequent to September 30, 2021, the Company issued 669,098 restricted stock units under the 2021 Incentive Award Plan.

In October 2021, the Board of Directors issued resolutions to amend certain previously granted equity awards. These amendments will be treated as award modifications under ASC 718 *Compensation – Stock Compensation* in fiscal year 2022.

- In relation to awards previously granted to the Company's former CEO, who served as a director of the Company through the date of the IPO, 1) accelerate to the IPO date the vesting of 102,082 phantom units that otherwise would have vested on the six-month anniversary of the consummation of the IPO, and 2) accelerate to the IPO date the vesting of 112,439 unit options that would have otherwise vested on April 2, 2022 assuming continued service. The resolution stipulates that the awards subject to accelerated vesting shall be settled fully in cash, using the IPO price to calculate the settlement value. All other equity awards previously granted to this individual were concurrently cancelled.

- Amend the vesting terms of 893,589 phantom unit awards previously granted to the Company's executive officers, which had been scheduled to fully vest on the six-month anniversary of the consummation of the IPO, such that 1/3 of the awards vest on the six-month anniversary of the consummation of the IPO, 1/3 on the eighteen-month anniversary, and 1/3 on the thirty-month anniversary, assuming continued service through each vesting date.

Revolving Credit Facility

We entered into a revolving credit facility (the "Revolver"), 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 Revolver is 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 initial aggregate amount of commitments is $190.0 million from the lenders party including JP Morgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., Bank of America, N.A., Barclays Bank PLC, and five other banks. The maturity date of the Revolver is November 1, 2025.

The interest rate is either (i) the Adjusted LIBOR or Adjusted EURIBO Rate (each as defined in the Revolver) plus 3.0 % or (ii) the Alternate Base Rate (as defined in the Revolver) plus 2.0 % (subject to customary LIBOR replacement provisions and alternative benchmark rates including customary spread adjustments with respect to borrowings in foreign currency), at the option of Fluence Energy, LLC. Fluence Energy, LLC is 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, which will be the four-year anniversary of the closing date of the Revolver. The Revolver also provides for up to $190.0 million in letter of credit issuances, which will require 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.

The Revolver contains covenants that, among other things, will restrict our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; make dividends, distributions or other restricted payments; and engage in affiliate transactions. The Revolver limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, Fluence Energy, Inc.'s equity and other restricted payments. In addition, we are required to maintain (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reaches $150.0 million for the most recent four fiscal quarters and we make an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. Such covenants will be tested on a quarterly basis.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. 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 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.

As required by SEC Rule 13a-15(b), 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 of September 30, 2021, the end of the period covered by this Annual Report on Form 10-K. Based upon that evaluation, and as a result of the material weaknesses described below, management concluded that, as of September 30, 2021, our disclosure controls and procedures were not effective at the reasonable assurance level.

Material Weaknesses and Remediation Measures

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

As of September 30, 2021, a material weakness in the internal control over revenue recognition process has not been remediated. The design and implementation of controls did not sufficiently interpret ASC 606 and its application to in-transit, uninstalled or delivered equipment, as well as liquidated damages. We are in the process of remediating the material weakness which includes, without limitation, i) hiring additional experienced accounting, financial reporting and internal control personnel, ii) implementing controls to enhance our review of significant accounting transactions and other new technical accounting and financial reporting issues and preparing and reviewing accounting memoranda addressing these issues, and iii) implementing controls to enable an effective and timely review of account analyses and account reconciliations. We have recently hired additional resources, and we have engaged with a third-party consulting firm to assist us with our formal internal control plan and provide staff augmentation.

We believe we are making progress toward achieving the effectiveness of our internal control over financial reporting and disclosure controls and procedures. The actions that we are taking are subject to ongoing senior management review, as well as Audit Committee oversight. We will not be able to conclude whether the steps we are taking will fully remediate these material weaknesses in our internal control over financial reporting until we have completed our remediation efforts and subsequent evaluation of their effectiveness. We may also conclude that additional measures may be required to remediate the material weaknesses in our internal control over financial reporting, which may necessitate additional implementation and evaluation time. We will continue to assess the effectiveness of our internal control over financial reporting and take steps to remediate the known material weaknesses expeditiously.

Management's Report on Internal Control over Financial Reporting

This Annual Report on Form 10-K does not include a report of management's assessment regarding our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) or an attestation report of our independent registered accounting firm due to a transition period established by rules of the SEC for newly public companies. Additionally, our independent registered accounting firm will not be required to opine on the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an "emerging growth company" as defined in the JOBS Act.

Changes in Internal Control over Financial Reporting

We are taking actions to remediate the material weaknesses relating to our internal control over financial reporting. Other than the changes to our internal control over financial reporting described in "Material Weakness and Remediation Measures" above, 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 September 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2021 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended September 30, 2021.

Code of Business Conduct and Ethics

Our board of directors has adopted a code of business conduct and ethics that applies to our directors, officers, and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A copy of the code is posted on our website, https://fluenceenergy.com. In addition, we intend to post on our website all disclosures that are required by law or Nasdaq rules concerning any amendments to, or waivers from, any provision of the code. We are not including this or any other information on our website as a part of, nor incorporating it by reference into, this Annual Report on Form 10-K or any of our other SEC filings.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2021 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended September 30, 2021.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item, including Securities Authorized for Issuance Under Equity Plans, is incorporated by reference to our Proxy Statement relating to our 2021 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended September 30, 2021.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2021 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended September 30, 2021.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement relating to our 2021 Annual Meeting of Stockholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended September 30, 2021.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENTS SCHEDULES

1. The list of consolidated financial statements and related notes, together with the report of Ernst & Young LLP, appear in Part II, Item 8 “Financial Statements and Supplementary Data” of this Annual Report on Form 10-K and are hereby incorporated by reference.
2. Financial statement schedules have been omitted because they are not applicable, not material or the required information is otherwise included.
3. The exhibits listed in the following Index to Exhibits are filed or incorporated by reference as part of this Annual Report

		Incorporated by Reference			
Exhibit No.	Exhibit Description	Form	File No.	Exhibit No.	Filing Date
3.1	Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.	8-K	001-40978	3.1	November 3, 2021
3.2	Amended and Restated Bylaws of Fluence Energy, Inc.	8-K	001-40978	3.2	November 3, 2021
4.1	Specimen Stock Certificate evidencing the shares of Class A common stock	S-1/A	333-259839	4.1	October 19, 2021
4.2*	Description of Registered Securities				
10.1	Third Amended and Restated LLC Agreement of Fluence Energy, LLC, dated as of October 27, 2021	8-K	001-40978	10.1	November 3, 2021
10.2	Tax Receivable Agreement, dated as of November 1, 2021, by and among Fluence Energy, Inc. and the TRA Parties	8-K	001-40978	10.2	November 3, 2021
10.3	Registration Rights Agreement, dated November 1, 2021, by and among Fluence Energy, Inc. and the Original Equity Owners	8-K	001-40978	10.3	November 3, 2021
10.4	Stockholders Agreement, dated October 27, 2021, by and among Fluence Energy, Inc., Fluence Energy, LLC and the Stockholders	8-K	001-40978	10.4	November 3, 2021
10.5†	2021 Incentive Award Plan	S-1/A	333-259839	10.5	October 19, 2021
10.6.1†	Form Restricted Stock Unit Award Agreement (Employee)	S-1/A	333-259839	10.6.1	October 19, 2021
10.6.2†	Form Restricted Stock Unit Award Agreement (Director)	S-1/A	333-259839	10.6.2	October 19, 2021
10.7†	2020 Unit Option Plan and Form Unit Option Award Agreement	S-1	333-259839	10.7	September 28, 2021
10.8†	Phantom Equity Incentive Plan and Form Phantom Unit Agreement	S-1	333-259839	10.8	September 28, 2021
10.9†	Phantom Cancellation Letter, dated September 23, 2021, with Manuel Perez Dubuc	S-1	333-259839	10.9	September 28, 2021
10.10†	Offer Letter, dated October 27, 2017, with Dennis Fehr	S-1	333-259839	10.10	September 28, 2021
10.11†	Offer Letter, dated May 12, 2020, with Rebecca Boll	S-1	333-259839	10.11	September 28, 2021
10.12 †	Non-Employee Independent Director Compensation Policy	S-1/A	333-259839	10.12	October 19, 2021
10.13	Form of Indemnification Agreement	S-1/A	333-259839	10.13	October 19, 2021
10.14*	Revolving 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.				
10.15	Amended and Restated Credit Support and Reimbursement Agreement, dated June 9, 2021, by and among Fluence Energy, LLC, The AES Corporation and Siemens Industry, Inc.	S-1	333-259839	10.15	September 28, 2021
10.16	Assignment of Rights, dated April 6, 2021, by and among Siemens Aktiengesellschaft and Fluence Energy, LLC.	S-1	333-259839	10.16	September 28, 2021
10.17	Amended and Restated Siemens License Agreement, dated June 9, 2021, by and among Fluence Energy, LLC and Siemens Aktiengesellschaft.	S-1/A	333-259839	10.17	October 19, 2021
10.18	Amended and Restated Siemens Industry License Agreement, by and among and Siemens Industry, Inc. and Fluence Energy, LLC.	S-1/A	333-259839	10.18	October 19, 2021
10.19	Intellectual Property Assignment, dated September 9, 2021, amongst the AES Corporation and Fluence Energy, LLC.	S-1/A	333-259839	10.19	October 19, 2021

		Incorporated by Reference			
10.20	License Agreement, dated September 9, 2021, by and between Fluence Energy, LLC and The AES Corporation.	S-1/A	333-259839	10.20	October 19, 2021
10.21*	Amended and Restated Equipment and Services Purchase Agreement, dated October 27, 2021, by and among Siemens Industry, Inc. and Fluence Energy, LLC.				
10.22*	Amended and Restated Storage Core Frame Purchase Agreement, dated October 27, 2021, by and among AES Grid Stability, LLC and Fluence Energy, LLC.				
10.23*	Amended and Restated Storage Core Frame Purchase Agreement, dated October 27, 2021, by and among Siemens Industry, Inc. and Fluence Energy, LLC.				
10.24*	Amended and Restated Trademark Agreement, dated October 27, 2021, by and among Fluence Energy, LLC and AES Grid Stability, LLC.				
10.25*	Amended and Restated Trademark Agreement, dated October 27, 2021, by and among Fluence Energy, LLC and Siemens Industry, Inc.				
10.26*	Amended and Restated Master Sales Cooperation Agreement, dated October 27, 2021, by and among Fluence Energy, LLC and Siemens Industry, Inc.				
10.27*	Amended and Restated AES Cooperation Agreement, dated October 27, 2021, by and among Fluence Energy, LLC and AES Grid Stability, LLC.				
10.28	Promissory Note, dated August 11, 2021, issued to Siemens Industry, Inc.	S-1	333-259839	10.28	September 28, 2021
10.29	Promissory Note, dated August 11, 2021, issued to AES Grid Stability, LLC.	S-1	333-259839	10.29	September 28, 2021
10.30	Global Paying Services Agreement between Fluence Energy, LLC as the borrower, and Citibank, N.A.	S-1/A	333-259839	10.30	October 19, 2021
21.1*	List of Subsidiaries of Fluence Energy, Inc.				
23.1*	Consent of Ernst & Young LLP				
31.1*	Certification of the Company's Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities and Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2*	Certification of the Company's Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities and Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1**	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.				
32.2**	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.				

† Indicates a management or compensatory plan or arrangement.

* Filed herewith.

** This certification is being furnished solely to accompany this Annual Report on Form 10-K 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, 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 Securities Exchange Act of 1934, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

ITEM 16. FORM 10-K SUMMARY

Not applicable

SIGNATURES

Pursuant to the requirements of the Section 13 or 15 (d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: December 14, 2021

Fluence Energy, Inc.
By: /s/ Manuel Perez Dubuc
Manuel Perez Dubuc
Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1934, this Annual report on Form 10-K has been signed by the following persons on behalf of the registrant in the capacities set forth opposite their names and on the date indicated.

Signature	Title	Date
/s/ Manuel Perez Dubuc Manuel Perez Dubuc	Chief Executive Officer and Director (Principal Executive Officer)	December 14, 2021
/s/ Dennis Fehr Dennis Fehr	Chief Financial Officer (Principal Financial Officer)	December 14, 2021
/s/ Amrita Chatterjee Amrita Chatterjee	Corporate Controller (Principal Accounting Officer)	December 14, 2021
/s/ Julian Nebreda Julian Nebreda	Director	December 14, 2021
/s/ Lisa Krueger Lisa Krueger	Director	December 14, 2021
/s/ Barbara Humpton Barbara Humpton	Director	December 14, 2021
/s/ Emma Falck Emma Falck	Director	December 14, 2021
/s/ Axel Meier Axel Meier	Director	December 14, 2021
/s/ Chris Shelton Chris Shelton	Director	December 14, 2021
/s/ Simon Smith Simon Smith	Director	December 14, 2021
/s/ Elizabeth Fessenden Elizabeth Fessenden	Director	December 14, 2021
/s/ Cynthia Arnold Cynthia Arnold	Director	December 14, 2021
/s/ Herman Bulls Herman Bulls	Director	December 14, 2021
/s/ Harald von Heynitz Harald von Heynitz	Director	December 14, 2021

Exhibit 4.2

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 (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 amended and restated bylaws, each of which is filed as an exhibit to this Annual Report on Form 10-K, and applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL").

Our amended and restated certificate authorizes capital stock consisting of:

- 1,200,000,000 shares of Class A common stock, par value $0.00001 per share;
- 300,000,000 shares of Class B-1 common stock, par value $0.00001 per share;
- 300,000,000 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 amended and restated certificate of incorporation and our amended and restated 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, Siemens Industry, 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 amended and restated certificate of incorporation described below or as otherwise required by applicable law or the amended and restated certificate of incorporation.

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 amended and restated certificate of incorporation 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.

The Founders together own 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" means AES Grid Stability, Siemens Industry, and Qatar Holding LLC and each of their respective subsidiaries.

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 amended and restated certificate of incorporation or our amended and restated 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 amended and restated certificate of incorporation and amended and restated 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 amended and restated 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 amended and restated 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 amended and restated 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 amended and restated 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 amended and restated certificate of incorporation and amended and restated 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 amended and restated certificate of incorporation, including provisions relating to amending our amended and restated 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 amended and restated certificate of incorporation. 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 amended and restated certificate of incorporation and amended and restated 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 amended and restated certificate of incorporation 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 amended and restated certificate of incorporation 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 amended and restated certificate of incorporation 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 amended and restated certificate of incorporation, (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 amended and restated certificate of incorporation 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".

Exhibit 10.14

EXECUTION VERSION

REVOLVING CREDIT AGREEMENT

dated as of

November 1, 2021 among

FLUENCE ENERGY, LLC,
as the Borrower,

FLUENCE ENERGY, INC.,
as the Parent

THE GUARANTORS PARTY HERETO

THE LENDERS PARTY HERETO

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
MORGAN STANLEY SENIOR FUNDING, INC.
BARCLAYS BANK PLC,
and
BOFA SECURITIES, INC.
as Joint Lead Arrangers and Joint Bookrunners

MORGAN STANLEY SENIOR FUNDING, INC.,
as Syndication Agent

BARCLAYS BANK PLC
and
BANK OF AMERICA, N.A.,
as Documentation Agents

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REVOLVING CREDIT AGREEMENT dated as of November 1, 2021 among FLUENCE, ENERGY LLC, a Delaware limited liability company, as the Borrower, FLUENCE ENERGY, INC., a Delaware corporation, as the Parent, the GUARANTORS party hereto, the LENDERS party hereto and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

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.

"**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.

"**Adjusted LIBO Rate**" means, with respect to any Term Benchmark Borrowing denominated in Dollars for any Interest Period, an interest rate *per annum* (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"**Administrative Agent**" means JPMorgan Chase Bank, 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 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.

"**Agent Parties**" has the meaning set forth in Section 10.01.

"**Agents**" means the Administrative Agent, the Arrangers, the Syndication Agent and the Documentation Agents.

"**Agreed Currency**" means Dollars and any Alternative Currency.

"**Agreed Security Principles**" has the meaning assigned to such term in Exhibit G.

"**Agreement**" means this Revolving Credit 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 Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the LIBO Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO 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 Pounds Sterling, Euros, Australian Dollars and any additional currencies determined after the Effective Date by mutual agreement of the Borrower, Lenders, Issuing Banks and Administrative Agent; provided that each such currency is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into Dollars and available in the London interbank deposit market.

"**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 Borrower and each Lender.

"**Ancillary Document**" has the meaning set forth in Section 10.06(b).

"**Anti-Corruption Laws**" means all laws, rules, and regulations of any jurisdiction applicable to the Parent, the Borrower or any of its Affiliates from time to time concerning or relating to bribery or corruption.

"**Anti-Terrorism Laws**" has the meaning set forth in Section 3.15(a)(ii).

"**Applicable Percentage**" means, with respect to any Lender, the percentage of the total Commitments represented by such 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, with respect to any Term Benchmark Loans, ABR Loans, RFR Loans or the commitment fees payable hereunder, as the case may be, the applicable rate *per annum* set forth under the caption "Applicable Rate" across from the caption "Term Benchmark Loans", "ABR Loans", "RFR Loans" or "Commitment Fee" in the table below, as the case may be.

Type	**Applicable Rate**
Term Benchmark Loans	3.00%
ABR Loans	2.00%
RFR Loans	3.1193%
Commitment Fee	0.55%

"**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.

"**Arrangers**" means each of JPMorgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., Barclays Bank PLC and BofA Securities, Inc., in their respective capacities as lead arrangers and bookrunners, and any successors thereto.

"**ASR Agreement**" has the meaning set forth in Section 6.05(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.

"**AUD Interpolated Rate**" means, at any time, the rate per annum determined by the Administrative Agent to be equal to the rate that results from interpolating on a linear basis between: (a) the AUD Screen Rate for the longest period for which that AUD Screen Rate is available that is shorter than the Impacted AUD Interest Period and (b) the AUD Screen Rate for the shortest period for which that AUD Screen Rate is available that exceeds the Impacted AUD Interest Period, in each case, at such time. If at any time the AUD Interpolated Rate is less than zero, the AUD Interpolated Rate shall be deemed to be zero for purposes of this Agreement.

"**AUD Rate**" means, with respect to any Term Benchmark Borrowing denominated in Australian Dollars and for any Interest Period, the AUD Screen Rate at approximately 11:00 A.M., Sydney, Australia time, on the first day of such Interest Period; provided, that, if the AUD Screen Rate shall not be available at such time for such Interest Period (an "**Impacted AUD Interest Period**"), then the AUD Rate shall be the AUD Interpolated Rate.

"**AUD Screen Rate**" means with respect to any Interest Period:

(1) the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (ACN 616 075 417) (or any other Person that takes over the administration of such rate) for Australian Dollar bills of exchange with a tenor equal in length to such Interest Period as displayed on page BBSY of the Reuters screen (or, in the event such rate does not appear on such Reuters page, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion) at or about 11:00 a.m. (Sydney, Australia time) on the first day of such Interest Period. If the AUD Screen Rate shall be less than zero, the AUD Screen Rate shall be deemed to be zero for purposes of this Agreement; and

(2) if the rate described in sub-paragraph (1) above is not available, the sum of:

(A) the Australian Bank Bill Swap Reference Rate administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on page BBSW of the Reuters Screen (or any replacement Reuters page which displays that rate) (or, in the event such rate does not appear on such Reuters page, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion) at or about 11:00 a.m. (Sydney, Australia time) on the first day of such Interest Period; and

(B) 0.05 per cent per annum;

(3) if (i) for any reason that rate is not displayed for a term equivalent to that period; or (ii) the basis on which that rate is displayed is changed or the relevant rate is otherwise unascertainable pursuant to the foregoing provision, and it is not possible to determine the AUD Interpolated Rate, then the AUD Screen Rate will be the rate determined by the Administrative Agent to be the average of the buying rates quoted to the Administrative Agent by three Reference Banks at or about that time on that date; provided, however, that such rate shall not be less than 0%. The buying rates must be for bills of exchange accepted by a leading Australian bank and which have a term equivalent to the period.

"**Auditors' Determination**" has the meaning assigned to such term 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 Collateral Agreements**" shall mean the security agreements set forth on Schedule 4.01(b) 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 Controller**" has the meaning given to the term "controller" in section 9 of the 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).

"**Australian Loan Party**" means a Loan Party that is incorporated in Australia. As of the Effective Date, the Australian Loan Parties shall constitute Fluence Energy Pty Ltd (ACN 627 071 461), an Australian corporation.

"**Australian PPS Act**" means the Personal Property Securities Act 2009 (Cth) (Australia).

"**Australian PPS Law**" means (a) the Australian PPS Act, (b) any regulations made under the Australian PPS Act, (c) any legislative instrument made under the Australian PPS Act, (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 Tax Act**" means the *Income Tax Assessment Act 1936* (Cth) (Australia) or the *Income Tax Assessment Act* 1997 (Cth) (Australia), as applicable.

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

"**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 Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments

of interest calculated pursuant to this Agreement 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.

"**Benchmark**" means, initially, with respect to any (i) RFR Loan in any Agreed Currency, the applicable Relevant Rate for such Agreed Currency or (ii) Term Benchmark Loan, the Relevant Rate for such Agreed Currency; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, and its 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) or clause (c) of Section 2.11.

"**Benchmark Replacement**" means, for any Available Tenor, 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 or in the case of an Other Benchmark Rate Election, "Benchmark Replacement" shall mean the alternative set forth in (3) below:

(1) in the case of any Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) in the case of any Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower 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;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is 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; provided further that, in the case of clause (3), when such clause is used to determine the Benchmark Replacement in connection with the occurrence of an Other Benchmark Rate Election, the alternate benchmark rate selected by the Administrative Agent and the Borrower shall be the term benchmark rate that is used in lieu of a LIBOR-based rate in the relevant other Dollar-denominated syndicated credit facilities; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the "Benchmark Replacement" shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) 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:

(1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of "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 Borrower for the applicable Corresponding Tenor giving due consideration to (i) 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 (ii) 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;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, 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 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 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);

(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;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.11(c); or

(4) in the case of an Early Opt-in Election or an Other Benchmark Rate Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election or Other Benchmark Rate Election, as applicable, is provided to the Lenders, written notice of objection to such Early Opt-in Election or Other Benchmark Rate Election, as applicable, from Lenders comprising the Required Lenders.

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 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**" means Fluence Energy, LLC, a Delaware limited liability company.

"**Borrower Competitor**" means any competitor of the Borrower and/or any of its Subsidiaries.

"**Borrowing**" means 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.

"**Borrowing Request**" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"**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 Loans denominated in Euros and in relation to the calculation or computation of EURIBOR, any day which is a TARGET Day, (c) in relation to Loans denominated in Australian Dollars and in relation to the calculation or computation of BBSY or BBSW, any day (other than a Saturday or a Sunday) on which banks are open for business in Sydney, Australia and (d) in relation to 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.

"**Capital Impairment**" has the meaning assigned to such term 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 the Effective Date and any similar lease entered into after the Effective Date 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 Borrower formed from time to time that engages primarily in the business of insuring risks of the 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 Dollars, 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 consistent with the Parent's or the Borrower's, as applicable, investment guidelines or as approved from time to time by the Parent's or the 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.

"**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) 0%; 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 0.00%, such rate shall be deemed to be 0.00%.

"**CFC**" has the meaning assigned to it in the definition of "Excluded Subsidiary."

"**CFC Holdco**" has the meaning assigned to it in the definition of "Excluded Subsidiary."

"**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 and the rules of the SEC thereunder) (other than the Permitted Holders), of Equity Interests in each of the Parent and the 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 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 Borrower than the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the 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 Borrower.

"**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 set forth in Section 10.13.

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

"**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.

"**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 Borrower or any of its subsidiaries in the ordinary course of business of such Person.

"**Commitment**" means, with respect to each Lender, the commitment of such Lender to make Loans and to acquire participations in Letters of Credit 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 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 Effective Date is $190,000,000.

"**Commitment Fee**" has the meaning set forth in Section 2.09(a).

"**Communications**" has the meaning set forth in Section 10.01.

"**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 for any period, Consolidated Net Income for such period adjusted (i) to exclude (a) gains or losses from disposed, abandoned, transferred, closed or discontinued operations, (b) any gains or losses attributable to business dispositions or asset dispositions other than in the ordinary course of business (as reasonably determined by the Borrower acting in good faith), (c) any extraordinary or non-recurring gains or losses, (d) any non-cash gains, losses, charges or expenses, (e) the cumulative effect of changes in accounting principles, including any changes to Accounting Standards

Codification 715 (or any subsequently adopted standards relating to pension and postretirement benefits) adopted by the Financial Accounting Standards Board after the date hereof, (f) Interest Expense, (g) consolidated tax expense or income, (h) all depreciation and amortization expense, including the depreciation of property, plant and equipment, the amortization of intangible assets, deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits, (i) all other non-cash charges, including actuarial gains or losses from pension and postretirement plans, impairment charges and asset write-offs, non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock or other Equity Interests, or non-cash compensation charges, (j) any costs and expenses related to employment of terminated employees or realized in connection with or resulting from stock appreciation or similar rights, stock options, restricted stock or other Equity Interests, (k) any gains or losses attributable to the early extinguishment of Indebtedness, Swap Agreements or other derivative instruments, (l) any currency translation gains and losses, and any realized or unrealized net loss or gain resulting from hedging transactions, (m) any expenses or charges related to any issuance of Equity Interests, Investment, acquisition, Disposition, recapitalization, Restricted Payment, or incurrence or repayment of Indebtedness permitted hereunder or any other Specified Transaction (in each case, whether or not consummated), (n) restructuring losses and expenses and (o) any payments by the Parent to the Permitted Holders under the Tax Receivable Agreement and (ii) to include proceeds received from business interruption insurance. 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 Borrower.

"**Consolidated Leverage Ratio**" means, for any Measurement Period, the ratio of (a) Net Debt for Borrowed Money of the Parent (excluding Indebtedness attributable to the Parent Convertible Notes) and its Subsidiaries as of the end of such period to (b) Consolidated EBITDA of the Parent and its Subsidiaries for such 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 Account Agreement**" means any tri-party agreement by and among a U.S. Loan Party, the Administrative Agent and a depositary bank or securities intermediary at which such U.S. Loan Party maintains a Controlled Account, in each case in form and substance reasonably satisfactory to the Administrative Agent and which shall provide that, upon the occurrence and during the continuance of any Event of Default, the Administrative Agent can cause the applicable depositary bank or securities intermediary to honor the instructions of the Administrative Agent with respect to any such Controlled Account on terms set forth therein.

"**Controlled Account**" has the meaning set forth in Section 5.12.

"**Corresponding Debt**" has the meaning assigned to such term in Section 10.20(b).

"**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 Party**" has the meaning assigned to it 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 Right**" has the meaning specified in Section 7.02(a).

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

"**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 (A) if such RFR Interest Day is a Business Day, such RFR Interest Day or (B) 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 Borrower.

"**Daily Simple SOFR**" means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"**Debt Purchase Transaction**" means, in relation to a person, a transaction where such person:

(a) purchases by way of assignment or transfer;

(b) enters into any sub-participation in respect of; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"**Deemed LC Issuance**" has the meaning set forth in Section 2.19(l).

"**Deemed LC Request**" has the meaning set forth in Section 2.19(l).

"**Deemed LC Termination**" has the meaning set forth in Section 2.19(l).

"**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 assigned to that term 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 Borrower 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 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 Borrower 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 Borrower, to confirm in writing to the Administrative Agent and the Borrower 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 Borrower, (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, custodian, conservator, trustee, administrator, 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 Borrower and each Lender.

"**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 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 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) have been identified to the Administrative Agent by the Borrower in writing from time to time or (ii) otherwise are reasonably identifiable on the basis of their 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.

"**Distributed Amount**" means the amount distributed or paid to the Secured Parties or to the Administrative Agent on behalf of the Secured Parties (or any of them) by the person responsible for the distribution of the assets (including any payments) of a Loan Party which is insolvent or otherwise subject to insolvency or similar proceedings.

"**Dividing Person**" has the meaning assigned to it 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.

"**Documentation Agent**" means each of Barclays Bank PLC and Bank of America, N.A. in their capacities as documentation agents, and any successors thereto.

"**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, excluding (x) any such Subsidiary substantially all of the assets of which consist of Equity Interests in one or more Subsidiaries that are "controlled foreign corporations" within the meaning of Section 957 of the Code and (y) any such Subsidiary that is owned (directly or indirectly, in whole or in part) by one or more Subsidiaries that are "controlled foreign corporations" within the meaning of Section 957 of the Code.

"**Early Opt-in Election**" means, if the then current Benchmark with respect to Dollars is LIBO Rate, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

"**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 the date on which each of the conditions set forth in Section 4.01 have been satisfied (or waived in accordance with Section 10.02), which date occurred on November 1, 2021.

"**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, the 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 or other rights 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, the 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, as to which the PBGC has not waived under subsection .22, .23, .25, .26, .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Regulation Section 4043 the requirement of Section 4043(a) of ERISA that it be notified of such event; (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.

"**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 0.00%, such rate shall be deemed to be 0.00% 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. If the EURIBOR

Screen Rate shall be less than 0.00%, the EURIBOR Screen Rate shall be deemed to be 0.00% for purposes of this Agreement.

"**Euro**", "**EUR**" and "**€**" mean the single currency of the Participating Member States.

"**Event of Default**" has the meaning set forth in Article 7.

"**Excluded Property**" means (a) any fee interest in real property having a value of at least $2,500,000 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, (d) property the grant of a security interest thereon to secure the Obligations is (1) prohibited by applicable law, rule or regulation (in each case, except to the extent such prohibition is unenforceable after giving effect to the applicable anti-assignment provisions of Article 9 of the Uniform Commercial Code) 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 Borrower shall be under no obligation to seek such consent), (e) any lease, license or other agreement and any property subject thereto on the Effective Date or on the date of the acquisition of such property (other than any property acquired by a Loan Party subject to any such contract or other agreement to the extent such contract or other agreement was incurred in contemplation of such acquisition) to the extent that a grant of a security interest therein to secure the Obligations would violate or invalidate such lease, license, contract or agreement or create a right of termination in favor of any other party thereto (other than the Borrower, any other Loan Party or any Subsidiary) after giving effect to the applicable anti-assignment provisions of Article 9 of the Uniform Commercial Code, (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 Borrower shall be under no obligation to seek such consent) after giving effect to the applicable anti-assignment provisions of Article 9 of the Uniform Commercial Code, (g) 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, (h) (A) payroll, healthcare and other employee wage and benefit accounts, (B) tax accounts, including, without limitation, sales tax accounts, (C) escrow, defeasance and redemption accounts, (D) fiduciary or trust accounts, (E) cash collateral accounts encumbered by Liens pursuant to Section 6.02(z) and (F) bank accounts containing an average daily balance not to exceed $2,500,000 in the aggregate for all such accounts for any fiscal month (items (h)(A) through (F) hereof, the "**Unrestricted Accounts**"); (l) commercial tort claims in an amount not exceeding $2,500,000 individually; (i) assets to the extent a security interest in such assets could reasonably be expected to result in adverse tax consequences as determined in good faith by the Borrower; (j) those assets or Equity Interests as to which the Administrative Agent and the Borrower reasonably agree that the costs or other consequence (including any adverse tax consequence) of obtaining or perfecting such a security interest or perfection thereof are excessive in relation to the value of the security to be afforded thereby and (k) Excluded Securities.

"**Excluded Securities**" means (a) voting Equity Interests of any CFC or any CFC Holdco (except to the extent such CFC is a Foreign Guarantor) in excess of 65% of the outstanding voting Equity Interests of such Subsidiary, (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 Uniform Commercial Code, (c) any Equity Interests in any person that is not a wholly-owned Subsidiary, (d) any Equity Interests in any Excluded Subsidiary (other than any 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 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 Borrower, (b) each Immaterial Subsidiary, (c) any Subsidiary that is a "controlled foreign corporation" within the meaning of the Code (a "**CFC**") except if such CFC is otherwise a Foreign Guarantor hereunder as elected by the Borrower, (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, (e) any Subsidiary of a CFC, (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 (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, 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, and (i) each Subsidiary as to which the Administrative Agent and the Borrower reasonably agree that the costs or other consequence (including any adverse tax consequence) of obtaining a guaranty therefrom are excessive in relation to the value to be afforded thereby; provided, however, in each case of the foregoing that, if the Borrower has elected to cause a Subsidiary that would otherwise constitute an Excluded Subsidiary to become a Foreign Guarantor hereunder, such Foreign Guarantor shall not be an Excluded Subsidiary; provided, further that any Person that is or that becomes (i) a Foreign Guarantor, shall not, except as a result of any Change in Law that could reasonably be expected to result in adverse tax consequences (as reasonably determined by the Borrower in consultation with the Administrative Agent), at any time thereafter be designated as or deemed an Excluded Subsidiary or (ii) a Guarantor (other than a Foreign Guarantor), shall not, except to the extent such Guarantor, at any time, is determined by the Borrower and notified to the Administrative Agent to be an "Excluded Subsidiary" pursuant to clauses (a), (b), (d), (e) and (i) above or as a result of any Change in Law that could reasonably be expected to result in adverse tax consequences (as reasonably determined by the Borrower in consultation with the Administrative Agent), at any time thereafter be designated as or deemed an Excluded Subsidiary; provided further that, to the extent a Guarantor is determined to be an Excluded Subsidiary pursuant to the proviso set forth immediately above, at the time of such determination, all

outstanding Investments which prior thereto were made by a Loan Party in such Subsidiary shall be deemed to have been made in an Excluded Subsidiary for the purposes of Section 6.04.

"**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, 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 the 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 such Lender at the time such Lender becomes a party to this Agreement (other than pursuant to an assignment request by Borrower under Section 2.16(b)) or designates a new lending office, 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 from the Borrower with respect to such withholding tax pursuant to Section 2.14(a), (c) Taxes attributable to such recipient's failure to comply with Section 2.14(f), (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) and (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), (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 clause 2.14(i)).

"**Executive Order**" has the meaning set forth in Section 3.15(a)(i).

"**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.

"**FCA**" has the meaning assigned to such term in Section 1.05.

"**Federal Funds Effective Rate**" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary 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 Letter**" means that certain Fee Letter, dated as of November 1, 2021, by and among the Borrower and the Administrative Agent.

"**Financial Officer**" means the chief financial officer, principal accounting officer, treasurer, vice president of finance or corporate controller of the Borrower.

"**Floor**" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBO Rate, EURIBOR Rate, AUD Rate or Daily Simple RFR, as applicable.

"**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) and has been designated by the Borrower, in writing to the Administrative Agent, as a "Foreign Guarantor" hereunder. As of the Effective Date, the Foreign Guarantors shall constitute Fluence Energy GmbH, a German corporation and Fluence Energy Pty Ltd. (ACN 627 071 461), an Australian corporation.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**Foreign Security Agreement**" means each of the agreements set forth on Schedule 4.01(b), including the German Security Documents, the Australian Collateral Agreements or otherwise entered into from time to time by any Foreign Guarantor in accordance with Section 5.11 and the Agreed Securities Principles.

"**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 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.

"**German Guarantor**" has the meaning assigned to such term in Section 9.09(a).

"**German GmbH & Co. KG Guarantor**" has the meaning assigned to such term in Section 9.09(a).

"**German GmbH Guarantor**" has the meaning assigned to such term in Section 9.09(a).

"**German Security**" means any security interest created under the German Security Documents.

"**German Security Document**" means any Security Document which is governed by German law.

"**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 any Subsidiary (not including an Excluded Subsidiary) of the Parent party hereto or that has executed a guaranty supplement pursuant to Section 5.11 or Section 9.07, the Parent and, other than with respect to its own Obligations, the Borrower.

"**Guaranty**" means the guaranty and other provisions in Article IX.

"**Guaranty Subordinated Debt**" has the meaning set forth in Section 5.11.

"**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 Borrower 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 Borrower 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. Each Immaterial Subsidiary as of the Effective Date shall be set forth in Schedule 3.13.

"**Impacted AUD Interest Period**" has the meaning assigned to such term in the definition of "AUD Rate".

"**Impacted EURIBOR Rate Interest Period**" has the meaning assigned to such term in the definition of "EURIBOR Rate."

"**Impacted LIBO Rate Interest Period**" has the meaning set forth in the definition of "LIBO Rate".

"**Increased Amount Date**" has the meaning set forth in Section 2.18.

"**Incremental Amount**" means $60,000,000.

"**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 the deferred purchase price of property or services 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) any earn-out obligation to the extent such obligation is (or is required to be) listed as a liability on the balance sheet of such Person in accordance with GAAP, has not been paid when due and is not disputed in good faith, (g) 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, (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 (other than Liens granted on Equity Interests of an Excluded Subsidiary to secure obligations of such Excluded Subsidiary and its Subsidiaries). 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 set forth in Section 10.03(b).

"**Indirect Tax**" means any goods and services tax (including Australian GST), 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 set forth in Section 10.12(a).

"**Intellectual Property**" has the meaning set forth in the Security Agreement.

"**Interest Coverage Ratio**" means, for any Measurement Period, the ratio of (a) Consolidated EBITDA to (b) Interest Expense (excluding any Interest Expense attributable to the Parent Convertible Notes) of the Parent and its Subsidiaries for such period.

"**Interest Election Request**" has the meaning set forth 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 Borrower 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.

"**IPO**" means a bona fide underwritten sale to the public of common stock of the Parent pursuant to a registration statement (other than on Form S-8 or any other form relating to securities issuable under any benefit plan of the Parent or any of its Subsidiaries, as the case may be) that is declared effective by the SEC.

"**IRS**" means the U.S. Internal Revenue Service.

"**ISDA Definitions**" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"**Issuing Bank**" means, with respect to a particular Letter of Credit, (a) each of JPMorgan Chase Bank N.A., Morgan Stanley Senior Funding, Inc., Bank of America, N.A. and Barclays Bank PLC, each 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 Borrower 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 Borrower (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.

"**Joinder Agreement**" means a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

"**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 Borrower 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) $200,000,000 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.

"**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 the Borrower for a Letter of Credit in accordance with Section 2.19.

"**LIBO Interpolated Rate**" means, at any time with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO 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 LIBO Screen Rate for the longest

period (for which the LIBO Screen Rate is available for the applicable Agreed Currency) that is shorter than the Impacted LIBO Rate Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available for the applicable Agreed Currency) that exceeds the Impacted LIBO Rate Interest Period, in each case, at such time; provided that if any LIBO Interpolated Rate shall be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

"**LIBO Rate**" means, with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an "**Impacted LIBO Rate Interest Period**") with respect to such Agreed Currency, then the LIBO Rate shall be the LIBO Interpolated Rate.

"**LIBO Screen Rate**" means, for any day and time, with respect to any Term Benchmark Borrowing denominated in Dollars and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than 0.00%, such rate shall be deemed 0.00% for the purposes of this Agreement.

"**LIBOR**" has the meaning assigned to such term in Section 1.05.

"**Lien**" means, with respect to any asset or right, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or 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 or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or right.

"**Limitation Event**" has the meaning assigned to such term in Section 9.09(a)(iii).

"**Liquidity Impairment**" has the meaning assigned to such term in Section 9.09(i).

"**Loan Documents**" means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), any Joinder Agreement, any guaranty supplement delivered pursuant to Section 5.11 hereof, the Security Documents, the Fee Letter 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 Borrower and the Guarantors.

"**Loans**" means the loans made by the Lenders to the Borrower pursuant to this Agreement.

"**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, local time (it being understood that such local time shall mean London, England time unless otherwise notified by the Administrative Agent) and (c) in the case of a Borrowing in Australian Dollars, "Local Time" shall mean Sydney time (daylight or standard, as applicable).

"**Management Notification**" has the meaning assigned to such term 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 the 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 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 $15,000,000. 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 the fourth anniversary of the Effective Date.

"**Maximum Amount**" means the amount which would, but for any reduction or prohibition of payment or other distribution due to the relationship between any Subordinated Lender and a Loan Party, have been distributed or distributable to the Secured Parties or to the Administrative Agent on behalf of the relevant Secured Parties (or any of them).

"**Maximum ASR Amount**" has the meaning set forth in Section 6.05(vi).

"**Maximum Rate**" has the meaning set forth in Section 10.13.

"**Measurement Period**" means, at any date of determination, the most recently completed four consecutive fiscal quarters of the Parent ended on or prior to such date.

"**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 issued and outstanding at such time.

"**Moody's**" means Moody's Investors Service, Inc.

"**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, the 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, the Borrower, or a Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

"**Net Assets**" has the meaning assigned to such term in Section 9.09(a)(i).

"**Net Debt for Borrowed Money**" of the Parent and its Subsidiaries means, as of any date of determination, an amount equal to (i) the sum of (a) the outstanding principal amount of all Indebtedness for borrowed money (including reimbursement obligations with respect to any drawn letters of credit) of all such Persons on a consolidated basis, (b) the aggregate amount of all Capital Lease Obligations of all such Persons on a consolidated basis, and (c) to the extent not duplicative with the Indebtedness and obligations specified in clauses (a) and (b) above, all Guarantees of all such Persons on a consolidated basis with respect to outstanding Indebtedness and obligations of the types specified in clauses (a) and (b) above of other Persons *minus* (ii) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash) of the Parent and its Subsidiaries in an aggregate amount not to exceed $75,000,000. For the avoidance of doubt, the amount of Net Debt for Borrowed Money shall be deemed to be zero with respect to any letter of credit, unless and until a drawing is made with respect thereto.

"**New Commitments**" has the meaning set forth in Section 2.18.

"**New Lender**" has the meaning set forth in Section 2.18.

"**New Loans**" has the meaning set forth 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, the Borrower or one or more Subsidiaries primarily for the benefit of employees of the Parent, the 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.

"**Note**" has the meaning set forth 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 Person that was a Lender or an Affiliate of a Lender at the time the relevant Swap Agreement was entered into) 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 (including all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of the Parent or any of its Subsidiaries, whether or not allowed in such case or proceeding).

"**Other Benchmark Rate Election**" means, with respect to any Loan denominated in Dollars, if the then-current Benchmark is the LIBO Rate, the occurrence of:

(a) a request by the Borrower to the Administrative Agent to notify each of the other parties hereto that, at the determination of the Borrower, Dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed), in lieu of a LIBOR-based rate, a term benchmark rate as a benchmark rate, and

(b) the Administrative Agent, in its sole discretion, and the Borrower jointly elect to trigger a fallback from the LIBO Rate and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders.

"**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 the 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 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 assigned to such term in Section 10.20(a).

"**Parent**" means Fluence Energy, Inc., a Delaware corporation.

"**Parent Convertible Notes**" means senior unsecured convertible notes issued by the Parent which (i) are not guaranteed by or otherwise of recourse to the Borrower or any of its Subsidiaries, (ii) do not mature or require any principal payments prior to the date that is 180 days following the Maturity Date and (iii) 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.

"**Participant**" has the meaning set forth in Section 10.04(c)(i).

"**Participant Register**" has the meaning set forth 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.

"**Payment**" has the meaning specified in Section 8.11(a).

"**Payment Notice**" has the meaning specified in Section 8.11(b).

"**PBGC**" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Pension Plan**" means any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, that is subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA and is maintained in whole or in part by the Parent, the Borrower, any Subsidiary or any ERISA Affiliate or with respect to which any of the Parent, the Borrower, any Subsidiary or any ERISA Affiliate has actual or contingent liability.

"**Permitted Bond Hedge Transaction**" means any call or capped call option (or substantively equivalent derivative transaction) on the Parent's common stock 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 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, 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) deposits 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(k);

(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, the Borrower or any Subsidiary;

(g) Uniform Commercial Code financing statements filed (or similar filings under applicable law) solely as a precautionary measure in connection with operating leases;

(h) leases or subleases 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, 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) 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 encumbering deposits (including the right of set-off);

(m) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially detract from the value of the affected property or interfere with the ordinary conduct of the business of Parent and its Subsidiaries, taken as a whole;

(n) Liens encumbering reasonable customary initial deposits and margin deposits and Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(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;

(p) operating leases of vehicles or equipment which are entered into in the ordinary course of the business; and

(q) customary restrictions in any license agreement with the Borrower as a licensee, including without limitation, with respect to the sale of inventory (provided that the Borrower shall give the Administrative Agent prompt notice of the execution of any such license agreement).

"**Permitted Holders**" means one or more of AES and Siemens.

"**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 Borrower or any of its 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 U.S. 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 stock 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, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Philippines Collateral**" has the meaning set forth in Section 10.01(f).

"**Philippines Guarantors**" means the Guarantors organized under the laws of the Philippines, including Fluence Energy Philippines.

"**Philippines SEC**" means the Securities and Exchange Commission of the Philippines.

"**Philippines Secured Amount**" has the meaning set forth in Section 10.01(f).

"**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(f), in each case, as may be amended, restated, supplemented or otherwise modified from time to time.

"**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, the Borrower, a Subsidiary or any ERISA Affiliate or to which the Parent, the 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, the 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 set forth in Section 10.01.

"**Pounds Sterling**" and "**£**" mean the lawful currency of the United Kingdom.

"**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 Borrower 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**": all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC 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.

"**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 assigned to it in Section 10.18.

"**Qualified Keepwell Provider**" has the meaning assigned to it in Section 10.18

"**Reference Banks**" shall mean Commonwealth Bank of Australia, Westpac Banking Corporation, National Australia Bank or Australia and New Zealand Banking Group Limited or such other bank or financial institution agreed in writing by the Administrative Agent and the Borrower from time to time that actively trades or lends Australian Dollars.

"**Reference Time**" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking 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, (4) if such Benchmark is AUD Rate, 11:00 a.m. Sydney, Australia time two Business Days preceding the date of such setting or (5) if such Benchmark is not the LIBO Rate, the EURIBOR Rate, AUD Rate or SONIA, the time determined by the Administrative Agent in its reasonable discretion.

"**Register**" has the meaning set forth 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 directors, officers, employees, agents 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 LIBO Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Rate, (iii) with respect to any Term Benchmark Borrowing denominated in Australian Dollars, the AUD 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 LIBO Screen Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Screen Rate and (iii) with respect to any Term Benchmark Borrowing denominated in Australian Dollars, the AUD Screen Rate, as applicable.

"**Required Lenders**" means, at any time, Lenders (a) having Revolving Credit Exposures and unused Commitments representing more than 50% of the sum of the total Revolving Credit Exposures 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 Credit Exposures 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 Borrower to the extent (a) classified (or required to be classified) as restricted cash or restricted cash equivalents on the balance sheet of the Borrower 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), (b), (e), (l)(i) and (l)(iii) of Permitted Encumbrances and under Section 6.02(l)).

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary of the Parent, 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 Borrower or any Subsidiary of the return of Equity Interests issued by the 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**" shall mean (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, and (iii) with respect to any RFR Loan, each Interest Payment Date; (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 face amount 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 fiscal quarter; and (d) any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

"**Revolving Credit Exposure**" means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Loans and its LC Exposure at such time.

"**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, 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, Her Majesty's Treasury of the United Kingdom or any other applicable sanctions authority in which the Borrower and its Subsidiaries operate, (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, Her Majesty's Treasury of the United Kingdom or any other applicable sanctions authority in which the Borrower and its Subsidiaries operate.

"**SEC**" means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

"**Secured Parties**" has the meaning assigned to such term in the Security Agreement.

"**Security Agreement**" means the Security Agreement, dated on or about the Effective Date, between the Borrower, the Parent, certain Subsidiaries of the Parent and the Administrative Agent for the benefit of the Secured Parties, as amended, supplemented or otherwise modified from time to time, including by each joinder agreement thereto.

"**Security Documents**" means the collective reference to the Security Agreement, Foreign Security Agreements, the Control Account Agreements 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.

"**Shareholder Loan Agreement**" means, collectively, (i) the Promissory Note, dated August 11, 2021, issued by the Borrower to Siemens Industry, Inc. and (ii) the Promissory Note, dated August 11, 2021, issued by the Borrower to AES Grig Stability, LLC.

"**Shortfall Amount**" means the amount by which the Maximum Amount exceeds the Distributed Amount.

"**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.

"**SOFR**" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"**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.

"**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 and (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). 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 and (b) any Captive Insurance Company.

"**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 Borrower or any Guarantor and any Lender or affiliate thereof, which is in effect as of the Effective Date or which has been designated by such Lender and the Borrower, by notice to the Administrative Agent not later than 90 days after the execution and delivery by the Borrower or such Guarantor, as a "Specified Cash Management Agreement".

"**Specified Swap Agreement**" means any Swap Agreement in respect of interest rates or currency exchange rates entered into by the Borrower or any Guarantor and any Person that is a Lender or an Affiliate of a Lender at the time such Swap Agreement is entered into; provided that such Swap Agreement is entered into to hedge or mitigate risks, and not for speculative purposes, in the ordinary course of the Borrower or such Guarantor'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 Borrower or such Guarantor.

"**Specified Transaction**" means (a) any incurrence or repayment of Indebtedness of the 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 the 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.

"**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 LIBO Rate or 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.

"**Subordinated Lender**" means any Lender which has a relationship with a Loan Party which leads to a reduction or prohibition of payment (including payments in form of an insolvency

quota) or other distribution (including the proceeds from the enforcement of any Collateral) by that Loan Party (including any administrator or insolvency administrator) to that Lender, including, without limitation, by reason of that Lender:

(i) being a Subsidiary of the Parent or an Affiliate thereof; or

(ii) having acquired (directly or indirectly) any Commitment, participation in any Loan and/or any other participation rights (including by way of sub-participation) in any of the Loans and/or any other rights and obligations under the Loan Documents from a Subsidiary of the Parent or an Affiliate thereof in accordance with Section 10.04 or otherwise.

"**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, 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.

"**Supplier Financing Excess Amount**" has the meaning assigned to it in Section 6.01(k).

"**Supported QFC**" has the meaning assigned to it 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 assigned to it in Section 10.18

"**Syndication Agent**" means Morgan Stanley Senior Funding, Inc., in its capacity as syndication agent, and any successor thereto.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

"**TARGET Day**" means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"**Tax Receivable Agreement**" means that certain Tax Receivable Agreement, dated as of November 1, 2021, among the Parent, the 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 Adjusted LIBO Rate, the Adjusted EURIBOR Rate or the AUD Rate.

"**Term SOFR**" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Term SOFR Notice**" means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

"**Term SOFR Transition Event**" means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable (and, for the avoidance of doubt, not in the case of an Other Benchmark Rate Election), has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.11(b) that is not Term SOFR.

"**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, the sum of (a) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash) held by (i) the U.S. Loan Parties, other than cash and Cash Equivalents held in a Controlled Account of a U.S. Loan Party which is not subject to a Control Account Agreement following the date that is ninety (90) days after (x) the Effective Date or (y) (in the case of a Controlled Account opened with a Lender after the Effective Date) the date such account is opened, and (ii) the Foreign Guarantors to the extent that such cash and Cash Equivalents are held in a deposit, securities or other account which is subject to an enforceable Lien of the Administrative Agent pursuant to the Security Documents under which it may cause the applicable depositary bank or other relevant institution to honor its instructions upon enforcement of such Lien under applicable law, in each case at such time (it being understood that Control Account Agreements are not required for the purposes of the foregoing with respect to any such account of any Subsidiary Guarantor which is organized under the laws of Australia or

Germany) and (b) the aggregate unused amount of the Commitments then in effect and which are then available to be drawn under this Agreement.

"**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).

"**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, consummation of the IPO and the use of the proceeds thereof, and the payment of fees and expenses relating to each of the foregoing.

"**Trigger Date**" means the first date to occur following the later of (1) the last day of a fiscal quarter for which Consolidated EBITDA of Parent and its Subsidiaries, calculated for the four consecutive fiscal quarter period ended on such day, is not less than $150,000,000 and (2) the date on which the Borrower shall have provided an irrevocable notice to the Administrative Agent informing the Administrative Agent of the event described in clause (1) above and including a reasonable calculation of such Consolidated EBITDA.

"**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 Adjusted LIBO Rate, the Adjusted EURIBOR Rate, the AUD Rate, the Daily Simple RFR or the Alternate Base Rate.

"**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 Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"**Unfunded Pension Liability**" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"**Unrestricted Account**" has the meaning set forth in the definition of "Excluded Property".

"**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. 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 thereto.

"**U.S. Person**" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"**U.S. Special Resolution Regime**" has the meaning assigned to it in Section 10.18.

"**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 Loan"). 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 or other document herein shall be construed as referring to such agreement, instrument 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 Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower 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 Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower 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 Borrower 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 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; LIBOR 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. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The London interbank offered rate ("**LIBOR**") is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority ("**FCA**") publicly announced that: (a) immediately after December 31, 2021, publication of all seven euro LIBOR settings, all seven Swiss Franc LIBOR settings, the spot next, 1-week, 2-month and 12-month Japanese Yen LIBOR settings, the overnight, 1-week, 2-month and 12-month British Pound Sterling LIBOR settings, and the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; immediately after December 31, 2021, the 1-month, 3-month and 6-month Japanese Yen LIBOR settings and the 1-month, 3-month and 6-month British Pound Sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or "synthetic") basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA's consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this Agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, Section 2.11(b) and (c) provide a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, 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 administration, submission, performance or any other matter related to the Daily Simple RFR, LIBOR or other rates in the definition of "LIBO Rate" (or "EURIBOR Rate" or "AUD Rate") or with respect to 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) or (c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(b)), 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, the Daily Simple RFR, the LIBO Rate (or the EURIBOR Rate or AUD Rate, as applicable) or have the same volume or liquidity as did the London interbank offered rate (or the euro interbank offered rate or the Tokyo interbank offered rate, as applicable) 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 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 Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any RFR, Daily Simple RFR or the Term Benchmark Rate, 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 the 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 stated 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 at such time.

Section 1.08 Exchange Rates; Currency Equivalents. (a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Dollar Equivalent amounts of Term Benchmark 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 Borrower 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 Interest Coverage 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 Interest Coverage 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 Interest Coverage 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 applicable Measurement Period, any Person that subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into the 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 Interest Coverage 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 the 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 Interest Coverage 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 Interest Coverage 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 (A) the last day of the applicable Measurement Period in the case of the Consolidated Leverage Ratio and (B) the first day of the applicable Measurement Period in the case of the Interest Coverage Ratio. If any Indebtedness bears a floating rate of interest and is being given Pro Forma Effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness); provided that, in the case of repayment of any Indebtedness, to the extent actual interest related thereto was included during all or any portion of the applicable Measurement Period, the actual interest may be used for the applicable portion of such 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 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 Borrower may designate.

(d) Notwithstanding anything to the contrary herein, unless the Borrower otherwise notifies 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 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 "collateral agent") to hold each such Security Document as security trustee on its behalf.

(b) The parties agree that the Australian Banking Code of Practice does not apply to the Loan Documents and the transactions under them.

ARTICLE 2
THE CREDITS

Section 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make Loans in Dollars or in one or more Alternative Currencies to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (a) the Dollar Equivalent of such Lender's Revolving Credit Exposure exceeding such Lender's Commitment or (b) the sum of the Dollar Equivalents of the total Revolving Credit Exposures of all Lenders exceeding the total Commitments of all Lenders. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.02 Loans and Borrowings.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders in accordance with their respective Applicable Percentages. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations

hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(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 and (B) in the case of Borrowings in any other Agreed Currency, entirely of Term Benchmark Loans or RFR Loans, as applicable, in each case of the same Agreed Currency, as the Borrower may request in accordance herewith. Each Lender at its option may make any Term Benchmark Loan or RFR 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 Borrower 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 Term Benchmark Borrowings or RFR Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not 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.

Section 2.03 Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request by telephone or telecopy (i) in the case of a Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing, (iii) in the case of an RFR Borrowing denominated in Sterling, not later than 11:00a.m., New York City time, five Business Days before the date of the proposed Borrowing or (iii) in the case of an ABR Borrowing, not later than 10:00 a.m., 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 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 Revolving 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 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 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, 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 Borrower 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 by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the 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 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 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 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 the 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 Borrower 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 Borrower 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 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 the 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 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 Borrower 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 Borrower shall be bound to effect a conversion or continuation in accordance therewith.

(e) If the Borrower fails 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 Borrower fails 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 Borrower 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 Borrower, 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 Borrower by the earlier of (x) the date that is three Business Days after receipt by the Borrower of such notice and (y) the last day of the current Interest Period for the applicable Term Benchmark Loan, the Borrower 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 Borrower 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 Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.08, the sum of the Dollar Equivalents of the Revolving Credit Exposures would exceed the total Commitments.

(c) The Borrower 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 Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower 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 Borrower (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 to the Lenders in accordance with their respective Applicable Percentages.

Section 2.07 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises 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 the 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 the 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 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 the 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 Borrower 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 Borrower 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 Borrower 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 12:00 noon, 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 11:00 a.m., 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 Borrower shall from time to time prepay the Loans to the extent necessary so that the Dollar Equivalent of the aggregate principal amount of all outstanding Loans shall not at any time exceed the Commitments then in effect.

(d) If at any time, (i) other than as a result of fluctuations in currency exchange rates, the Dollar Equivalent of the Lenders' aggregate Revolving Credit Exposures (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) exceeds the aggregate Commitments then in effect, or (ii) solely as a result of fluctuations in currency exchange rates, the Dollar Equivalent of the Lenders' aggregate Revolving Credit Exposures (so calculated), as of the most recent Revaluation Date, exceeds one hundred ten percent (110%) of the aggregate Commitments then in effect, the Borrower shall immediately repay Borrowings and cash collateralize LC Exposure in accordance with the procedures set forth in Section 2.17(d) in an aggregate principal amount sufficient to cause the Dollar Equivalent of the Lenders' aggregate Revolving Credit Exposures (so calculated) to be less than or equal to the aggregate Commitments then in effect.

Section 2.09 Fees.

(a) The Borrower agrees 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 relevant percentage set forth in the row entitled "Commitment Fee" in the definition of "Applicable Rate" on the average daily amount of the unused Commitment of such Lender during the period from and including the 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 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 Borrower agrees 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 2.75% *per annum* 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 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 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 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 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 Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent in the 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 Adjusted LIBO Rate, the Adjusted EURIBOR Rate, or the AUD 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 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 LIBO 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 or 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). Interest computed by reference to the AUD Rate shall be computed on the basis of a year of 365 days. In each case interest shall be payable for the actual number of days elapsed (including the first day but excluding the last day). 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, Adjusted LIBO Rate, LIBO Rate, Adjusted EURIBOR Rate, EURIBOR Rate, AUD 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), (c), (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

Adjusted LIBO Rate, the LIBO Rate, the Adjusted EURIBOR Rate, the EURIBOR Rate or the AUD 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 RFR for the applicable Agreed Currency; 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 Adjusted LIBO Rate, the LIBO Rate, the Adjusted EURIBOR Rate, the EURIBOR Rate or the AUD 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 Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower 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 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 Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.11(i) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until the Administrative Agent notifies the Borrower 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 Borrower's election prior to such day: (A) be prepaid by the Borrower 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 Borrower's 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, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, 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) or (2) 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 (3) 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) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, with respect to a Loan denominated in Dollars, if a Term SOFR 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 the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or 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; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right 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 Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, an Early Opt-in Election or an Other Benchmark Rate Election, as applicable, (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 Term SOFR, LIBO Rate, EURIBOR Rate or AUD 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 Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the 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 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 Borrower's 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, (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 Borrower's election prior to such day: (A) be prepaid by the Borrower 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 Borrower's 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 LIBO Rate or 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 the Borrower hereunder, to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) 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 Indemnified Taxes and Excluded 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 Borrower 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 Borrower 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 Borrower and shall be conclusive absent manifest error. The Borrower 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 Borrower 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 Borrower 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 Borrower under syndicated credit facilities comparable to those provided hereunder.

Section 2.13 Break Funding Payments. (a) With respect to Loans that are not RFR 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 Borrower pursuant to Section 2.16 or (v) the failure by the 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 Borrower 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 Adjusted LIBO 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 Borrower and shall be conclusive absent manifest error. The Borrower 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 Borrower pursuant to Section 2.16 or (iv) the failure by the 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 Borrower 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 Borrower and shall be conclusive absent manifest error. The Borrower 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 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 payable by the Borrower shall be increased 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.

(c) The Loan Parties shall jointly and severally indemnify the Administrative Agent, each Issuing Bank and each Lender, within 10 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 the 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 Borrower 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 the 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 Foreign Lender, if it is legally entitled to do so, shall deliver to the Borrower 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 Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(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 the 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(f)(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(f)(iii) on behalf of such direct or indirect partner or partners; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower 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 Borrower 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 Borrower 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(g)) promptly upon the obsolescence or invalidity of any form previously delivered by such Lender or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

In addition, the Administrative Agent shall deliver to the Borrower 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 Borrower), an executed original of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding.

(g) 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 Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower 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 Borrower and the Administrative Agent sufficient for the Administrative Agent and the Borrower 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(g), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) 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 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 (h) (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 (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h), 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.

(i) 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.

(ii) 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.

(j) 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.

(k) 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, the 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 Borrower is 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 the 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 Borrower takes 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 Borrower 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 the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The 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 the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower 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 Borrower will not make such payment, the Administrative Agent may assume that the Borrower has 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 Borrower has 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 the 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 Borrower hereby agrees 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) the 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 Borrower may, at its sole expense and effort, upon notice 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 Borrower 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 Borrower (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 Borrower exercises its 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 Borrower to require such assignment and delegation cease to apply.

Section 2.17 Defaulting Lenders/Subordinated Lender.

(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 the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder; *third*, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17(d); *fourth*, as the Borrower 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; *fifth*, if so determined by the Administrative Agent and the Borrower, 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); *sixth*, 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; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, 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 Borrower 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 stated amount 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 Borrower 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 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 Dollar Equivalent of the aggregate 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 Borrower shall, without prejudice to any right or remedy available to it 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 Borrower, 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 Borrower 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 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 Borrower 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) The 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 Borrower 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.

(e) Each Subordinated Lender agrees that to the extent and for so long as its Commitment, participation in any Loan or subparticipation or other agreement or arrangement relating to a Commitment, including, without limitation, following a Debt Purchase Transaction, could result in the subordination of claims of any other Lender under the Loans pursuant to any law regarding the subordination of shareholder loans or prejudice or adversely affect the Collateral or guarantee and indemnity pursuant to Article IX (or their enforceability) in any way, the relevant Subordinated Lender shall not be a secured or guaranteed party (however described) under and for the purposes of any Loan Document and no amount owing to it under any Loan Document shall be secured by the Security Documents (unless the subordination ceases to apply or subsequently or at the same time applies to the Lenders generally (other than where such subordination of the Lenders generally is caused by a Debt Purchase Transaction by a Subordinated Lender)).

Section 2.18 Incremental Facility.

(a) The Borrower 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 or an Alternative Currency, 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 Borrower proposes 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 proposed currency denomination and 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 Borrower proposes 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 New Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, 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 Borrower shall make any payments required pursuant to Sections 2.12 and 2.13 in connection with the New Commitments; and (4) except with respect to New Commitments in an aggregate amount of up to $10,000,000 with respect to which the Increased Amount Date occurs on or before December 31, 2021 (or such later date as the Administrative Agent may approve), the Borrower

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 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 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) of the New Loans shall be identical to the existing Loans. Notwithstanding anything in Section 10.02 to the contrary, each 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, including, to the extent the New Commitments are incurred in an Alternative Currency, any amendments to reflect such Alternative Currency hereunder.

Section 2.19 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the 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 Borrower to, or entered into by the 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) the Borrower shall not 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 (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 (iv) the Borrower shall not request, and no Issuing Bank shall issue, any Letter of Credit if after giving effect to such issuance of a Letter of Credit, (1) the Dollar Equivalent of any Lender's Revolving Credit Exposure would exceed such Lender's Commitment or (2) the sum of the Dollar Equivalents of the total Revolving Credit Exposures of all Lenders would exceed the total Commitments of all Lenders.

(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 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 five 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 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 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 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 sum of the Dollar Equivalents of the total Revolving Credit Exposures shall not exceed the total Commitments, (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 Dollar Equivalent of 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 Borrower provides Cash Collateral for, "backstops" or replaces such Letter of Credit, in each case, in an amount equal to 103% of the applicable Issuing Bank's LC Exposure attributable to such Letter of Credit 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 Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower 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 Borrower 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 Borrower shall have received notice of such LC Disbursement; provided that the Borrower may, subject to the conditions to borrowing set forth herein, 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 Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing. If the Borrower fails 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 Borrower 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 Borrower, 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 Borrower 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 the Borrower of its obligation to reimburse such LC Disbursement. If the Borrower's 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 Borrower shall, at its 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. The 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 Borrower's 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 Borrower 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 the Borrower to the extent permitted by applicable law) suffered by the Borrower 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, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly 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 Borrower 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 the 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 Borrower 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 Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.10(d) 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 Event of Default shall occur and be continuing, on the Business Day that the Borrower receives 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 Borrower shall provide Cash Collateral in an amount equal to 103% of the LC Exposure 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 the Borrower described in clause (h) or (i) of Article 7. Such Cash Collateral shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower 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 Borrower's 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 Borrower 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 Borrower under this Agreement. If the Borrower is 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 Borrower 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 Borrower, 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 Borrower 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 Borrower 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 to be terminated and issued hereunder as a Letter of Credit (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.

Section 2.20 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due from the Borrower 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 the Borrower 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, the Borrower 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 Borrower.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

The Parent and the Borrower, as applicable, represent and warrant to the Lenders that:

Section 3.01 Organization; Powers. Each of the Parent and its Subsidiaries is duly organized or formed, validly existing and (to the extent the concept is applicable in such jurisdiction) in good standing 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 in, every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability. The Transactions are within the 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 Borrower 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, 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 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).

Section 3.04 Financial Condition; No Material Adverse Change.

(a) The Borrower has heretofore furnished to the Administrative Agent (i) the Borrower's consolidated balance sheets and related consolidated statements of operations and comprehensive loss, consolidated statements of changes in members' (deficit) equity, and consolidated statements of cash flows as of and for the fiscal years ended September 30, 2019 and September 30, 2020, reported on by Ernst & Young LLP, independent public accountants and (ii) its condensed consolidated balance sheets and related condensed consolidated statements of operations and comprehensive loss, condensed consolidated statements of changes in members' (deficit) equity, and condensed consolidated statements of cash flows as of the end of and for the fiscal quarters ended December 31, 2020, March 31, 2021 and June 30, 2021 and the then elapsed portion of the fiscal year. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP.

(b) Since September 30, 2020, 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 its real and tangible personal property material to its business, other than minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes or 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 rights 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. 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 the Parent or the Borrower, 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.

(a) 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 set forth on Schedule 3.10 or 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.

(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 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). 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 reasonably be expected to result in a Material Adverse Effect.

(c) None of the Borrower, any Subsidiary 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.

(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 Borrower, any Subsidiary 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 Borrower, 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) 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. The Borrower, any Subsidiary, 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 Borrower, any Subsidiary or any ERISA Affiliate have incurred or reasonably expect to incur any liability to PBGC except as would not 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 reasonably be expected to result in a Material Adverse Effect, and no lien imposed under the Code or ERISA on the assets of the Borrower or any Subsidiary or any ERISA Affiliate exists or, to the knowledge of the Borrower, is likely to arise on account of any Plan. None of the Borrower, any Subsidiary 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.

(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 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 reasonably be expected to result in a Material Adverse Effect. Neither the Borrower 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 Borrower'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.

Section 3.12 Disclosure.

(a) All written information provided by any Responsible Officer of the Parent or the Borrower, as applicable (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 Parent and the Borrower, as applicable, 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 Parent's and the Borrower's 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 Effective Date, to the best knowledge of the Borrower, to the extent required to be delivered pursuant to Section 4.01(h), the information included in the Beneficial Ownership Certification provided on or prior to the 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 Effective Date a list of all Subsidiaries, together with (a) the percentage ownership (directly or indirectly) of the Parent and the 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 ownership interests of all Subsidiaries of the Parent and the Borrower, as applicable, are fully paid and non-assessable and are owned by the Parent and the 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 Effective Date, the Parent and its consolidated Subsidiaries 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 Parent or the Borrower, any agent or Affiliate of the Parent, the Borrower or any Subsidiary 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 subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "**Executive Order**");

(ii) a Person owned or 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 Parent or the Borrower, 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, 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) The Parent will not use, and will not 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.

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 Borrower or any of its Subsidiaries, or, to the knowledge of the Parent, the Borrower, 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, or any applicable Anti-Corruption Law.

(b) The Parent has implemented and maintains in effect policies and procedures designed to ensure compliance by the Parent, the Borrower, their respective Subsidiaries and their respective directors, officers, employees, Affiliates 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, the Borrower, their respective Affiliates 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 Collateral Agreements) are effective to create in favor of the Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable security interest (subject to Liens permitted by Section 6.02) in the Collateral described therein and proceeds thereof. In the case of any Equity Interests required to be pledged under the Security Agreement (other than the Australian Collateral Agreements), when stock certificates representing such Equity Interests are delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), and in the case of the other Collateral described in the Security Agreement, when financing statements and other filings specified on Schedule 3 to the Security Agreement in appropriate form are filed in the offices specified on Schedule 3 to the Security Agreement, the Security Agreement shall constitute a fully perfected Lien on, and security interest (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, (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, and (iii) the recordation of intellectual property security agreements with the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

Section 3.18 Australian Representations. In respect of any Australian Loan Party:

(a) *Australian Collateral Agreements*: The security interests created under the Australian Collateral Agreements 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).

ARTICLE 4
CONDITIONS

Section 4.01 Effective Date. The obligations of the Lenders to make Loans and the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received (i) the Security Agreement, executed and delivered by the Borrower, the Parent, and all other U.S. Loan Parties and in form and substance reasonably acceptable to the Administrative Agent, (ii) each short-form intellectual property security agreement required pursuant to Section 4.8(j) of the Security Agreement, (iii) each Foreign Security Agreement set forth on Schedule 4.01(b) and (iv) a Note executed by the Borrower in favor of each Lender requesting a Note at least 5 Business Days prior to the Effective Date.

(c) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of (i) Latham & Watkins, LLP, counsel for the Loan Parties, (ii) Gilbert + Tobin as Australian counsel to the Lenders and (iii) (1) Weil, Gotshal & Manges LLP (Munich) as German counsel to the Lenders and (2) Latham & Watkins, LLP (Munich), as German counsel to the Loan Parties, in each case, in form and substance reasonably satisfactory to the Administrative Agent. The Borrower hereby requests each such counsel to deliver such opinion.

(d) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the Borrower and the Guarantors (or in the case of an Australian Loan Party, extracts of resolutions) approving the transactions contemplated by the Loan Documents to which each such Loan Party is a party and the execution and delivery of such Loan Documents to be delivered by such Loan Party on the Effective Date, and all documents evidencing other necessary organizational action and governmental approvals, if any, with respect to the Loan Documents, and in the case of each Australian Loan Party, providing a statement of corporate benefit and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of the Guarantors and the Borrower and authorization of the transactions contemplated hereby.

(e) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary (or other equivalent officer) of the Borrower and each Guarantor (or director,

in the case of the Australian 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 Effective Date and the other documents to be delivered hereunder on the Effective Date.

(f) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed on behalf of the Borrower by the President, a Vice President or a Financial Officer of the Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 as of the Effective Date, and (ii) a certificate, dated the Effective Date and signed on behalf of the Borrower by the chief financial officer of the Borrower, certifying that, as of the Effective Date, the Parent is, individually and together with its Subsidiaries, and after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(g) The Lenders, the Administrative Agent and the Arrangers shall have received all fees required to be paid by the Borrower on the Effective Date, and all expenses required to be reimbursed by the Borrower for which invoices have been presented at least three business days prior to the Effective Date, on or before the Effective Date.

(h) (i) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the 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 (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least three days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least ten days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(i) The Administrative Agent shall have received (i) audited consolidated financial statements of the Borrower for the two most recent fiscal years ended at least 90 days prior to the Effective Date as to which such financial statements are available, (ii) unaudited interim consolidated financial statements of the Borrower for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and at least 45 days prior to the Effective Date as to which such financial statements are available and (iii) reasonably detailed projections of the Parent and its Subsidiaries through its fiscal year ending September 30, 2025.

(j) All outstanding Equity Interests (other than Excluded Securities) owned by or on behalf of any Loan Party shall have been pledged pursuant to the Security Agreement or a Foreign Security Agreement and the Administrative Agent shall have received certificates or other instruments representing all such Equity Interests (if any), together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank (and with respect to the Equity Interests of Fluence Energy Singapore Pte. Ltd., no later than five (5) Business Days following the

Effective Date (or such additional time period as the Administrative Agent may approve in its reasonable discretion)).

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

(l) Each document (including any Uniform Commercial Code financing statement (or similar filings under applicable law as set forth on Schedule 4.01(l)) required by the Security Documents or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Lenders, 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), shall be in proper form for filing, registration or recordation.

(m) An underwritten sale to the public of Class A common stock of the Parent pursuant to a registration statement on Form S-1 (as approved by the Arrangers without any changes thereto which are materially adverse to the interests of the Arrangers or the Lenders, unless consented to by the Arrangers (such consent not to be unreasonably withheld, conditioned or delayed)), that has been declared effective by the SEC shall have been consummated and which shall have generated gross cash proceeds of at least $600.0 million.

(n) Evidence reasonably satisfactory to the Administrative Agent of repayment and termination of the Shareholder Loan Agreement.

(o) In the case of the Australian Loan Party, a certificate, dated the Effective Date and signed on behalf of the Australian Loan Party by the Secretary or a Director of the Australian Loan Party confirming that:

(i) the Australian Loan Party is solvent for the purposes of section 95A of the Australian Corporations Act and there are no grounds for suspecting that it will not continue to be so after executing and complying with its obligations under the Finance Documents; and

(ii) the Australian Loan Party is not prevented by Chapter 2E of the Australian Corporations Act from entering into and performing any of its obligations under the Loan Documents to which it is (or will become) a party.

The Administrative Agent shall notify the Borrower and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Without limiting the generality of the provisions of Article 8, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

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 the Required Lenders) of the following conditions:

(a) The representations and warranties of the Parent and the Borrower, as applicable, set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects 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 Borrower shall be in compliance with Section 6.10(i)(x).

Each Borrowing and each issuance, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower 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 or otherwise satisfied, 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 Parent and the Borrower, as applicable, covenant and agree with 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 certificate of a Financial Officer of the Borrower in substantially the form of Exhibit F attached hereto (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) 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 (iv) setting forth a list of any issued patents, registered trademarks or registered copyrights acquired by the Parent and its Subsidiaries since the Effective Date or the date of the most recent 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 certificate, as applicable;

(d) 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; and

(e) 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 and (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 and the Beneficial Ownership Regulation, 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.

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 Borrower's 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 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 Borrower on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Borrower 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 Borrower 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; and

(c) 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 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. The Parent 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, 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 reasonably be expected to result in a Material Adverse Effect.

Section 5.04 Payment of Taxes. The Parent 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 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. The Parent 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, copyright, trademarks, trade names, patents, 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 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 Borrower and its Subsidiaries operate. No later than ten (10) Business Days following the Effective Date (or such additional time period as the Administrative Agent may approve in its reasonable discretion), the Loan Parties shall cause to be delivered to the Administrative Agent customary insurance endorsements naming the Administrative Agent as lender's loss payee or additional insured, as applicable, with respect to the general commercial liability and commercial property insurance policies maintained by the Loan Parties.

Section 5.06 Maintenance of Material Agreements. The Parent 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 failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 5.07 Books and Records; Inspection Rights. The Parent 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. The Parent 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 the Parent 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. The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Section 5.09 Compliance with Laws and Agreements. The Parent 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. The Parent will maintain in effect and enforce policies and procedures designed to ensure compliance by the Parent, its 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 Loans and Letters of Credit will be used only for working capital and general corporate purposes, including, without limitation, for stock repurchases under stock repurchase programs approved by the Borrower 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.

Section 5.11 Guarantors; Additional Collateral.

(a) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any Person shall have become (1) a Domestic Subsidiary (other than an Excluded Subsidiary), then the Parent or the Borrower, as applicable, shall, within 60 days (or such longer period of time as the Administrative Agent may agree in its reasonable discretion) after delivery of such financial statements, cause such Domestic Subsidiary to (i) enter into a guaranty supplement in the form of Exhibit E hereto to become a Guarantor under this Agreement and (ii) (A) enter into a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent to the Security Agreement and (B) take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Lenders a perfected first priority security interest (subject to Liens permitted by Section 6.02) in the Collateral described in the Security Agreement with respect to such Domestic Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions, and filings with the United States Patent and Trademark Office and United States Copyright Office, as may be required by the Security Agreement or as may be reasonably requested by the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions consistent with the legal opinions delivered on the Effective Date, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and/or (2) a foreign Subsidiary (other than an Excluded Subsidiary) and such foreign Subsidiary has been designated as a "Foreign Guarantor" by the Borrower, then the Parent or the Borrower, as applicable, shall, within 60 days (or such longer period of time as the Administrative Agent may agree in its reasonable discretion) after delivery of such financial statements, cause such foreign Subsidiary to take all actions necessary to (i) ensure that the Administrative Agent shall have a valid, perfected and enforceable security interest in its assets in accordance with the Agreed Security Principles, (ii) cause such foreign Subsidiary to enter into a guaranty supplement in the form of Exhibit E hereto or otherwise reasonably satisfactory to the Administrative Agent and (iii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions consistent with the legal opinions delivered on the Effective Date, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent; provided that the Parent and its Subsidiaries shall not be required to take any action under this Section 5.11(a) if prior to the end of such 60 day period (or such longer period of time as the Administrative Agent may agree in its sole discretion) such Person becomes an Excluded Subsidiary as a result of a transfer of assets from such Person to the Borrower in a transaction or transactions permitted under this Agreement;

(b) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any foreign Subsidiary (not including any such foreign Subsidiary that becomes a Guarantor as provided for in Section 5.11(a)(2)) that is a direct Subsidiary of any Loan Party shall have been created or acquired after the Effective Date by any Loan Party, the Parent or Borrower, as applicable, will, or will cause the applicable Guarantor to, except to the extent the Equity Interests in such foreign Subsidiary constitute Excluded Securities, within 60 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after delivery of such financial statements, (i) execute and deliver to the Administrative Agent such amendments to the Security Agreement as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest (subject to Liens permitted by Section 6.02) in 65% of

the total outstanding voting Equity Interests of any such foreign Subsidiary, (ii) deliver to the Administrative Agent any certificates representing such Equity Interests, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the relevant Loan Party, and take such other action as may be necessary or, in the opinion of the Administrative Agent, reasonably required to perfect the Administrative Agent's security interest therein, and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

(c) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any property shall be acquired by any Loan Party (other than (x) any property described in paragraphs (a) or (b) above or paragraph (d) below and (y) any property subject to a Lien expressly permitted by Section 6.02) as to which the Administrative Agent, for the benefit of the Lenders, does not have a perfected Lien, to the extent required by the Security Documents, the Parent or the Borrower, as applicable, will, or will cause the applicable Loan Party to, within 60 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after the delivery of such financial statements (i) execute and deliver to the Administrative Agent such amendments to the applicable Security Documents or such other documents as the Administrative Agent deems necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a security interest in such property and (ii) take all actions necessary or advisable to grant to the Administrative Agent, for the benefit of the Lenders, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements (or similar filings under applicable law) in such jurisdictions as may be required by the Security Agreement or by law or as may be requested by the Administrative Agent, in each case subject to Section 5.11(e).

(d) If, as of the date of the most recently available financial statements delivered pursuant to Section 5.01(a) or (b), as the case may be, any fee interest in any real property having a value (together with improvements thereof) of at least $2,500,000 shall be acquired by any Loan Party (other than any such real property subject to a Lien expressly permitted by Section 6.02), the Parent or the Borrower, as applicable, will, or will cause the applicable Loan Party to, within 60 days (or such longer period of time as the Administrative Agent may agree in its sole discretion) after the delivery of such financial statements (i) execute and deliver a first priority mortgage, in favor of the Administrative Agent, for the benefit of the Lenders, 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.

(e) 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 (i) the United States, any State thereof or the District of Columbia or (ii) the jurisdiction of organization or incorporation of any Foreign Guarantor. In addition, in no event shall (i) any landlord, mortgagee and bailee waivers be required, or (ii) notices be required to be sent to account debtors or other contractual third parties absent an Event of Default.

(f) (i) The 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 on or before the date that is 30 days after the Effective Date or five days after the issuance of the Philippine SEC Certificate of Filing of Amended Articles, whichever is later (or such longer period as the Administrative Agent may approve); 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 Effective Date, the aggregate amount of Obligations which are secured under the applicable Philippine Security Documents on the Equity Interest owned by the Borrower in Fluence Energy Philippines and the Collateral of the Philippines Guarantors (collectively, the "**Philippines Collateral**") shall be $25,000,000 (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 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%	$50,000,000
> 50%	$75,000,000
> 60%	$100,000,000
> 70%	$150,000,000
> 80%	$200,000,000

; and

(B) The 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 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 (f)(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 (f)(i)(A) above are made in connection with such increase); and

(ii) At all times following the 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 (i)(B) above, the 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 Borrower or any of its Subsidiaries, or (iii) in connection with credit card programs incurred in the ordinary course of business in a manner consistent with past practice;

(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 and (ii) Permitted Encumbrances which do not secure Indebtedness for borrowed money; 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 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(f); (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(f); (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. The Parent shall, and shall cause each other U.S. Loan Party to, maintain all cash management and treasury business with the Lenders or Permitted Third Party Banks, including, without limitation, all deposit accounts, disbursement accounts, investment accounts and lockbox accounts which, as of the Effective Date, are specified in Schedule 3.9 of the Security Agreement (other than any Unrestricted Account) (each such deposit account, disbursement account, investment account and lockbox account, a "**Controlled Account**"); provided that within ninety (90) days following the Effective Date (or, if any such Controlled Account is opened after the Effective Date, within ninety (90) days after such account is opened) (or such later time as may be agreed by the Administrative Agent in its reasonable discretion), each such Controlled Account shall be subject to a Control Account Agreement.

Section 5.13 Further Assurances. Promptly upon the reasonable request by the Administrative Agent, the Borrower 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. The Borrower 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, in the light of the circumstances under which they were made, not materially misleading.

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 or otherwise satisfied, 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 Parent and the Borrower, as applicable, covenant and agree with the Lenders that:

Section 6.01 Indebtedness. The Borrower 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 date hereof and set forth in Schedule 6.01 and any Permitted Refinancing thereof;

(b) (i) Indebtedness of the Borrower owing to any Subsidiary and of any Subsidiary owing to the Borrower or any other Subsidiary; provided that such Indebtedness is permitted by Section 6.04 and (ii) Indebtedness of the Borrower owing to Parent;

(c) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary; provided that such Guarantees are permitted by Section 6.04;

(d) Indebtedness of the 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) $17,500,000 and (ii) 2.5% of the Total Assets at any time outstanding;

(e) Indebtedness of the Borrower or any Subsidiary in an aggregate principal amount at any time outstanding not to exceed the greater of (i) $69,500,000 and (ii) 10% of the Total Assets at any time outstanding; provided that such Indebtedness is (x) if incurred or guaranteed only by Loan Parties, is either unsecured or secured by a Lien permitted pursuant to Section 6.02(o), and (y) if incurred or guaranteed by any Subsidiary that is not a Guarantor, the aggregate principal amount thereof shall not exceed the greater of (i) $10,500,000 and (ii) 1.5% of the Total Assets at any time outstanding;

(f) Indebtedness of the 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 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 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 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 Borrower or any Subsidiary in an aggregate principal amount not to exceed the greater of (i) $17,500,000 and (ii) 2.5% of the Total Assets at any time outstanding;

(h) Indebtedness of Subsidiaries that are not Loan Parties in an aggregate principal amount not to exceed the greater of (i) $8,750,000 and (ii) 1.25% of the Total Assets at any time outstanding;

(i) Indebtedness incurred 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;

(j) Obligations under the Loan Documents;

(k) Indebtedness incurred under the Citi Supplier Financing Agreement, only to the extent (i) such agreement pertains to ordinary course supplier financing arrangements and (ii) the aggregate principal amount of Indebtedness outstanding thereunder does not exceed $200.0 million at any time; provided, however, that (I) the Borrower shall be in compliance with Section 6.10 on a Pro Forma Basis on each date that it incurs Indebtedness under the Citi Supplier Financing Agreement that results in the outstanding amount thereunder exceeding $100.0 million (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 and (II) the Supplier Financing Excess Amount outstanding during any fiscal quarter of the Parent shall not be greater than (x) $25.0 million plus (y) the highest Supplier Financing Excess Amount that was outstanding in compliance with this Section 6.01(k) during the immediately preceding fiscal quarter of the Parent;

(l) Indebtedness of the Borrower or any Subsidiary in connection with one or more letters of credit, 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) Subject to the Borrower being in compliance with Section 6.10 on a Pro Forma Basis, (i) Indebtedness of any Person acquired by, or merged into or consolidated or amalgamated with, the Borrower or any Subsidiary after the Effective Date as part of an Investment otherwise permitted by Section 6.04 (provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of, or in connection with, such Person becoming a Subsidiary); and (ii) any Permitted Refinancing thereof;

(n) obligations under Swap Agreements entered into by the 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) Indebtedness arising from agreements of the Borrower or any Subsidiary providing for deferred purchase price for goods or services, earnouts, 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; and

(r) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Borrower or any Subsidiary incurred in the ordinary course of business.

Notwithstanding the foregoing, 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.

Section 6.02 Liens. The Borrower 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 Borrower 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 Borrower 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 refinancing, extension, renewal or replacement thereof that does not increase the outstanding principal amount thereof except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, extensions, renewals or replacements;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower 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 Borrower 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 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 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) 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 Borrower and its Subsidiaries, taken as a whole;

(f) the interest and title of a lessor under any lease or sublease entered into by the Borrower 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, license, or 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 licensors and 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 securing Indebtedness to finance insurance premiums owing in the ordinary course of business to the extent such financing is not prohibited hereunder;

(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 Borrower 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;

(m) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Borrower 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) $69,500,000 and (ii) 10% of the Total Assets at any time outstanding; provided that (A) 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 (B) any such Liens on assets that are not Collateral shall secure obligations in an aggregate amount at any time not to exceed the greater of (x) $10,500,000 and (ii) 1.50% of the Total Assets at any time outstanding;

(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 capital stock of any joint venture or similar customary arrangement pursuant to any joint venture or similar agreement;

(r) Liens on Equity Interests not required to be pledged pursuant hereto;

(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 Borrower or any Subsidiary (and not created in connection with or in anticipation or contemplation thereof); provided, however, 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 ratably secured by the Collateral in favor of counterparties to Swap Agreements permitted under Section 6.01(n);

(v) Liens securing Indebtedness incurred pursuant to Section 6.01(c);

(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 or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;

(x) Liens encumbering deposits made to secure obligations arising from statutory or regulatory requirements of that Person or its Subsidiaries;

(y) any encumbrance or restriction (including put and call arrangements) with respect to the Equity Interests of any joint venture or similar arrangement pursuant to any joint venture or similar agreement; and

(z) Liens securing Indebtedness permitted under Section 6.01(l) (i) on cash collateral or (ii) arising from a backstop letter of credit arrangement.

Section 6.03 Fundamental Changes.

(a) The Borrower will not, and will not permit any Subsidiary to, (x) merge into or consolidate with any other Person, or permit any other Person to merge 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 or any other Person (except the Parent) may merge into or consolidate with the Borrower in a transaction in which the Borrower is the surviving corporation;

(ii) any Person (other than the Borrower or the Parent) may merge into or consolidate with any Subsidiary in a transaction in which the surviving entity is a Subsidiary (provided that any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity or the surviving entity becoming a Guarantor as part of the transaction);

(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 Loan Party may Dispose of its assets to any other Loan Party (other than the Parent);

(v) in connection with any Investment permitted under Section 6.04, any Loan Party may merge into or consolidate with any other Person (other than the Parent), so long as the Person surviving such merger or consolidation shall be a Loan Party (provided that (x) any such merger or consolidation involving a Guarantor must result in a Guarantor as the surviving entity or the surviving entity becoming a Guarantor as part of the transaction and (y) any such merger or consolidation involving the Borrower must result in the Borrower as the surviving entity);

(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); and

(vii) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders; and 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;

provided that any such any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) The Borrower 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 Borrower and its Subsidiaries on the Effective Date and businesses substantially related or incidental thereto.

Section 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. The Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) any capital stock, 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) any assets of any other Person constituting a business unit (the foregoing activities are collectively referred to herein as "Investments"), except:

(a) Investments in cash and Cash Equivalents;

(b) (i) Investments by the Borrower existing on the date hereof in the capital stock 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 Borrower or any Subsidiary, in the Borrower or any other Subsidiary that is a Loan Party; and (ii) Investments by Excluded Subsidiaries in other Excluded Subsidiaries;

(d) Investments made by the Borrower in any Excluded Subsidiary, or by any Subsidiary that is a Loan Party in any Excluded Subsidiary, provided that the aggregate amount of such Investments shall not exceed the greater of (i) $24,500,000 and (ii) 3.5% of the Total Assets at any time outstanding;

(e) Investments in an aggregate amount at any time outstanding not to exceed the greater of (i) $10,500,000 and (ii) 1.5% of the Total Assets at any time outstanding;

(f) [reserved];

(g) Investments received in settlement of debts, claims or disputes owed to the 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 the Borrower or any Subsidiary in the Parent to the extent permitted to be made as a Restricted Payment by Section 6.05;

(j) 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;

(k) Investments among Loan Parties and their 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;

(m) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make Investments (except in the Parent) and other acquisitions if the Borrower is in compliance with Section 6.10 on a Pro Forma Basis after giving effect to such Investment or acquisition;

(n) Investments funded with (i) Equity Interests of the Parent (or any parent company thereof) or the Borrower or (ii) net cash proceeds from (x) the issuance of the Equity Interests of the Parent (or any parent company thereof) and contributed as common equity to the Borrower or (y) the issuance of the Equity Interests of the Borrower;

(o) Investments consisting of the licensing, sublicensing or contribution of any Intellectual Property pursuant to joint marketing, collaboration or other similar arrangements with other Persons;

(p) advances up to an aggregate principal amount of $500,000 per year to officers, directors and employees of the Borrower and its Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;

(q) purchases or redemption of the Parent's or the Borrower's Equity Interests to the extent permitted by Section 6.05;

(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) capital expenditures and Investments consisting of or to finance purchases and 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;

(u) any Investment made in lieu of payment of a Tax or in consideration of a reduction in Tax;

(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 the Borrower or any Subsidiary after the Effective Date to the extent that 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 or consolidation;

(w) Investments resulting from pledges and deposits under clauses (c), (d), (e), (l) and (n) of Permitted Encumbrances and Sections 6.02(u), (w) 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; and

(z) to the extent constituting Investments, transactions permitted under Section 6.03.

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 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.

Section 6.05 Restricted Payments. The Borrower will not, and will not permit any of its Subsidiaries to, declare or make any Restricted Payments with respect to the Borrower or any of its Subsidiaries, except:

(i) (A) any Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any direct or indirect wholly-owned Subsidiary of the Borrower that is a Loan Party, and (B) any non-wholly-owned Subsidiary may make Restricted Payments to the 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 Borrower may declare and make dividends payable solely in the form of additional shares of the Borrower's or the Parent's Equity Interests;

(iii) the 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 Borrower may redeem or otherwise cancel 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 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 Borrower may make any Restricted Payment that has been declared by the Parent or the Borrower, so long as (A) such Restricted Payment would be otherwise permitted under clause (ix) of this Section 6.05 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 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, the Borrower would be in compliance with Section 6.10 immediately after giving Pro Forma Effect to the Maximum ASR Amount;

(vii) the Borrower 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 Borrower, the Parent or its Subsidiaries, including the repurchase of Equity Interests or rights in respect thereof granted to directors, management, employees or other eligible service providers of the Borrower 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;

(viii) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make Restricted Payments not otherwise permitted under this Section 6.05 in an amount not to exceed the amount of proceeds of any substantially concurrent issuance of Equity Interests of the Parent (or any parent company thereof) which have been contributed as common equity to the Borrower or of any substantially concurrent issuance of Equity Interests of the Borrower;

(ix) so long as no Default or Event of Default then exists or would result therefrom, the Borrower may make Restricted Payments not otherwise permitted under this Section 6.05 in an unlimited amount (a) if, prior to the Trigger Date, Total Liquidity immediately after giving Pro Forma Effect to such Restricted Payment is equal to or greater than $600,000,000 or (b) if, on or after the Trigger Date, the Consolidated Leverage Ratio immediately after giving Pro Forma Effect to such Restricted Payment is less than or equal to 2.00:1.00; and

(x) the Borrower may make and pay Restricted Payments to the Parent (and in the cases of clauses (A) and (B), to the other equity owners of the Borrower):

(A) (1) with respect to any taxable period (x) for which the 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 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 Borrower and/or its

Subsidiaries, as applicable, would have paid for such taxable period had the 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 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 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 owners in amounts not to exceed (x) the taxable income of the Borrower and its Subsidiaries for such fiscal year (as determined based on such assumptions as may be made by the managing member (or equivalent governing body) of 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, resident 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;

(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) to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries;

(D) [intentionally omitted];

(E) the proceeds of which shall be used to allow the Parent to pay fees and expenses 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 fees and expenses (including real and personal property Taxes, and franchise, excise or similar taxes) required to maintain its corporate existence or good standing under applicable law, travel expenses, customary salary, bonus, long-term incentive plan awards, severance and other benefits payable to, and indemnities provided on behalf of, directors, officers, members of management, employees and consultants of the Parent, and any payroll, social security or similar taxes

thereof, to the extent such fees, expenses, salaries, bonuses, other benefits and indemnities are attributable to the ownership or operation of the Borrower and its Subsidiaries;

(G) so long as no Default or Event of Default then exists or would result therefrom and subject to the Borrower being in compliance with Section 6.10 immediately after giving Pro Forma Effect to such Restricted Payment, the proceeds of which shall be used to pay interest payments on the Parent Convertible Notes;

(H) to pay monitoring, consulting, management, transaction, advisory, termination or similar fees relating to the ownership or operations of the Borrower and/or its subsidiaries;

(I) to pay audit and other accounting and reporting expenses at the Parent to the extent relating to the ownership or operations of the Borrower and/or its subsidiaries;

(J) to pay insurance premiums to the extent relating to the ownership or operations of the Borrower and/or its subsidiaries; and

(K) 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 Borrower for the purposes set forth in this Section 6.05 (and shall be deemed to be a utilization of such capacity from and after such time); and

(xi) the Borrower may make Restricted Payments in accordance with Article IX of the Third Amended and Restated Limited Liability Company Agreement of the Borrower, so long as such Restricted Payments are funded with Equity Interests of the Parent or the proceeds from an issuance of Equity Interests of the Parent to the extent such proceeds were contributed to the Borrower.

Section 6.06 Restrictive Agreements. The Borrower 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 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 to make or repay loans or advances to the Borrower or any other Subsidiary or of any Subsidiary to Guarantee Indebtedness of the 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 (and shall apply to any extension or renewal of, or any amendment or modification 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 Borrower 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 Borrower, so long as such agreement was not entered into solely in contemplation of such Person

becoming a Subsidiary of the Borrower, (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 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. The Borrower 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 Borrower and its Subsidiaries to the extent otherwise permitted hereunder), except (a) on terms and conditions not less favorable to the Borrower 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 Borrower or any of its Subsidiaries, (c) transactions approved by a majority of the disinterested directors of the Borrower's board of directors, (d) any transaction involving amounts less than, in the aggregate, the greater of (i) $17,500,000 and (ii) 2.50% of the Total Assets at any time outstanding, (e) any Restricted Payment permitted by Section 6.05 and (f) the agreements listed on Schedule 6.07 hereto.

Section 6.08 Use of Proceeds. The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall procure that its Subsidiaries and its or their 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.

Section 6.09 Disposition of Property. The Borrower 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 Borrower'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 Borrower's or its Subsidiaries' businesses;

(b) the sale of inventory and other 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 and (ii) Dispositions that constitute Restricted Payments that are permitted under Section 6.05;

(e) [reserved];

(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 license of patents, trademarks, registrations therefor and other similar intellectual property;

(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 Borrower or any Guarantor that is a wholly owned Subsidiary;

(j) the Disposition of other property having a fair market value not to exceed $5,000,000 in the aggregate for each fiscal year of the Parent;

(k) Dispositions of other property having a fair market value not to exceed $10,000,000 in the aggregate; 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 Event of Default exists or would result therefrom), no Event of Default then exists or would result from such Disposition, (ii) such Disposition is for fair market value as reasonably determined by the Borrower, and (iii) not less than 75% of the purchase price 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 Borrower or applicable Subsidiary having an aggregate fair market value (determined 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) $17,500,000 and (ii) 2.50% of the Total Assets at any time outstanding, 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 Borrower and their 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; and

(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 Borrower's or any Subsidiary's business.

Section 6.10 Financial Covenants. The Parent and the Borrower will not, and will not permit any of its respective Subsidiaries to, (i) from the Effective Date until the Trigger Date, (x) permit Total Liquidity to be less than $350,000,000 as of the last day of any fiscal quarter of the Parent or on any date on which any Borrowing of a Loan or issuance of any Letter of Credit is made pursuant to Section 4.02 and (y) permit Total Revenues for any Measurement Period ending on any date set forth below to be less than the amount set forth below opposite such date:

Date of Determination	Minimum Revenue
December 31, 2021	$570,000,000
March 31, 2022	$635,000,000
June 30, 2022	$690,000,000
September 30, 2022	$880,000,000
December 31, 2022	$950,000,000
March 31, 2023	$985,000,000
June 30, 2023	$1,140,000,000
September 30, 2023	$1,185,000,000
December 31, 2023	$1,345,000,000
March 31, 2024	$1,445,000,000
June 30, 2024	$1,675,000,000
September 30, 2024	$1,890,000,000
December 31, 2024	$2,020,000,000
March 31, 2025	$2,100,000,000
June 30, 2025	$2,285,000,000

; and

(ii) from and after the Trigger Date, (x) permit the Consolidated Leverage Ratio to exceed 3.50:1.00 and (y) permit the Interest Coverage Ratio to be less than 3.00:1.00, in each case, as of the last day of each Measurement Period.

Section 6.11 Swap Agreements. Neither the Borrower nor any other Guarantor will enter into any Swap Agreement for purely speculative purposes.

Section 6.12 Permitted Activities of Parent. Parent shall not:

(a) incur any Indebtedness for borrowed money other than (i) Guarantees of Indebtedness or other obligations of the Borrower and/or any Subsidiary, which Indebtedness or other obligations are otherwise permitted hereunder, (ii) Indebtedness owed to the Borrower or any Subsidiary otherwise permitted hereunder and (iii) Parent Convertible Notes, subject to the Parent being in compliance with Section 6.10 immediately after giving Pro Forma Effect to the issuance of any such Parent Convertible Notes;

(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) of this Section 6.12); or

(c) engage in any material business activity or own any material assets other than (i) holding the Equity Interest of the Borrower, and, indirectly, any other subsidiary of the Borrower (and/or any joint venture of any thereof) or Indebtedness owing by, the 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(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, 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 Borrower and the Borrower's Subsidiaries to the extent permitted hereunder;

(xiv) activities incidental to acquisitions permitted hereunder or similar investments consummated by the 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, Parent may consolidate or amalgamate with, or merge with or into, any other Person (other than the Borrower and any of its Subsidiaries) so long as (i) Parent is the continuing or surviving Person or (ii) if the Person formed by or surviving any such consolidation, amalgamation or merger is not Parent, (x) (A) the successor Person expressly assumes all obligations of Parent under this Agreement and the other Loan Documents to which 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 reasonably requested by the Lenders.

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) the 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) the 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 the Parent, the Borrower or 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) the Parent or the Borrower, as applicable, 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 the Borrower's existence), Section 5.10 or in Article 6;

(e) the Parent or the Borrower, as applicable, 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 Borrower;

(f) the Parent, the Borrower 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 the Parent, the Borrower 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) liquidation, reorganization or other relief in respect of the Parent, the Borrower or any Subsidiary or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent, the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case,

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;

(i) except as may otherwise be permitted under Section 6.03, the Parent, the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization 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 a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent, the Borrower 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 or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Parent, the Borrower or any Subsidiary shall become unable and admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in excess of $15,000,000 in the aggregate shall be rendered against the Parent, the Borrower, 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 the Parent, the Borrower or any Subsidiary to enforce any such judgment and such action shall not be stayed;

(l) one or more ERISA Events shall have occurred that would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) 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 of all the Obligations; then, and in every such event (other than an event with respect to the Parent or the 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 Borrower, 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 Borrower 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 the Borrower; and in case of any event with respect to the Parent or the Borrower 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 Borrower 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 the Borrower.

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 as of the last day of any fiscal quarter has occurred, the Borrower 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 or the 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 Borrower) or the Borrower (the "**Cure Right**"), and upon the receipt by the Borrower of such cash (the "**Cure Amount**"), pursuant to the exercise by the Borrower of such Cure Right, as an increase to Consolidated EBITDA or Total Revenue, as applicable, for the applicable fiscal quarter; provided that (i) such amounts to be designated are actually received by the 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 as of such date and (iii) the Borrower 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 5.101(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 is less than the full amount of such originally designated amount). The Cure Amount used to increase Consolidated EBITDA or Total Revenue, as applicable, for the applicable fiscal quarter shall be used and included when calculating Consolidated EBITDA or Total Revenue, as applicable, 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 or Total Revenue, as applicable, other than as applicable to Section 6.10 (and shall not be included in Consolidated EBITDA or Total Revenue, as applicable, for any other purposes) and (2) shall not result in any adjustment to any amounts (including the amount of Indebtedness) 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 Borrower, to the extent applicable, Section 6.10 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 and any Event of Default resulting from a failure to comply with Section 6.10 (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 (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 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 Borrower 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 Borrower thereof in an amount sufficient to cure the relevant Event of Default, Borrower 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 is received (such fiscal quarter a "**Cure Quarter**") is included in the calculation of Consolidated EBITDA or Total Revenue for a subsequent fiscal period, the Consolidated EBITDA or Total Revenue attributable solely to such Cure Quarter shall be deemed permanently increased by such amount for purposes of calculating Consolidated EBITDA or Total Revenue for a subsequent fiscal period including such Cure Quarter; provided, that the Cure Amount shall be included in the calculation of Consolidated EBITDA or Total Revenue solely for the purpose of determining compliance with the financial covenant contained in Section 6.10 and not for any other purposes.

Section 7.03 Application of Proceeds. If an Event of Default shall have occurred and be continuing, after the acceleration of the Obligations pursuant to Section 7.01 or the exercise of other remedies provided for in Section 7.01, the Administrative Agent shall apply all or any part of any proceeds of the Collateral (including all Proceeds) and all payments received by it in respect of any of the Obligations in the following order:

First, to pay incurred and unpaid fees and expenses of the Administrative Agent under the Loan Documents in its capacity as such;

Second, to the Administrative Agent, for application by it towards payment of amounts remaining unpaid in respect of the Obligations, pro rata among the Secured Parties according to the amounts of such Obligations then due and owing and remaining unpaid to the Secured Parties;

Third, to the Administrative Agent, for application by it towards payment of all other Obligations, pro rata among the Secured Parties according to the amounts of such Obligations then held by the Secured Parties; and

Fourth, any balance remaining after the Obligations shall have been paid in fullshall be paid over to the Borrower, the Loan Parties or to whomsoever may be lawfully entitled to receive the same.

Notwithstanding the foregoing, no amounts received from any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

ARTICLE 8
THE AGENTS

Section 8.01 Appointment of Administrative Agent. JPMorgan Chase Bank, N.A. is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes JPMorgan Chase Bank, 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 the Borrower, the Parent or any of its Subsidiaries. As of the Effective Date, none of the Arrangers, Syndication Agent or the Documentation Agents in such capacity shall have any obligations but shall be entitled to all benefits of this Article 8. The Arrangers, the Syndication Agent and the Documentation Agents may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower.

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.

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 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 Parent, the Borrower 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 Parent or the Borrower, 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 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.

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 Borrower. 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 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 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 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 Borrower, 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 Lenders 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 and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw (or otherwise Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), upon request of the Borrower, 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 or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

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 the 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, assignee, trustee, liquidator, sequestrator 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 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) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "**Payment**") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent 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, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, 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 Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.11(a) shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment 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 a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "**Payment Notice**") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent 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.

(c) The Borrower and each other Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount 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(c) 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.

Each party's obligations under this Section 8.11(a) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations 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 (g) 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) Subject to German law, with respect to any German Security 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 benefit of the Secured Parties.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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*).

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 the Borrower. Each Guarantor further agrees that the due and punctual payment of the Obligations of the Borrower 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 the Borrower 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 the Borrower under the provisions of this Agreement, any other Loan Document 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 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 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 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).

(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 the Borrower 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 the Borrower 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 the Borrower 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 United States Bankruptcy Code or any comparable provision of any other applicable law.

(h) Upon payment in full by any Guarantor of any Obligation of the Borrower, 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 the Borrower 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 by the Borrower to the Lenders and Issuing Banks (it being understood that, after the discharge of all the Obligations due and payable from the Borrower, such rights may be exercised by such Guarantor notwithstanding that the Borrower 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**" shall mean, 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 and no Letter

of Credit shall be outstanding or subject to any pending draw (or otherwise 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 Lenders and Issuing Banks 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 the Parent, 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 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, the Parent, the Borrower and any other 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 under this Agreement and the Notes 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 the Parent, the Borrower or any other 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 Borrower's 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 Borrower as provided in Section 10.01.

Section 9.05 Termination. The Guarantees set forth in this Article IX shall terminate when all the Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full and no Letter of Credit shall be outstanding or subject to any pending draw (or otherwise 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 Right of Set Off. 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) at any time held by, and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Guarantor against any of and all the obligations of such Guarantor 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 2.17 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 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify such Guarantor 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.

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 date hereof 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 (Kommanditgesell-schaft) 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'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 date of this Agreement (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;

(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); and

(v) any amounts not available for distributions to the shareholders of the German Guarantor in accordance with sections 268(8) and 253(6) of the German Commercial Code (Handelsgesetzbuch) shall be deducted when calculating the amount of the Net Assets of the German Guarantor.

(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 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 for 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*) and (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*).

(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 section 64 sentence 3 of the German Limited Liability Companies Act (*GmbHG*) 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:

(i) 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);

(ii) the German Guarantor does not or stops to take promptly all acceptable (*zumutbare*) measures in order to increase the German Guarantor's liquidity;

(iii) the German Guarantor does not promptly deliver further liquidity schedules and/or payment schedules or any other information or assistance if reasonably so requested by the Administrative Agent; or

(iv) the German Guarantor otherwise does not use its best efforts to be able to fulfil its payment obligations under the guarantee.

(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

(l) 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.

(m) 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;

(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.

(n) 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.

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 and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrower, to it at:

Fluence Energy, LLC
4601 Fairfax Drive, Suite 600
Arlington, VA 22203
United States
Attention: Samuel Chong and Jie Yuan
Email: samuel.chong@fluenceenergy.com; jie.yuan@fluenceenergy.com

(ii) if to the Administrative Agent, to it at:

JPMorgan Chase Bank, N.A.
500 Stanton Christiana Road
NCC 5, 1st Floor
Newark, DE 19713
Attention: Bryan Cook
Telephone: (302) 455-3768
Email: bryan.a.cook@jpmchase.com

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(iv) if to JPMorgan Chase Bank, N.A., as an Issuing Bank, to it at:

JPMorgan Chase Bank, N.A.
10420 Highland Manor Dr. 4th Floor
Tampa, FL 33610
Attention: Standby LC Unit
Tel: 800-364-1969
Fax: 856-294-5267

Email: GTS.Client.Services@jpmchase.com

With a copy to:

JPMorgan Chase Bank, N.A.
500 Stanton Christiana Rd.
NCC5 / 1st Floor
Newark, DE 19713
Attention: Loan & Agency Services Group
Tel: 1 302 455 3768
Fax: 12012443629@tls.ldsprod.com
Email: bryan.a.cook@jpmchase.com

(v) With respect to any other 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 sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). 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 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 Borrower agrees 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 Guarantor 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 Guarantor in any case shall entitle such Guarantor 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), 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 Borrower and the Required Lenders or by the Borrower 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, (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 Borrower to pay interest at the default rate set forth in Section 2.10(d), (iv) change Section 2.15(b), Section 2.15(c) or any other

Section hereof providing for the ratable treatment of the Lenders, 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 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 the Liens on all or substantially all the value of the Collateral to the Liens securing any other Indebtedness, or contractually subordinate with respect to payment any Obligations, without the written consent of each Lender adversely affected thereby, provided that any Lender that is provided a bona fide offer to participate on a ratable basis and on substantially the same terms offered to each other Lender in the issuance of such Indebtedness shall be deemed not to be adversely affected, (viii) amend Section 7.03 without the written consent of the Administrative Agent and each Lender adversely affected thereby or (ix) amend the definition of "Alternative Currency" without the written consent of the Administrative Agent and each Lender adversely affected thereby. 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 as contemplated by Section 2.18 to effect New Commitments pursuant to a Joinder Agreement with the consent only of the Administrative Agent, the Borrower and the New Lenders providing New Commitments. If the Administrative Agent and the Borrower 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 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 9.07, no provision of Article IX 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 Borrower 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 counsel for all such Persons taken as a whole (and, if reasonably necessary, of one local counsel in any relevant material jurisdiction to all such persons, taken as a whole and, solely in the case of a conflict of interest, one additional local counsel to all affected indemnified persons, taken as a whole, in each such relevant material jurisdiction) 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 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 counsel for all such Persons taken as a whole (and, if reasonably necessary, of one local counsel in any relevant material jurisdiction to all such persons, taken as a whole and, solely in the case of a conflict of interest, one additional local counsel to all affected indemnified persons, taken as a whole, in each such relevant material jurisdiction), 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, and each Related Party, successor, partner, representative 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 counsel for all such Persons taken as a whole (and, if reasonably necessary, of one local counsel in any relevant material jurisdiction to all such persons, taken as a whole and, solely in the case of a conflict of interest, one additional local counsel to all affected indemnified persons, taken as a whole, in each such relevant material jurisdiction) 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 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 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 the Borrower or any other Guarantor, as applicable, 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 Guarantors 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 the Borrower 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 Guarantor 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) the Borrower may not 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 the 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 the Borrower 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 Borrower; provided that no consent of the 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 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 Borrower and the Administrative Agent otherwise consent; provided that no such consent of the 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;

(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 Borrower and their respective Related Parties 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 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 Borrower, 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 Borrower, 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 the 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, the Borrower or the Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (but not to the Borrower, an Affiliate thereof or to 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 Borrower, 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, the 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(f) (it being understood that the documentation required under Section 2.14(f) 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 Borrower, 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 the Parent, the Borrower, or the Guarantors as applicable, 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 Guarantor and may be amended, modified, supplemented, waived or released with respect to any Guarantor without the approval of any other Guarantor and without affecting the obligations of any other Guarantor 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 the 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, the Borrower and each Loan Party hereby (A) agree 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, the Borrower 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) agree 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) waive 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) waive 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 the Borrower and/or 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 the Borrower against any of and all the obligations of the Borrower 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 2.17 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 Borrower 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) 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 Guarantor 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, officers, employees, and agents, including accountants, legal counsel and other professionals, experts or advisors, or to any credit insurance provider relating to the Borrower 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 permitted by applicable law, to inform the Borrower 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 or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the 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 nonconfidential basis from a source other than the Borrower 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 the 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 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 the Parent, the Borrower or any of its Subsidiary relating to the Parent, the Borrower or any Subsidiary or any of their respective business that is identified by the Borrower as confidential, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Borrower. 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 BORROWER AND ITS RELATED PARTIES 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 THE BORROWER 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 BORROWER AND ITS RELATED PARTIES OR ITS

SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER 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 Parent and the Borrower 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 Syndication Agent, the Documentation Agents, the Issuing Banks and the Lenders are arm's-length commercial transactions between the Parent, the Borrower and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers, the Syndication Agent, the Documentation Agents, the Issuing Banks and the Lenders, on the other hand, (ii) each of the Parent and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each of the Parent and the Borrower 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 Syndication Agent, the Documentation Agents, 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 the Parent, the Borrower or any of their respective Subsidiaries, or any other Person and (ii) neither the Administrative Agent, any Arranger, the Syndication Agent, any Documentation Agent, any Issuing Bank, nor any Lender has any obligation to the Parent, the Borrower or any of their respective 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 Syndication Agent, the Documentation Agents, the Issuing Banks and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Parent, the Borrower and their respective Affiliates, and neither the Administrative Agent, any Arranger, the Syndication Agent, any Documentation Agent, any Issuing Bank, nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. Each of the Parent and the Borrower, 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, the Syndication Agent, any Documentation Agent, any Issuing Bank or any Lender, on the one hand, and the Parent, the Borrower, any of their respective Subsidiaries, or their respective 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 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 the 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 the Borrower and each Guarantor, which information includes the name and address of the Borrower and each Guarantor and other information that will allow such Lender or such Issuing Bank to identify the Borrower and each Guarantor in accordance with the USA Patriot Act. The 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 are sold, transferred or otherwise disposed of to a Person other than the Borrower or its Subsidiaries in a transaction permitted under this Agreement, or (ii) a Guarantor ceases to be a Subsidiary or becomes an Excluded Subsidiary (including as a result of any Change in Law that could reasonably be expected to result in adverse tax consequences and which the Borrower has determined shall become an Excluded Subsidiary in accordance with the definition thereof and has notified the Administrative Agent), 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 Borrower's expense, promptly take such action and execute such documents as the Borrower 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 the Borrower or its Subsidiaries in a transaction permitted under Section 6.09 of this Agreement, (ii) any of the Collateral constitutes or becomes Excluded Property, (iii) any of the Collateral is owned by a Guarantor that is released from the Guaranty in

accordance with the terms hereof or (iv) 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 Borrower's expense, promptly take such action and execute such documents as the Borrower may reasonably request to release the Liens created by the Security Documents on such Collateral.

(c) At such time as all Obligations (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) have been paid in full and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw (or otherwise 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 clause (d) of the "Permitted Encumbrances", 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 Borrower with respect to leases entered into by the Parent and its Subsidiaries, to the extent requested by the Borrower 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 (the "**Parallel Debt**").

(b) 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.

(c) 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.

(d) 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.

(e) 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 Subordinated Lender.

(a) If the Distributed Amount is less than the Maximum Amount, then, upon application of the Distributed Amount (or any part thereof) pursuant to Section 2.15(b) towards the discharge of the obligations of a Loan Party under the Loan Documents (including principal, interest, fees and commissions), the amount which would otherwise be required to be applied towards any such obligations under the Loan Documents owed to a Subordinated Lender shall be reduced by the Shortfall Amount attributable to that Subordinated Lender and such amount shall in addition be applied towards the discharge of the obligations (including principal, interest, fees, commission) towards the other Lenders pro rata in accordance with Section 2.15(b).

(b) Any risk of a shortfall between the Maximum Amount and the Distributed Amount (whether arising from the prohibition and/or reduction of payments to the Subordinated Lender

and/or from any contestation (*Anfechtung*) under applicable law) shall for all purposes of the Loan Documents be borne by the relevant Subordinated Lender.

(c) A Subordinated Lender shall not have the benefit, but only the obligations, of any sharing provisions under the Loan Documents, including under Section 2.15(c), and shall not be entitled to receive any payment, and the Administrative Agent shall not be required to make any payment to any Subordinated Lender under or in connection with the Loan Documents in respect of the Shortfall Amount.

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 (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.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

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

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

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

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

FLUENCE ENERGY, INC., a Delaware corporation, as Parent

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

FLUENCE ENERGY, INC., a Delaware corporation, as Parent

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

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

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

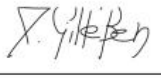
FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC, a Delaware limited liability company, as a Guarantor

By: _____
Name: Dennis Fehr
Title: Senior Vice President and Chief Financial Officer

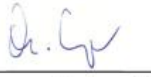
By: _____
Name: Francis Fuselier
Title: Senior Vice President and General Counsel

Signed, sealed and delivered by FLUENCE ENERGY PTY LTD in accordance with section 127 of the *Corporations Act 2001* (Cth) by:		
Signature of director		Signature of director/secretary
MARGARET HE PRENTICE		Richard Ward
Name of director (print)		Name of director/secretary (print)

FLUENCE ENERGY GMBH, a German corporation, as a Guarantor

By:  Digitally signed by Michael Gillessen
Date: 2021-11-01 11:40:22+01:00

Name: Michael Gilleßen
Title: Managing Director

By:  Digitally signed by Markus Meyer
Date: 2021-11-01 11:44:07+01:00

Name: Markus Meyer
Title: Managing Director

JPMORGAN CHASE BANK, N.A., as Administrative Agent, an Issuing Bank and a Lender



By: _____
Name: Arina Mavilian
Title: Authorized Officer

MORGAN STANLEY SENIOR FUNDING, INC.,
as an Issuing Bank and as a Lender

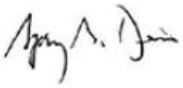
By: Alysha Salinger
Name: Alysha Salinger
Title: Authorized Signatory

BANK OF AMERICA, N.A., as an Issuing Bank and as a Lender

By: _____

Name: Molly Daniello
Title: Director

Barclays Bank PLC, as an Issuing Bank and as a Lender

By: 

Name: Sydney G. Dennis
Title: Director

Citicorp North America, Inc., as a Lender

By: 

Name: Sandip Sen
Title: Managing Director / Authorized Signatory

CREDIT SUISSE AG, Cayman Islands Branch, as a Lender

By: 
Name: William O'Daly
Title: Authorized Signatory

By: 
Name: Komal Shah
Title: Authorized Signatory

Standard Chartered Bank, as a Lender

By: 
Name: Kristopher Tracy
Title: Director, Financing Solutions

HSBC Bank USA National Association, as a Lender

By: 

Name: Jessica Smith
Title: Director

Royal Bank of Canada, as a Lender

By: Martina Wellik

Name: Martina Wellik
Title: Authorized Signatory

SCHEDULE 2.01 Commitments

	Lender	Commitment	LC Commitment	Alternative Currencies available for Letters of Credit
1.	JPMorgan Chase Bank, N.A.	$47,500,000	$25,00,0000	Pounds Sterling, Euros or Australian Dollars
2.	Morgan Stanley Senior Funding, Inc.	$ 47,500,000	$25,00,0000	Pounds Sterling, Euros or Australian Dollars
3.	Bank of America, N.A.	$ 25,500,000	$12,500,000	Pounds Sterling, Euros or Australian Dollars
4.	Barclays Bank PLC	$ 25,500,000	$12,500,000	Pounds Sterling, Euros or Australian Dollars
5.	Citicorp North America, Inc.	$ 10,000,000	--	--
6.	Credit Suisse AG, Cayman Islands Branch	$ 10,000,000	--	--
7.	Standard Chartered Bank	$ 10,000,000	--	--
8.	HSBC Bank USA, National Association	$ 7,000,000	--	--
9.	Royal Bank of Canada	$ 7,000,000	--	--
	TOTAL:	**$190,000,000.00**	**$75,000,000**	

SCHEDULE 3.06 Litigation or Environmental Matters

None.

SCHEDULE 3.10 Taxes

None.

SCHEDULE 3.13 Subsidiaries

Subsidiary	Jurisdiction	Owner	Ownership Percentage	Excluded Subsidiary or Guarantor
Fluence Energy GmbH	Germany	Fluence Energy, LLC	100%	Guarantor
Fluence Energy Pty Ltd.	Australia	Fluence Energy, LLC	100%	Guarantor
Fluence Energy, Inc.	Philippines	Fluence Energy, LLC	100%	Excluded Subsidiary
Fluence Energy Singapore Pte. Ltd.	Singapore	Fluence Energy, LLC	100%	Excluded Subsidiary
Fluence Energy Global Production Operations, LLC	Delaware	Fluence Energy, LLC	100%	Guarantor

Immaterial Subsidiaries:

Fluence Energy Singapore Pte. Ltd.

SCHEDULE 4.01(b) Foreign Security Agreements

Australia:

1. Australian law general security deed granted by Fluence Energy Pty Ltd (ACN 627 071 461) in favour of JPMorgan Chase Bank, N.A.; and

2. Australian law specific security deed granted by Fluence Energy, LLC in favour of JPMorgan Chase Bank, N.A.

Germany:

1. A notarized German law governed share pledge agreement between, Fluence Energy, LLC as pledgor, JPMorgan Chase Bank N.A. as pledgee and Fluence Energy GmbH as pledged company relating to the shares in Fluence Energy GmbH.

2. A German law governed account pledge agreement between, Fluence Energy GmbH as pledgor and JPMorgan Chase Bank N.A. as pledgee relating to the German law governed bank accounts of Fluence Energy GmbH.

3. A German law governed security assignment agreement between, Fluence Energy GmbH as assignor and JPMorgan Chase Bank N.A. as assignee relating to certain intra-group receivables of Fluence Energy GmbH.

SCHEDULE 4.01(l) Foreign Security Filings

Australia

Grantor	Collateral class and description / PMSI
Fluence Energy, LLC	Financial property – Investment instrument. All of the grantor's right, title and interest in and to any shares or other marketable securities held by the grantor in Fluence Energy Pty Ltd (ACN 627 071 461).
Fluence Energy, LLC	All present and after-acquired property – with exceptions. Except any personal property of the grantor which is not from time to time subject to the Specific Security Deed dated November 1, 2021 in favour of the secured party. The collateral includes, without limitation, all shares or other marketable securities held by the grantor in Fluence Energy Pty Ltd (ACN 627 071 461). It will be a breach of the security agreement if certain dealings in the collateral occur without the secured party's consent.
Fluence Energy Pty Ltd (ACN 627 071 461)	All present and after-acquired property – with exceptions. Except any personal property of the grantor which is not from time to time subject to the security document in favour of the secured party. The collateral may include inventory and may be subject to control. It will be a breach of the security agreement if certain dealings in the collateral (including selling or leasing it) occur without the secured party's consent.

SCHEDULE 5.06 Material Agreements

- Tax Receivable Agreement
- Amended and Restated Credit Support and Reimbursement Agreement, dated June 9, 2021, by and among Fluence Energy, LLC, The AES Corporation and Siemens Industry, Inc.
- Assignment of Rights, dated April 6, 2021, by and among Siemens Aktiengesellschaft and Fluence Energy, LLC.
- Amended and Restated Siemens License Agreement, by and among Fluence Energy, LLC and Siemens Aktiengesellschaft, dated as of the Effective Date
- Amended and Restated Siemens Industry License Agreement, by and among and Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Intellectual Property Assignment, dated September 9, 2021, among the AES Corporation and Fluence Energy, LLC
- License Agreement, dated September 9, 2021, by and between Fluence Energy and AES Corporation
- Amended and Restated Equipment and Services Purchase Agreement, by and among Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Storage Core Frame Purchase Agreement, by and among AES Grid Stability, LLC and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Storage Core Frame Purchase Agreement, by and among Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Trademark Agreement, by and among Fluence Energy, LLC and AES Grid Stability, LLC, dated as of the Effective Date
- Amended and Restated Trademark Agreement, by and among Fluence Energy, LLC and Siemens Industry, Inc., dated as of the Effective Date
- Amended and Restated Master Sales Cooperation Agreement, by and among Fluence Energy, LLC and Siemens Industry, Inc., dated as of the Effective Date
- Amended and Restated AES Cooperation Agreement, by and among Fluence Energy, LLC and AES Grid Stability, LLC, dated as of the Effective Date

SCHEDULE 6.01 Indebtedness

1. Letters of Credit issued by Crédit Agricole Corporate and Investment Bank:

Beneficiary Name	Effective Date	Expiration Date	Amount
UNIVERSAL POWER SOLUTIONS INC.	10/11/2021	12/15/2021	78,000.00
APS	9/15/2021	7/29/2022	8,400,000.00
Andes Solar	9/24/2021	1/31/2022	8,192,820.60

2. Letters of Credit issued by Goldman Sachs Bank USA:

Beneficiary Name	Effective Date	Expiration Date	Amount
UNIVERSAL POWER SOLUTIONS INC.	8/11/2021	12/31/2021	2,040,000.00
UNIVERSAL POWER SOLUTIONS INC.	8/11/2021	12/31/2021	4,080,000.00
AES Andes SA	9/2/2021	12/31/2021	5,034,993.50
LImAY POWER GENERATION CORPORATION	9/20/2021	12/31/2021	$78,000.00
Universal POWER SOLUTIONS INC.	9/20/2021	2/23/2022	$156,000.00
Universal POWER SOLUTIONS INC.	9/20/2021	2/23/2022	$78,000.00
LIMAY POWER GENERATION CORPORATION	9/20/2021	12/31/2021	$90,000.00
Hill Trench Power Inc	9/20/2021	2/15/2022	57,000.00
Universal POWER SOLUTIONS INC.	9/20/2021	12/31/2021	90,000.00
MaSINLOC POWER PARTNERS CO, LTD.	10/11/2021	11/15/2021	58,592.70
Universal POWER SOLUTIONS INC.	10/11/2021	2/7/2022	210,000.00
SMCGP PHILIPPINES ENERGY STORAGE	10/11/2021	11/15/2021	239,590.50

3. Indebtedness pursuant to that certain International Swap Dealers Association, Inc. Master Agreement, dated as of February 7, 2019, by and between Citibank, N.A. and the Borrower.

4. Letters of Credit issued by Citibank, N.A. pursuant to that certain Continuing Agreement for Standby Letters of Credit, dated as of October 31, 2018, by and between Citibank, N.A. and the Borrower:

Beneficiary Name	Effective Date	Expiration Date	Amount
UNIVERSAL POWER SOLUTIONS INC.	4/23/2020	12/31/2021	$2,040,000.00
MASINLOC POWER PARTNERS CO, LTD.	4/23/2020	12/31/2021	$2,274,000.00
LIMAY POWER GENERATION CORPORATION	8/21/2020	8/6/2022	$2,040,000.00
UNIVERSAL POWER SOLUTIONS INC.	8/21/2020	8/10/2022	$2,040,000.00
SMCGP PHILIPPINES ENERGY STORAGE	8/21/2020	5/21/2022	$1,020,000.00
UNIVERSAL POWER SOLUTIONS INC.	9/24/2020	5/20/2022	$2,040,000.00
UNIVERSAL POWER SOLUTIONS INC.	10/7/2020	5/30/2022	$2,040,000.00
UNIVERSAL POWER SOLUTIONS INC.	11/25/2020	8/15/2022	$4,080,000.00
CITIBANK EUROPE PLC	1/21/2021	5/2/2022	€959,870.16
SAN DIEGO GAS AND ELECTRIC COMPANY	1/29/2021	8/1/2022	$2,508,864.70
CITIBANK EUROPE PLC	3/2/2021	5/30/2022	€1,476,064.14
CITIBANK, N.A. (MAKATI BRANCH)	8/13/2021	2/15/2022	$ 130,000.00
CITIBANK EUROPE PLC	9/20/2021	3/30/2023	$3,529,585.00
CITIBANK EUROPE PLC	9/20/2021	3/30/2023	€641,215.00
CITIBANK, N.A. (MAKATI BRANCH)	9/30/2021	10/30/2022	$130,000.00
CITIBANK N.A., SYDNEY BRANCH	9/14/2021	8/30/2022	AU$9,683.20

SCHEDULE 6.02 Permitted Liens

Grantor	Registration Details					
FLUENCE ENERGY PTY LTD ACN 627 071 461	**Registration No.**	201811150013970				
	Secured Party	AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ACN 00 005 357 522				
	Collateral Class	General Intangible				
	Collateral Description	Term deposit.				
	Start Time	15 Nov 2018				
	End Time	15 Nov 2043				
	Other Details	**Serial No.**	**Inventory**	**Transitional**	**Migrated**	**PMSI**
		N/A	No	No	No	No

SCHEDULE 6.04(b)(II) Existing Investments

None.

SCHEDULE 6.06 Permitted Restrictive Agreements

None.

SCHEDULE 6.07 Transactions with Affiliates

- Tax Receivable Agreement
- Amended and Restated Credit Support and Reimbursement Agreement, dated June 9, 2021, by and among Fluence Energy, LLC, The AES Corporation and Siemens Industry, Inc.
- Assignment of Rights, dated April 6, 2021, by and among Siemens Aktiengesellschaft and Fluence Energy, LLC.
- Amended and Restated Siemens License Agreement, by and among Fluence Energy, LLC and Siemens Aktiengesellschaft, dated as of the Effective Date
- Amended and Restated Siemens Industry License Agreement, by and among and Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Intellectual Property Assignment, dated September 9, 2021, among the AES Corporation and Fluence Energy, LLC
- License Agreement, dated September 9, 2021, by and between Fluence Energy and AES Corporation
- Amended and Restated Equipment and Services Purchase Agreement, by and among Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Storage Core Frame Purchase Agreement, by and among AES Grid Stability, LLC and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Storage Core Frame Purchase Agreement, by and among Siemens Industry, Inc. and Fluence Energy, LLC, dated as of the Effective Date
- Amended and Restated Trademark Agreement, by and among Fluence Energy, LLC and AES Grid Stability, LLC, dated as of the Effective Date
- Amended and Restated Trademark Agreement, by and among Fluence Energy, LLC and Siemens Industry, Inc., dated as of the Effective Date
- Amended and Restated Master Sales Cooperation Agreement, by and among Fluence Energy, LLC and Siemens Industry, Inc., dated as of the Effective Date
- Amended and Restated AES Cooperation Agreement, by and among Fluence Energy, LLC and AES Grid Stability, LLC, dated as of the Effective Date

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "**Assignment and Assumption**") is dated as of the Effective Date set forth below and is entered into by and between [NAME OF ASSIGNOR] (the "**Assignor**") and [NAME OF ASSIGNEE] (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented, extended and/or otherwise modified from time to time, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below (including any letters of credit included in the facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1.	Assignor:	_____ [Assignor [is] [is not] a Defaulting Lender]
2.	Assignee:	_____ [and is an [Affiliate][Approved Fund] of [identify Lender]]
3.	Borrower:	Fluence Energy, LLC (the "**Company**")
4.	Administrative Agent:	JPMorgan Chase Bank, N.A., as administrative agent under the Credit Agreement
5.	Credit Agreement:	Revolving Credit Agreement, dated as of November 1, 2021, among Fluence Energy, Inc. (the "**Parent**"), as Parent, the Company, as Borrower, the other Guarantors party thereto, the

Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent.

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/ Loans[1]
Revolving Facility.....	$	$	%

Effective Date: _____, 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed 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) 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.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE:

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

CONSENTED TO AND ACCEPTED:

[JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

1 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

By: _____
Name:
Title:][2]

CONSENTED TO:

[ISSUING BANK]

By: _____
Name:
Title:

[CONSENTED TO:

FLUENCE ENERGY, LLC

By: _____
Name:
Title:][3]

2 To be inserted to the extent consent of the Administrative Agent is required by the terms of the Credit Agreement.
3 To be added only if the consent of the Company is required by the terms of the Credit Agreement.

ANNEX I

FLUENCE ENERGY, LLC REVOLVING CREDIT AGREEMENT

Standard Terms and Conditions for
Assignment and Assumption

1. *Representations and Warranties*.

1.1 *Assignor*. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Parent, the Company, any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Parent, the Company, any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 *Assignee*. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received and/or had the opportunity to review a copy of the Credit Agreement to the extent it has in its sole discretion deemed necessary, together with copies of the most recent financial statements delivered pursuant to Section 5.01(a) and Section 5.01(b) thereof, as applicable, and such other documents and information as it has in its sole discretion deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; (b) agrees that it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to or otherwise conferred upon the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (d) agrees that it will perform in accordance with their terms all of the

obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. *Payments.* From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. *Effect of Assignment.* Upon the delivery of a fully executed original hereof to the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Assumption, have the rights and obligations of a Lender thereunder and under the other Loan Documents and (ii) the Assignor shall, to the extent provided in this Assignment and Assumption, relinquish its rights and be released from its obligations under the Credit Agreement and the other Loan Documents.

4. *General Provisions*. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or other means of electronic imaging shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

EXHIBIT B-1

FORM OF BORROWING REQUEST

JPMorgan Chase Bank, N.A., as Administrative Agent
for the Lenders party to the
Credit Agreement referred to below

[Date]

Ladies and Gentlemen:

The undersigned, Fluence Energy, LLC (the "**Borrower**"), refers to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the "**Credit Agreement**," the terms defined therein being used herein as therein defined), among Fluence Energy, Inc. (the "**Parent**"), the Borrower, the other Guarantors party thereto, the lenders from time to time party thereto (each a "**Lender**" and collectively, the "**Lenders**") and you, as Administrative Agent for such Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.03 of the Credit Agreement, that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such Borrowing (the "**Proposed Borrowing**") as required by Section 2.03 of the Credit Agreement:

(i) The Business Day of the Proposed Borrowing is _____, 20____.[1]

(ii) The aggregate principal amount of the Proposed Borrowing is [_____].[2]

(iii) Currency of Borrowing: _____.[3]

(iv) The Proposed Borrowing is to consist of [ABR Loans] [Term Benchmark Loans] [RFR Loans].

(v) [The initial Interest Period for the Proposed Borrowing is [one/three/six/twelve months] [insert period less than one month].[4]]

(vi) The location and number of the account or accounts to which funds are to be disbursed is as follows: [___]

[Insert location and number of the account(s)]

---

[1]Borrowing Request shall be submitted (i) in the case of a Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing, (ii) 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 or (iii) in the case of an ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of the proposed Borrowing.

[2] Denominate in proposed currency of borrowing.

[3]To be Dollars, Pounds Sterling, Euros or Australian Dollars.

[4] To be included for a Proposed Borrowing of Term Benchmark Loans. Interest Periods of twelve months or less than one month only available with the consent of each Lender.

The undersigned hereby certifies that the following statements will be true on the date of the Proposed Borrowing:

(A) the representations and warranties of the Parent and the Borrower set forth in the Credit Agreement and in the other Loan Documents are true and correct in all material respects, on and as of the date of the Proposed Borrowing, except that (i) for purposes of this Borrowing Request, 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 were 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 the Proposed Borrowing, no Default or Event of Default has occurred and is continuing.

[Signature Page Follows]

The Borrower has caused this Borrowing Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

FLUENCE ENERGY, LLC

By: _____
Name:
Title:

EXHIBIT B-2

FORM OF LETTER OF CREDIT REQUEST

JPMorgan Chase Bank, N.A., as Administrative Agent
for the Lenders party to the
Credit Agreement referred to below

[Date]

Ladies and Gentlemen:

The undersigned, Fluence Energy, LLC (the "**Borrower**"), refers to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the "**Credit Agreement**," the terms defined therein being used herein as therein defined), among Fluence Energy, Inc. (the "**Parent**"), the Borrower, other Guarantors party thereto, the lenders from time to time party thereto (each a "**Lender**" and collectively, the "**Lenders**") and you, as Administrative Agent for such Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.19 of the Credit Agreement, that the undersigned hereby requests a Letter of Credit to be issued in accordance with the terms and conditions of the Credit Agreement, and in that connection the following information relating to such Letter of Credit (the "**Proposed Letter of Credit**") is attached hereto:

(i) The stated amount of such Proposed Letter of Credit:

(ii) The name and address of the beneficiary:

(iii) The expiration date:

(iv) Currency:

The undersigned hereby certifies that the following statements will be true on the date of issuance of the Proposed Letter of Credit:

(A) the representations and warranties of the Parent and the Borrower set forth in the Credit Agreement and in the other Loan Documents are true and correct in all material respects, on and as of the date of issuance of the Proposed Letter of Credit, except that (i) for purposes of this Letter of Credit Request, 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 were 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 to the issuance of the Proposed Letter of Credit, no Default or Event of Default has occurred and is continuing.

[Signature Page Follows]

The Borrower has caused this Letter of Credit Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

FLUENCE ENERGY, LLC

By: _____
Name:
Title:

EXHIBIT C

FORM OF INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A., as Administrative Agent
for the Lenders party to the
Credit Agreement referred to below

[Date]

Ladies and Gentlemen:

The undersigned, Fluence Energy, LLC (the "**Borrower**"), refers to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the "**Credit Agreement**," the terms defined therein being used herein as therein defined), among Fluence Energy, Inc. (the "**Parent**"), the Borrower, the other Guarantors party thereto, the lenders from time to time party thereto (the "**Lenders**") and you, as Administrative Agent for such Lenders, and hereby gives you notice, irrevocably, pursuant to Section 2.05 of the Credit Agreement, that the undersigned hereby requests to [convert] [continue] the Borrowing of Loans referred to below, and in that connection sets forth below the information relating to such [conversion] [continuation] (the "**Proposed [Conversion] [Continuation]**") as required by Section 2.05 of the Credit Agreement:

(i) The Proposed [Conversion] [Continuation] relates to the Borrowing of Loans originally made on _____, 20____ (the "**Outstanding Borrowing**") in the principal amount of [$(USD)][€][$(AUD)]_____ and currently maintained as a Borrowing of [ABR Loans] [Term Benchmark Loans with an Interest Period ending on _____, _____].

(ii) The effective date of the Proposed [Conversion] [Continuation] is _____, _____.[1]

(iii) [The Outstanding Borrowing][A portion of the Outstanding Borrowing in the principal amount of [$(USD)][€][$(AUD)]_____] shall be [continued as a Borrowing of [Term Benchmark Loans with an Interest Period of [one/three/six/twelve months][insert period less than one month]]] [converted into a Borrowing of [ABR Loans] [Term Benchmark Loans with an Interest Period of [one/three/six/twelve months][insert period less than one month]]].[2]

[1] Shall be submitted (i) in the case of a Proposed Conversion into or Proposed Continuation as a Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the Proposed Conversion or Proposed Continuation, or (ii) in the case of a Proposed Conversion into or Proposed Continuation as ABR Borrowing, not later than 10:00 a.m., New York City time, on the date of the Proposed Conversion or Proposed Continuation.

[2] Interest Periods of twelve months or less than one month only available with the consent of each Lender.

[The undersigned hereby certifies that no Event of Default has occurred and will be continuing on the date of the Proposed [Conversion] [Continuation]].[3]

[Signature Page Follows]

[3] In the case of a Proposed Conversion or Continuation, insert this sentence only in the event that the conversion is from an ABR Loan to a Term Benchmark Loan or in the case of a continuation of a Term Benchmark Loan.

The Borrower has caused this Interest Election Request to be executed and delivered by its duly authorized officer as of the date first written above.

Very truly yours,

FLUENCE ENERGY, LLC

By: _____
Name:
Title:

EXHIBIT D

FORM OF REVOLVING NOTE

New York, New York

,

FOR VALUE RECEIVED, FLUENCE ENERGY, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Borrower**"), hereby promises to pay to _____ or its registered assigns (the "**Lender**"), in Dollars, in immediately available funds, at the office of JPMORGAN CHASE BANK, N.A. (the "**Administrative Agent**") at its Principal Office (as defined in the Credit Agreement) on the Maturity Date (as defined in the Credit Agreement) the unpaid principal amount of all Loans (as defined in the Credit Agreement) made by the Lender to the Borrower pursuant to the Credit Agreement, payable at such times and in such amounts as are specified in the Credit Agreement.

The Borrower promises also to pay to the Lender interest on the unpaid principal amount of each Loan incurred by the Borrower from the Lender in like money at said office from the date such Loan is made until paid at the rates and at the times provided in Section 2.10 of the Credit Agreement.

This Note is one of the Notes referred to in the Revolving Credit Agreement, dated as of November 1, 2021, among Fluence Energy, Inc., the Borrower, the other Guarantors party thereto, the lenders party thereto (including the Lender) and JPMorgan Chase Bank, N.A., as Administrative Agent (as the same may be amended, restated, amended and restated, modified, extended and/or supplemented from time to time, the "**Credit Agreement**") and is entitled to the benefits thereof and of the other Loan Documents (as defined in the Credit Agreement). As provided in the Credit Agreement, this Note is subject to voluntary prepayment, in whole or in part, prior to the Maturity Date and the Loans may be converted from one Type (as defined in the Credit Agreement) into another Type to the extent provided in the Credit Agreement.

In case an Event of Default (as defined in the Credit Agreement) shall occur and be continuing, the principal of and accrued interest on this Note may be declared to be due and payable in the manner and with the effect provided in the Credit Agreement.

The Borrower hereby waives presentment, demand, protest or notice of any kind in connection with this Note.

[Signature page follows]

THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK.

FLUENCE ENERGY, LLC

By: _____
Name:
Title:

EXHIBIT E

GUARANTY SUPPLEMENT

THIS GUARANTY SUPPLEMENT, dated as of [●] (this "**Supplement**") is delivered pursuant to Section 5.11(a) of the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the other Guarantors party thereto, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

By executing and delivering this Supplement, the undersigned Subsidiary, as provided in Section 5.11(a) of the Credit Agreement, hereby becomes a party to the Credit Agreement as a Guarantor thereunder with the same force and effect as if originally named as a Guarantor therein and, without limiting the generality of the foregoing, hereby agrees (i) to join the Credit Agreement as a Guarantor and as a Loan Party and (ii) to comply with the terms and provisions of the Credit Agreement applicable to it.

The undersigned hereby agrees to be bound as a Guarantor for the purposes of the Credit Agreement. The undersigned hereby represents and warrants that each of the representations and warranties contained in Article 3 of the Credit Agreement applicable to it is true and correct in all material respects (without duplication of any materiality qualifier contained therein) on and as of the date hereof as if made on and as of such date except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties are true and correct in all material respects as of such earlier date).

This Supplement is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to certain provisions of the Credit Agreement, including Sections 10.06 (Counterparts; Integration; Effectiveness), 10.07, (Severability), 10.09 (Governing Law; Jurisdiction; Consent to Service of Process) and 10.10 (Waiver Of Jury Trial) thereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned Subsidiary and the Administrative Agent have duly executed this Supplement as of the day and year first above written.

[INSERT NEW GUARANTOR NAME]

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

EXHIBIT F

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate is delivered to you pursuant to Section 5.01(c) of the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the other Guarantors party thereto, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

1. I am the duly elected, qualified and acting [_____][1] of the Borrower.

2. I have reviewed and am familiar with the contents of this Compliance Certificate. I am providing this Compliance Certificate solely in my capacity as an officer of the Borrower.

3. I have reviewed the terms of the Credit Agreement and the other Loan Documents. Attached hereto as ANNEX 1 (or otherwise previously delivered to the Administrative Agent) are the financial statements for the fiscal [quarter][year] of the Parent ended [_____, _____] (the "**Financial Statements**"), which are delivered pursuant to the requirements of Section 5.01 of the Credit Agreement. [Such Financial Statements present fairly in all material respects as of the date of each such statement 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].[2] No Default has occurred and is continuing as of the date hereof[, except for _____].[3] There has been no change in GAAP since the date of the audited financial statements referred to in Section 3.04 of the Credit Agreement that has had an impact on the Financial Statements [, except for _____, the effect of which on the Financial Statements has been [_____]].[4]

4. Attached hereto as ANNEX 2 are the computations showing (in reasonable detail) the information required by Sections 5.01(c)(ii) of the Credit Agreement.

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[1] Certificate may be signed by any Financial Officer of the Borrower (chief financial officer, principal accounting officer, treasurer, vice president of finance or corporate controller of the Borrower).
[2] To be included only if the Compliance Certificate is certifying the quarterly financials.
[3] Specify the details of any Default, if any, and any action taken or proposed to be taken with respect thereto.
[4] 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 of the Credit Agreement had an impact on such financial statements, specify the effect of such change on the financial statements accompanying this Compliance Certificate.

5. Attached hereto as ANNEX 3 is a description of any registered patents, registered trademarks or registered copyrights acquired by the Parent and its Subsidiaries since the [Effective Date][date of the most recent Compliance Certificate delivered pursuant to Section 5.01(c) of the Credit Agreement prior to the date hereof].

IN WITNESS WHEREOF, I have executed this Compliance Certificate as of the date first written above.

FLUENCE ENERGY, LLC

By: _____
Name:
Title:

ANNEX 1

[Applicable Financial Statements to be attached if applicable]

ANNEX 2

The information described herein is as of [_____, _____][1], (the "**Computation Date**") and, except as otherwise indicated below, pertains to the period from [_____, _____][2] to the Computation Date (the "**Measurement Period**").

		Amount
[Consolidated EBITDA for the Measurement Period ended on the Computation Date, for the Parent and its Subsidiaries		
1.	Consolidated Net Income	$
plus or minus, as applicable		
2.	Gains or losses from disposed, abandoned, transferred, closed or discontinued operations	$
3.	Any gains or losses attributable to business dispositions or asset dispositions other than in the ordinary course of business (as reasonably determined by the Borrower acting in good faith)	$
4.	Any extraordinary or non-recurring gains or losses	$
5.	Any non-cash gains, losses, charges or expenses	$
6.	The cumulative effect of changes in accounting principles, including any changes to Accounting Standards Codification 715 (or any subsequently adopted standards relating to pension and postretirement benefits) adopted by the Financial Accounting Standards Board after the Effective Date	$
7.	Interest Expense	$
8.	Consolidated tax expense or income	$
9.	All depreciation and amortization expense, including the depreciation of property, plant and equipment, the amortization of intangible assets, deferred financing fees and amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits	$
10.	All other non-cash charges, including actuarial gains or losses from pension and postretirement plans, impairment charges and asset write-offs, non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock or other Equity Interests, or non-cash compensation charges	$

1 Insert the last day of the respective fiscal quarter or fiscal year covered by the financial statements which are required to be accompanied by this Compliance Certificate.
2 Insert the first day of the most recently completed four consecutive fiscal quarters of the Parent ended on the Computation Date.

11.	Any costs and expenses related to employment of terminated employees or realized in connection with or resulting from stock appreciation or similar rights, stock options, restricted stock or other Equity Interests	$
12.	Any gains or losses attributable to the early extinguishment of Indebtedness, Swap Agreements or other derivative instruments	$
13.	Any currency translation gains and losses, and any realized or unrealized net loss or gain resulting from hedging transactions	$
14.	Any expenses or charges related to any issuance of Equity Interests, Investment, acquisition, Disposition, recapitalization, Restricted Payment, or incurrence or repayment of Indebtedness permitted under the Credit Agreement or any other Specified Transaction (in each case, whether or not consummated)	$
15.	Restructuring losses and expenses	$
16.	Any payments by the Parent to the Permitted Holders under the Tax Receivable Agreement	$
17.	Proceeds received from business interruption insurance	$
I.	**Consolidated EBITDA**	**$**
II.	**Net Debt for Borrowed Money**[3]	**$**
III.	**Interest Expense (excluding any Interest Expense attributable to the Parent Convertible Notes)**	**$**][4]

Financial Covenants (Section 6.10)	**Amount**
[Total Liquidity	$
Total Revenues	$][5]
[Consolidated Leverage Ratio (II/I)	[_]:1.00
Interest Coverage Ratio (I / III)	[_]:1.00][6]

3 Equal to (i) the sum of (a) the outstanding principal amount of all Indebtedness for borrowed money (including reimbursement obligations with respect to any drawn letters of credit) of all the Parent and its Subsidiaries on a consolidated basis, (b) the aggregate amount of all Capital Lease Obligations of the Parent and its Subsidiaries on a consolidated basis, and (c) to the extent not duplicative with the Indebtedness and obligations specified in clauses (a) and (b) above, all Guarantees of the Parent and its Subsidiaries on a consolidated basis with respect to outstanding Indebtedness and obligations of the types specified in clauses (a) and (b) above of other Persons *minus* (ii) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash) of the Parent and its Subsidiaries in an aggregate amount not to exceed $75,000,000. For the avoidance of doubt, the amount of Net Debt for Borrowed Money shall be deemed to be zero with respect to any letter of credit, unless and until a drawing is made with respect thereto, and shall exclude Indebtedness attributable to the Parent Convertible Notes

4 Calculation of EBITDA, Net Debt for Borrowed Money and Interest Expense to be included only after the Trigger Date.

5 To include prior to the Trigger Date.

6 To include after the Trigger Date.

ANNEX 3

[Description of Intellectual Property]

EXHIBIT G

AGREED SECURITY PRINCIPLES

Agreed Security Principles

Reference is made to the Revolving Credit Agreement dated as of November 1, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Fluence Energy, Inc., as Parent, Fluence Energy, LLC, as Borrower, the other Guarantors party thereto, the Lenders from time to time party thereto and the Administrative Agent.

1. Agreed Security Principles

(a) The principles set out in this Exhibit G (the "Agreed Security Principles") identify the Agreed Security Principles and address the manner in which the Agreed Security Principles will impact on and determine the extent of the guarantees and liens proposed to be provided in relation to this transaction by Loan Parties organized in a Covered Jurisdiction. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement and if not defined in the Credit Agreement, then as defined in the applicable Foreign Security Agreements.

(b) The Agreed Security Principles embody a recognition by all parties that there may be certain legal and practical difficulties in obtaining effective or commercially reasonable guarantees and/or liens from Loan Parties in each jurisdiction in which it has been agreed that guarantees and liens will be granted by those Loan Parties. In particular:

(i) general legal and statutory limitations (including pursuant to reviews of the Committee on Foreign Investment in the United States and Foreign Ownership, Control or Influence restrictions or, with respect to the relevant jurisdictions for which guarantee limitation language is set out in the Loan Documents or in any applicable joinder agreement to the Loan Documents, such limitations as set out therein), regulatory restrictions, financial assistance, corporate benefit, fraudulent preference, equitable subordination, "transfer pricing", "thin capitalization", "earnings stripping", non-U.S. tax restrictions, "controlled foreign corporation" (other than with respect to a Foreign Guarantor) and other tax restrictions, "exchange control restrictions" and "capital maintenance" rules, retention of title claims, employee consultation or approval requirements and similar principles may limit the ability of a Loan Party to provide a guarantee or lien or may require that the guarantee or lien be limited as to amount or otherwise and, if so, the guarantee or lien will be limited accordingly;

(ii) to the extent reasonably requested by the Administrative Agent, the relevant Loan Party shall use commercially reasonable efforts to overcome any such limitations for a period of not more than twenty (20) Business Days;

(iii) a key factor in determining whether or not a guarantee or lien will be taken (and in respect of the lien, the extent of its perfection and/or registration) is the applicable time and cost (including adverse effects on non-U.S. taxes, interest deductibility, stamp duty, registration taxes, registration fees, notarial costs, all applicable legal fees or any other fees, costs, commissions or expenses directly associated with the granting of the guarantee of Collateral) which will not be disproportionate to the benefit accruing to the secured parties of obtaining such guarantee or lien;

(iv) Loan Parties and their Subsidiaries will not be required to give guarantees or enter into Security Documents if they are Excluded Subsidiaries or if it is not within the legal capacity of the relevant Loan Party or if it would conflict with (or be at risk of conflicting with) the fiduciary or statutory duties of their directors or officers or contravene (or risk contravention of) any applicable legal, regulatory or contractual prohibition or restriction or have the potential to result in a material risk of personal or criminal liability for any director, officer or managing member of or for any Loan Party, *provided that:*

(A) to the extent requested by the Administrative Agent before signing any applicable security document or accession certificate or joinder agreement, the relevant Loan Party shall use commercially reasonable efforts to overcome any such obstacle or otherwise such security document shall be subject to such limit; and

(B) in relation to the restriction on financial assistance in Part 2J.3 of the Australian Corporations Act, the relevant Loan Parties will undertake a financial assistance whitewash process in accordance with section 260B of the Corporations Act to the extent those legislative provisions are applicable;

(v) guarantees and liens will be limited so that the aggregate of notarial costs and all registration and like taxes and duties relating to the provision of liens will not exceed an amount to be agreed between the relevant Loan Party and the Administrative Agent;

(vi) where a class of assets to be secured includes material and immaterial assets, if the cost of granting a lien over the immaterial assets is disproportionate to the benefit of granting such lien, such lien will be granted over the material assets only;

(vii) it is expressly acknowledged that it may be either impossible or impractical to create a lien over certain categories of assets in which event a lien will not be taken over such assets;

(viii) any asset subject to a legal requirement, contract, lease, license, instrument or other third party arrangement, which may prevent or condition the asset from being charged, secured or being subject to the applicable Security Document (including requiring a consent of any third party, supervisory board or works council (or equivalent)) and any asset which, if subject to the applicable Security Document, would give a third party the right to terminate or otherwise amend any rights, benefits and/or obligations with respect to the Parent or any of its Subsidiaries in respect of the asset or require the Loan Party entering into the Security Document to take any action materially adverse to the interests of the Parent or any of its Subsidiaries, in each case will be excluded from a guarantee or Security Document; *provided* that commercially reasonable efforts to obtain consent to charging any asset (where otherwise prohibited) shall be used by the Parent and its Subsidiaries if (provided the Administrative Agent has been made aware of any such legal requirement, contract, lease, license, instrument or other third party arrangement) the Administrative Agent specifies prior to the date of the Security Document or accession certificate that the asset is material and the relevant Loan Party is satisfied that such efforts will not involve placing relationships with third parties in jeopardy (but if it has used its commercially reasonable efforts as described for a period of at least fifteen (15) Business Days without success, its obligation to so use commercially reasonable efforts will cease);

(ix) the giving of a guarantee, the granting of a lien and the registration and/or the perfection of the lien granted will not be required if it would have a material adverse effect on the ability of the relevant Loan Party to conduct its operations and business in the ordinary course as otherwise permitted by the Loan Documents (including dealing with the secured assets and all contractual counterparties or amending, waiving or terminating (or allowing to lapse) any rights, benefits or obligations), in each case unless an Event of Default has occurred and is continuing, and any requirement under the Agreed Security Principles to seek consent of any person or take or not take any other action shall be subject to this paragraph (ix);

(x) any Security Document will only be required to be notarized if required by law in order for the lien to become effective or admissible in evidence;

(xi) no guarantee from, or lien will be required to be given by, persons or over (and no consent shall be required to be sought with respect to) assets which are required to support acquired indebtedness to the extent such acquired indebtedness is permitted by the Loan Documents to remain outstanding after an acquisition. No member of a target group acquired pursuant to an acquisition not prohibited by the Loan Documents shall be required to

become a Guarantor or grant a lien if prevented by the terms of the documentation governing that acquired indebtedness; no lien will be granted over any asset secured for the benefit of any financial indebtedness permitted to be incurred under the Loan Documents and/or to the extent constituting a lien which is permitted to be granted under the Loan Documents;

(xii) to the extent possible and unless required by applicable law and as provided for in the relevant Security Documents, there should be no action required to be taken in relation to the guarantees or liens when any lender assigns or transfers any of its participation to a new lender (and, unless explicitly agreed to the contrary in the Loan Documents, neither the Borrower nor any of its Subsidiaries shall bear or otherwise be liable for any notarial, registration or perfection fees or any other costs, fees or expenses that result from any assignment or transfer by a secured party);

(xiii) no title investigations or other diligence on assets will be required and no title insurance will be required;

(xiv) liens will not be required over any assets subject to a lien in favor of a third party (except for pledges over German bank accounts which may be subject to a lien in favor of such account bank) or any cash constituting regulatory capital or customer cash (and shall be excluded from any relevant Security Document);

(xv) to the extent legally effective, all liens will be given in favor of the Administrative Agent and not the secured parties individually (with the Administrative Agent to hold one set of Security Documents for all the secured parties); "parallel debt" provisions will be used where necessary;

(xvi) Loan Parties and their Subsidiaries shall not be required give guarantees or enter into Security Documents if doing so would result in material adverse tax consequences as reasonably determined by the Borrower;

(xvii) the secured parties (or any agent or similar representative appointed by them at the relevant time) will not be able to exercise any power of attorney or set-off granted to them under the terms of the Loan Documents unless an Event of Default has occurred and is continuing;

(xviii) no guarantees or liens shall guarantee or secure any "Excluded Swap Obligations" defined in accordance with the Loan Syndication and Trading Association ("LSTA") Market Advisory Update dated February 15, 2013 entitled "Swap Regulations' Implications for Loan Documentation", and any update thereto by the LSTA;

(xix) no action will be taken to perfect any security interest in any Intellectual Property under the laws of any jurisdiction outside of the United States,

including filings or registrations in connection with Australian stamp duty and filings or registrations as required under Australian PPS Law;

(xx) details of "serial numbers" (as defined in the Australian PPS Act) and registration of security by serial number on the Australian Personal Property Securities Register will only be required in relation to personal property that must be described by serial number in a financing statement under the Australian PPS Act for assets over $2,500,000; and

(xxi) other than a general security agreement and related filing, no perfection, filing or other action will be required with respect to assets of a type not owned by the Parent or any of its Subsidiaries.

(xxii) Notwithstanding anything to the contrary in the Agreed Security Principles: (1) liens or charges of any type will not be required over any Excluded Property and (2) guarantees will not be required by any Excluded Subsidiary.

(xxiii) (A) to the extent that a valid and enforceable security interest having the requisite priority can be taken on substantially all of the intended Collateral in any Covered Jurisdiction on a generic basis without listing any individual assets, no specific listing shall be required (other than in relation to bank accounts, details of which may be listed as customary) and (B) without limiting the generality of the foregoing, the Security Documents shall not include or require a listing of any assets unless the absence of such listing would render the security interest therein invalid, unenforceable or would otherwise result in the inability to perfect and/or enforce the security interest created thereunder;

(xxiv) any such guarantee and any such Collateral shall also be limited by any other specific prohibitions or limitations of applicable local law as agreed by the advisers to the Administrative Agent and the advisers to the Loan Parties as set forth in the relevant Security Document; and

(xxv) unless otherwise expressly provided in these Agreed Security Principles, notices will not be required to be sent to contractual third parties unless required under applicable local law to perfect, establish priority of or enforce a security interest in respect of receivables (including in respect of insurance and intercompany receivables, inventory, or bank accounts).

(c) Any lien will not include any Excluded Property.

2. Guarantees

Subject to the guarantee limitations set out in the Loan Documents, each guarantee will be an upstream, cross-stream and downstream guarantee for all liabilities of the Loan Parties under the Loan Documents in accordance with, and subject to, the requirements of these Agreed Security Principles in each relevant jurisdiction (references to "security" to be read

for this purpose as including guarantees). Security Documents will secure the guarantee obligations of the relevant security provider (and in case of any German law governed security all liabilities of the Loan Parties under the Loan Documents) or, if such lien is provided on a third party basis, all liabilities of the Loan Parties under the Loan Documents, in each case in accordance with, and subject to, the requirements of these Agreed Security Principles in each relevant jurisdiction.

3. Governing law and scope

(a) Other than with respect to Excluded Subsidiaries and Excluded Properties, guarantees and liens will be provided by Loan Parties incorporated in the following jurisdictions: Germany, Australia, the Philippines and any additional jurisdictions designated by the Borrower and reasonably acceptable to the Administrative Agent (collectively, the "Covered Jurisdictions").

(b) The parties agree that the liens will be granted by Loan Parties based in a Covered Jurisdiction over their material bank accounts, shares owned in other Loan Parties incorporated in a Covered Jurisdiction (except to the extent such shares constitute Excluded Securities) and any intercompany receivables owed to them.

(c) All liens granted by Loan Parties organized in Covered Jurisdictions (other than liens over shares) will be governed by the law of, and secure only assets located in, the jurisdiction of incorporation of the applicable grantor of the lien.

(d) Liens over shares of any Loan Party will be governed by the law of the place of incorporation of that Loan Party.

4. Terms of Security Documents

The following principles will be reflected in the terms of any lien granted in connection with this transaction:

(a) the lien will not be enforceable or crystalize unless an Event of Default has occurred and is continuing;

(b) the beneficiaries of the lien will only be able to exercise a power of attorney at any time that an Event of Default has occurred and is continuing (unless otherwise provided for in any German law governed security agreement in respect of non-compliance with certain undertakings of the security grantor);

(c) the Security Documents should only operate to create a lien rather than to impose new commercial obligations or repeat clauses in other Loan Documents; accordingly (i) they should not contain additional representations, undertakings or indemnities (including in respect of insurance, information, maintenance or protection of assets or the payment of fees, costs and expenses) unless legally required and unless these are the same as or consistent with those contained in the Loan Documents or if required for the creation or perfection of liens; and (ii) nothing in any Security Document shall (or be construed to) prohibit any

transaction, matter or other step (or the grantor of such lien taking or entering into the same or dealing in any manner whatsoever in relation to any asset (including all rights, claims, benefits, proceeds and documentation, and contractual counterparties in relation thereto)) the subject of (or expressed to be the subject of) the security agreement if not prohibited by the terms of the other Loan Documents;

(d) no lien will be granted over parts, stock, moveable plant, equipment or receivables if it would require labelling, segregation or periodic listing or specification of such parts, stock, moveable plant, equipment or receivables;

(e) perfection will not be required in respect of (i) vehicles and other assets subject to certificates of title or (ii) letter of credit rights and tort claims (or applicable law equivalent);

(f) a lien will, where possible and practical, automatically create a lien over future assets of the same type as those already secured; where applicable law requires supplemental pledges or notices to be delivered in respect of future acquired assets in order for an effective lien to be created over that class of asset, such supplemental pledges or notices will be provided at intervals no more frequent than annually;

(g) lists of assets will only be provided to the extent required by the applicable law to create, perfect and preserve the relevant lien and shall only be required on the date of the relevant security agreement and not on an ongoing basis;

(h) the maximum guaranteed or secured amount may be limited to minimize stamp duty, notarization, registration or other applicable fees, taxes and duties so as to ensure that the costs are proportionate to the benefits accruing to the secured parties of obtaining such guarantee or lien; and

(i) unless otherwise set forth in the relevant Security Document, each guarantee and Security Document should contain a clause which records that if there is a conflict between the guarantee or Security Document and the Credit Agreement then the provisions of the Credit Agreement (including the Agreed Security Principles) will take priority over the provisions of the guarantee or Security Document; it further being understood and agreed that, notwithstanding anything herein to the contrary, the principles and actions set forth in and/or contemplated by Section 5.11(f) of the Credit Agreement are fully authorized.

5. Bank accounts

(a) If a Loan Party grants a lien over its material bank accounts it will be free to deal, operate and transact business in relation to those accounts (including opening and closing accounts) unless an Event of Default has occurred and is continuing. There will be no "fixed" lien over bank accounts, cash or receivables or any obligation to hold or pay cash or receivables in a particular account unless an Event of Default has occurred and is continuing (with the exception of pledges over bank accounts in Germany where a notice of the pledge must be served on the account bank).

(b) Where a "fixed" lien is required, if required by applicable law to perfect the lien and if possible without disrupting operation of the account and in any event in respect of any pledge over bank accounts in Germany, notice of the lien will be served on the account bank by the applicable grantor (or, to the extent such applicable grantor of the lien does not fulfil such obligation, such notices may be delivered by the Administrative Agent) in relation to applicable accounts within fifteen (15) Business Days of the date of the Security Document (or accession thereto) and the applicable grantor shall not be obliged to obtain an acknowledgment of any notice unless required as a matter of law for perfection, priority or enforcement purposes, and in such event the applicable grantor will use commercially reasonable endeavours to obtain an acknowledgement of that notice and a waiver or subordination of prior liens in favor of the account bank within twenty (20) Business Days of service. If the grantor of the lien has used its commercially reasonable endeavours but has not been able to obtain acknowledgement or acceptance, its obligations to obtain acknowledgement will cease on the expiry of that twenty (20) Business Day period. Notwithstanding anything to the contrary in the foregoing, irrespective of whether notice of the lien is required for perfection, if the service of notice would prevent the Parent or any of its Subsidiaries from using a bank account in the course of its business no notice of the lien will be served unless an Event of Default has occurred and is continuing.

(c) [reserved].

(d) Lien over bank accounts will be subject to any security interests (including rights of set off and deduction with respect to the account bank's standard fees and charges) in favor of the account bank which are created either by law or in the standard terms and conditions of the account bank. No grantor of a lien will be required to change its banking arrangements or standard terms and conditions in connection with the granting of bank account security.

(e) If required under applicable law, security over bank accounts will be registered subject to the general principles set out in these Agreed Security Principles.

6. Intercompany receivables

(a) If a Loan Party grants a lien over its intercompany receivables it shall, subject to the terms of the Loan Documents, be free to deal with those receivables in the course of its business unless an Event of Default has occurred and is continuing.

(b) In respect of intercompany receivables, if required by local law to perfect the security, notice of a lien will be served on the relevant counterparty concurrently with the security being granted, but in no event shall acknowledgements, or similar, be required (other than to the extent such acknowledgement is required under local law for the creation, perfection, validity or priority of the security, in which case the applicable grantor will use commercially reasonable endeavours to obtain an acknowledgement of that notice within twenty (20) Business Days of service, but if the grantor of the lien has used its commercially reasonable endeavours but has

not been able to obtain acknowledgement or acceptance, its obligations to obtain acknowledgement will cease on the expiry of that twenty (20) Business Day period.).

(c) If required under applicable law, a lien over intercompany receivables will be registered subject to the general principles set out in these Agreed Security Principles.

7. Shares

(a) Unless an Event of Default has occurred and is continuing, the legal title of the shares will remain with the relevant grantor of the lien and any grantor of liens over shares will be permitted to retain and to exercise voting rights and powers in relation to any shares and other related rights charged by it and receive, own and retain all assets and proceeds in relation thereto without restriction or condition prior to such Event of Default (provided that in respect of any pledges over shares in a German entity, the voting rights and powers will remain with the security grantor until a transfer of the legal title to the shares to a purchaser, including by way of an enforcement, occurs).

(b) Where customary and applicable as a matter of law, as soon as reasonably practicable following execution of the Security Document or accession certificate, the applicable share certificate (or other documents evidencing title to the relevant shares) and a stock transfer form executed in blank (or applicable law equivalent) will be provided to the Administrative Agent.

(c) The constitutional documents of a Germany company whose shares have been pledged will be amended to remove any restriction on, or approval requirements in relation to, the transfer or the registration of the transfer of the shares in the event of enforcement of the security granted over them.

8. Other assets

No liens will be granted over any other assets, unless pursuant to a floating charge (or similar concept in the relevant jurisdiction).

Notwithstanding anything to the contrary in these Agreed Security Principles, to the extent legally possible, any Australian Loan Party shall also grant an all-assets featherweight charge over any Excluded Assets which shall be enforceable only upon the appointment of an administrator provided that where it is possible to charge or mortgage all or a category of the assets of an Australian entity by a single charging or mortgaging document (including any "featherweight" security), all such assets shall be so charged.

9. Release of Liens

Unless required by local law, the circumstances in which a lien shall be released should not be dealt with in the individual Security Documents but, if so required, shall provide that Collateral will be released in accordance with Section 9.17 of the Credit Agreement,

and such release shall be automatic, without prejudice to any actions that may be necessary under local law to effect or evidence such release and, where appropriate, shall entail a simultaneous release of any contractual obligations related to the released Collateral.

EXHIBIT H-1

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the other Guarantors party thereto, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to the provisions of Section 2.14 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____

Date: _____ __, 20[ ]

EXHIBIT H -2

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the other Guarantors party thereto, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to the provisions of Section 2.14 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____

Date: _____ __, 20[ ]

EXHIBIT H -3

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the other Guarantors party thereto, the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to the provisions of Section 2.14 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____

Date: _____ __, 20[ ]

EXHIBIT H-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Revolving Credit Agreement, dated as of November 1, 2021 (as amended, restated, amended and restated, supplemented, extended or modified from time to time, the "**Credit Agreement**"), among Fluence Energy, Inc. (the "**Parent**"), Fluence Energy, LLC (the "**Borrower**"), the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as therein defined.

Pursuant to the provisions of Section 2.14 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____

Date: _____ __, 20[ ]

Exhibit 10.21

EXECUTION VERSION

Amended and Restated

Equipment and Services Purchase Agreement

by and between

Fluence Energy, LLC

as Buyer

and

Siemens Industry, Inc.

as Supplier

dated October 27, 2021

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Attachment A Description of Supplier's Equipment and Services

THIS **AMENDED AND RESTATED EQUIPMENT AND SERVICES PURCHASE AGREEMENT** (this "**Agreement**") is made and entered into on October 27, 2021, between **Siemens Industry, Inc.,** whose principal place of business is at 100 Technology Drive, Alpharetta, Georgia 30005 hereinafter referred to as "**Supplier**" and **Fluence Energy, LLC**, whose principal place of business is 4601 N. Fairfax Drive, Suite 600, Arlington, Virginia 22203 hereinafter referred to as "**Buyer**". Each of Supplier and Buyer are referred to herein as a "**Party**" and collectively are referred to herein as the "**Parties**."

WHEREAS, Buyer sells electrical storage solutions to Customers;

WHEREAS, Supplier sells electrical balance of plant equipment and related services which Buyer may want to purchase to incorporate within its energy storage equipment and related services projects;

WHEREAS, Supplier wishes to cooperate with Buyer in order to fulfill Buyer's requirements and provide preferred purchasing conditions to Buyer for those electrical balance of plant equipment and related services;

WHEREAS, Supplier and Buyer are parties to that certain Equipment and Services Purchase Agreement, dated as of January 1, 2018, by and between Supplier and Buyer (the "**Prior Agreement**"); and

WHEREAS, Supplier is party to the Second Amended and Restated Limited Liability Company Agreement of Buyer, dated as of June 9, 2021(the "**LLC Agreement**");

WHEREAS, Supplier, Buyer and certain other parties are entering into a series of transactions in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("**Issuer**") to serve as the vehicle through which the public will own indirect interests in Buyer through an initial public offering; and

WHEREAS, in connection with the closing of initial public offering, the LLC Agreement is being amended and restated in its entirety by the Third Amended and Restated Limited Liability Company Agreement, dated on or about the date hereof (the "**Restated LLC Agreement**"), to, among other things, reflect Issuer's ownership of Supplier and the restructuring of Supplier and its Affiliates.

NOW, THEREFORE, the Parties agree that on the Effective Date, the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and further agree as follows:

1. DEFINITIONS; INTERPRETATION.

1.1. Definitions. Initially-capitalized terms used in this Agreement (including the preamble and Recitals hereto) and not otherwise defined herein shall have the meanings specified below.

"**Affiliate**" means, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons. No Person shall be considered an Affiliate of another Person or under the Control of such other Person so long as (i) it is owned less than 50% by such other Person, (ii) such other Person has no capacity to elect or appoint the majority of the board of directors or similar

governing body of the subject Person, (iii) such other Person does not consolidate the subject Person in its financial reporting and (iv) there is no other management or services agreement pursuant to which such other Person exerts control over the subject Person. With respect to Supplier, none of Gamesa Corporación Technológica S.A., Siemens Healthineers AG nor any of their respective Subsidiaries shall be considered an Affiliate of Supplier.

"**Agreement**" has the meaning set forth in the Preamble hereto.

"**Applicable Law**" means any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision or declaration of a Governmental Authority having valid jurisdiction.

"**Business Day**" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"**Buyer**" has the meaning set forth in the Preamble hereto.

"**Buyer Event of Default**" has the meaning set forth in Section 14.2.

"**Buyer Furnished Property**" has the meaning set forth in Article 9.

"**Change Order**" has the meaning set forth in Section 12.1.

"**Change Order Information**" has the meaning set forth in Section 12.2.

"**Claims**" has the meaning set forth in Section 15.1.

"**Confidential Information**" has the meaning set forth in Section 17.1.

"**Control**" means, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings.

"**Defect**" means any material defect in design, manufacturing, materials or workmanship in or to the Equipment, or any failure of the Equipment to materially comply with the Technical Specifications, excluding in all cases any of the foregoing attributable to or caused by ordinary wear and tear of the Warranted Equipment.

"**Deliver**", "**Delivered**" or "**Delivery**" means that Supplier has caused the delivery of the applicable Equipment to the Delivery Point in accordance with the terms of this Agreement.

"**Delivery Point**" means the delivery location set forth in a Pricing Notice, provided that, if no such location is specified in the applicable Pricing Notice, the Delivery Point for the Equipment shall be the location of Supplier's facility.

"**Derivative Software**" has the meaning set forth in Article 20.

"**EAR**" has the meaning set forth in Section 21.1.

"**Effective Date**" shall have the meaning assigned to such term in Section 2.1.

"**EHS Laws**" has the meaning set forth in Section 19.1.

"**Enforcement Action**" has the meaning set forth in Section 13.11.

"**Equipment**" means any electrical balance of plant equipment offered by Supplier pursuant to this Agreement, as set forth in Attachment A.

"**Equipment Warranty**" has the meaning set forth in Section 8.1.

"**Equipment Warranty Period**" has the meaning set forth in Section 8.1.

"**Export Controls and Sanctions Laws**" has the meaning set forth in Section 21.1.

"**Force Majeure**" means any event which is not within the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the affected Party to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement (other than an obligation for the payment of money) and is not caused by or resulting from the negligence or breach or failure of such Party to perform its obligations under this Agreement, which, subject to the foregoing, may include: acts of God or the public enemy, natural disasters, war, terrorism, insurrection, sabotage, unavoidable accidents, orders, decrees, rulings and policies of any Governmental Authority, fires, floods, earthquakes, volcanic activity, severe weather conditions not reasonably foreseeable taking into account the location of performance and the climate patterns applicable thereto, explosions, riots, general strikes and area lockouts. Force Majeure shall not include a Party's financial inability to perform under this Agreement or any Purchase Order.

"**Further Buyer Contracting Parties**" has the meaning set forth in Section 3.2.

"**Governmental Authority**" means a federal, state, local or foreign governmental authority (including any regulatory authority); a state, province, commonwealth, territory or district thereof; a county; a city, town, township, or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, system, service, office, commission, committee, council or other administrative body of any of the foregoing; any court or other judicial body; and any officer, official or other representative of any of the foregoing.

"**Guaranteed Delivery Date**" has the meaning set forth in Section 5.2.

"**Hazardous Materials**" has the meaning set forth in Section 19.1.

"**Indemnified Party**" has the meaning set forth in Section 15.1.

"**Indemnifying Party**" has the meaning set forth in Section 15.1.

"**Infringement Claim Costs**" means any and all judgments, damages, fines, awards, penalties, and interest associated with any of the foregoing, that, in each case, are finally

awarded in a claim for which an Indemnifying Party is obligated to indemnify an Indemnified Party under Section 15.2 or 15.3, as applicable, and costs and expenses, including reasonable attorneys' fees, court costs and other reasonable costs of suit, arbitration, dispute resolution or other similar proceedings, associated with such claim.

"**Initial Term**" has the meaning set forth in Section 2.1.

"**Intellectual Property**" means United States and foreign: (a) Patents; (b) Trademarks; (c) copyrights, whether registered or unregistered, and all applications and registrations therefor, web sites, proprietary domain names, mask works, and all applications and registrations therefor; (d) Know-How; (e) Software; and (f) similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing.

"**Know-How**" means all proprietary and confidential information and data (irrespective as to whether such information or data is available by way of documentation, orally or in electronic format, or protected by copyrights), including business and trade secrets, technical and business information and data, know-how and similar proprietary rights in confidential information and processes, discoveries, analytic models, improvements, techniques, devices, methods, patterns, formulations and specifications, all to the extent that such information and data are proprietary and confidential and neither Software nor a Patent.

"**License**" has the meaning set forth in Section 13.1.

"**Licensed Technology**" means, collectively, all of the following to the extent owned by, or licensed (with the right to grant sublicenses) to, Supplier, relating to the Equipment or the uses and purposes contemplated in connection with this Agreement or any Purchase Order issued hereunder for such Equipment: (a) Software embedded in or integrated with the Equipment, (b) any other trade secrets, proprietary information, know-how or other Intellectual Property incorporated into or embedded within the Equipment or necessary for the installation, operation, maintenance, and ownership of the Equipment, (c) any improvements of or updates to any of the foregoing provided to Buyer pursuant to this Agreement, if any, and (d) all Intellectual Property rights of Supplier in the Licensed Technology listed in any of clauses (a) through (d) above, in each case, for use solely in connection with the installation, commissioning, operation and maintenance of the Equipment at the Project Site or such other site as Buyer shall elect.

"**LLC Agreement**" has the meaning set forth in the Recitals hereto.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Open License Terms**" has the meaning set forth in Article 20.

"**Open Source Software**" has the meaning set forth in Article 20.

"**Party**" has the meaning set forth in the Preamble hereto.

"**Parties**" has the meaning set forth in the Preamble hereto.

"**Patents**" means all patents, utility models, patent and utility model applications, and all priorities and rights related thereto, including all reissues, reexaminations, divisions, continuations, continuations-in-part, provisionals, continued prosecution applications, substitutions, extensions, additions or renewals of any of the foregoing.

"**Person**" means any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not having separate legal personality), and shall include any successor (by merger or otherwise) of such entity.

"**Pricing Notice**" has the meaning set forth in Section 4.1.

"**Pricing Request**" has the meaning set forth in Section 4.1.

"**Prohibited Person**" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency or instrumentality thereof, of a Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or any other similar list published by OFAC, including, but not limited to, the Foreign Sanctions Evaders List, the Part 561 List, and the Non SDN Iranian Sanctions List; (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State; or (vi) any entity beneficially owned or controlled, directly or indirectly, by, any of the individuals or entities listed in subparagraphs (i)-(v) above.

"**Prudent Industry Practices**" means those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by electrical utility industry members, including Supplier, in the U.S. as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

"**Purchase Order**" means a purchase order in the form attached hereto as Exhibit A issued for the purchase of Equipment and Services pursuant to and in accordance with the terms and conditions of this Agreement.

"**Representatives**" means, with respect to any Person, such Person's shareholders, members, officers, directors, employees, accountants, consultants, legal counsel, financial advisors and other representatives and agents.

"**Sanctioned Country**" means any country or territory against which the United States maintains comprehensive economic sanctions or embargoes, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria.

"**Services**" means any Equipment related services offered for sale by Supplier pursuant to this Agreement, as set forth in Attachment A.

"**Services Warranty**" has the meaning set forth in Section 8.2.

"**Services Warranty Period**" has the meaning set forth in Section 8.2.

"**Software**" means all computer programs, operating systems, applications, systems, firmware, and software of any nature, whether operational, active, under development, or design, non-operational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, test scripts, user manuals, and other documentation therefore, whether in machine-readable form, programming language, or any other language or symbols, and whether stored, encoded, recorded, or written on disk, tape, film, memory device, paper, or other media of any nature and all databases necessary or appropriate to operate any such computer program, operating system, applications system, firmware, or software.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing member, general partner or analogous controlling Person of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times that such Person has one or more Subsidiaries.

"**Supplier**" has the meaning set forth in the Preamble hereto.

"**Supplier Documents**" means the documents and deliverables to be provided by Supplier to Buyer to the extent reasonably required for the installation, commissioning, operation and maintenance of the Equipment, as more fully set forth in the applicable Purchase Order.

"**Supplier Event of Default**" has the meaning set forth in Section 14.1.

"**Taxes**" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including income tax, withholding tax, corporation tax, capital gains tax, capital transfer tax, sales tax, business and occupation tax, inheritance tax, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and generally any tax, duty, impost, levy, rate or other amount and any interest, penalty or fine in connection therewith.

"**Technical Specifications**" means the technical specifications for the Equipment as set forth in the applicable Purchase Order.

"**Term**" has the meaning set forth in Section 2.1.

"**Territory**" means (i) for purposes of the sales and marketing by Buyer of the Equipment, worldwide and (ii) for all other use of the Equipment, the country in which the Equipment is installed for use.

"**Trademarks**" means all trademarks, trademark applications, service marks, service mark applications, trade dress, trade names, identifying symbols, words, colors, designs, product names, company names, slogans, logos or insignia, whether registered or unregistered, and all applications and registrations therefor, and all goodwill associated therewith.

"**TSCA**" has the meaning set forth in Section 19.1.

"**Work Site**" has the meaning set forth in Section 19.2.

1.2. Interpretation.

(a) References to Recitals, Articles, Sections, Exhibits, Annexes and Attachments are, unless otherwise indicated, to Recitals, Articles, Sections, Exhibits, Annexes and Attachments to this Agreement. All Exhibits, Annexes and Attachments to this Agreement are incorporated herein by this reference and made a part hereof for all purposes.

(b) As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.

(c) Unless expressly stated otherwise, references to a Person include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.

(d) As used in this Agreement, references to "days" shall mean calendar days, unless the term "Business Days" is used. If the term "Business Days" is used and the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

(e) As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words "herein," "hereunder" and "hereof" refer to this Agreement, taken as a whole,

and not to any particular provision of this Agreement; "including" means "including, for example and without limitation," and other forms of the verb "to include" are to be interpreted similarly.

(f) As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

2. TERM AND TERMINATION OF AGREEMENT.

2.1. Term. This Agreement shall become effective and the term shall commence on the day on which the Class A Common Stock of the Issuer is issued to the underwriters in its initial public offering (the "**Effective Date**"); provided, that if the Effective Date does not occur on or prior to December 31, 2021, this Agreement shall be deemed terminated as of such date and of no force or effect without further notice or action by the Parties, and the Prior Agreement shall remain in full force and effect without any amendment thereto. The term of this Agreement shall continue until the fourth (4th) anniversary of the Effective Date (the "**Initial Term**") and thereafter shall be automatically extended in successive one (1) year increments (the Initial Term together with any such extensions, the "**Term**").

2.2. Early Termination. Either Party may terminate this Agreement effective upon the expiration of the Initial Term or the expiration of any extension thereof upon not less than six (6) months prior written notice of termination furnished to the other Party. No termination of this Agreement pursuant to this Section 2.2 shall affect any Purchase Orders executed between the Parties prior to the date of termination. If this Agreement is terminated pursuant to this Section 2.2, the Parties shall attempt, in fair dealing and good faith, to agree on reasonable post-termination procedures in compliance with applicable law and antitrust requirements.

3. SCOPE OF AGREEMENT.

3.1. Scope Generally. This Agreement shall apply to all purchases by Buyer from Supplier of Equipment and Services during the Term. Notwithstanding the foregoing, nothing herein shall be construed to mean that either Buyer or Supplier is committing to any specific level of business or quantity of Equipment and Services to be purchased or supplied other than that specified in Purchase Orders issued to Supplier during the Term of this Agreement by Buyer; provided, however, Buyer shall consider Equipment and Services from Supplier when sourcing Equipment and Services available from Supplier hereunder as long as the "most favored nation" pricing described in Section 4.3 remains in effect. Attachment A hereto sets forth the various standard Equipment and Services offerings of Supplier, it being understood that any project-specific requirements associated with any particular order hereunder shall be as set forth in the applicable Purchase Order therefor. Supplier may from time to time update the Equipment and Services offered for sale hereunder by furnishing to Buyer an update to Attachment A hereto, it being agreed that no such update shall affect any previously issued Purchase Order unless and to the extent set forth in a Change Order thereto.

3.2. Further Buyer Contracting Parties. Buyer and its Subsidiary companies (hereinafter referred to as "**Further Buyer Contracting Parties**") shall be entitled to conclude individual Purchase Orders under the terms of this Agreement provided that such Further Buyer Contracting Parties either: (a) execute a joinder agreement acceptable to Supplier and otherwise in the form of Exhibit B hereto; or (b) agree that that the terms of this Agreement will govern the subject transaction by including a conspicuous cross-reference in the applicable Purchase Order which confirms that the Terms of the Equipment and Services Purchase Agreement will apply to the Purchase Order.

3.3. Cooperation. The Parties agree to jointly review opportunities to optimize Equipment, Services and Software for inclusion in the Equipment and Services (as such terms are defined in the Storage Core Frame Purchase Agreement entered into by Buyer and Supplier).

3.4. Interfaces. In order to implement Section 3.3, the Parties shall nominate permanent contact persons on both sides to act as liaison for effective cooperation and communication between Supplier and Buyer. These contact persons shall schedule regular meetings. These contact persons include, but are not limited to, the following for day to day interactions on the procurement of Equipment and Services:

(a) Buyer Procurement; and

(b) Supplier MS PA eBoP Program Manager.

These contact persons include, but are not limited to, the following for system optimization and market requirement exchange:

(a) Supplier MS PA eBoP Program Manager;

(b) Supplier PLM Inverters (MS PA);

(c) Supplier PLM Microgrid (Digital Grid);

(d) Supplier PLM PSS (Digital Grid);

(e) Buyer PLM (Product Requirement); and

(f) Buyer R&D.

4. ORDERS.

4.1. Pricing Requests. If Buyer desires to purchase Equipment and Services from Supplier during the Term, Buyer shall furnish Supplier with written request (a "**Pricing Request**") detailing the Equipment and Services it wishes to purchase and requesting pricing therefor from Supplier, including in such Pricing Request such information as may be reasonably necessary for Supplier to determine pricing therefor and any other project-specific requirements, including Buyer's requested delivery schedule. Supplier shall provide Buyer with a written notice (a "**Pricing Notice**") detailing Supplier's pricing and delivery schedule for the Equipment and Services that Buyer wishes to purchase (including therein any terms, conditions and specifications required by Supplier in connection with the particular project and/or purchase contemplated by Buyer, which terms and conditions may be

different than, and shall supersede, those set forth in this Agreement), which Pricing Notice Supplier shall endeavor to provide within ten (10) Business Days of receipt of Buyer's Pricing Request. If Buyer does not issue a Purchase Order to Supplier pursuant to Section 4.2 in response to the Pricing Notice within ten (10) Business Days of issuance thereof, the Pricing Notice shall be deemed rejected.

4.2. Purchase Orders. If Buyer desires to purchase the Equipment and Services on the terms specified in a Pricing Request, it shall issue a Purchase Order to Supplier in the form attached hereto as Exhibit A, which Purchase Order shall include: (i) the pricing and any other terms, conditions and specifications set forth in Supplier's Pricing Notice; and (ii) a detailed description of the Equipment and Services to be purchased, consistent with those set forth in the Pricing Request and to the extent modified thereby, the Pricing Notice. Purchase Orders shall only be binding when issued in compliance with the requirements of this Agreement and sent by e-mail, by fax or by electronic data interchange to Supplier. Supplier shall accept or reject a Purchase Order within ten (10) Business Days after receipt. Acceptance or rejection shall be declared in the form of the Purchase Order. If a Purchase Order is neither accepted nor rejected within ten (10) Business Days after receipt, it shall be deemed rejected.

4.3. Most Favored Nation Pricing. Subject to Applicable Law, during the Term, Supplier will offer its Equipment and Services to Buyer at Most Favored Nation Pricing in the Pricing Notice so long as Supplier and its Affiliates collectively own at least a twenty percent (20%) interest in Buyer. "Most Favored Nation Pricing" shall be reasonably determined by the Supplier by reference to recent (last six (6) months) sales arrangements with customers, resellers or project developers, as applicable, taking into account purchase volumes, regional market conditions, the geographic location of the projects, and the relative size and technology to be used. Supplier shall not be obligated to provide such pricing if it no longer offers the relevant products or services for sale and Supplier shall have no obligations to offer or continue to offer any such products or services for sale. If requested by Buyer, Supplier shall furnish to Buyer a certificate executed by an executive officer of Supplier and attesting to the methodology used by Supplier in determining the Most Favored Nation Pricing set forth in the applicable Pricing Notice. Supplier shall provide Buyer with supporting information concerning the comparable purchase volumes, regional market conditions, the geographic location of the projects, relative size and technology to be used, and any other variables that Supplier considered when determining the Most Favored Nation Pricing; provided that Suppler may always anonymize information about other customers' projects, in Supplier's sole discretion. In the event that Buyer believes the price indicated in the Pricing Notice does not accurately reflect Most Favored Nation Pricing, then the parties shall retain a mutually-agreeable auditing firm to independently and confidentially review Supplier's methodology and pricing inputs and to render a decision regarding whether Supplier must offer a lower price in order to satisfy its Most Favored Nation Pricing obligation as set forth above. The decision of the independent auditor shall be final and binding on both Parties. The costs of the independent auditor shall be shared equally between Supplier and Buyer.

4.4. Payment Terms. Unless otherwise provided in a Pricing Notice, all payments for Equipment are due and payable net thirty (30) days following invoice based on delivery of the applicable Equipment. Unless otherwise provided in a Purchase Order, all payments for Services are due and payable net thirty (30) days following invoice based on progress of the Services being performed. Payment(s) shall be by electronic banking method identified on the Purchase Order. Buyer will not make payments to Supplier in cash or

bearer instruments, nor to an account other than that specified in the Purchase Order.. Buyer will make no unlawful payments, nor make payments through any trust, intermediate entity or other party. Buyer will not make payment(s) to an individual, employee, or other designee of Supplier.

4.5. Disputed Payments. If a dispute arises regarding the payments to be made hereunder, Buyer or Supplier, as applicable, shall pay all undisputed amounts, and the Parties shall attempt in good faith to resolve the dispute as promptly as practicable.

4.6. Late Payments. Any amount owed by a Party hereunder beyond the date that such amount first becomes due and payable under this Agreement shall accrue interest from the date that it first became due and payable until the date that it is paid at the lesser of (a) LIBOR plus four percent (4%) per annum or (b) the maximum rate permitted by Applicable Law.

4.7. Taxes; Export and Import Duties. Notwithstanding anything herein to the contrary, (i) Supplier shall collect and withhold any and all sales taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment and imposed by any Governmental Authority having jurisdiction over Supplier at the Delivery Point and (ii) Buyer shall be responsible for any and all other Taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment, any and all export duties from the jurisdiction or jurisdictions in which the Equipment is manufactured or from which the Equipment may be shipped and any and all import duties, in each case, arising in connection with or relating to the supply, sale or Delivery of the Equipment. Buyer shall also be responsible for and pay all Taxes in relation to the operation of its business, including in connection with the use of the Equipment. Buyer and Seller shall cooperate to obtain exemption from, or to minimize, any Taxes.

5. DELIVERY.

5.1. Delivery Terms; Inspection. Unless otherwise provided in a Pricing Notice, delivery of the Equipment shall be made FCA (Incoterms 2010) at Supplier's facility. Prior to Delivery a representative of Supplier and a representative of Buyer may inspect the Equipment for damage and record such damage, if any.

5.2. Guaranteed Delivery Date. Supplier shall use commercially reasonable efforts to Deliver Equipment to the applicable Delivery Point by the applicable guaranteed Delivery date therefore, if any, as set forth in the applicable Purchase Order, subject to extension as provided under this Agreement (as may be extended hereunder, the "**Guaranteed Delivery Date**"). Any other dates in a Purchase Order for performance by Supplier of any work and any other obligations of Supplier pursuant to such Purchase Order are estimated, and not guaranteed, dates. The failure of Supplier to timely achieve such other Supplier milestones or obligations by the applicable dates set forth in the Purchase Order shall not be a breach under this Agreement. Neither the Purchase Order nor any milestone date contained therein, including the Guaranteed Delivery Date for the Equipment, may be changed unless the same has been modified by a duly executed Change Order. If an unexcused delay originates with Supplier or its Representatives, Supplier shall be solely responsible for expedited delivery and other charges to meet Delivery dates.

5.3. Delay Liquidated Damages. Except as may be otherwise agreed in a Purchase Order, if Delivery of the Equipment has not occurred by the Guaranteed Delivery Date for reasons that are not excused hereunder, and Buyer can prove that as a direct result thereof it must pay delay liquidated damages to its Customer, Supplier shall reimburse Buyer for such delay liquidated damages (such reimbursement not to exceed an amount equal to 0.5% of the price set forth in the Purchase Order allocable to the delayed Equipment for every completed week of delay) for each completed week after the Guaranteed Delivery Date that Buyer pays such liquidated damages to its Customer as a result of Supplier's delay, provided, however, that the amount of delay liquidated damages payable by Supplier shall be reduced by any amounts received by Buyer under any delay in startup insurance policies providing coverage for any such losses or damages. Payment of the delay liquidated damages shall be the sole and exclusive remedy of Buyer for delay and under no circumstances shall the total aggregate liability of Supplier exceed five percent (5%) of the price set forth in the applicable Purchase Order.

5.4 Buyer Caused Delay. If Buyer fails to perform any obligations under a Purchase Order or otherwise causes a delay in the performance by Supplier of its obligations under a Purchase Order, and such failure or delay results in an increase in Supplier's costs and/or impacts Supplier's ability to meet any Supplier milestone in accordance with the schedule contemplated by the applicable Purchase Order, Supplier shall be entitled to a Change Order increasing the price payable under the applicable Purchase Order and extending the date for completion of any Supplier milestones commensurate with such delay and added cost, including overtime charges for labor and equipment.

6. TITLE, RISK OF LOSS AND CARE, CUSTODY AND CONTROL.

6.1. Transfer of Title and Risk of Loss. Title, care, custody, control and risk of loss of any portion of the Equipment shall pass to Buyer upon Delivery of the Equipment to the Delivery Point. Notwithstanding the foregoing, in no event will title to the Licensed Technology or any other Intellectual Property used in the Equipment or otherwise provided to Buyer, including any Software, transfer to Buyer.

6.2. Warranty of Title. Supplier warrants to Buyer that, when title to the Equipment or any portion thereof is transferred to Buyer in accordance herewith, Buyer shall have good title to the Equipment or such portion thereof free and clear of all Liens, other than any such Liens which may arise in connection with Buyer's failure to make payments as they become due under this Agreement. In the event of any nonconformity with the foregoing, Supplier, at its own expense, upon written notice of such failure, shall indemnify Buyer from the consequences of such nonconformity and defend the title to such Equipment, and Supplier shall either promptly replace such Equipment or any affected portion thereof or remedy the title defect.

7. INSPECTION AND QUALITY CONTROL.

7.1. Inspection Rights. Supplier shall permit Buyer, its Representatives and/or customer(s), at Buyer's expense, to inspect Equipment/Services during manufacture at Supplier's facilities or during performance and shall use commercially reasonable efforts to facilitate similar inspections at the manufacturing facilities of third party suppliers. Buyer shall provide Supplier with written notice of its intent to make any such inspection not less than ten (10) Business Days prior to the proposed inspection date. Buyer's inspections/tests will not unduly interfere with Supplier's business or the business of its third party suppliers.

7.2. Quality Control. Supplier shall maintain quality control with respect to the Equipment and Services as mutually agreed upon by the Parties and provide Buyer with quality assurance documentation, manuals or certifications.

8. WARRANTIES.

8.1. Equipment Warranty. Supplier warrants to Buyer that (i) the Equipment as Delivered shall be new at the time of Delivery and shall have been manufactured using new components and (ii) during the Equipment Warranty Period the Equipment shall be free of any Defects (the "**Equipment Warranty**"). As used herein or otherwise agreed in a Purchase Order, the "**Equipment Warranty Period**" means the period of time commencing on the earlier to occur of (i) the date that the Equipment is placed into service as evidenced by the operation thereof for commercial purposes and (ii) the day that is sixty (60) days after the date of Delivery of the Equipment and continuing to and ending on (A) the first (1st) anniversary of such date or (B) such longer period as required by Applicable Law applicable to a particular Purchase Order.

8.2. Services Warranty. Supplier warrants to Buyer that any Services shall at the time of performance thereof and during the Services Warranty Period be (i) performed in a good and workmanlike manner and free of any fault, defect or deficiency that would preclude or impair the ability of such Services to fulfill the purposes set forth in the applicable Purchase Order therefor in all material respects, (ii) consistent with a level of care, skill and judgment which conforms with Prudent Industry Practices, and (iii) in compliance with the requirements of this Agreement and the applicable Purchase Order (the "**Services Warranty**"). As used herein or otherwise agreed in a Purchase Order, the "**Services Warranty Period**" means the period of time commencing on the date of performance of the applicable Service and continuing to and ending on (A) the first (1st) anniversary of such date or (B) such longer period as required by Applicable Law applicable to a particular Purchase Order.

8.3. Notification Requirements. Buyer shall promptly (but in any event within ten (10) Business Days after obtaining notice or knowledge thereof) notify Supplier of any failure of the Equipment to satisfy the Equipment Warranty or any failure of the Services to satisfy the Services Warranty, in each case by delivering written notice to Supplier of a warranty claim. The written notice of warranty claim shall, to the extent reasonably practicable, identify the applicable failure and the circumstances or conditions observed by Buyer that indicates the presence of such failure.

8.4. Corrective Action. If, at any time prior to the expiration of the Equipment Warranty Period, either Party discovers any Defect, Supplier agrees that it shall Deliver a replacement for the applicable Defective part, without cost or expense to Buyer. When a Defective part has been Delivered to Buyer, such replaced part shall be covered by the Equipment Warranty until the later of (a) twelve (12) months from the time such replacement part was Delivered to Buyer, and (b) the end of the Equipment Warranty Period. All replacement parts shall be of good and workmanlike quality and shall be new or newly refurbished. If, at any time prior to the expiration of the Services Warranty Period, either Party discovers any failure of the Services to satisfy the Services Warranty, Supplier agrees that it shall, in its sole discretion, either correctly re-perform or otherwise correct the defective Services, without cost or expense to Buyer. When a defective Service has been remedied, such remedied Service shall be covered by the Services Warranty until the later of (a)

twelve (12) months from the time such remedy was completed, and (b) the end of the Services Warranty Period.

8.5. Warranty Exclusions. The Equipment Warranty and the Services Warranty shall not apply if (a) the applicable Defect or failure is attributable to Buyer's failure to operate, repair or maintain the Equipment in material compliance with the procedures set forth in any Supplier Documents furnished to Buyer, which procedures are identified therein as necessary to maintain the effectiveness of the warranties or (b) the applicable Defect or failure is attributable to Buyer's or Buyer's contractor's misuse or abuse of the Equipment (c) if the Equipment has been used in a manner contrary to Supplier's instructions set forth in the Supplier Documents that are identified therein as necessary to maintain the effectiveness of the warranties; (d) the applicable Defect or failure is attributable to any materials or equipment provided by Buyer; or (e) if the Equipment has failed as a result of ordinary wear and tear.

8.6. NO IMPLIED WARRANTIES. THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT ARE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. THE REMEDIES SET FORTH HEREIN WITH RESPECT TO SUCH WARRANTIES ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES, AND SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY BREACH OF SUCH WARRANTIES. OTHER THAN THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT, SUPPLIER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER EXPRESS WARRANTIES AND ALL OTHER WARRANTIES, CONDITIONS, DUTIES AND OBLIGATIONS, STATUTORY OR OTHERWISE, IMPLIED IN LAW, INCLUDING THOSE OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CUSTOM, USAGE, OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, OR UNDERSTANDINGS, WHETHER OR NOT IN A CONTEMPORANEOUSLY EXECUTED OR DATED AGREEMENT OR SPECIFICATION, THAT EXTEND BEYOND THOSE SET FORTH HEREIN AND NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT OR REPRESENTATIVE OF SUPPLIER OR ITS AFFILIATES ARE AUTHORIZED BY SUPPLIER.

8.7. Reserved Rights. Without limiting Supplier's obligations hereunder to remedy Defects, Supplier reserves the right (i) to make changes and improvements in its equipment and products without incurring any obligation to make such changes and improvements to any Equipment previously sold under a Purchase Order pursuant to this Agreement; and (ii) to change the terms of the warranty it provides to other Persons in the future without incurring any right or obligation to make the revised terms applicable to any Equipment previously sold under a Purchase Order pursuant to this Agreement. The provisions of this Section 8.7 shall survive the termination or expiration of this Agreement.

9. BUYER FURNISHED PROPERTY.

The term "**Buyer Furnished Property**" shall mean all tools, patterns, equipment, materials or other property which is either supplied by, or purchased by or on behalf of, Buyer or its Representatives to Supplier to perform the Services or furnish the Equipment. Title to Buyer Furnished Property shall remain with Buyer and risk of loss shall be with the

Party who has possession. For Buyer Furnished Property in Supplier's possession, custody or control, Supplier shall insure against loss and damage in an amount equal to full replacement cost. Buyer Furnished Property shall carry no guarantee or warranty, express or implied. Supplier shall not use Buyer Furnished Property on any work other than the Equipment/Services. Supplier shall clearly mark Buyer Furnished Property to show Buyer's ownership and prevent a lien, encumbrance or challenge to Buyer's title thereto. Supplier shall, at its own expense, maintain and repair Buyer Furnished Property returning it to Buyer in the condition in which received, reasonable wear and tear excepted. Upon expiration or termination of the Purchase Order, Supplier shall dispose of Buyer Furnished Property as Buyer directs in writing. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer. The applicable Purchase Order pursuant to which Buyer Furnished Property was furnished to Seller shall remain in effect so long as Supplier possesses Buyer Furnished Property.

10. PACKAGING.

Except where the Purchase Order includes alternative requirements, Supplier shall be responsible for packaging Equipment, and the clear and conspicuous marking of Equipment and packaging, in accordance with Applicable Law, industry standards and in a manner sufficient to permit efficient handling, to provide adequate protection and comply with requirements of carrier and Applicable Law. Packing slips identifying the Purchase Order number, and part number must accompany each shipment. The exterior of each shipping container or package will be clearly marked with Buyer's Purchase Order number and country of origin, which shall also be marked on Equipment, in a clear, conspicuous and permanent manner. Supplier shall provide all necessary shipping documents, including, but not limited to, customs invoices and packing lists in accordance with Buyer's requirements and Applicable Law. Damages and costs incurred by Buyer, its Representative or customer resulting from Supplier or its Representative's failure to comply with this Article 10 shall be paid by Supplier. If Supplier imports wood packaging materials, in accordance with 7 CFR 319.40, Supplier warrants that such wood packaging material is treated and marked under an official program developed and overseen by the National Plant Protection Organization in the country of export.

11. FORCE MAJEURE.

11.1. Effect of Force Majeure. A Party shall not be considered to be in breach or default of this Agreement or any Purchase Order hereunder if and to the extent that its failure or delay in performance or its efforts to cure are prevented by Force Majeure.

11.2. Procedures. If either Party, as a result of the occurrence of a Force Majeure, is rendered wholly or partially unable to perform its obligations under this Agreement or any Purchase Order, such Party shall comply with the following:

(a) the affected Party shall promptly notify the other Party hereto in writing, and in any event within five (5) Business Days after the affected Party becomes aware of the occurrence of such Force Majeure event, describing in such notice the particulars of the occurrence;

(b) the affected Party shall give the other Party written notice estimating the event's expected duration and probable impact on the performance of such Party's

obligations under this Agreement, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the event;

(c) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the event;

(d) no liability of either Party which arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence;

(e) the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party, promptly taking appropriate and sufficient corrective action, including the expenditure of all reasonable sums of money;

(f) the affected Party shall use all reasonable efforts to continue to perform its obligations under this Agreement and to correct or cure the event excusing performance; and

(g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall promptly resume performance and give the other Party written notice to that effect.

11.3. Termination for Extended Force Majeure. If Supplier experiences a Force Majeure Event completely preventing Supplier's performance for more than forty-five (45) consecutive days, Buyer shall have the right to terminate the applicable Purchase Order and shall be entitled to a refund of all monies advanced to Supplier.

12. CHANGE ORDERS.

12.1. Change Order. A "**Change Order**" is a written instrument signed by the Parties and stating their mutual agreement upon a change in the obligations of the Parties under this Agreement or any Purchase Order, including if applicable the amount of the adjustment in the purchase price and the extent of any adjustment to the Delivery schedule, including the Guaranteed Delivery Date.

12.2. Change Order Process. In addition to circumstances set forth herein where the Parties are entitled to a Change Order, either Party may request changes in the obligations of the Parties under this Agreement within the scope of this Agreement consisting of additions, deletions, or other revisions to such obligations. If either Buyer or Supplier wishes to change such obligations, it shall submit a change request to the other Party in writing. If the requested change relates to a change to the Equipment supply obligations or results from a condition in which Supplier is entitled to a Change Order under this Agreement, then, within fifteen (15) Business Days following receipt or delivery, as applicable, of the requested change, Supplier shall submit a proposal to Buyer stating (i) the increase or decrease, if any, in the purchase price and changes to the Delivery schedule and/or the Guaranteed Delivery Date, if any, that would result from such change (collectively, the "**Change Order Information**"). If the proposed change relates to any other matter, the requesting Party, at the time the request for the change is made, shall provide the proposed Change Order Information. Within five (5) Business Days following receipt of the Change Order Information, the Parties shall meet and, acting reasonably, negotiate in good faith a mutually acceptable Change Order in accordance with the principles set forth herein. Following agreement on the terms and conditions of the Change Order, the Parties

shall execute the same. If the Parties do not agree upon the terms and conditions of the Change Order, and the proposed change relates to circumstances in which a Party is entitled to a Change Order under this Agreement, then either Party may submit the matter to dispute resolution pursuant to Article 24.

12.3. Change Order Restrictions. Notwithstanding anything herein to the contrary, Buyer shall not be entitled reduce the scope of the Equipment supply obligations under any Purchase Order.

12.4. No Change. Supplier shall not be obligated to proceed with any change in the Equipment supply obligations requested by Buyer unless and until a Change Order is executed by the Parties in relation to such change. Further, Supplier shall not be required to implement a requested change in the Equipment supply obligations by Buyer if Supplier reasonably believes the implementation of such change would impair Supplier's ability to comply with any of the warranties or the covenants set forth in this Agreement or the applicable Purchase Order.

13. INTELLECTUAL PROPERTY.

13.1. Grant of License. Upon transfer of title with respect to any Equipment purchased hereunder and upon providing parts under the Equipment Warranty hereunder, Supplier hereby grants to Buyer a non-exclusive, transferable, fully paid-up with no further royalty obligation, worldwide, license in and to, all Intellectual Property owned or licensed by Supplier which are necessary for the use and enjoyment by Buyer of Equipment hereunder (the "**License**") to import into the Territory and use the Licensed Technology (including any Intellectual Property in the Licensed Technology) within the Territory, and solely in accordance with the terms of this Agreement. Such license includes a perpetual license to use software provided for the operation of the Equipment including but not limited to all modifications or additions to software upon payment of commercially reasonable service charges to be negotiated, as well as all related documentation and technical information. With respect to any Confidential Information contained within the Licensed Technology, Buyer may disclose such Confidential Information to third party contractors who have a need to know such parts of the Licensed Technology solely for Buyer's use and operation of the Equipment and in accordance with the terms of this Agreement; provided that such third parties shall first execute a confidentiality agreement consistent with this Agreement containing restrictions on disclosure and use at least as restrictive as those in Article 17 (and such third party contractors shall not be permitted to disclose the Licensed Technology to any other third party). The Licensed Technology is Confidential Information of Supplier as defined in Section 17.1 even if not marked as "confidential," "proprietary" or with other such similar language, except where an exception in Section 17.3 applies.

13.2. No Copies. Except as otherwise permitted by this Agreement, Buyer shall not make any copies of the Licensed Technology without first obtaining express written permission from Supplier. Notwithstanding the foregoing, Buyer may make such number of copies of (i) the documentation and manuals for the Equipment or other Intellectual Property licensed hereunder that is not embedded in the Equipment as are required for Buyer's normal use and operation hereunder (including such copies as may be included in or attached to electronic mail messages by Buyer for delivery to Persons who are otherwise permitted recipients of Supplier's Confidential Information hereunder) and (ii) the Licensed Technology as are reasonably required for back-up, disaster recovery and archival purposes.

13.3. Proprietary Notices. Buyer shall not remove or alter, or permit to be removed or altered, any proprietary notices that appear on or with the Licensed Technology. Buyer shall include on and with the Licensed Technology a written notice stating: "Confidential and Proprietary Information of Siemens Industry, Inc.. Access and Use Restricted by License." or such other or additional notice as Supplier reasonably may prescribe.

13.4. Security. Buyer shall take all reasonable steps to ensure that no unauthorized persons have access to the Licensed Technology, and to ensure that no persons authorized to have such access shall take any action which would be in violation of this Agreement. Such steps shall include, but shall not be limited to, imposing password restrictions on use of the Licensed Technology securing Buyer's network on which such Licensed Technology resides from outside intrusion, preventing the making of unauthorized copies of the Licensed Technology and administering and monitoring use of the Licensed Technology.

13.5. No Reverse Engineering. The Licensed Technology includes trade secrets of Supplier or its Affiliates. In order to protect the Licensed Technology, Buyer shall not modify, translate, decompile, reverse engineer, decrypt, extract or disassemble the Licensed Technology or otherwise reduce or attempt to reduce any Software in the Licensed Technology to source code form. Buyer shall ensure, both during and (if Buyer still has possession of the Licensed Technology) after the performance of this Agreement, that (a) Persons who are not bound by a confidentiality agreement consistent with this Agreement shall not have access to the Licensed Technology and (b) Persons who are so bound are put on written notice that the Licensed Technology contains trade secrets, owned by and proprietary to Supplier or its Affiliates.

13.6. Open Source Software. Buyer shall not sell, sublicense, or otherwise make available the Licensed Technology or any part thereof as Open Source Software, nor combine the Licensed Technology with any Open Source Software in a manner that could require the release, disclosure or distribution of the Licensed Technology, or otherwise infect the Licensed Technology so as to impose any obligation on Supplier or diminish any rights Supplier may have therein.

13.7. Reporting. Buyer shall promptly report to Supplier any actual or suspected violation of this Article 13, and shall take such further steps as may reasonably be requested by Supplier to prevent or remedy any such violation.

13.8. Relief. Because unauthorized use or transfer of the Licensed Technology is likely to diminish substantially the value of such Licensed Technology and irreparably harm Supplier and will not be susceptible of cure by the payment of monetary damages, if Buyer breaches the provisions of this Article 13, Supplier shall be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent or restrain such breach.

13.9. Improvements.

(a) By Supplier. Any improvement hereafter made by or for Supplier or any of its Affiliates in the Licensed Technology (including those set out in (b) and (c) below) that is approved and adopted by Supplier for use by Buyer under this Agreement shall be included in the Licensed Technology for purposes of the License. The Parties agree that Supplier may decide in its sole discretion which improvements it shall approve and adopt for purposes of Buyer's use under the License; provided,

however, that if Supplier makes improvements available to buyers similarly situated to Buyer in terms of project scope and fees paid, Supplier also shall make such improvements available to Buyer on terms at least as favorable to Buyer as the terms generally provided to such similarly situated buyers.

(b) By Buyer with respect to Licensed Technology, excluding the Inverter Hardware ("Non-IH Licensed Technology"). Buyer may not modify the Non-IH Licensed Technology except as expressly permitted in this Section 13.9(b). Buyer may suggest modifications in the Non-IH Licensed Technology to Supplier. Any modification or improvement in the Non-IH Licensed Technology suggested by Buyer must first be approved by Supplier in accordance with Section 13.9(a).

(c) By Buyer with respect to Inverter Hardware. Buyer will be permitted to make modifications or improvements to the Inverter Hardware listed in Annex A. Supplier will provide to Buyer Know-How that is reasonably requested by Buyer and that is required to enable Buyer to make modifications or improvements pursuant to this Section 13.9(c). Any modifications or improvements made by Buyer pursuant to this Section 13.9(c) will be owned by Supplier and will be licensed under Section 13.1. Notwithstanding the foregoing, Supplier shall have no liability to Buyer as a result of Buyer's modifications or improvements to the Inverter Hardware.

(d) With respect to both Section 13.9(b) and 13.9(c), Buyer shall own any modifications or improvements to both the Non-IH Licensed Technology and the Inverter Hardware, only if such ownership is mandated by Applicable Law. If Buyer's ownership is legally mandated, Buyer hereby grants to Supplier and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to make, have made, import, offer for sale, sell, copy, make derivative works, use and sublicense to others the right to use these modifications or improvements.

13.10. Ownership.

(a) Supplier. As between the Parties, Supplier or its Affiliates shall own the Licensed Technology, including any modifications, discoveries, derivative works and improvements derived from or based on it, whether developed by Supplier, by Buyer, or by the Parties jointly, all Intellectual Property therein and any Intellectual Property developed during, or arising out of, the performance of Supplier's obligations under this Agreement, to the extent permitted by Applicable Law. Buyer acquires only certain rights to use the Licensed Technology under the License, strictly in compliance with the terms of this Agreement, and does not acquire any ownership rights or title to it.

(b) Buyer. As between the Parties, Buyer or its Affiliates shall own (1) any Intellectual Property developed or acquired by Buyer prior to or independently of this Agreement, and (2) all Intellectual Property therein, excluding in each case any of the Licensed Technology incorporated therein or any Intellectual Property in any combination of the Licensed Technology.

(c) Cooperation. Buyer shall reasonably cooperate with Supplier to assist in perfecting Supplier's ownership in any Intellectual Property in modifications, discoveries, derivative works and improvements to Licensed Technology

developed by Supplier or by the Parties jointly, including by executing declarations, oaths, assignments or other formalities documents as needed.

13.11. Enforcement. Each Party shall notify the other promptly in writing of any suspected infringement by a third party of the Licensed Technology or any of the Intellectual Property therein. Supplier shall have the exclusive right to enforce and defend the rights appurtenant to the Licensed Technology or the Intellectual Property therein in Supplier's sole discretion and shall have the sole right of control of any such enforcement action or proceeding it elects to initiate (an "**Enforcement Action**"), at Supplier's sole cost and expense. Supplier shall keep Buyer timely and reasonably informed as to significant events during the course of all such Enforcement Actions as would reasonably be expected to affect Buyer's use of the Licensed Technology whether conducted for Supplier's or Buyer's account. Buyer shall provide on Supplier's written request reasonable assistance in preparing and advancing Supplier's case, in consideration of which Supplier shall reimburse Buyer's reasonable out-of-pocket costs incurred in doing so (including reasonable attorneys' fees). Supplier may retain any monetary damages or other compensation or recovery awarded to it in any Enforcement Action under this Section 13.11. Notwithstanding the foregoing, Buyer may participate and be represented in any Enforcement Action by its own counsel at its own expense, to the extent such participation and representation does not materially interfere with Supplier's right to control such Enforcement Action. Supplier shall not settle any such Enforcement Action in a manner materially and adversely affecting Buyer's rights in this Agreement, or in a manner including an admission of wrongdoing by Buyer, without obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer has no right to enforce Supplier's Intellectual Property in the Licensed Technology against any third parties.

13.12. Duration and Transfers. Subject to termination in accordance with this Agreement, the License (i) shall continue for so long as Buyer or any successor retains ownership of the Equipment and continues operating the same (ii) shall terminate automatically if and when the Equipment is permanently removed from service (subject to earlier termination in accordance herewith) and (iii) shall transfer as part of an assignment that is permitted under Section 25.5. If Buyer sells or transfers the Equipment, or any portion thereof, apart from an Assignment of this Agreement, the License will terminate as to Buyer with respect to the Equipment, or any portion thereof sold or transferred and Buyer must, as a condition thereof, notify Supplier in writing and assign to the transferee thereof the License with respect to the Equipment, or any portion thereof sold or transferred, and procure from the transferee an assumption of such License, on substantially the same terms as set forth in this Article 13 and in form subject to Supplier's prior reasonable approval, to the extent the License is applicable to the assets being sold or transferred. The License may not be assigned, transferred or sublicensed except as expressly permitted in this Section 13.12. Buyer shall be responsible for, and indemnify, defend and hold harmless Supplier, Supplier's Parent, Supplier's Affiliates, and their respective officers, directors, members, agents and employees from and against any damage, injury or loss resulting from the failure of Buyer to comply with the terms of this Article 13. Supplier may terminate the License, except with respect to any Licensed Technology that is integrated in any Equipment as to which title has transferred to Buyer hereunder, on written notice to Buyer if Buyer (a) fails to cure any material breach of an obligation in this Article 13 which is capable of being cured within thirty (30) days after Supplier's written notice specifying the breach, or (b) on more than two (2) occasions in any five (5) year period, Buyer is found,

through resolution of a Dispute, whether by settlement or otherwise, to have materially breached the terms and conditions of this Article 13 in substantially the same manner.

13.13. Government End Users. The Software portion of the Licensed Technology is a "commercial item" as that term is defined at 48 CFR 2.101, and includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and in the event the Licensed Technology is provided to the US Government, such Licensed Technology shall be provided to the US Government only as a commercial end item. Consistent with 48 CFR 12.212, civilian US Government end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 12.212(a)(1) and (a)(2); Department of Defense end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 227.7202-1 through 227.7202-4.

13.14. Reservation of Rights. Supplier reserves all rights in the Licensed Technology not expressly granted to Buyer in this Agreement. No right or license is granted (expressly or by implication or estoppel) by Supplier to Buyer or its Affiliates under any tangible, Intellectual Property, or other proprietary right.

14. DEFAULTS AND REMEDIES.

14.1. Supplier Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder (a "**Supplier Event of Default**"):

(a) Supplier fails to pay to Buyer any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Supplier voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Supplier and such proceedings remain undismissed or unstayed for a period of ninety (90) days;

(d) Supplier fails to deliver Equipment by the date upon which Supplier exhausts its liability for liquidated damages for delayed deliveries under Section 5.3; or

(e) Except as otherwise expressly provided for in this Section 14.1, Supplier is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Buyer.

14.2. Buyer Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (a "**Buyer Event of Default**"):

(a) Buyer fails to pay to Supplier any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Buyer voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Buyer and such proceeding remains undismissed or unstayed for a period of ninety (90) days;

(d) Any Assignment by Buyer not in conformity with Section 25.5; or

(e) Except as otherwise expressly provided for in this Section 14.2, Buyer is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Supplier.

14.3. Remedies. Upon the occurrence of a Supplier Event of Default, Buyer may, by written notice to Supplier, terminate the outstanding Purchase Order(s) under which the Supplier Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Upon the occurrence of a Buyer Event of Default, Supplier may, by written notice to Buyer, terminate the outstanding Purchase Order(s) under which the Buyer Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Any rights and remedies available under Applicable Law upon termination of this Agreement pursuant to this Section 14.3 shall be limited in all respects by the limitations of liability set forth in Article 16. For sake of clarity, in the event that there are more than one Buyer under this Agreement, (i) a Buyer Event of Default by one such Buyer shall not constitute a Buyer Event of Default by any other Buyer and any remedies available to Supplier shall be exercisable only as against the defaulting Buyer and as regards the non-defaulting Buyer(s) this Agreement and any related Purchase Orders shall continue in full force and effect, and (ii) a Supplier Event of Default with respect to any particular Purchase Order shall only count as a Supplier Event of Default for the applicable Purchase Order and as regards any other Purchase Orders and any other Buyer(s), this Agreement and any related Purchase Orders shall continue in full force and effect.

15. INDEMNIFICATION.

15.1. General. Each Party (the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party, its Affiliates, and their Representatives and assigns (the "**Indemnified Party**") from and against all claims, suits, causes of action, losses, liabilities, liens, damages, assessments, costs, expenses, demands, complaints or actions including but not limited to reasonable attorneys' fees and court costs (collectively, "**Claims**") of third parties concerning: (i) death, personal injury, or property damage of third parties, (ii) nonpayment of wages, benefits, fees, amounts owed, and/or any taxes (including penalties and interest) associated therewith arising from the Indemnifying Party's Representatives, suppliers, contractors, and/or materialmen which may include liens or encumbrances on the Equipment/Services or the premises on which located and (iii) violations by the Indemnifying Party or any Person for whom the Indemnifying Party is responsible of Applicable Law; in each case to the extent arising or resulting from the Indemnifying Party's or its Representative's negligence, willful misconduct, or breach of this Agreement. For sake of clarity, if both Parties are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this Section 15.1

shall continue, but the Indemnifying Party shall indemnify the Indemnified Party only for the percentage of responsibility for the damage or injuries attributable to the Indemnifying Party.

15.2. Infringement Indemnification by Supplier.

(a) Indemnity. If an action is brought or threatened against Buyer claiming that Buyer's use, as permitted herein, of the Licensed Technology within the Territory infringes any Intellectual Property arising or existing under Applicable Law, Supplier shall defend, indemnify and hold harmless Buyer, its Affiliates, and their Representatives and assigns at Supplier's expense from and against any and all Infringement Claim Costs of Buyer to the extent arising from such action or claim.

(b) Corrective Actions. If Buyer's permitted use of the Licensed Technology within the Territory is materially impaired or if Supplier's performance of the Equipment supply obligations under this Agreement or any other obligation is materially impaired by reason of such third party claim, Supplier shall use commercially reasonable efforts, at its expense, to continue its performance of the Equipment supply obligations under this Agreement or the other affected obligations, including at its own election and expense (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent or better or (iii) to obtain for Buyer the right to continue using such item or process. Supplier shall, prior to proceeding with any of the foregoing actions, consult with Buyer as to the proposed action and consider in good faith any reasonable request of Buyer in respect thereof. Nothing herein constitutes a guarantee by Supplier that such efforts will succeed in avoiding the infringement claim or that Supplier will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness. If Supplier reasonably believes that an injunction against use of the Licensed Technology in the Territory may be granted against Buyer, either imminently or with the passage of time, Supplier may at its expense, and upon reasonable prior written notice to Buyer, take any of the foregoing actions in order to minimize its liability.

(c) Exclusions. This Section 15.2 does not apply to, and Supplier assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise) to the extent that such claims relate, in whole or in part, to (i) Buyer's modification or alteration of the Licensed Technology (except, subject to clause (iv) below, to the extent permitted by this Agreement) or the Equipment, in either case made without Supplier's written consent or contrary to Supplier's instructions, (ii) the combination of the Licensed Technology with other Software, products, materials, equipment, parts or apparatus and not approved in writing by Supplier, (iii) a failure to promptly install an update required by Supplier or (iv) Buyer's modifications or improvements to the Inverter Hardware pursuant to Section 13.9(c).

(d) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 15.2 STATE THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND ITS AFFILIATES AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS

OR OTHER INTELLECTUAL PROPERTY BY THE EQUIPMENT OR THE LICENSED TECHNOLOGY OR ANY PART THEREOF, EXCEPT TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED IN ACCORDANCE WITH MANDATORY LEGAL REQUIREMENTS.

(e) Notifications. Buyer shall promptly notify Supplier in writing following receipt of written notice of any claims alleging infringement of patents or other proprietary rights (including Intellectual Property) in connection with Buyer's permitted use of the Licensed Technology or Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations, and shall provide Supplier with all information in its possession relevant to such claim. In turn, Supplier shall notify Buyer as soon as practical in writing of any claims which Supplier may receive alleging infringement of patents or other proprietary rights which may affect Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations under this Agreement or Buyer's right to own, operate and maintain the Equipment.

15.3. Infringement Indemnification by Buyer.

(a) Indemnity. If an action is brought or threatened against Supplier claiming that any condition or event described in Section 15.2(c) results in an infringement upon any Intellectual Property within the Territory arising or existing under Applicable Law, Buyer shall defend, indemnify and hold harmless the Supplier Indemnified Parties at Buyer's expense from and against any and all Infringement Claim Costs of Supplier to the extent arising from such action or claim.

(b) Corrective Actions. If performance of Supplier's obligations hereunder is enjoined by reason of a claim subject to Section 15.3(a), Buyer shall use commercially reasonable efforts, at its option and expense, at its own election (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent, or (iii) to obtain for Supplier the right to continue using such item or process. Nothing herein constitutes a guarantee by Buyer that such efforts will succeed in avoiding the infringement claim or that Buyer will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness.

(c) Exclusions. This Section 15.3 does not apply to, and Buyer assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise), to the extent that such claims relate, in whole or in part, to (i) a modification to the Licensed Technology or the Equipment requested by Buyer but executed by Supplier or with Supplier's supervision and control (except for Buyer's modifications or improvements to Inverter Hardware pursuant to Section 13.9(c) for which Supplier shall have no liability) or (ii) the combination of the Licensed Technology with other products, materials, equipment, parts or apparatus approved in writing by Supplier.

15.4. Indemnification Procedures.

(a) If an Indemnified Party receives written notice of a Claim, the Indemnified Party shall give prompt written notice to the Indemnifying Party, including a reasonably detailed description of the facts and circumstances relating to such Claim, a complete copy of all notices, pleadings and other papers related thereto, and a description in reasonable detail of the basis for the potential claim for indemnification with respect thereto. The Indemnified Party's delay or deficiency in notifying Supplier shall not relieve Supplier of liability or obligation except to the extent (and only to the extent) such delay materially impacts the defense of the Claim.

(b) The Indemnifying Party shall be entitled to assume the defense and to represent the interests of the Indemnified Party, which shall include the right to select and direct legal counsel and other consultants (all of whom shall be reasonably acceptable to the Indemnified Party), appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement, subject to Section 15.4(c) below, all at its sole cost. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants or participating in its own defense at its own cost and expense. Notwithstanding the foregoing, if (i) the claim is primarily for non-monetary damages against the Indemnified Party, or primarily for an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) there is a material actual or potential conflict of interest that makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend (and in the case of clause (iii) above, compromise and settle), such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party; however the settlement of any claim pursuant to clauses (i) and (ii) above shall be governed by Section 15.4(c) below. Notwithstanding anything to the contrary herein, for sake of clarity, the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

(c) Notwithstanding anything to the contrary herein, the Indemnifying Party shall not compromise or settle, or admit any liability with respect to any third party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the relief consists solely of (i) money damages (all of which the Indemnifying Party shall pay), and (ii) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto. If the Indemnified Party assumes the defense of or represents their own interests, no settlement shall be made without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

15.5. Limited Waiver of Certain Immunities. Each of the Parties hereby specifically and expressly agrees that with respect to any and all claims against an Indemnified Party by any representative of an Indemnifying Party, any indemnification available hereunder shall

not be limited by reason of any immunity to which such Indemnifying Party may be entitled under any workers compensation and/or industrial insurance acts, disability benefit acts, or other employee benefits acts and any limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party to such representative with respect to any such claim. For the sake of clarity, the Indemnifying Party's waiver of immunity by the provisions of this section extends only to indemnification claims against the Indemnifying Party by or on behalf of the Indemnified Party under or pursuant to this Agreement, and does not apply to any claims made by the Indemnifying Party's representatives directly against the Indemnifying Party.

15.6. Survival. The indemnities set forth in this Article 15 shall survive the termination or expiration of this Agreement.

16. LIMITATIONS OF LIABILITY.

16.1. WAIVER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE, WHETHER BASED IN CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

16.2. MAXIMUM LIABILITY. SUPPLIER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE SET FORTH IN THE APPLICABLE PURCHASE ORDER PURSUANT TO WHICH THE APPLICABLE CLAIM AROSE.

16.3. EFFECTIVENESS. THE PARTIES AGREE THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 16 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SUPPLIER HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 16 EXTEND TO THE PARTIES' RESPECTIVE AFFILIATES, PARTNERS, PRINCIPALS, MEMBERS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.

16.4. Commencement of Claims. Except with respect to claims arising under Article 13, Article 15 or Article 17, any legal action of either Party arising under this Agreement or any Purchase Order issued hereunder must be commenced within two (2) years after the Delivery of the applicable Equipment or performance of the applicable Service. To the

maximum extent permitted by Applicable Law, each Party hereby waives any right to commence any claim or action after such two (2) year period.

17. CONFIDENTIALITY.

17.1. Confidential Information. Each Party shall, and shall cause its respective Affiliates and Representatives to, keep confidential any information which it may have or acquire before or after the date of this Agreement, concerning the other Party and its assets, business, operations, affairs, financial condition or such information, "**Confidential Information**").

17.2. Non-Disclosure. Neither Party shall use any Confidential Information in any manner detrimental to the other Party nor shall any of them disclose, publish or make accessible, directly or indirectly, any Confidential Information to any person. In addition, the Parties shall exercise all reasonable efforts to prevent any other person from gaining access to such Confidential Information and take such protective measures as may be or become reasonably necessary to preserve the confidentiality of such Confidential Information.

17.3. Exceptions. Notwithstanding Section 17.1 and Section 17.2, either Party may disclose Confidential Information:

(a) to any Representative of such Party, provided that such Representative has a need to know and has been informed of the confidential nature of the information pursuant to Section 17.4;

(b) to the extent required by (i) any Applicable Law of any Governmental Authority (including any rule or regulation of the Securities and Exchange Commission), (ii) any stock exchange rule or regulation or (iii) any binding judgment, order or requirement of any court or other Governmental Authority of competent jurisdiction; provided, that the Party required to disclose Confidential Information, as the case may be, has delivered written notice to and consulted, to the extent practicable, with the other Party prior to disclosure of such Confidential Information; and

(c) to the extent such Confidential Information becomes available within the public domain (otherwise than as a result of a breach of this Article 17).

17.4. Representatives Bound. Each Party shall inform any representative to whom it provides Confidential Information that such information is confidential and shall instruct them (a) to keep such Confidential Information confidential and (b) not to disclose it to any third party (other than those persons to whom such Confidential Information has already been disclosed in accordance with the terms of this Agreement). The disclosing Party shall be responsible for any breach of this Article 17 by the person to whom the Confidential Information is disclosed.

17.5. Survival. Notwithstanding anything herein to the contrary, the provisions of this Article 17 shall survive the termination of this Agreement for a period of three (3) years and, with respect to each Party, shall survive for a period of three (3) years following the date on which such Party is no longer a Party.

18. REPRESENTATIONS AND WARRANTIES.

18.1. Representations of the Parties.As of the Effective Date (or, with respect to each Further

Buyer Contracting Party that becomes a Buyer hereunder, as of the time of execution of a joinder hereto), and as of the entry into of each Purchase Order hereunder, each Party represents to the other Party as follows:

(a) Due Formation. Such Party (i) is a duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) has the requisite power and authority to own its properties and carry on its business as now being conducted and currently proposed to be conducted and to execute, deliver and perform its obligations under this Agreement, and (iii) is qualified to do business in every jurisdiction in which failure so to qualify could be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(b) Authorization; Enforceability. Such Party has taken all action necessary to authorize it to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to bankruptcy, reorganization, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and subject to general principles of equity.

(c) No Conflict. The execution, delivery and performance by such Party of this Agreement does not and will not (i) violate any Applicable Law, (ii) result in any breach of such Party's constituent documents or (iii) conflict with, violate or result in a breach of or constitute a default under any agreement or instrument to which such Party or any of its properties or assets is bound or result in the imposition or creation of any lien or security interest in or with respect to any of such Party's property or assets, other than in each case any such violations, conflicts, breaches or impositions which could not be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(d) No Authorization. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any third party (other than those which have been obtained) is required for the due execution, delivery and performance by such Party of this Agreement, other than any such authorizations, approvals or actions the failure of which to obtain could not reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(e) Litigation. Such Party is not a party to any legal, administrative, arbitration or other proceeding, and, to such Party's knowledge, no such proceeding is threatened, before any Governmental Authority that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of this Agreement, the subject matter hereof, or that which could be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

18.2. Additional Representations of Supplier.In addition to representations and warranties set forth elsewhere in this Agreement, Supplier hereby represents and warrants as of the Effective Date and as of the entry into of each Purchase Order hereunder as follows:

(a) None of Supplier, its Affiliates or Representatives is the target of or designated under any sanctions program that is established by statute or regulation of the

United States, by Executive Order of the President of the United States, or by designations of any department or agency of the United States government including but not limited to those designations reflected in the "list of Specially Designated Nationals and Blocked Persons" of the Office of Foreign Asset Control, U.S. Department of the Treasury;

(b) Supplier's Representatives are legally authorized to work in the United States and Supplier shall complete as required by Applicable Law the Department of Labor's Form I-9 and to retain it for the statutorily designated period and, if requested by Buyer, Supplier shall provide copies of such Forms I-9 to Buyer unless such disclosure shall be prohibited by Applicable Law;

(c) For Services provided at Buyer's, it's customer or third party's premises, Supplier has examined the worksite in order to acquaint itself with the local conditions, including applicable regulations codes, permits, licenses, registrations, environmental standards, and notification requirements concerning site safety and/or security;

Supplier has not and will not, absent prior written approval from Buyer, take any actions that: (i) create, or purport to create, any obligation on behalf of Buyer, or (ii) grant, or purport to grant, any rights or immunities to any third party under Buyer's intellectual property or proprietary rights; and

(d) The bank account named by Supplier to Buyer for all payments to be effected in connection with any Purchase Order hereunder is held in Supplier's name and solely for its account.

19. ENVIRONMENT, HEALTH AND SAFETY.

19.1. Compliance and Related Matters.

(a) Each of the Parties shall, in addition to other obligations set forth in this Agreement, during the course of performance of their respective obligations under this Agreement or any Purchase Order issued hereunder:

(i) comply with Applicable Laws concerning health, the environment, safety, or pertaining to or regulating pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes, including without limitation the handling, transportation and disposal thereof, or governing or regulating the health and safety of personnel, including but not limited to the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act ("**TSCA**"), as amended (collectively referred to as "**EHS Laws**") (pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes as defined under EHS Laws shall be referred to collectively as "**Hazardous Materials**");

(ii) take reasonable and prudent measures, as appropriate, consistent with applicable industry standards, to mitigate hazards to the environment and to the health and safety of persons;

(iii) select and use only equipment, including but not limited to personal protection equipment, that comports with EHS Laws, implement programs to train its Representatives in the use of such equipment in a safe and lawful manner, and maintain such equipment in good working order at all times; and

(iv) promptly notify the other Party of any incident involving death, injury or damage to any person or property in connection with any Equipment or Purchase Order.

(b) Supplier shall, in addition to other obligations set forth in this Agreement, during the course of performance of its obligations under this Agreement or any Purchase Order issued hereunder:

(i) ensure that Equipment/Services comply with EHS Laws;

(ii) ensure the Equipment, and any and all parts, components, or material thereof, as Delivered by Supplier, bear all markings, labels, warnings, notices or other information required under applicable EHS Laws at the time of such Delivery; and

(iii) comply with any applicable substance declarations and other requirements set forth in Exhibit C.

19.2. On-Site Environmental and Safety Responsibility. Where the Purchase Order includes the presence of Supplier or its Representatives on the premises of Buyer, Buyer's customer, or any other location other than the premises of Supplier ("**Work Site**"), Supplier shall: (1) be responsible for the safety, health, medical surveillance, industrial hygiene, training and all other matters required under EHS Laws relating to safety and health of its Representatives at the Work Site, (2) appoint a competent person as its representative for environmental, health and safety who shall take part in safety discussions with Buyer, its Representatives, customer, or the owner of the Work Site, (3) be responsible for the handling, use, transportation and disposal of any and all substances regulated under the EHS Laws which Supplier or its Representatives bring onto the Work Site or generate in the performance of Supplier's work pursuant to the applicable Purchase Order, including but not limited to excess, waste or residue, containers or any of such substances not consumed, and for any spills, releases or discharges of such substances to the extent attributable to acts or omissions of Supplier or its Representatives, strictly in accordance with EHS Laws, and (4) ensure Supplier's Representatives participate in any site-specific safety training and comply with all rules and requirements of Buyer, its customer, or such other owner of the Work Site, in each case, of which Buyer provides Supplier advance written notice.

19.3. Health and Safety Plan. Prior to commencing any Services at a Work Site, Supplier shall, in accordance with EHS Laws provide and comply with a site specific health and safety plan, Work Site requirements, and shall make the same available to Buyer or its Representatives at Buyer's request. If Supplier fails to comply with this Article 19, Buyer may, at its sole option and without limiting its other rights, order Supplier or its Representatives to cease Services until Supplier complies at Supplier's sole cost and expense. If Supplier is unable or refuses to take corrective action hereunder Buyer may contract with a third party or otherwise continue such Services at the Work Site and charge

Supplier any excess cost reasonably incurred by Buyer. Buyer shall have the right, at its sole discretion, to remove Supplier or its Representatives from a Work Site for violation of this Article 19.

20. OPEN SOURCE SOFTWARE.

Supplier shall inform Buyer no later than ten (10) Business Days following receipt of any written request from Buyer in connection with a Purchase Order, whether the Equipment/Services contemplated thereby include "Open Source Software." As used herein "**Open Source Software**" means any Software that is licensed royalty-free (i.e., fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor can be permitted) under any license terms or other contract terms ("**Open License Terms**") which require, as a condition of use, modification and/or distribution of such Software and/or any other Software incorporated into, derived from or distributed with such software ("**Derivative Software**"), either of the following: (i) that the source code of such Software and/or any Derivative Software be made available to third parties; or (ii) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties. If Open Source Software is included, Supplier shall deliver to Buyer, not later than the date of order confirmation, (A) a schedule of all Open Source Software files known to be used, indicating the relevant license(s) to the extent known by Supplier; and (B) a written notice that Supplier is not aware of any violation of such license(s) due to such Use of Open Source Software.

21. EXPORT CONTROL AND FOREIGN TRADE REGULATIONS.

21.1. Acknowledgement and Compliance. The Parties acknowledge that all Equipment to be delivered and Services to be provided according to this Agreement are subject to export control and sanctions laws and regulations, including, without limitation, the U.S. Export Administration Regulations ("**EAR**") (15 C.F.R. §§ 730-774), the U.S. Foreign Trade Regulations (15 C.F.R. Part 30), and the regulations, rules, and executive orders administered by OFAC (collectively, the "**Export Controls and Sanctions Laws**"). Each Party agrees to comply with all Export Controls and Sanctions Laws applicable to any such Equipment/Services and shall not take any action that will cause the other Party to violate or be subject to penalty under the Export Controls and Sanctions Laws.

21.2. Export Licenses. Supplier shall obtain all necessary export licenses, unless Buyer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Export Controls and Sanctions Laws. To the extent Supplier is requested to deliver Equipment/Services regulated under the Arms Export Control Act or the Atomic Energy Act, Supplier shall advise Buyer in advance of order or contract acceptance.

21.3. Provision of Trade Data. At the request of Buyer, Supplier shall provide Buyer for Equipment and Services delivered the following trade data as applicable: (i) "Export Control Classification Number" according to the EAR's Commerce Control List (ECCN) or the Munitions List Category Designation according to the US International Traffic in Arms Regulations, and all other export control list numbers; (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates, Supplier's declaration for preferential origin (in case of European suppliers) or

preferential certificates (in case of non-European suppliers) such as NAFTA certificates of origin.

21.4. Changes. In the event Supplier has knowledge of any alterations to origin and/or characteristics of the Equipment/Services, it shall notify the Buyer not later than ten (10) Business Days after discovery thereof.

21.5. Additional Buyer's Obligations. Buyer agrees that it will not, in violation of applicable Export Controls and Sanctions Laws:

(a) directly or indirectly, export, reexport, or transfer Equipment or Services to, or transship Equipment or Services through, a Sanctioned Country;

(b) directly or indirectly, release, sell, provide, export, reexport, transfer, divert, loan, lease, consign, allow access to, or otherwise dispose of Equipment or Services to a Prohibited Person; or

(c) use Equipment or Services to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.

21.6. Certain Relief. No Party shall be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

22. CODE OF CONDUCT.

Supplier shall comply with the principles and requirements of the "Code of Conduct" attached hereto as Exhibit D (hereinafter the "**Code of Conduct**"). If and as requested by Buyer, Supplier shall, not more than once a year (at its option), provide to Buyer either (A) a written self-assessment in substantially the form provided by Buyer or (B) a written report reasonably acceptable to Buyer describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct. In addition to any other rights and remedies Buyer may have, in the event of Supplier's material or repeated failure to comply with the Code of Conduct, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Buyer may terminate any outstanding Purchase Orders under this Agreement without any liability whatsoever. Material failures include, but are not limited to, incidents of child labor, corruption and bribery. The notice and remedy provisions herein shall not apply to material failures set forth in the preceding sentence.

23. COMPLIANCE WITH LAWS AND PERMITS.

The Parties and their Representatives shall comply with all Applicable Laws in the course of the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder. In addition, Supplier and Buyer shall each obtain all required licenses, permits, authorizations, registrations or approvals required with respect to the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder.

24. DISPUTE RESOLUTION.

24.1. Referral to Senior Management. Except as otherwise provided by this Agreement, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof (which breach or alleged breach by a Party remains uncured within ten (10) Business Days after receipt of written notice thereof from another Party) or the validity or termination hereof or the relationship created between the Parties by and/or through this Agreement (a "**Dispute**") shall first be settled as far as possible by good faith negotiations between the parties to the Dispute, in the form of meetings between senior- management level representatives of such Parties, upon the written request by any such Party to the other parties to the Dispute, which writing shall set forth in reasonable detail the nature and extent of the Dispute.

24.2. Referral to Arbitration. If the parties to the Dispute are unable for any reason to resolve a Dispute within thirty (30) days after receipt by any Party of written notice of a Dispute, then any Party may submit the Dispute to arbitration to be finally and exclusively resolved under the Arbitration Rules of the American Arbitration Association ("**AAA**") then in effect, except as modified herein, with respect to Equipment and Services to be provided to a Customer with the United States (as applicable, the "**Rules**"). There shall be three (3) arbitrators. If there are two (2) parties to the Dispute, each of the parties to the Dispute shall nominate one (1) arbitrator in accordance with the Rules. If there are more than two (2) parties to the Dispute, the arbitrators shall be nominated in accordance with the Rules; provided, however, that any Party and its Affiliates shall be entitled to nominate only one (1) such arbitrator. The arbitrators so nominated, once confirmed by the AAA, shall nominate an additional arbitrator to serve as chairman, such nomination to be made within fifteen (15) days of the confirmation by the AAA of the second arbitrator. If the initial arbitrators shall fail to nominate an additional arbitrator within such fifteen (15) day period, such additional arbitrator shall be appointed by the AAA. The arbitrators shall be required to submit a written statement of their findings and conclusions. Except as otherwise agreed by the parties to such Dispute, exclusive venue of arbitration with the AAA will be Wilmington, Delaware, and the language of the arbitration shall be English. Each of the Parties will submit to the non-exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware for preliminary relief in aid of arbitration and for the enforcement of any arbitral award from AAA. By agreeing to arbitration, the Parties do not intend to deprive any national court of its jurisdiction to issue any pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings.

24.3. Neutral Arbitrators. None of the Parties or the arbitrators shall select any arbitrator for the arbitral tribunal who has any interest in the Dispute or who has, or within the immediately preceding five (5) years has had, any economic or other relationship with any party to the Dispute.

24.4. Procedures and Costs. The arbitrators shall not have the right to award consequential, incidental, indirect, special, treble, multiple or punitive damages. The arbitral tribunal shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur, and the arbitral tribunal shall decide the Dispute under the substantive laws of the State of Delaware, without regard to applicable choice of law provisions thereof. The arbitration award shall be decided by majority opinion and issued in writing in the English language and shall state the reasons upon which it is based. It may be made public only with the consent of each participating Party or as may be required by law or regulatory authority or as necessary for enforcement of such award. The arbitrators shall allocate the fees and costs of the arbitration. The losing Party(ies) shall pay the prevailing Party(ies)' attorney's fees and costs and the costs associated with the arbitration, including the expert fees and

costs and the arbitrators' fees and costs borne by the prevailing Party(ies), all as determined by the arbitrators. Each Party shall bear its own fees and costs until the arbitrators determine which, if any, Party is the prevailing Party(ies) and the amount that is due to such prevailing Party(ies).

24.5. Award. The award rendered by the arbitrators shall be final and binding on the participating Parties and shall be the sole and exclusive remedy between and among the participating Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. The award shall be issued no later than one hundred twenty (120) days from the signing or ratification of the Terms of Reference (as defined in the Rules) or as soon thereafter as practicable. The award shall be paid within thirty (30) days after the date it is issued and shall be paid in U.S. Dollars in immediately available funds, free and clear of any Liens, Taxes or other deductions. A judgment confirming or enforcing such award may be rendered by any court of competent jurisdiction.

24.6. Confidentiality. The arbitration shall be confidential. No Party may disclose the fact of the arbitration, any award relating thereto or any settlement relating to any Dispute without the prior consent of the other Party(ies); provided, that such matters may be disclosed without the prior consent of the other Party(ies) to lenders, auditors, tax or other Governmental Authority or as may be required by law or regulatory authorities or as necessary to enforce any award.

24.7. Continued Performance; Provisional Remedies. Notwithstanding the existence of any Dispute, the Parties shall continue to perform their respective obligations under this Agreement unless the Parties otherwise mutually agree in writing. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it, prevent the Parties from seeking temporary injunctive relief at any time as may be available under Law or in equity to preserve its rights pending the outcome of any arbitration. Without prejudice to such provisional remedies as may be available under the jurisdiction of a national court, the arbitral tribunal shall have full authority to grant provisional remedies or order the Parties to request that a court modify or vacate any temporary or preliminary relief issued by a court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect. The Parties agree that any issue regarding the arbitrability of any claims or disputes arising under, relating to or in connection with this Agreement is an issue solely for the arbitrators, not a court, to decide.

24.8. Waiver of Jury Trial. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY OR OTHERWISE ON ANY CLAIM, CAUSE OF ACTION, SUIT OR PROCEEDING PERMITTED UNDER THIS ARTICLE 24. THE PROVISIONS OF THIS AGREEMENT RELATING TO WAIVER OF TRIAL BY JURY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

25. MISCELLANEOUS.

25.1. Governing Law. This Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Equipment of April 11, 1980 shall be excluded.

25.2. Records. Supplier and its Representatives shall maintain accurate and complete records of all contracts, papers, correspondence, copybooks, applications, accounts, invoices,

and/or other information reasonably relating to this Agreement and any Purchase Orders issued hereunder (collectively, "**Records**") in accordance with recognized commercial accounting practices, and shall retain such Records for a period of seven (7) years unless a longer period is required under Applicable Law.

25.3. Intentionally Omitted.

25.4. Insurance. Supplier and its Representatives shall comply with the Insurance requirements set forth in Exhibit E attached hereto.

25.5. Assignment; Successors. Neither Party may assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment which fails to comply with the requirements of this Section 25.5 shall be null and void. Notwithstanding the foregoing: (i) either Party may, without the prior written consent of the other Party, assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, to an Affiliate, which will accept such assignment and assume all obligations related to this Agreement and any applicable Purchase Orders (including by executing a joinder to this Agreement in the form of Exhibit B hereto); provided that, notwithstanding any such assignment, the assigning Party shall not be relieved of any of its obligations hereunder by reason of such assignment and shall remain liable hereunder to the same degree that the assigning Party would be responsible had there been no assignment.

25.6. Subcontracting. Supplier shall be solely responsible for the proper selection, supervision, acts and omissions of its subcontractors.

25.7. Other Terms and Amendments. The terms and conditions contained in any sales order, acknowledgment, invoice, website, letter, writing, software or file (such as "clickwrap", "shrinkwrap", or website terms of use), or other document or medium shall not be applicable or amend this Agreement or any Purchase Order issued hereunder nor bind the Parties hereto or their Affiliates or Representatives. This Agreement and any Purchase Order issued hereunder may only be amended by a written instrument signed by authorized Representatives of the Parties.

25.8. Government Contracts. When the Equipment/Services are to be used in the performance of a contract or subcontract with a Governmental Authority, applicable government contract requirements attached to this Agreement shall apply and are incorporated herein by reference.

25.9. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, employee-employer relationship, trust or other association of any kind between the Parties and each Party shall be individually responsible only for its obligations as set forth in this Agreement. Any Services provided by Supplier, its Affiliates and Representatives pursuant to this Agreement are provided as independent contractors of Buyer and not in the capacity of an employee or agent of Buyer.

25.10. Publicity. No Party hereto shall refer to or use, or permit any persons to refer to or use, any other Party's name, trademarks, service marks or logos in any advertising,

promotional materials, press releases or other publicity without obtaining the prior written consent of the applicable Party.

25.11. Non-Exclusive Remedies and Non-Waivers. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. Any waiver authorized on one occasion must be made in writing and is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The rights and remedies of the Parties herein shall not be exclusive and are in addition to any other rights and remedies provided by Applicable Law or in equity.

25.12. Severability. Any provision of this Agreement or any Purchase Order issued hereunder that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (provided the substance of the agreement between the Parties is not thereby materially altered), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Laws, the Parties hereto hereby waive any provision of Applicable Law which renders any provision hereof prohibited or unenforceable in any respect.

25.13. Survival. The Title and Risk of Loss, Warranties, Intellectual Property, Defaults and Remedies, Indemnification, Limitations of Liability, Confidentiality, Export Control and Foreign Trade Regulations, Dispute Resolution and Miscellaneous sections of this Agreement, and any provision that contemplates performance or observance subsequent to termination or expiration shall survive termination or expiration of this Agreement.

25.14. Affirmative Action. Supplier shall, to the extent applicable, comply with Buyer's requirements as promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs set forth in Exhibit F.

25.15. Complete Agreement and Counterparts. This Agreement, together with all Purchase Orders issued hereunder, shall constitute the entire agreement between Buyer and Supplier and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof. The headings used in this Agreement are for reference and shall not limit or affect the meaning or interpretation of any of the terms hereof. Upon the effectiveness of this Agreement, if at all, the Prior Agreement shall be deemed amended and restated and superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

25.16. Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

25.17. No Pre-Printed Terms. Pre-printed terms or conditions in any invoice, quotation, shipping notice or order acknowledgement issued by Buyer or Supplier shall be of no force or effect, except to the extent included in a Pricing Notice. The terms and conditions applicable to

each Purchase Order issued by Buyer shall be those set forth herein and in such Purchase Order and the applicable Pricing Notice therefor.

25.18. Priority. In the event of inconsistency between or among the provisions of this Agreement, a Purchase Order and the applicable Pricing Notice therefor, the following order of precedence, from highest to lowest, shall govern:

(a) mutually agreed Change Orders;

(b) Purchase Order;

(c) this Agreement.

25.19. Notices.

(a) All notices and other communications which either Party is required or may desire to serve upon the other shall be addressed to the Party to be served as follows, unless a different address is designated in writing by the Party to be served:

To Supplier:

Siemens Industry, Inc.
800 Northpoint Parkway, #450
Alpharetta, GA 30005
Attn: Craig Langley, Associate General Counsel
Email: langley.craig@siemens.com

With a copy to:

Officer of the General Counsel
Siemens Industry, Inc.
100 Technology Drive
Alpharetta, GA 30005
Attn: Lisa Greene
Email: lisa.greene@siemens.com

To Buyer:

Fluence Energy, LLC
4601 N. Fairfax Drive, Suite 600
Arlington, VA 22203
Attn: Marek Wolek, SVP – Strategy & Partnerships
Email: marek.wolek@fluenceenergy.com

With a copy to:

Fluence Energy, LLC
4601 N. Fairfax Drive, Suite 600
Arlington, VA 22203
Attn: Frank Fuselier, General Counsel
Email: frank.fuselier@fluenceenergy.com

(b) All notices, requests, consents and other communications under this Agreement must be in writing and shall be deemed to have been duly given and effective (i) immediately (or, if not delivered or sent on a Business Day, the next Business Day) if delivered or sent and received by electronic mail, (ii) on the date of delivery if by hand delivery (or, if not delivered on a Business Day, the next Business Day) or (iii) on the first Business Day following the date of dispatch (or, if not sent on a Business Day, the next Business Day after the date of dispatch) if by a nationally recognized overnight delivery service (all fees prepaid). In the case of notice via email, each Party shall provide confirmation of receipt or non-receipt upon the request of the transmitting Party.

(c) All notices, requests, consents and other communications under this Agreement shall include reference to the applicable Purchase Order number, if any.

25.20. Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or Exhibits hereto.

25.21. Language of the Agreement, Correspondence, Documentation. The language of this Agreement shall be English. Unless to the extent agreed otherwise, correspondence, technical and commercial documents as well as any other information exchanged between the Consortium Members relating to this Agreement shall be in English.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

Gratzke Ruth — Digitally signed by Gratzke Ruth DN: cn=Gratzke Ruth, o=Siemens, Date: 2021.10.26 17:06:07 -04'00'

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

Smith Marsha — Digitally signed by Smith Marsha DN: cn=Smith Marsha, o=Siemens, Date: 2021.10.26 17:47:12 -04'00'

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

Exhibit A

Form of Purchase Order

The following sets forth the minimum terms and conditions to be included on a Purchase Order under this Agreement, which terms and conditions may be modified or supplemented by the mutual agreement of the Parties:

Equipment:

1. Type of Equipment
2. Quantity of Equipment
3. Unit Price of Equipment
4. Total Price of Equipment on this Purchase Order
5. Manufacturing Location
6. Incoterms and Delivery Location
7. Guaranteed Delivery Date
8. Insurance
9. Equipment Warranty Period
10. IP/Software Terms
11. Supplier Documents
12. Technical Specifications
13. Special Packaging Requirements

Services:

1. Type of Services
2. Amount of Services
3. Price of Services
4. Total Price of Services on this Purchase Order
5. Performance Location
6. Performance Date(s)
7. Insurance
8. Services Warranty Period
9. IP/Software Terms

10. Supplier Documents

11. Specifications

Other Terms:

1. Electronic Banking Method for Payments

2. Buyer Furnished Property

EXHIBIT B

Joinder Agreement Template

This Joinder Agreement (the "Joinder Agreement") to the Equipment and Services Purchase Agreement, dated January 1, 2018 between Siemens Industry, Inc. and Fluence Energy, LLC is made and entered into

by and between

___
with its registered seat in [Place], [Country]

- hereinafter referred to as "Supplier" -

and

___,
with its registered seat in [Place], [Country]

- hereinafter referred to as "Buyer" -

- Supplier and Buyer are hereinafter individually referred to as a "Party" and collectively as the "Parties" -

WHEREAS, Supplier and **Fluence Energy, LLC** ("Fluence") entered on January 1, 2018 into the Equipment and Services Purchase Agreement (the "Agreement") which is attached hereto as Annex 1;

WHEREAS, Buyer is an Affiliate of Fluence and wishes to become a party to the Agreement and to adopt the terms and conditions thereof, and consequently Supplier and Buyer wish to enter into this Joinder Agreement.

NOW THEREFORE, in consideration of the mutual covenants and premises contained herein, the Parties agree as follows:

ADOPTION OF THE AGREEMENT

a) Buyer hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, Buyer shall be deemed a party to the Agreement for all purposes of the Agreement, and shall have all of the obligations of a "Buyer" under the Agreement, as though an original party to the Agreement. Buyer hereby ratifies, as of the date hereof, and agrees to be bound by, and subject to, all of the covenants, terms, provisions and conditions applicable to "Buyer" contained in the Agreement. The terms and conditions as set out in the Agreement are incorporated herein by reference and are made applicable between the Parties.

b) Without limiting the generality of the foregoing, Buyer hereby represents and warrants that each of the representations and warranties of "Buyer" contained in the Agreement is true and correct as of the date of the execution and delivery of this Joinder Agreement.

c) This Joinder Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles.

d) This Joinder Agreement contains the entire agreement between the Parties and supersedes any and all prior negotiations, correspondence, understandings between the Parties concerning the subject matter hereof. It may not be changed orally, but only by an agreement in writing signed by both Parties hereto.

e) This Joinder Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Joinder Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

SPECIFIC STIPULATIONS UNDER THIS JOINDER AGREEMENT

[**ONLY** country specific deviations from the Agreement are to be stipulated here.]

a) [Delivery and Payment terms]

b) [Term and Termination]

c) [Country specific regulations (jurisdiction, governing law, tax etc.)]

d) ...

ORDER OF PRECEDENCE BETWEEN THE AGREEMENT AND THE ADOPTION AGREEMENT

In the event of any conflict or inconsistency between the terms of this Joinder Agreement and the Agreement, the Joinder Agreement shall prevail over the Agreement.

Supplier		**Buyer**	
Place, Date:		Place, Date:	
_____		_____	
_____	_____	_____	_____
Name:	Name:	Name:	Name:
_____	_____	_____	_____
(Print)	(Print)	(Print)	(Print)
Title:	Title:	Title:	Title:
_____	_____	_____	_____

Annex 1: Equipment and Services Purchase Agreement

Exhibit C

Substance Declaration

If Supplier furnishes Equipment that is subject to restrictions, rules or regulations for Hazardous Materials or other substances comprising, part of or contained in such Equipment, including but not limited to (1) EHS Laws, including TSCA, (2) other statutes, rules, regulations, codes, rules, standards and requirements governing, controlling or regulating Hazardous Materials, including but not limited to the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (hereinafter "RoHS"), Directives 2002/96/EC and 2012/19/EU as well as their respective incorporation into EU member states' legislation including any amendments thereto (hereinafter "WEEE"), (3) the Regulation EC 1907/2006 of the European Parliament and of the Council of the European Union concerning the Registration, Evaluation, Authorization and Restriction of Chemicals including any amendment thereto (hereinafter "REACH"), and/or (4) EC Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators, without limiting Supplier's obligations under this Agreement, Supplier shall comply with the requirements of this "Substance Declaration".

Supplier shall submit to Buyer with the Equipment, a list of the chemical substances contained therein, and/or Material Safety Data Sheets, Safety Data Sheets or other such documentation as required by Applicable Laws (including without limitation the OSHA Hazardous Communication Standard 29 CFR 1910.1200 et seq.). If Supplier furnishes Equipment that is subject to substance restrictions, rules or regulations including but not limited to those identified in this Exhibit, Supplier shall declare such substances on the Buyer web database BOMcheck (www.BOMcheck.net) or, only if and approved in writing in advance by Buyer, in another reasonable format provided to Buyer no later than first delivery date of the Equipment, and Supplier shall prior to Supplier's first delivery of Equipment complete and comply with the Declarable Substances-Form (hereinafter "Substance Declaration") in the Buyer supplier portal "c4seasy" or in hard copy forwarded to Buyer. In addition, for Equipment that is subject to substance restrictions, rules or regulations Supplier shall provide Buyer with a safety data sheet required in Article 31 of the Regulation EC 1907/2006 (REACH) for Equipment that is or contains substances subject to such substance restrictions, rules or regulations, and Supplier shall keep this Substance Declaration up to date. Should a delivery hereunder contain "dangerous goods" as so classified pursuant to Applicable Laws, Supplier shall notify Buyer in writing in sufficient detail to identify the Equipment, the hazards, and the laws, rules or regulations applicable thereto no later than three (3) business days after receipt of the Purchase Order.

Exhibit D

Code of Conduct

This Code of Conduct defines the basic requirements placed on Buyer's suppliers and third party intermediaries concerning their responsibilities towards their stakeholders and the environment. Buyer reserves the right to reasonably change the requirements of this Code of Conduct. In such event Buyer expects the supplier to accept such reasonable changes.

The supplier and/or third party intermediary declares herewith:

- **Legal compliance**
  - to comply with the laws of the applicable legal Equipment and Services.
- **Prohibition of corruption and bribery**
  - to tolerate no form of and not to engage directly or indirectly in any form of corruption or bribery and not to grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage.
- **Fair competition, anti-trust laws and intellectual property rights**
  - to act in accordance with national and international competition laws and not to participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors;
  - to respect the intellectual property rights of others.
- **Conflicts of interest**
  - to avoid all conflicts of interest that may adversely influence business relationships.
- **Respect for the basic human rights of employees**
  - to promote equal opportunities for and treatment of its employees irrespective of skin color, race, nationality, social background, disabilities, sexual orientation, political or religious conviction, sex or age;
  - to respect the personal dignity, privacy and rights of each individual;
  - to refuse to employ or make anyone work against his will;
  - to refuse to tolerate any unacceptable treatment of employees, such as mental cruelty, sexual harassment or discrimination;
  - to prohibit behavior including gestures, language and physical contact, that is sexual, coercive, threatening, abusive or exploitative;
  - to provide fair remuneration and to guarantee the applicable national statutory minimum wage;
  - to comply with the maximum number of working hours laid down in the applicable laws;
  - to recognize, as far as legally possible, the right of free association of employees and to neither favor nor discriminate against members of employee organizations or trade unions.
- **Prohibition of child labor**
  - to employ no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, to employ no workers under the age of 14.
- **Health and safety of employees**
  - to take responsibility for the health and safety of its employees;
  - to control hazards and take the best reasonably possible precautionary measures against accidents and occupational diseases;

- to provide training and ensure that employees are educated in health and safety issues;
- to set up or use a reasonable occupational health & safety management system.

- **Environmental protection**
  - to act in accordance with the applicable statutory and international standards regarding environmental protection;
  - to minimize environmental pollution and make continuous improvements in environmental protection;
  - to set up or use a reasonable environmental management system
- **Supply chain**
  - to use reasonable efforts to promote among its suppliers compliance with this Code of Conduct;
  - to comply with the principles of nondiscrimination with regard to supplier selection and treatment.
- **Conflict Minerals**
  - to take reasonable efforts to avoid in its products the use of raw materials which directly or indirectly finance armed groups who violate human rights.

Exhibit E

Insurance

(A) Supplier shall, at its sole expense, maintain, and shall require its Representatives to maintain, the types of insurance coverage(s) listed below. The coverage limits for each type of insurance listed below shall be the greater of: (i) the coverage limits listed below; or (ii) if the applicable Attachments require Supplier to maintain higher limits, then the coverage limits specified in the Attachments. Evidence of insurance required by this Agreement is to be furnished before any Equipment/Services is commenced. Supplier and its Representatives shall maintain such insurance in full force and effect during the term of this Agreement, and, in addition, for as long as Supplier is under any warranty obligations arising out of this Agreement. All insurers on required insurance coverage(s) shall have an A.M. Best Rating of A- /VIII or better. Buyer and its subsidiaries, affiliates, and its or their Representatives, and/or any other party designated on the Face Page as applicable shall be named as an additional insured, with respect to the Commercial General Liability and Automobile Liability policies/coverage(s). All insurance certificates shall be in a form satisfactory to Buyer. Supplier shall deliver the certificates of insurance, naming Buyer and, if applicable, Buyer's customer, as the Certificate Holder. All of Supplier's policies of insurance, except for Workers' Compensation and Employers Liability, shall be primary insurance and noncontributing with any other insurance maintained by Buyer, Buyer's customer and/or other parties. All of Supplier's policies of insurance, except for Worker's Compensation and Employer's Liability, shall contain a cross-liability or severability of interest clause. The limits of insurance set forth below may be satisfied by any combination of excess and primary insurance coverage. Supplier shall require all its insurers to waive all rights of subrogation against Buyer, Buyer's customer, and their respective subsidiaries, affiliates, and Representatives, and any other party designated as an additional insured.

B) Supplier shall maintain the following insurance coverage(s):

Worker's Compensation Insurance in accordance with the statutory requirements of the location in which the Purchase Order is performed. If there is an exposure to injury to Supplier's employee under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage required by law shall be provided for same.

Employer's Liability Insurance with the following limits of liability:

- $1,000,000 for each occurrence;
- $1,000,000 Disease Policy
- $1,000,000 Each Employee.

Commercial General Liability Insurance, in occurrence coverage form, with minimum limits of $5 million per occurrence, including the following coverages:

- Products and Completed Operations

- Contractual Liability insuring the obligations assumed by Supplier under this Agreement
- Premises/Operations
- Underground, Undermining, Explosion and Collapse (XCU) Hazard,
- Supplier's Contractor's Protective Liability
- Broad Form Property Damage (including Completed Operations)

Automobile Liability Insurance, including coverage for owned, hired, and non-owned automobiles and trucks used by or on behalf of the Supplier providing insurance for bodily injury, liability and property damage liability with minimum limits for each type of coverage of $5,000,000 per occurrence.

(C) The following are required if a Purchase Order involves such exposures: (i) Exposure to Hazardous Materials, then Environmental Impairment Liability Insurance (including Asbestos) with limits of $5,000,000 per occurrence; (ii) Involves watercraft owned, operated or chartered by Supplier or its Representatives, liability arising out of such watercraft shall be insured by the General Liability or by Protection and Indemnity Insurance with a CSL of no less than $1,000,000 per each occurrence; (iii) Involves the hauling and/or rigging of property in excess of $100,000, Supplier shall carry "All Risk" Transit Insurance, or "All Risk" Motor Truck Cargo Insurance (Such insurance shall provide a limit of not less than the replacement cost of the highest value single lift or highest value being moved, whichever is greater, and insuring the interest of Supplier, Buyer and Buyer's customer, as their respective interests may appear); (iv) Involves aircraft (fixed wing or helicopter) owned, operated or chartered by Supplier or its Representatives, liability arising out of such aircraft shall be insured for not less than $1,000,000 CSL each occurrence. If required by a Purchase Order, Supplier shall obtain insurance covering loss or damage to Buyer or Buyer's customer's property under the care, custody and control of Supplier or Supplier's Representatives on a 100 percent replacement cost basis, and/or if the Equipment/Services involve access, storage, transmission or processing of Buyer's, its customer's, its or their Representatives' confidential information, a Cyber Liability Errors and Omissions Policy shall be procured by Supplier providing coverage, on a per occurrence basis, for acts, errors, omissions, and negligence of employees and contractors giving rise to potential liability, financial and other losses relating to data security and privacy, including cost of defense and settlement, in an amount of at least $2,000,000.

(D) The procurement, maintenance or acceptance of insurance coverage by Buyer, if any, shall not: (i) relieve Supplier of liability for loss or damage in excess of the policy coverage limits specified herein; or (ii) limit or release Supplier of its obligations or liabilities under the Purchase Order.

(E) No delay or failure in declaring any default or in enforcing any of the requirements of this Section, and no course of dealing between Buyer and Supplier shall constitute a waiver of any of the requirements of this Section.

Exhibit F

Affirmative Action

Should Buyer become a federal contractor/subcontractor, Buyer will be required to comply with certain federal regulations, including the regulations promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"). Should Buyer become a federal contractor, Buyer will also be required to ensure compliance of the OFCCP by its subcontractors, vendors and suppliers covered under the OFCCP (each, a "Covered Party"). Supplier is hereby notified of Buyer's policy related to affirmative action and its mutual OFCCP obligations to the extent Supplier, its subcontractors, vendors or suppliers is a Covered Party.

Buyer is an equal opportunity/affirmative action employer and does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, age, physical or mental disability, marital status, pregnancy, genetic information, sexual orientation, gender identity, protected veteran or military status, or any other consideration not related to the person's ability to do the job or otherwise made unlawful by federal, state or local law in the following employment practices, including among others: recruiting, hiring, placement, transfer, promotion, demotion, selection for training, layoff, termination, shift assignment, determination of service, rates of pay, benefit plans, and all forms of compensation and other personnel actions.

Should Buyer become a federal contractor/subcontractor, Buyer's Covered Parties (including Supplier and its Covered Parties, if applicable) will also have an obligation to comply with equal opportunity and affirmative action principles. Therefore, Buyer's Covered Parties (including Supplier and its Covered Parties, if applicable) will take appropriate action in support of these principles. Through our mutual effort and cooperation, we will continue to provide a working environment that appreciates and encourages diversity, promotes equal employment opportunity and is free from any type of discrimination.

Supplier and its Covered Parties, if applicable, shall abide by the requirements of the "Equal Opportunity Clause" in Section 202 of Executive Order 11246. See 41 CFR 60-1.4(a).

The following shall also apply if the Supplier is a Covered Party:

For contracts of $100,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

For contracts of $10,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Attachment A

DESCRIPTION OF SUPPLIER'S EQUIPMENT AND SERVICES

See attached.[1]

[1] Within sixty (60) days of the Effective Date, the Parties agree to discuss and use reasonable efforts to update Attachment A, if mutually desired, to meet the expectations of the Parties.

Exhibit 10.22

EXECUTION VERSION

Amended and Restated

Storage Core Frame Purchase Agreement

by and between

AES Grid Stability, LLC

as Buyer

and

Fluence Energy, LLC

as Supplier

dated October 27, 2021

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Attachment A Description of Supplier's Battery Storage Equipment and Services

THIS AMENDED AND RESTATED STORAGE CORE FRAME PURCHASE AGREEMENT (this "Agreement") is made and entered into on October 27, 2021 (the "Effective Date"), between AES Grid Stability, LLC. hereinafter referred to as "Buyer" and Fluence Energy, LLC, whose principal place of business is 4601 N. Fairfax Drive, Suite 600, Arlington, VA 22203 hereinafter referred to as "Supplier". Each of Buyer and Supplier are referred to herein as a "Party" and collectively are referred to herein as the "Parties."

WHEREAS, Buyer sells electrical transmission and distribution projects to Customers;

WHEREAS, Buyer may want to purchase energy storage equipment and related services to incorporate within its electrical transmission and distribution projects;

WHEREAS, Supplier sells energy storage equipment and related services;

WHEREAS, Supplier wishes to cooperate with Buyer in order to fulfill Buyer's requirements and provide preferred purchasing conditions to Buyer for those energy storage equipment and related services;

WHEREAS, Supplier and Buyer are parties to that certain Storage Core Frame Purchase Agreement, dated as of January 1, 2018, by and between Supplier and Buyer (the "Prior Agreement"); and

WHEREAS, Buyer is party to the Second Amended and Restated Limited Liability Company Agreement of Supplier, dated as of June 9, 2021(the "LLC Agreement");

WHEREAS, Supplier, Buyer and certain other parties are entering into a series of transactions in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("Issuer") to serve as the vehicle through which the public will own indirect interests in Supplier through an initial public offering;

WHEREAS, in connection with the closing of the initial public offering, the LLC Agreement is being amended and restated in its entirety by the Third Amended and Restated Limited Liability Company Agreement, dated on or about the date hereof (the "Restated LLC Agreement"), to, among other things, reflect Issuer's ownership of Supplier and the restructuring of Supplier and its Affiliates; and

NOW, THEREFORE, the Parties agree that on the Effective Date the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and further agree as follows:

1. DEFINITIONS; INTERPRETATION.

1.1. Definitions. Initially-capitalized terms used in this Agreement (including the preamble and Recitals hereto) and not otherwise defined herein shall have the meanings specified below.

"Affiliate" means, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons. No Person shall be considered an Affiliate of another Person or under the Control of such other Person so long as (i) it is owned less than 50% by such other Person, (ii) such other Person has no capacity to elect or appoint the majority of the board of directors or similar

governing body of the subject Person, (iii) such other Person does not consolidate the subject Person in its financial reporting and (iv) there is no other management or services agreement pursuant to which such other Person exerts control over the subject Person.

"Agreement" has the meaning set forth in the Preamble hereto.

"Applicable Law" means any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision or declaration of a Governmental Authority having valid jurisdiction.

"Application" means one of the stationary, battery based energy storage solutions and services for the grid connected storage market (including systems both in front of and behind the meter) set forth on Schedule 1.1(a).

"Battery" means a battery included within the Equipment supplied pursuant to this Agreement.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Buyer" has the meaning set forth in the Preamble hereto.

"Buyer Data" has the meaning set forth in Section 13.10(b).

"Buyer Event of Default" has the meaning set forth in Section 14.2.

"Buyer Furnished Property" has the meaning set forth in Article 9.

"Change Order" has the meaning set forth in Section 12.1.

"Change Order Information" has the meaning set forth in Section 12.2.

"Claims" has the meaning set forth in Section 15.1.

"Confidential Information" has the meaning set forth in Section 17.1.

"Control" means, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings.

"Defect" means any material defect in design, manufacturing, materials or workmanship in or to the Equipment, or any failure of the Equipment to materially comply with the Technical Specifications, excluding in all cases any of the foregoing attributable to or caused by ordinary wear and tear of the Warranted Equipment.

"Deliver", "Delivered" or "Delivery" means that Supplier has caused the delivery of the applicable Equipment to the Delivery Point in accordance with the terms of this Agreement.

"Delivery Point" means the delivery location set forth in a Pricing Notice, provided that, if no such location is specified in the applicable Pricing Notice, the Delivery Point for Equipment comprised of batteries shall be at the facility of the supplier thereof and the Delivery Point for all other Equipment shall the location of Supplier's facility.

"Derivative Software" has the meaning set forth in Article 20.

"EAR" has the meaning set forth in Section 21.1.

"Effective Date" shall have the meaning assigned to such term in Section 2.1.

"EHS Laws" has the meaning set forth in Section 19.1.

"Enforcement Action" has the meaning set forth in Section 13.11.

"Equipment" means any energy storage equipment offered for sale by Supplier pursuant to this Agreement, as set forth in Attachment A.

"Equipment Warranty" has the meaning set forth in Section 8.1.

"Equipment Warranty Period" has the meaning set forth in Section 8.1.

"Exclusive Activities" means the development, marketing and sale of an Integrated Solution for one or more Applications, where the size of such Integrated Solution is equal to or greater than 500 kilowatts, including those Integrated Solutions marketed, sold and delivered through a Buyer sales channel or another Supplier sales channel as contemplated in Supplier's then current business plan.

"Export Controls and Sanctions Laws" has the meaning set forth in Section 21.1.

"Force Majeure" means any event which is not within the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the affected Party to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement (other than an obligation for the payment of money) and is not caused by or resulting from the negligence or breach or failure of such Party to perform its obligations under this Agreement, which, subject to the foregoing, may include: acts of God or the public enemy, natural disasters, war, terrorism, insurrection, sabotage, unavoidable accidents, orders, decrees, rulings and policies of any Governmental Authority, fires, floods, earthquakes, volcanic activity, severe weather conditions not reasonably foreseeable taking into account the location of performance and the climate patterns applicable thereto, explosions, riots, general strikes and area lockouts. Force Majeure shall not include a Party's financial inability to perform under this Agreement or any Purchase Order.

"Further Buyer Contracting Parties" has the meaning set forth in Section 3.2.

"Governmental Authority" means a federal, state, local or foreign governmental authority (including any regulatory authority); a state, province, commonwealth, territory or district thereof; a county; a city, town, township, or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of

any of the foregoing; any agency, authority, board, department, system, service, office, commission, committee, council or other administrative body of any of the foregoing; any court or other judicial body; and any officer, official or other representative of any of the foregoing.

"Guaranteed Delivery Date" has the meaning set forth in Section 5.2.

"Hazardous Materials" has the meaning set forth in Section 19.1.

"Indemnified Party" has the meaning set forth in Section 15.1.

"Indemnifying Party" has the meaning set forth in Section 15.1.

"Infringement Claim Costs" means any and all judgments, damages, fines, awards, penalties, and interest associated with any of the foregoing, that, in each case, are finally awarded in a claim for which an Indemnifying Party is obligated to indemnify an Indemnified Party under Section 15.2 or 15.3, as applicable, and costs and expenses, including reasonable attorneys' fees, court costs and other reasonable costs of suit, arbitration, dispute resolution or other similar proceedings, associated with such claim.

"Integrated Solution" means an integrated, stationary, battery based energy storage solution, comprised of inverters, a control system including software, and electrical battery. Notwithstanding the foregoing, the following will not be considered Integrated Solutions: (i) uninterruptable power supply (UPS) systems (other than for use in Applications), (ii) a virtual energy storage network built out of individual, connected, geographically distributed product units of less than 150 kilowatts per unit (a "swarm"), (iii) static synchronous compensators (Statcom), (iv) supercapacitors, (v) the technology for the storage medium (e.g. batteries), (vi) energy storage inverters, (vii) stationary storage systems sold as part of an integrated product in conjunction with the sale of energy storage systems on board of vessels, vehicles or locomotives, where the main purpose of the stationary storage system is to charge or to be charged by such on board energy storage system or the vehicle brake energy and (viii) stationary storage systems providing power directly and primarily to electric vehicle charging stations.

"Intellectual Property" means United States and foreign: (a) Patents; (b) Trademarks; (c) copyrights, whether registered or unregistered, and all applications and registrations therefor, web sites, proprietary domain names, mask works, and all applications and registrations therefor; (d) Know-How; (e) Software; and (f) similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing.

"Key Agreements" means the various contracts between Supplier and certain of its members or their Affiliates listed on Exhibit G, as the same may be amended and/or restated from time to time.

"Know-How" means all proprietary and confidential information and data (irrespective as to whether such information or data is available by way of documentation, orally or in electronic format, or protected by copyrights), including business and trade secrets, technical and business information and data, know-how and similar proprietary rights in confidential information and processes, discoveries, analytic models, improvements, techniques, devices, methods, patterns, formulations and specifications, all to the extent

that such information and data are proprietary and confidential and neither Software nor a Patent.

"License" has the meaning set forth in Section 13.1.

"Licensed Technology" means, collectively, all of the following to the extent owned by, or licensed (with the right to grant sublicenses) to, Supplier, relating to the Equipment or the uses and purposes contemplated in connection with this Agreement or any Purchase Order issued hereunder for such Equipment: (a) Software embedded in or integrated with the Equipment, (b) any other trade secrets, proprietary information, know-how or other Intellectual Property incorporated into or embedded within the Equipment or necessary for the installation, operation, maintenance, and ownership of the Equipment, (c) any improvements of or updates to any of the foregoing provided to Buyer pursuant to this Agreement, if any, and (d) all Intellectual Property rights of Supplier in the Licensed Technology listed in any of clauses (a) through (d) above, in each case, for use solely in connection with the installation, commissioning, operation and maintenance of the Equipment at the Project Site or such other site as Buyer shall elect.

"LLC Agreement" has the meaning set forth in the Recitals hereto.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Open License Terms" has the meaning set forth in Article 20.

"Open Source Software" has the meaning set forth in Article 20.

"Party" has the meaning set forth in the Preamble hereto.

"Parties" has the meaning set forth in the Preamble hereto.

"Patents" means all patents, utility models, patent and utility model applications, and all priorities and rights related thereto, including all reissues, reexaminations, divisions, continuations, continuations-in-part, provisionals, continued prosecution applications, substitutions, extensions, additions or renewals of any of the foregoing.

"Person" means any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not having separate legal personality), and shall include any successor (by merger or otherwise) of such entity.

"Potential Project" shall have the meaning assigned to such term in Section 4.3(b)(ii).

"Pricing Notice" has the meaning set forth in Section 4.1.

"Pricing Request" has the meaning set forth in Section 4.1.

"Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency or instrumentality thereof, of a

Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or any other similar list published by OFAC, including, but not limited to, the Foreign Sanctions Evaders List, the Part 561 List, and the Non SDN Iranian Sanctions List; (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State; or (vi) any entity beneficially owned or controlled, directly or indirectly, by, any of the individuals or entities listed in subparagraphs (i)-(v) above.

"Project Bid" shall have the meaning assigned to such term in Section 4.3(c)(iv).

"Prudent Industry Practices" means those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by electrical utility industry members, including Supplier, in the U.S. as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

"Purchase Order" means a purchase order in the form attached hereto as Exhibit A issued for the purchase of Equipment and Services pursuant to and in accordance with the terms and conditions of this Agreement.

"Representatives" means, with respect to any Person, such Person's shareholders, members, officers, directors, employees, accountants, consultants, legal counsel, financial advisors and other representatives and agents.

"Revised Project Bid" shall have the meaning assigned to such term in Section 4.3(b)(v).

"Sanctioned Country" means any country or territory against which the United States maintains comprehensive economic sanctions or embargoes, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria.

"Services" means any Equipment related services offered for sale by Supplier pursuant to this Agreement, as set forth in Attachment A.

"Services Warranty" has the meaning set forth in Section 8.2.

"Services Warranty Period" has the meaning set forth in Section 8.2.

"**Shares"** means (i) the Class A Common Stock of the Issuer, calculated on a fully diluted basis and assuming that all options, warrants and any other rights to purchase shares of Class A Common Stock of the Issuer have been exercised in full, including, for sake of clarity, the Underlying Class A Shares plus (ii) any other equity securities now or hereafter issued by the Issuer, together with any options thereon and any other shares of stock or

other equity securities issued or issuable with respect thereto (whether by way of a stock dividend, stock split or in exchange for or in replacement or upon conversion of such shares or otherwise in connection with a combination of shares, recapitalization, merger, consolidation or other corporate reorganization); provided, however, that in no event shall the Shares include the Class B Common Stock of the Issuer.

"Siemens Storage Core Frame Purchase Agreement" means that certain Amended and Restated Storage Core Frame Purchase Agreement, dated as of even date herewith, between Siemens Industry, Inc. and Supplier.

"Software" means all computer programs, operating systems, applications, systems, firmware, and software of any nature, whether operational, active, under development, or design, non-operational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, test scripts, user manuals, and other documentation therefore, whether in machine-readable form, programming language, or any other language or symbols, and whether stored, encoded, recorded, or written on disk, tape, film, memory device, paper, or other media of any nature and all databases necessary or appropriate to operate any such computer program, operating system, applications system, firmware, or software.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing member, general partner or analogous controlling Person of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times that such Person has one or more Subsidiaries.

"Sunset Date" means the earlier to occur of (i) the seventh (7^{th}) anniversary of the Effective Date and (ii) that date on which Buyer and Affiliates collectively hold Shares representing less than twenty percent (20%) of the then outstanding Voting Power.

"Supplier" has the meaning set forth in the Preamble hereto.

"Supplier Documents" means the documents and deliverables to be provided by Supplier to Buyer to the extent reasonably required for the installation, commissioning, operation and maintenance of the Equipment, as more fully set forth in the applicable Purchase Order.

"Supplier Event of Default" has the meaning set forth in Section 14.1.

"Taxes" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including income tax, withholding tax, corporation tax, capital gains tax, capital transfer tax, sales tax, business and occupation tax, inheritance tax, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and generally any tax, duty, impost, levy, rate or other amount and any interest, penalty or fine in connection therewith.

"Technical Specifications" means the technical specifications for the Equipment as set forth in the applicable Purchase Order.

"Term" has the meaning set forth in Section 2.1.

"Terminating Event" shall have the meaning assigned to such term in Section 4.3(a)(i).

"Territory" means (i) for purposes of the sales and marketing by Buyer of the Equipment, worldwide and (ii) for all other use of the Equipment, the country in which the Equipment is installed for use.

"Third Party" means any Person, other than a member of Supplier or such member's

Affiliates.

"Trademarks" means all trademarks, trademark applications, service marks, service mark applications, trade dress, trade names, identifying symbols, words, colors, designs, product names, company names, slogans, logos or insignia, whether registered or unregistered, and all applications and registrations therefor, and all goodwill associated therewith.

"TSCA" has the meaning set forth in Section 19.1.

"Underlying Class A Shares" means all shares of Class A Common Stock of the Issuer issuable upon redemption of Common Units of the Supplier, assuming all such Common Units are redeemed for Class A Common Stock of the Issuer on a one-for-one basis.

"Voting Power" means the total voting power of all Shares entitled to vote generally in the election of directors.

"Work Site" has the meaning set forth in Section 19.2.

1.2. Interpretation.

(a) References to Recitals, Articles, Sections, Exhibits, Annexes and Attachments are, unless otherwise indicated, to Recitals, Articles, Sections, Exhibits, Annexes and Attachments to this Agreement. All Exhibits, Annexes and Attachments to this Agreement are incorporated herein by this reference and made a part hereof for all purposes.

(b) As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.

(c) Unless expressly stated otherwise, references to a Person include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.

(d) As used in this Agreement, references to "days" shall mean calendar days, unless the term "Business Days" is used. If the term "Business Days" is used and the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

(e) As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words "herein," "hereunder" and "hereof" refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement; "including" means "including, for example and without limitation," and other forms of the verb "to include" are to be interpreted similarly.

(f) As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

2. TERM AND TERMINATION OF AGREEMENT.

2.1. Term. This Agreement shall become effective and the term shall commence on the day on which the Class A Common Stock of the Issuer is issued to the underwriters in its initial public offering (the "Effective Date"); provided, that if the Effective Date does not occur on or prior to December 31, 2021, this Agreement shall be deemed terminated as of such date and of no force or effect without further notice or action by the Parties, and the Prior Agreement shall remain in full force and effect without any amendment thereto. The term of this Agreement shall continue from the Effective Date until the date that the obligations contained in Section 4.4(a) (Non-Competition) cease to apply to Buyer (the "Term"). The expiration or early termination of the Term of this Agreement shall not affect any Purchase Orders executed between the Parties prior to the date of termination or expiration, and in such event the Parties shall attempt, in fair dealing and good faith, to agree on reasonable post-termination or post-expiration procedures in compliance with Applicable Law and antitrust requirements.

3. SCOPE OF AGREEMENT.

3.1. Scope Generally. This Agreement shall apply to all purchases by Buyer from Supplier of Equipment and Services during the Term. Notwithstanding the foregoing, nothing herein shall be construed to mean that either Buyer or Supplier is committing to any specific level of business or quantity of Equipment and Services to be purchased or supplied other than that specified in Purchase Orders issued to Supplier during the Term of this Agreement

by Buyer. Attachment A hereto sets forth the various standard Equipment and Services offerings of Supplier, it being understood that any project-specific requirements associated with any particular order hereunder shall be as set forth in the applicable Purchase Order therefor. Supplier may from time to time update the Equipment and Services offered for sale hereunder by furnishing to Buyer an update to Attachment A hereto, it being agreed that no such update shall affect any previously issued Purchase Order unless and to the extent set forth in a Change Order thereto.

3.2. Further Buyer Contracting Parties. The AES Corporation and its Subsidiary companies (hereinafter referred to as "Further Buyer Contracting Parties") shall be entitled to conclude individual Purchase Orders under the terms of this Agreement provided that such Further Buyer Contracting Parties either: (a) execute a joinder agreement acceptable to Supplier and otherwise in the form of Exhibit B hereto or (b) agree that the terms of this Agreement will govern the subject transaction by including a conspicuous cross-reference in the applicable Purchase Order which confirms that the terms of this Agreement will apply to the Purchase Order.

4. ORDERS.

4.1. Pricing Requests. If Buyer desires to purchase Equipment and Services from Supplier during the Term, Buyer shall furnish Supplier with written request (a "Pricing Request") detailing the Equipment and Services it wishes to purchase and requesting pricing therefor from Supplier, including in such Pricing Request such information as may be reasonably necessary for Supplier to determine pricing therefor and any other project-specific requirements, including Buyer's requested delivery schedule. Supplier shall endeavor to provide an initial response to any Pricing Request within five (5) Business Days, indicating (i) whether or not Supplier intends to furnish an offer to Buyer for the requested Equipment and Services on the timeline requested by Buyer and (ii) indicating what, if any, additional information Supplier may need in order to furnish such offer. Within fourteen (14) days after a final written scope of work is agreed with Buyer, or one of its Affiliates, Supplier shall provide Buyer with a written notice (a "Pricing Notice") detailing Supplier's pricing and delivery schedule for the Equipment and Services that Buyer wishes to purchase (including therein any terms, conditions and specifications required by Supplier in connection with the particular project and/or purchase contemplated by Buyer, which terms and conditions may be different than, and shall supersede, those set forth in this Agreement), which Pricing Notice Supplier shall endeavor to provide within ten (10) Business Days of receipt of Buyer's Pricing Request. If Buyer does not issue a Purchase Order to Supplier pursuant to Section 4.2 in response to the Pricing Notice within ten (10) Business Days of issuance thereof, the Pricing Notice shall be deemed rejected.

4.2. Purchase Orders. If Buyer desires to purchase the Equipment and Services on the terms specified in a Pricing Request, it shall issue a Purchase Order to Supplier in the form attached hereto as Exhibit A, which Purchase Order shall include: (i) the pricing and any other terms, conditions and specifications set forth in Supplier's Pricing Notice; and (ii) a detailed description of the Equipment and Services to be purchased, consistent with those set forth in the Pricing Request and to the extent modified thereby, the Pricing Notice. Purchase Orders shall only be binding when issued in compliance with the requirements of this Agreement and sent by e-mail, by fax or by electronic data interchange to Supplier. Supplier shall accept or reject a Purchase Order within ten (10) Business Days after receipt. Acceptance or rejection shall be declared in the form of the Purchase Order. If a

Purchase Order is neither accepted nor rejected within ten (10) Business Days after receipt, it shall be deemed rejected.

4.3. Exclusivity and Certain Related Priorities.

(a) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Buyer shall and shall cause its Affiliates (except certain Affiliates of Buyer that (1) are prohibited from being bound by the exclusivity terms set forth below as a result of rights held by Third Party equity investors in such Affiliates pursuant to the terms of such Affiliate's organizational or governance documents (including charters, bylaws, and shareholder, partnership, limited liability company, joint venture and similar agreements) or (2) that reasonably determine that compliance with such exclusivity requirements would, due to their status as regulated utilities, cause complications with the applicable regulatory bodies having jurisdiction over such Affiliates) to:

(i) purchase exclusively from Supplier any battery-based energy storage technology systems/solutions that are (A) within the Exclusive Activities (provided that for the purposes of this paragraph only, the term "Application" within Exclusive Activities shall also include power quality and microgrid/island applications (in each case as described on Schedule 1.1(a))) and (B) offered for sale by Supplier; provided, however, it is hereby agreed that the exclusive purchase obligations contained in this Section 4.3(a)(i) shall immediately cease to apply with respect to the particular purchase opportunity in the event that (1) either (x) Supplier fails to provide an initial response within five (5) Business Days following receipt of a Pricing Request from Buyer or one of its Affiliates, or (y) Supplier fails to submit a bona fide Pricing Notice within fourteen (14) days after a final written scope of work is agreed with Buyer, or one of its Affiliates, provided that if a shorter response time is required for a final bid by the customer or project related thereto, the parties will discuss and mutually agree on such shorter time period, or (2) the prerequisite of a public tender specifies using a particular vendor, other than Supplier, to provide such battery-based energy storage technology systems/solutions (the matters set forth in the immediately preceding clause (1) and clause (2), may each individually be referred to herein as a "Terminating Event"); and

(ii) prioritize the purchase of any other battery-based energy storage technology systems/solutions that are offered for sale by Supplier and request that each of its Affiliates notify Supplier if it intends to purchase such systems/solutions, such that Supplier shall have an opportunity to sell such systems/solutions thereto. It is hereby agreed that any opportunity described above is subject to other factors, including that such systems/solutions offered by Supplier are competitive in the discretion of its Affiliates, taking into account economic, financial and technological aspects as well as the ability to perform and deliver in terms of timeframes and logistics, that such systems/solutions comply with specific customer requirements, country-specific requirements or mandatory external regulation and in all cases subject to Applicable Laws.

In each case of clause (i) and Error! Reference source not found. above, the above provisions shall apply to the extent that such systems/solutions are needed

as components of, or parts for, its other products/services or for its own needs or for reselling; excluding, however, inverters, which may be sourced independently.

(b) With respect to Sections 4.3(a)(ii), it is hereby agreed that the following shall apply with respect to any requirement to prioritize the purchase of any battery-based energy storage technology systems/solutions that are offered for sale by Supplier:

(i) (A) any such opportunity described therein is subject to other factors, including that such systems/solutions offered by Supplier are competitive in the discretion of the applicable Affiliate taking into account economic, financial and technological aspects as well as the ability to perform and deliver in terms of timeframes and logistics, that such systems/solutions comply with specific customer requirements, country-specific requirements or mandatory external regulation and in all cases subject to Applicable Laws and (B) the purchase priority obligations contained in Sections 4.3(a)(ii) shall immediately cease to apply with respect to the particular purchase opportunity upon the occurrence of a Terminating Event;

(ii) Buyer shall cause its Affiliates to consult regarding Supplier's products, solutions and technology and keep regular contact with such applicable Affiliates concerning projects and opportunities for which Supplier's products, solutions and technology may be suitable (each, a "Potential Project");

(iii) Buyer shall cause its Affiliates to notify Supplier of each such Potential Project and support Supplier's preparing bids or proposals therefor, subject to Applicable Law and Third Party contractual restrictions;

(iv) In the event that Supplier makes a formal bid or proposal with respect to a Potential Project (each, a "Project Bid") and such Project Bid is not accepted by the applicable Affiliate, subject to Applicable Law and Third Party contractual restrictions, Buyer shall cause the applicable Affiliate to inform Supplier of the main considerations of such Affiliate, which led to Supplier's Project Bid not being accepted with respect to such Potential Project;

(v) If Supplier is able to submit a revised Project Bid to the Affiliate (the "Revised Project Bid"), and such Revised Project Bid is not accepted, subject to Applicable Law and Third Party contractual restrictions, Buyer shall cause the applicable Affiliate to inform Supplier of the main considerations of such Affiliate which led to Supplier's Revised Project Bid not being accepted with respect to such Potential Project. If Supplier is able to submit a Project Bid and, if applicable, a Revised Project Bid to the applicable Affiliate for the Potential Project and such Revised Project Bid is satisfactory to such Affiliate in all respects and is deemed by such Affiliate in its judgment to be the best bid for the Potential Project, then such Affiliate shall proceed with Supplier's Revised Project Bid. In the event that Supplier is ultimately not chosen by such Affiliate for such Potential Project based on its initial Project Bid or subsequent Revised Project Bid, Buyer shall cause such Affiliate to discuss with Supplier how Supplier can improve

the competitiveness of its products, solutions and technology for future offerings.

(c) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Supplier will offer its Equipment and Services to Buyer and its Affiliates at Most Favored Nation Pricing in the Pricing Notice. "Most Favored Nation Pricing" shall be reasonably determined by the Supplier by reference to recent (last six (6) months) sales arrangements with customers, resellers or project developers, as applicable, taking into account purchase volumes, regional market conditions, the geographic location of the projects, and the relative size and technology to be used. Supplier shall not be obligated to provide such pricing if it no longer offers the relevant products or services for sale and Supplier shall have no obligations to offer or continue to offer any such products or services for sale. If requested by Buyer, Supplier shall furnish to Buyer a certificate executed by an executive officer of Supplier and attesting to the methodology used by Supplier in determining the Most Favored Nation Pricing set forth in the applicable Pricing Notice. Supplier shall provide Buyer with supporting information concerning the comparable purchase volumes, regional market conditions, the geographic location of the projects, relative size and technology to be used, and any other variables that Supplier considered when determining the Most Favored Nation Pricing; provided that Suppler may always anonymize information about other customers' projects, in Supplier's sole discretion. In the event that Buyer believes the price indicated in the Pricing Notice does not accurately reflect Most Favored Nation Pricing, then the parties shall retain a mutually-agreeable auditing firm to independently and confidentially review Supplier's methodology and pricing inputs and to render a decision regarding whether Supplier must offer a lower price in order to satisfy its Most Favored Nation Pricing obligation as set forth above. The decision of the independent auditor shall be final and binding on both Parties. The costs of the independent auditor shall be shared equally between Supplier and Buyer.

4.4. Non-Competition.

(a) Subject to compliance with Applicable Law or regulatory requirements, Buyer agrees that until the earlier to occur of (i) the seventh (7^{th}) anniversary of the Effective Date and (ii) that date on which Buyer and its Affiliates collectively hold Shares representing less than ten percent (10%) of the then outstanding Voting Power, neither it nor its Affiliates will directly or indirectly engage in any Exclusive Activities; provided, however, that beginning on October 1, 2023, if Supplier has not achieved at least $25,000,000 in average annual gross revenues over a rolling period of three fiscal years (such rolling period commencing on October 1, 2020) for Application No. 4 (as set forth on Schedule 1.1(a)), then Buyer, at its sole discretion, may, upon written notice to the other members of Supplier, remove Application No. 4 as an Exclusive Activity for all purposes hereunder). If Buyer removes Application No. 4 as an Exclusive Activity pursuant to this Section 4.4(a), then Application No. 4 shall simultaneously and automatically also be removed as an "Exclusive Activity" under the Siemens Storage Core Frame Purchase Agreement. In addition, if Siemens Industry, Inc. removes Application No. 9 as an "Exclusive Activity" pursuant to the Siemens Storage Core Frame Purchase Agreement, then Application No. 9 shall simultaneously and automatically also be removed as an Exclusive Activity under this Agreement.

(b) Notwithstanding the foregoing, the restrictions set forth in this Section 4.4 shall not affect or prohibit Buyer or its Affiliates from:

(i) (A) engaging in activities expressly permitted or contemplated herein or in the Key Agreements, or as otherwise approved by Issuer as Supplier's managing member, (B) selling Supplier's Equipment and Services to Buyer's customers with Supplier acting as a sub-supplier to Buyer, or (C) engaging in the development and sale of larger solutions incorporating an Integrated Solution from a Third Party, which is subject to the provisions of Section 4.3 hereof;

(ii) acquiring and owning, through its venture capital or growth capital activities, a non-controlling interest of up to thirty-five percent (35%) of the equity or debt securities of any legal entity that is engaged in whole or in part in any Exclusive Activity, provided, that the products and/or services of such legal entity that are included within the scope of Exclusive Activities are not sold or marketed by Buyer or its Affiliates;

(iii) acquiring or owning any debt or equity securities of any legal entity engaged in whole or in part in any Exclusive Activities through any employee benefit or pension plan maintained by Buyer or its Affiliates or solely for purposes of asset or treasury management; or

(iv) acquiring control of a business or legal entity (an "Acquired Business") engaged in whole or in part in any Exclusive Activities (a "Competing Business") where the annual revenues attributable to the Competing Business of the Acquired Business over its previous fiscal year were less than both (A) twenty-five percent (25%) of the total annual revenues of the Acquired Business for such fiscal year, and (B) twenty-five percent (25%) of the total annual revenues of the Issuer and its' Subsidiaries for such fiscal year(collectively, the "Non-Triggering Acquisition Thresholds"); provided, that the Non-Triggering Acquisition Threshold set forth in clause (B) above shall only apply in the case where the annual revenues attributable to the Competing Business of the Acquired Business over its previous fiscal year were more than $25.0 million; and provided, further, that in each case where revenue is only available for a part of a fiscal year, references to annual revenues in this Section 4.4(b)(iv) and in Section 4.4(b)(v) shall mean the annualized revenues reasonably determined by extrapolation from such partial fiscal year revenues;

(v) either (i) acquiring control of an Acquired Business where at the time of such acquisition the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year (x) equal or exceed either of the Non-Triggering Acquisition Thresholds and (y) are less than forty percent (40%) of the total annual revenues of the Acquired Business for its most recently completed fiscal year,(ii) acquiring control of an Acquired Business where at the time of such acquisition the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year (x) equal or exceed forty percent (40%) of the total annual revenues of the Acquired Business for its most recently completed fiscal year and (y) are equal to or less than twenty-five million

dollars ($25,000,000) for its most recently completed fiscal year, or (iii) continuing to own and control a Competing Business of an Acquired Business at any time after such acquisition when the non-compete restrictions herein apply, once the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year equal or exceed both twenty-five percent (25%) of the total annual revenues of the Issuer and its' Subsidiaries for such fiscal year and twenty-five million dollars ($25,000,000) (either such circumstance as described in clauses (i), (ii) or (iii) above, a "Triggering Event"); provided, that, within thirty (30) days following the occurrence of such Triggering Event, Buyer shall, or shall cause its Affiliate to, (A) offer to sell the equity interests or assets comprising the Competing Business to Issuer for a price not greater than the Fair Market Value thereof (appropriately taking into account the assumption of liabilities and Indebtedness of (to the extent not included in determining or calculating the purchase price or valuation for)), the Competing Business (which, in the case of a Triggering Event existing as of the closing of an acquisition of an Acquired Business, shall not exceed that portion of the price paid by Buyer or its Affiliate that was allocable in good faith to the Competing Business) (each, a "Competing Business Offer") and (B) provide Issuer with such material information regarding the applicable Competing Business, subject to any restrictions of confidentiality or Applicable Law, that Buyer or its Affiliate determines in good faith will permit Issuer to make an informed decision as to whether to accept or reject such Competing Business Offer.

(c) Buyer or its Affiliate shall provide such additional information regarding the applicable Competing Business, subject to any restrictions of confidentiality or Applicable Law, as may be reasonably requested by Issuer following Issuer's receipt of the Competing Business Offer that it determines is reasonably necessary to permit Issuer to make an informed decision as to such Competing Business Offer.

(d) In the event that the Issuer accepts a Competing Business Offer, Buyer and Supplier shall (and shall cause their respective Affiliates to) act in good faith to consummate the acquisition of such Competing Business which is the subject of the Competing Business Offer, including with respect to securing financing, either through equity or debt financing, as necessary;

(e) Issuer shall have eighteen (18) months from receipt of such Competing Business Offer to enter into a legally binding commitment with Buyer or its Affiliate to acquire the Competing Business which is the subject of the Competing Business Offer. In addition, Issuer shall have up to six (6) months after entering into such legally binding commitment to consummate such acquisition, or such longer period as may be reasonably required to obtain any required regulatory approvals. Failure to meet either of the timelines set forth above notwithstanding the good faith efforts of Buyer, Supplier, and their respective Affiliates to consummate the transaction will be deemed to be a rejection of the Competing Business Offer.

(f) In case of rejection of a Competing Business Offer, Buyer or its Affiliate shall be free to continue to own and control the Competing Business.

4.5. Payment Terms. Unless otherwise provided in a Pricing Notice, all payments for Equipment are due and payable net thirty (30) days following invoice. Payment terms will be mutually agreed in the Purchase Order and may be milestone based such that payments match cost outflow timing and conditions similar to 20%, 30%, 40%, 10% for Order, Delivery, Project Substantial Completion, Project Final Completion. Unless otherwise provided in a Purchase Order, all payments for Services are due and payable net thirty (30) days following invoice based on progress of the Services being performed. Payment(s) shall be by electronic banking method identified on the Purchase Order. Buyer will not make payments to Supplier in cash or bearer instruments, nor to an account other than that specified in the Purchase Order.. Buyer will make no unlawful payments, nor make payments through any trust, intermediate entity or other party. Buyer will not make payment(s) to an individual, employee, or other designee of Supplier.

4.6. Disputed Payments. If a dispute arises regarding the payments to be made hereunder, Buyer or Supplier, as applicable, shall pay all undisputed amounts, and the Parties shall attempt in good faith to resolve the dispute as promptly as practicable.

4.7. Late Payments. Any amount owed by a Party hereunder beyond the date that such amount first becomes due and payable under this Agreement shall accrue interest from the date that it first became due and payable until the date that it is paid at the lesser of (a) LIBOR plus four percent (4%) per annum or (b) the maximum rate permitted by Applicable Law.

4.8. Taxes; Export and Import Duties. Notwithstanding anything herein to the contrary, (i) Supplier shall collect and withhold any and all sales taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment and imposed by any Governmental Authority having jurisdiction over Supplier at the Delivery Point and (ii) Buyer shall be responsible for any and all other Taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment, any and all export duties from the jurisdiction or jurisdictions in which the Equipment is manufactured or from which the Equipment may be shipped and any and all import duties, in each case, arising in connection with or relating to the supply, sale or Delivery of the Equipment. Buyer shall also be responsible for and pay all Taxes in relation to the operation of its business, including in connection with the use of the Equipment. Buyer and Seller shall cooperate to obtain exemption from, or to minimize, any Taxes.

5. DELIVERY.

5.1. Delivery Terms; Inspection. Unless otherwise provided in a Pricing Notice, delivery of Equipment comprised of Batteries shall be made FCA (Incoterms 2010) at facility of the supplier thereof and delivery of all other Equipment shall be FCA (Incoterms 2010) Supplier location. Prior to Delivery a representative of Supplier and a representative of Buyer may inspect the Equipment for damage and record such damage, if any.

5.2. Guaranteed Delivery Date. Supplier shall use commercially reasonable efforts to Deliver Equipment to the applicable Delivery Point by the applicable guaranteed Delivery date therefore, if any, as set forth in the applicable Purchase Order, subject to extension as provided under this Agreement (as may be extended hereunder, the "Guaranteed Delivery Date"). Any other dates in a Purchase Order for performance by Supplier of any work and any other obligations of Supplier pursuant to such Purchase Order are estimated, and not guaranteed, dates. The failure of Supplier to timely achieve such other

Supplier milestones or obligations by the applicable dates set forth in the Purchase Order shall not be a breach under this Agreement. Neither the Purchase Order nor any milestone date contained therein, including the Guaranteed Delivery Date for the Equipment, may be changed unless the same has been modified by a duly executed Change Order. If an unexcused delay originates with Supplier or its Representatives, Supplier shall be solely responsible for expedited delivery and other charges to meet Delivery dates.

5.3. Delay Liquidated Damages. Except as may be otherwise agreed in a Purchase Order, if Delivery of the Equipment has not occurred by the Guaranteed Delivery Date for reasons that are not excused hereunder, and Buyer can prove that as a direct result thereof it must pay delay liquidated damages to its Customer, Supplier shall reimburse Buyer for such delay liquidated damages (such reimbursement not to exceed an amount equal to 0.5% of the price set forth in the Purchase Order allocable to the delayed Equipment for every completed week of delay) for each completed week after the Guaranteed Delivery Date that Buyer pays such liquidated damages to its Customer as a result of Supplier's delay, provided, however, that the amount of delay liquidated damages payable by Supplier shall be reduced by any amounts received by Buyer under any delay in startup insurance policies providing coverage for any such losses or damages. Payment of the delay liquidated damages shall be the sole and exclusive remedy of Buyer for delay and under no circumstances shall the total aggregate liability of Supplier exceed five percent (5%) of the price set forth in the applicable Purchase Order.

5.4. Buyer Caused Delay. If Buyer fails to perform any obligations under a Purchase Order or otherwise causes a delay in the performance by Supplier of its obligations under a Purchase Order, and such failure or delay results in an increase in Supplier's costs and/or impacts Supplier's ability to meet any Supplier milestone in accordance with the schedule contemplated by the applicable Purchase Order, Supplier shall be entitled to a Change Order increasing the price payable under the applicable Purchase Order and extending the date for completion of any Supplier milestones commensurate with such delay and added cost, including overtime charges for labor and equipment.

6. TITLE, RISK OF LOSS AND CARE, CUSTODY AND CONTROL.

6.1. Transfer of Title and Risk of Loss. Title, care, custody, control and risk of loss of any portion of the Equipment shall pass to Buyer upon Delivery of the Equipment to the Delivery Point. Notwithstanding the foregoing, in no event will title to the Licensed Technology or any other Intellectual Property used in the Equipment or otherwise provided to Buyer, including any Software, transfer to Buyer.

6.2. Warranty of Title. Supplier warrants to Buyer that, when title to the Equipment or any portion thereof is transferred to Buyer in accordance herewith, Buyer shall have good title to the Equipment or such portion thereof free and clear of all Liens, other than any such Liens which may arise in connection with Buyer's failure to make payments as they become due under this Agreement. In the event of any nonconformity with the foregoing, Supplier, at its own expense, upon written notice of such failure, shall indemnify Buyer from the consequences of such nonconformity and defend the title to such Equipment, and Supplier shall either promptly replace such Equipment or any affected portion thereof or remedy the title defect.

7. INSPECTION AND QUALITY CONTROL.

7.1. Inspection Rights. Supplier shall permit Buyer, its Representatives and/or customer(s), at Buyer's expense, to inspect Equipment/Services during manufacture at Supplier's facilities or during performance and shall use commercially reasonable efforts to facilitate similar inspections at the manufacturing facilities of third party suppliers. Buyer shall provide Supplier with written notice of its intent to make any such inspection not less than ten (10) Business Days prior to the proposed inspection date. Buyer's inspections/tests will not unduly interfere with Supplier's business or the business of its third party suppliers.

7.2. Quality Control. Supplier shall maintain quality control with respect to the Equipment and Services as mutually agreed upon by the Parties and provide Buyer with quality assurance documentation, manuals or certifications.

8. WARRANTIES.

8.1. Equipment Warranty. Supplier warrants to Buyer that (i) the Equipment as Delivered shall be new at the time of Delivery and shall have been manufactured using new components and (ii) during the Equipment Warranty Period the Equipment shall be free of any Defects (the "Equipment Warranty"). As used herein, the "Equipment Warranty Period" means the period of time commencing on the earlier to occur of (i) the date that the Equipment is placed into service as evidenced by the operation thereof for commercial purposes and (ii) the day that is sixty (60) days after the date of Delivery of the Equipment and continuing to and ending on the first (1st) anniversary of such date. Notwithstanding the foregoing, (i) the Parties may agree in any particular Purchase Order to address defect warranties with respect to Batteries separately and (ii) any performance guarantees with respect to Batteries shall be solely as set forth in the applicable Purchase Order.

8.2. Services Warranty. Supplier warrants to Buyer that any Services shall at the time of performance thereof and during the Services Warranty Period be (i) performed in a good and workmanlike manner and free of any fault, defect or deficiency that would preclude or impair the ability of such Services to fulfill the purposes set forth in the applicable Purchase Order therefor in all material respects, (ii) consistent with a level of care, skill and judgment which conforms with Prudent Industry Practices, and (iii) in compliance with the requirements of this Agreement and the applicable Purchase Order (the "Services Warranty"). As used herein, the "Services Warranty Period" means the period of time commencing on the date of performance of the applicable Service and continuing to and ending on the first (1st) anniversary of such date.

8.3. Notification Requirements. Buyer shall promptly (but in any event within ten (10) Business Days after obtaining notice or knowledge thereof) notify Supplier of any failure of the Equipment to satisfy the Equipment Warranty or any failure of the Services to satisfy the Services Warranty, in each case by delivering written notice to Supplier of a warranty claim. The written notice of warranty claim shall, to the extent reasonably practicable, identify the applicable failure and the circumstances or conditions observed by Buyer that indicates the presence of such failure.

8.4. Corrective Action. If, at any time prior to the expiration of the Equipment Warranty Period, either Party discovers any Defect, Supplier agrees that it shall Deliver a replacement for the applicable Defective part, without cost or expense to Buyer. When a Defective part has been Delivered to Buyer, such replaced part shall be covered by the Equipment Warranty until the later of (a) twelve (12) months from the time such replacement part was Delivered to Buyer, and (b) the end of the Equipment Warranty Period. All replacement

parts shall be of good and workmanlike quality and shall be new or newly refurbished. If, at any time prior to the expiration of the Services Warranty Period, either Party discovers any failure of the Services to satisfy the Services Warranty, Supplier agrees that it shall, in its sole discretion, either correctly re-perform or otherwise correct the defective Services, without cost or expense to Buyer. When a defective Service has been remedied, such remedied Service shall be covered by the Services Warranty until the later of (a) twelve (12) months from the time such remedy was completed, and (b) the end of the Services Warranty Period.

8.5. Warranty Exclusions. The Equipment Warranty and the Services Warranty shall not apply if (a) the applicable Defect or failure is attributable to Buyer's failure to operate, repair or maintain the Equipment in material compliance with the procedures set forth in any Supplier Documents furnished to Buyer, which procedures are identified therein as necessary to maintain the effectiveness of the warranties or (b) the applicable Defect or failure is attributable to Buyer's or Buyer's contractor's misuse or abuse of the Equipment (c) if the Equipment has been used in a manner contrary to Supplier's instructions set forth in the Supplier Documents that are identified therein as necessary to maintain the effectiveness of the warranties; (d) the applicable Defect or failure is attributable to any materials or equipment provided by Buyer; or (e) if the Equipment has failed as a result of ordinary wear and tear.

8.6. NO IMPLIED WARRANTIES. THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT ARE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. THE REMEDIES SET FORTH HEREIN WITH RESPECT TO SUCH WARRANTIES ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES, AND SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY BREACH OF SUCH WARRANTIES. OTHER THAN THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT, SUPPLIER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER EXPRESS WARRANTIES AND ALL OTHER WARRANTIES, CONDITIONS, DUTIES AND OBLIGATIONS, STATUTORY OR OTHERWISE, IMPLIED IN LAW, INCLUDING THOSE OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CUSTOM, USAGE, OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, OR UNDERSTANDINGS, WHETHER OR NOT IN A CONTEMPORANEOUSLY EXECUTED OR DATED AGREEMENT OR SPECIFICATION, THAT EXTEND BEYOND THOSE SET FORTH HEREIN AND NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT OR REPRESENTATIVE OF SUPPLIER OR ITS AFFILIATES ARE AUTHORIZED BY SUPPLIER.

8.7. Reserved Rights. Without limiting Supplier's obligations hereunder to remedy Defects, Supplier reserves the right (i) to make changes and improvements in its equipment and products without incurring any obligation to make such changes and improvements to any Equipment previously sold under a Purchase Order pursuant to this Agreement; and (ii) to change the terms of the warranty it provides to other Persons in the future without incurring any right or obligation to make the revised terms applicable to any Equipment previously sold under a Purchase Order pursuant to this Agreement. The provisions of this Section 8.7 shall survive the termination or expiration of this Agreement.

8.8. Access to Buyer Data. Real time access on a 24/7 basis to all Buyer Data shall be determined on a case by case basis and set forth in the applicable Purchase Order.

9. BUYER FURNISHED PROPERTY.

The term "Buyer Furnished Property" shall mean all tools, patterns, equipment, materials or other property which is either supplied by, or purchased by or on behalf of, Buyer or its Representatives to Supplier to perform the Services or furnish the Equipment. Title to Buyer Furnished Property shall remain with Buyer and risk of loss shall be with the Party who has possession. For Buyer Furnished Property in Supplier's possession, custody or control, Supplier shall insure against loss and damage in an amount equal to full replacement cost. Buyer Furnished Property shall carry no guarantee or warranty, express or implied. Supplier shall not use Buyer Furnished Property on any work other than the Equipment/Services. Supplier shall clearly mark Buyer Furnished Property to show Buyer's ownership and prevent a lien, encumbrance or challenge to Buyer's title thereto. Supplier shall, at its own expense, maintain and repair Buyer Furnished Property returning it to Buyer in the condition in which received, reasonable wear and tear excepted. Upon expiration or termination of the Purchase Order, Supplier shall dispose of Buyer Furnished Property as Buyer directs in writing. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer. The applicable Purchase Order pursuant to which Buyer Furnished Property was furnished to Seller shall remain in effect so long as Supplier possesses Buyer Furnished Property.

10. PACKAGING.

Except where the Purchase Order includes alternative requirements, Supplier shall be responsible for packaging Equipment, and the clear and conspicuous marking of Equipment and packaging, in accordance with Applicable Law, industry standards and in a manner sufficient to permit efficient handling, to provide adequate protection and comply with requirements of carrier and Applicable Law. Packing slips identifying the Purchase Order number, and part number must accompany each shipment. The exterior of each shipping container or package will be clearly marked with Buyer's Purchase Order number and country of origin, which shall also be marked on Equipment, in a clear, conspicuous and permanent manner. Supplier shall provide all necessary shipping documents, including, but not limited to, customs invoices and packing lists in accordance with Buyer's requirements and Applicable Law. Damages and costs incurred by Buyer, its Representative or customer resulting from Supplier or its Representative's failure to comply with this Article 10 shall be paid by Supplier. If Supplier imports wood packaging materials, in accordance with 7 CFR 319.40, Supplier warrants that such wood packaging material is treated and marked under an official program developed and overseen by the National Plant Protection Organization in the country of export.

11. FORCE MAJEURE.

11.1. Effect of Force Majeure. A Party shall not be considered to be in breach or default of this Agreement or any Purchase Order hereunder if and to the extent that its failure or delay in performance or its efforts to cure are prevented by Force Majeure.

11.2. Procedures. If either Party, as a result of the occurrence of a Force Majeure, is rendered wholly or partially unable to perform its obligations under this Agreement or any Purchase Order, such Party shall comply with the following:

(a) the affected Party shall promptly notify the other Party hereto in writing, and in any event within five (5) Business Days after the affected Party becomes aware of the occurrence of such Force Majeure event, describing in such notice the particulars of the occurrence;

(b) the affected Party shall give the other Party written notice estimating the event's expected duration and probable impact on the performance of such Party's obligations under this Agreement, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the event;

(c) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the event;

(d) no liability of either Party which arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence;

(e) the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party, promptly taking appropriate and sufficient corrective action, including the expenditure of all reasonable sums of money;

(f) the affected Party shall use all reasonable efforts to continue to perform its obligations under this Agreement and to correct or cure the event excusing performance; and

(g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall promptly resume performance and give the other Party written notice to that effect.

11.3. Termination for Extended Force Majeure. If Supplier experiences a Force Majeure Event completely preventing Supplier's performance for more than forty-five (45) consecutive days, Buyer shall have the right to terminate the applicable Purchase Order and shall be entitled to a refund of all monies advanced to Supplier.

12. CHANGE ORDERS.

12.1. Change Order. A "Change Order" is a written instrument signed by the Parties and stating their mutual agreement upon a change in the obligations of the Parties under this Agreement or any Purchase Order, including if applicable the amount of the adjustment in the purchase price and the extent of any adjustment to the Delivery schedule, including the Guaranteed Delivery Date.

12.2. Change Order Process. In addition to circumstances set forth herein where the Parties are entitled to a Change Order, either Party may request changes in the obligations of the Parties under this Agreement within the scope of this Agreement consisting of additions, deletions, or other revisions to such obligations. If either Buyer or Supplier wishes to change such obligations, it shall submit a change request to the other Party in writing. If the requested change relates to a change to the Equipment supply obligations or results from a condition in which Supplier is entitled to a Change Order under this Agreement, then, within fifteen (15) Business Days following receipt or delivery, as applicable, of the requested change, Supplier shall submit a proposal to Buyer stating (i) the increase or decrease, if any, in the purchase price and changes to the Delivery schedule and/or the

Guaranteed Delivery Date, if any, that would result from such change (collectively, the "Change Order Information"). If the proposed change relates to any other matter, the requesting Party, at the time the request for the change is made, shall provide the proposed Change Order Information. Within five (5) Business Days following receipt of the Change Order Information, the Parties shall meet and, acting reasonably, negotiate in good faith a mutually acceptable Change Order in accordance with the principles set forth herein. Following agreement on the terms and conditions of the Change Order, the Parties shall execute the same. If the Parties do not agree upon the terms and conditions of the Change Order, and the proposed change relates to circumstances in which a Party is entitled to a Change Order under this Agreement, then either Party may submit the matter to dispute resolution pursuant to Article 24.

12.3. Change Order Restrictions. Notwithstanding anything herein to the contrary, Buyer shall not be entitled reduce the scope of the Equipment supply obligations under any Purchase Order.

12.4. No Change. Supplier shall not be obligated to proceed with any change in the Equipment supply obligations requested by Buyer unless and until a Change Order is executed by the Parties in relation to such change. Further, Supplier shall not be required to implement a requested change in the Equipment supply obligations by Buyer if Supplier reasonably believes the implementation of such change would impair Supplier's ability to comply with any of the warranties or the covenants set forth in this Agreement or the applicable Purchase Order.

13. INTELLECTUAL PROPERTY.

13.1. Grant of License. Upon transfer of title with respect to any Equipment purchased hereunder and upon providing parts under the Equipment Warranty hereunder, Supplier hereby grants to Buyer a non-exclusive, transferable, fully paid-up with no further royalty obligation, worldwide, license in and to, all Intellectual Property owned or licensed by Supplier which are necessary for the use and enjoyment by Buyer of Equipment hereunder (the "License") to import into the Territory and use the Licensed Technology (including any Intellectual Property in the Licensed Technology) within the Territory, and solely in accordance with the terms of this Agreement. Such license includes a perpetual license to use software provided for the operation of the Equipment, including but not limited to all modifications or additions to software upon payment of commercially reasonable service charges to be negotiated, as well as all related documentation and technical information. With respect to any Confidential Information contained within the Licensed Technology, Buyer may disclose such Confidential Information to third party contractors who have a need to know such parts of the Licensed Technology solely for Buyer's use and operation of the Equipment and in accordance with the terms of this Agreement; provided that such third parties shall first execute a confidentiality agreement consistent with this Agreement containing restrictions on disclosure and use at least as restrictive as those in Article 17 (and such third party contractors shall not be permitted to disclose the Licensed Technology to any other third party). The Licensed Technology is Confidential Information of Supplier as defined in Section 17.1 even if not marked as "confidential," "proprietary" or with other such similar language, except where an exception in Section 17.3 applies.

13.2. No Copies. Except as otherwise permitted by this Agreement, Buyer shall not make any copies of the Licensed Technology without first obtaining express written permission from Supplier. Notwithstanding the foregoing, Buyer may make such number of copies of (i)

the documentation and manuals for the Equipment or other Intellectual Property licensed hereunder that is not embedded in the Equipment as are required for Buyer's normal use and operation hereunder (including such copies as may be included in or attached to electronic mail messages by Buyer for delivery to Persons who are otherwise permitted recipients of Supplier's Confidential Information hereunder) and (ii) the Licensed Technology as are reasonably required for back-up, disaster recovery and archival purposes.

13.3. Proprietary Notices. Buyer shall not remove or alter, or permit to be removed or altered, any proprietary notices that appear on or with the Licensed Technology. Buyer shall include on and with the Licensed Technology a written notice stating: "Confidential and Proprietary Information of Supplier. Access and Use Restricted by License." or such other or additional notice as Supplier reasonably may prescribe.

13.4. Security. Buyer shall take all reasonable steps to ensure that no unauthorized persons have access to the Licensed Technology, and to ensure that no persons authorized to have such access shall take any action which would be in violation of this Agreement. Such steps shall include, but shall not be limited to, imposing password restrictions on use of the Licensed Technology securing Buyer's network on which such Licensed Technology resides from outside intrusion, preventing the making of unauthorized copies of the Licensed Technology and administering and monitoring use of the Licensed Technology.

13.5. No Reverse Engineering. The Licensed Technology includes trade secrets of Supplier or its Affiliates. In order to protect the Licensed Technology, Buyer shall not modify, translate, decompile, reverse engineer, decrypt, extract or disassemble the Licensed Technology or otherwise reduce or attempt to reduce any Software in the Licensed Technology to source code form. Buyer shall ensure, both during and (if Buyer still has possession of the Licensed Technology) after the performance of this Agreement, that (a) Persons who are not bound by a confidentiality agreement consistent with this Agreement shall not have access to the Licensed Technology and (b) Persons who are so bound are put on written notice that the Licensed Technology contains trade secrets, owned by and proprietary to Supplier or its Affiliates.

13.6. Open Source Software. Buyer shall not sell, sublicense, or otherwise make available the Licensed Technology or any part thereof as Open Source Software, nor combine the Licensed Technology with any Open Source Software in a manner that could require the release, disclosure or distribution of the Licensed Technology, or otherwise infect the Licensed Technology so as to impose any obligation on Supplier or diminish any rights Supplier may have therein.

13.7. Reporting. Buyer shall promptly report to Supplier any actual or suspected violation of this Article 13, and shall take such further steps as may reasonably be requested by Supplier to prevent or remedy any such violation.

13.8. Relief. Because unauthorized use or transfer of the Licensed Technology is likely to diminish substantially the value of such Licensed Technology and irreparably harm Supplier and will not be susceptible of cure by the payment of monetary damages, if Buyer breaches the provisions of this Article 13, Supplier shall be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent or restrain such breach.

13.9. Improvements.

(a) By Supplier. Any improvement hereafter made by or for Supplier or any of its Affiliates in the Licensed Technology that is approved and adopted by Supplier for use by Buyer under this Agreement shall be included in the Licensed Technology for purposes of the License. The Parties agree that Supplier may decide in its sole discretion which improvements it shall approve and adopt for purposes of Buyer's use under the License; provided, however, that if Supplier makes improvements available to buyers similarly situated to Buyer in terms of project scope and fees paid, Supplier also shall make such improvements available to Buyer on terms at least as favorable to Buyer as the terms generally provided to such similarly situated buyers.

(b) By Buyer. Buyer may not modify the Licensed Technology except as expressly permitted in this Section 13.9(b). Buyer may suggest modifications in the Licensed Technology to Supplier. Any modification in the Licensed Technology suggested by Buyer must first be approved by Supplier in its sole discretion in writing before it is used by Buyer hereunder. If Buyer develops any material modification or improvement in the Licensed Technology (whether permitted or not), it shall promptly disclose it to Supplier in writing. If and only if, and to the extent, Applicable Law mandates that Buyer own any modifications to or improvements in the Licensed Technology, in whole or in part, and notwithstanding the terms of this Agreement, Buyer hereby grants to Supplier and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to make, have made, import, offer for sale, sell, copy, make derivative works, use and sublicense others to use these modifications or improvements.

13.10. Ownership.

(a) Supplier. As between the Parties, Supplier or its Affiliates shall own the Licensed Technology, including any modifications, discoveries, derivative works and improvements derived from or based on it, whether developed by Supplier, by Buyer, or by the Parties jointly, all Intellectual Property therein and any Intellectual Property developed during, or arising out of, the performance of Supplier's obligations under this Agreement, to the extent permitted by Applicable Law. Buyer acquires only certain rights to use the Licensed Technology under the License, strictly in compliance with the terms of this Agreement, and does not acquire any ownership rights or title to it.

(b) Buyer. As between the Parties, Buyer or its Affiliates shall own (1) any Intellectual Property developed or acquired by Buyer prior to or independently of this Agreement, (2) all data generated or collected by the Equipment or Buyer or its customer during the commercial use of the Equipment (the "Buyer Data"), and (3) all Intellectual Property therein, excluding in each case any of the Licensed Technology incorporated therein or any Intellectual Property in any combination of the Licensed Technology and Buyer Data.

(c) Cooperation. Buyer shall reasonably cooperate with Supplier to assist in perfecting Supplier's ownership in any Intellectual Property in modifications, discoveries, derivative works and improvements to Licensed Technology

developed by Supplier or by the Parties jointly, including by executing declarations, oaths, assignments or other formalities documents as needed.

13.11. Enforcement. Each Party shall notify the other promptly in writing of any suspected infringement by a third party of the Licensed Technology or any of the Intellectual Property therein. Supplier shall have the exclusive right to enforce and defend the rights appurtenant to the Licensed Technology or the Intellectual Property therein in Supplier's sole discretion and shall have the sole right of control of any such enforcement action or proceeding it elects to initiate (an "Enforcement Action"), at Supplier's sole cost and expense. Supplier shall keep Buyer timely and reasonably informed as to significant events during the course of all such Enforcement Actions as would reasonably be expected to affect Buyer's use of the Licensed Technology whether conducted for Supplier's or Buyer's account. Buyer shall provide on Supplier's written request reasonable assistance in preparing and advancing Supplier's case, in consideration of which Supplier shall reimburse Buyer's reasonable out-of-pocket costs incurred in doing so (including reasonable attorneys' fees). Supplier may retain any monetary damages or other compensation or recovery awarded to it in any Enforcement Action under this Section 13.11. Notwithstanding the foregoing, Buyer may participate and be represented in any Enforcement Action by its own counsel at its own expense, to the extent such participation and representation does not materially interfere with Supplier's right to control such Enforcement Action. Supplier shall not settle any such Enforcement Action in a manner materially and adversely affecting Buyer's rights in this Agreement, or in a manner including an admission of wrongdoing by Buyer, without obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer has no right to enforce Supplier's Intellectual Property in the Licensed Technology against any third parties.

13.12. Duration and Transfers. Subject to termination in accordance with this Agreement, the License (i) shall continue for so long as Buyer or any successor retains ownership of the Equipment and continues operating the same (ii) shall terminate automatically if and when the Equipment is permanently removed from service (subject to earlier termination in accordance herewith) and (iii) shall transfer as part of an assignment that is permitted under Section 25.5. If Buyer sells or transfers the Equipment, or any portion thereof, apart from an Assignment of this Agreement, the License will terminate as to Buyer with respect to the Equipment, or any portion thereof sold or transferred and Buyer must, as a condition thereof, notify Supplier in writing and assign to the transferee thereof the License with respect to the Equipment, or any portion thereof sold or transferred, and procure from the transferee an assumption of such License, on substantially the same terms as set forth in this Article 13 and in form subject to Supplier's prior reasonable approval, to the extent the License is applicable to the assets being sold or transferred. The License may not be assigned, transferred or sublicensed except as expressly permitted in this Section 13.12. Buyer shall be responsible for, and indemnify, defend and hold harmless Supplier, Supplier's Parent, Supplier's Affiliates, and their respective officers, directors, members, agents and employees from and against any damage, injury or loss resulting from the failure of Buyer to comply with the terms of this Article 13. Supplier may terminate the License, except with respect to any Licensed Technology that is integrated in any Equipment as to which title has transferred to Buyer hereunder, on written notice to Buyer if Buyer (a) fails to cure any material breach of an obligation in this Article 13 which is capable of being cured within thirty (30) days after Supplier's written notice specifying the breach, or (b) on more than two (2) occasions in any five (5) year period, Buyer is found,

through resolution of a Dispute, whether by settlement or otherwise, to have materially breached the terms and conditions of this Article 13 in substantially the same manner.

13.13. Government End Users. The Software portion of the Licensed Technology is a "commercial item" as that term is defined at 48 CFR 2.101, and includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and in the event the Licensed Technology is provided to the US Government, such Licensed Technology shall be provided to the US Government only as a commercial end item. Consistent with 48 CFR 12.212, civilian US Government end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 12.212(a)(1) and (a)(2); Department of Defense end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 227.7202-1 through 227.7202-4.

13.14. Reservation of Rights. Supplier reserves all rights in the Licensed Technology not expressly granted to Buyer in this Agreement. No right or license is granted (expressly or by implication or estoppel) by Supplier to Buyer or its Affiliates under any tangible, Intellectual Property, or other proprietary right.

14. DEFAULTS AND REMEDIES.

14.1. Supplier Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder (a "Supplier Event of Default"):

(a) Supplier fails to pay to Buyer any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Supplier voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Supplier and such proceedings remain undismissed or unstayed for a period of ninety (90) days;

(d) Supplier fails to deliver Equipment by the date upon which Supplier exhausts its liability for liquidated damages for delayed deliveries under Section 5.3; or

(e) Except as otherwise expressly provided for in this Section 14.1, Supplier is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Buyer.

14.2. Buyer Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (a "Buyer Event of Default"):

(a) Buyer fails to pay to Supplier any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Buyer voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Buyer and such proceeding remains undismissed or unstayed for a period of ninety (90) days;

(d) Any Assignment by Buyer not in conformity with Section 25.5; or

(e) Except as otherwise expressly provided for in this Section 14.2, Buyer is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Supplier.

14.3. Remedies. Upon the occurrence of a Supplier Event of Default, Buyer may, by written notice to Supplier, terminate the outstanding Purchase Order(s) under which the Supplier Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Upon the occurrence of a Buyer Event of Default, Supplier may, by written notice to Buyer, terminate the outstanding Purchase Order(s) under which the Buyer Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Any rights and remedies available under Applicable Law upon termination of this Agreement pursuant to this Section 14.3 shall be limited in all respects by the limitations of liability set forth in Article 16. For sake of clarity, in the event that there are more than one Buyer under this Agreement, (i) a Buyer Event of Default by one such Buyer shall not constitute a Buyer Event of Default by any other Buyer and any remedies available to Supplier shall be exercisable only as against the defaulting Buyer and as regards the non-defaulting Buyer(s) this Agreement and any related Purchase Orders shall continue in full force and effect, and (ii) a Supplier Event of Default with respect to any particular Purchase Order shall only count as a Supplier Event of Default for the applicable Purchase Order and as regards any other Purchase Orders and any other Buyer(s), this Agreement and any related Purchase Orders shall continue in full force and effect.

15. INDEMNIFICATION.

15.1. General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its Affiliates, and their Representatives and assigns (the "Indemnified Party") from and against all claims, suits, causes of action, losses, liabilities, liens, damages, assessments, costs, expenses, demands, complaints or actions including but not limited to reasonable attorneys' fees and court costs (collectively, "Claims") of third parties concerning: (i) death, personal injury, or property damage of third parties, (ii) nonpayment of wages, benefits, fees, amounts owed, and/or any taxes (including penalties and interest) associated therewith arising from the Indemnifying Party's Representatives, suppliers, contractors, and/or materialmen which may include liens or encumbrances on the Equipment/Services or the premises on which located and (iii) violations by the Indemnifying Party or any Person for whom the Indemnifying Party is responsible of Applicable Law; in each case to the extent arising or resulting from the Indemnifying Party's or its Representative's negligence, willful misconduct, or breach of this Agreement. For sake of clarity, if both Parties are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this Section 15.1

shall continue, but the Indemnifying Party shall indemnify the Indemnified Party only for the percentage of responsibility for the damage or injuries attributable to the Indemnifying Party.

15.2. Infringement Indemnification by Supplier.

(a) Indemnity. If an action is brought or threatened against Buyer claiming that Buyer's use, as permitted herein, of the Licensed Technology within the Territory infringes any Intellectual Property arising or existing under Applicable Law, Supplier shall defend, indemnify and hold harmless Buyer, its Affiliates, and their Representatives and assigns at Supplier's expense from and against any and all Infringement Claim Costs of Buyer to the extent arising from such action or claim.

(b) Corrective Actions. If Buyer's permitted use of the Licensed Technology within the Territory is materially impaired or if Supplier's performance of the Equipment supply obligations under this Agreement or any other obligation is materially impaired by reason of such third party claim, Supplier shall use commercially reasonable efforts, at its expense, to continue its performance of the Equipment supply obligations under this Agreement or the other affected obligations, including at its own election and expense (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent or better or (iii) to obtain for Buyer the right to continue using such item or process. Supplier shall, prior to proceeding with any of the foregoing actions, consult with Buyer as to the proposed action and consider in good faith any reasonable request of Buyer in respect thereof. Nothing herein constitutes a guarantee by Supplier that such efforts will succeed in avoiding the infringement claim or that Supplier will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness. If Supplier reasonably believes that an injunction against use of the Licensed Technology in the Territory may be granted against Buyer, either imminently or with the passage of time, Supplier may at its expense, and upon reasonable prior written notice to Buyer, take any of the foregoing actions in order to minimize its liability.

(c) Exclusions. This Section 15.2 does not apply to, and Supplier assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise) to the extent that such claims relate, in whole or in part, to (i) Buyer's modification or alteration of the Licensed Technology (except to the extent permitted by this Agreement) or the Equipment, in either case made without Supplier's written consent or contrary to Supplier's instructions, (ii) the combination of the Licensed Technology with other Software, products, materials, equipment, parts or apparatus and not approved in writing by Supplier or (iii) a failure to promptly install an update required by Supplier.

(d) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 15.2 STATE THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND ITS AFFILIATES AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY BY THE EQUIPMENT OR THE LICENSED TECHNOLOGY OR ANY PART THEREOF, EXCEPT TO THE

EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED IN ACCORDANCE WITH MANDATORY LEGAL REQUIREMENTS.

(e) Notifications. Buyer shall promptly notify Supplier in writing following receipt of written notice of any claims alleging infringement of patents or other proprietary rights (including Intellectual Property) in connection with Buyer's permitted use of the Licensed Technology or Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations, and shall provide Supplier with all information in its possession relevant to such claim. In turn, Supplier shall notify Buyer as soon as practical in writing of any claims which Supplier may receive alleging infringement of patents or other proprietary rights which may affect Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations under this Agreement or Buyer's right to own, operate and maintain the Equipment.

15.3. Infringement Indemnification by Buyer.

(a) Indemnity. If an action is brought or threatened against Supplier claiming that any condition or event described in Section 15.2(c) results in an infringement upon any Intellectual Property within the Territory arising or existing under Applicable Law, Buyer shall defend, indemnify and hold harmless the Supplier Indemnified Parties at Buyer's expense from and against any and all Infringement Claim Costs of Supplier to the extent arising from such action or claim.

(b) Corrective Actions. If performance of Supplier's obligations hereunder is enjoined by reason of a claim subject to Section 15.3(a), Buyer shall use commercially reasonable efforts, at its option and expense, at its own election (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent, or (iii) to obtain for Supplier the right to continue using such item or process. Nothing herein constitutes a guarantee by Buyer that such efforts will succeed in avoiding the infringement claim or that Buyer will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness.

(c) Exclusions. This Section 15.3 does not apply to, and Buyer assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise), to the extent that such claims relate, in whole or in part, to (i) a modification to the Licensed Technology or the Equipment requested by Buyer but executed by Supplier or with Supplier's supervision and control or (ii) the combination of the Licensed Technology with other products, materials, equipment, parts or apparatus approved in writing by Supplier.

15.4. Indemnification Procedures.

(a) If an Indemnified Party receives written notice of a Claim, the Indemnified Party shall give prompt written notice to the Indemnifying Party, including a reasonably detailed description of the facts and circumstances relating to such Claim, a complete copy of all notices, pleadings and other papers related thereto, and a

description in reasonable detail of the basis for the potential claim for indemnification with respect thereto. The Indemnified Party's delay or deficiency in notifying Supplier shall not relieve Supplier of liability or obligation except to the extent (and only to the extent) such delay materially impacts the defense of the Claim.

(b) The Indemnifying Party shall be entitled to assume the defense and to represent the interests of the Indemnified Party, which shall include the right to select and direct legal counsel and other consultants (all of whom shall be reasonably acceptable to the Indemnified Party), appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement, subject to Section 15.4(c) below, all at its sole cost. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants or participating in its own defense at its own cost and expense. Notwithstanding the foregoing, if (i) the claim is primarily for non-monetary damages against the Indemnified Party, or primarily for an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) there is a material actual or potential conflict of interest that makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend (and in the case of clause (iii) above, compromise and settle), such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party; however the settlement of any claim pursuant to clauses (i) and (ii) above shall be governed by Section 15.4(c) below. Notwithstanding anything to the contrary herein, for sake of clarity, the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

(c) Notwithstanding anything to the contrary herein, the Indemnifying Party shall not compromise or settle, or admit any liability with respect to any third party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the relief consists solely of (i) money damages (all of which the Indemnifying Party shall pay), and (ii) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto. If the Indemnified Party assumes the defense of or represents their own interests, no settlement shall be made without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

15.5. Limited Waiver of Certain Immunities. Each of the Parties hereby specifically and expressly agrees that with respect to any and all claims against an Indemnified Party by any representative of an Indemnifying Party, any indemnification available hereunder shall not be limited by reason of any immunity to which such Indemnifying Party may be entitled under any workers compensation and/or industrial insurance acts, disability benefit acts, or other employee benefits acts and any limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party to such representative

with respect to any such claim. For the sake of clarity, the Indemnifying Party's waiver of immunity by the provisions of this section extends only to indemnification claims against the Indemnifying Party by or on behalf of the Indemnified Party under or pursuant to this Agreement, and does not apply to any claims made by the Indemnifying Party's representatives directly against the Indemnifying Party.

15.6. Survival. The indemnities set forth in this Article 15 shall survive the termination or expiration of this Agreement.

16. LIMITATIONS OF LIABILITY.

16.1. WAIVER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE, WHETHER BASED IN CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

16.2. MAXIMUM LIABILITY. SUPPLIER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE SET FORTH IN THE APPLICABLE PURCHASE ORDER PURSUANT TO WHICH THE APPLICABLE CLAIM AROSE.

16.3. EFFECTIVENESS. THE PARTIES AGREE THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 16 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SUPPLIER HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 16 EXTEND TO THE PARTIES' RESPECTIVE AFFILIATES, PARTNERS, PRINCIPALS, MEMBERS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.

16.4. Commencement of Claims. Except with respect to claims arising under Article 13, Article 15 or Article 17, any legal action of either Party arising under this Agreement or any Purchase Order issued hereunder must be commenced within two (2) years after the Delivery of the applicable Equipment or performance of the applicable Service. To the maximum extent permitted by Applicable Law, each Party hereby waives any right to commence any claim or action after such two (2) year period.

17. CONFIDENTIALITY.

17.1. Confidential Information. Each Party shall, and shall cause its respective Affiliates and Representatives to, keep confidential any information which it may have or acquire before or after the date of this Agreement, concerning the other Party and its assets, business, operations, affairs, financial condition or such information, "Confidential Information").

17.2. Non-Disclosure. Neither Party shall use any Confidential Information in any manner detrimental to the other Party nor shall any of them disclose, publish or make accessible, directly or indirectly, any Confidential Information to any person. In addition, the Parties shall exercise all reasonable efforts to prevent any other person from gaining access to such Confidential Information and take such protective measures as may be or become reasonably necessary to preserve the confidentiality of such Confidential Information.

17.3. Exceptions. Notwithstanding Section 17.1 and Section 17.2, either Party may disclose Confidential Information:

(a) to any Representative of such Party, provided that such Representative has a need to know and has been informed of the confidential nature of the information pursuant to Section 17.4;

(b) to the extent required by (i) any Applicable Law of any Governmental Authority (including any rule or regulation of the Securities and Exchange Commission), (ii) any stock exchange rule or regulation or (iii) any binding judgment, order or requirement of any court or other Governmental Authority of competent jurisdiction; provided, that the Party required to disclose Confidential Information, as the case may be, has delivered written notice to and consulted, to the extent practicable, with the other Party prior to disclosure of such Confidential Information; and

(c) to the extent such Confidential Information becomes available within the public domain (otherwise than as a result of a breach of this Article 17).

17.4. Representatives Bound. Each Party shall inform any representative to whom it provides Confidential Information that such information is confidential and shall instruct them (a) to keep such Confidential Information confidential and (b) not to disclose it to any third party (other than those persons to whom such Confidential Information has already been disclosed in accordance with the terms of this Agreement). The disclosing Party shall be responsible for any breach of this Article 17 by the person to whom the Confidential Information is disclosed.

17.5. Survival. Notwithstanding anything herein to the contrary, the provisions of this Article 17 shall survive the termination of this Agreement for a period of three (3) years and, with respect to each Party, shall survive for a period of three (3) years following the date on which such Party is no longer a Party.

18. REPRESENTATIONS AND WARRANTIES.

18.1. Representations of the Parties. As of the Effective Date (or, with respect to each Further Buyer Contracting Party that becomes a Buyer hereunder, as of the time of execution of a joinder hereto), and as of the entry into of each Purchase Order hereunder, each Party represents to the other Party as follows:

(a) Due Formation. Such Party (i) is a duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) has the requisite power and authority to own its properties and carry on its business as now being conducted and currently proposed to be conducted and to execute, deliver and perform its obligations under this Agreement, and (iii) is qualified to do business in every jurisdiction in which failure so to qualify could be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(b) Authorization; Enforceability. Such Party has taken all action necessary to authorize it to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to bankruptcy, reorganization, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and subject to general principles of equity.

(c) No Conflict. The execution, delivery and performance by such Party of this Agreement does not and will not (i) violate any Applicable Law, (ii) result in any breach of such Party's constituent documents or (iii) conflict with, violate or result in a breach of or constitute a default under any agreement or instrument to which such Party or any of its properties or assets is bound or result in the imposition or creation of any lien or security interest in or with respect to any of such Party's property or assets, other than in each case any such violations, conflicts, breaches or impositions which could not be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(d) No Authorization. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any third party (other than those which have been obtained) is required for the due execution, delivery and performance by such Party of this Agreement, other than any such authorizations, approvals or actions the failure of which to obtain could not reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(e) Litigation. Such Party is not a party to any legal, administrative, arbitration or other proceeding, and, to such Party's knowledge, no such proceeding is threatened, before any Governmental Authority that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of this Agreement, the subject matter hereof, or that which could be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

18.2. Additional Representations of Supplier. In addition to representations and warranties set forth elsewhere in this Agreement, Supplier hereby represents and warrants as of the Effective Date and as of the entry into of each Purchase Order hereunder as follows:

(a) None of Supplier, its Affiliates or Representatives is the target of or designated under any sanctions program that is established by statute or regulation of the United States, by Executive Order of the President of the United States, or by designations of any department or agency of the United States government including but not limited to those designations reflected in the "list of Specially

Designated Nationals and Blocked Persons" of the Office of Foreign Asset Control, U.S. Department of the Treasury;

(b) Supplier's Representatives are legally authorized to work in the United States and Supplier shall complete as required by Applicable Law the Department of Labor's Form I-9 and to retain it for the statutorily designated period and, if requested by Buyer, Supplier shall provide copies of such Forms I-9 to Buyer unless such disclosure shall be prohibited by Applicable Law;

(c) For Services provided at Buyer's, it's customer or third party's premises, Supplier has examined the worksite in order to acquaint itself with the local conditions, including applicable regulations codes, permits, licenses, registrations, environmental standards, and notification requirements concerning site safety and/or security;

Supplier has not and will not, absent prior written approval from Buyer, take any actions that: (i) create, or purport to create, any obligation on behalf of Buyer, or (ii) grant, or purport to grant, any rights or immunities to any third party under Buyer's intellectual property or proprietary rights; and

(d) The bank account named by Supplier to Buyer for all payments to be effected in connection with any Purchase Order hereunder is held in Supplier's name and solely for its account.

19. ENVIRONMENT, HEALTH AND SAFETY.

19.1. Compliance and Related Matters.

(a) Each of the Parties shall, in addition to other obligations set forth in this Agreement, during the course of performance of their respective obligations under this Agreement or any Purchase Order issued hereunder:

(i) comply with Applicable Laws concerning health, the environment, safety, or pertaining to or regulating pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes, including without limitation the handling, transportation and disposal thereof, or governing or regulating the health and safety of personnel, including but not limited to the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act ("TSCA"), as amended (collectively referred to as "EHS Laws") (pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes as defined under EHS Laws shall be referred to collectively as "Hazardous Materials");

(ii) take reasonable and prudent measures, as appropriate, consistent with applicable industry standards, to mitigate hazards to the environment and to the health and safety of persons;

(iii) select and use only equipment, including but not limited to personal protection equipment, that comports with EHS Laws, implement programs to train its Representatives in the use of such equipment in a safe and

lawful manner, and maintain such equipment in good working order at all times; and

(iv) promptly notify the other Party of any incident involving death, injury or damage to any person or property in connection with any Equipment or Purchase Order.

(b) Supplier shall, in addition to other obligations set forth in this Agreement, during the course of performance of its obligations under this Agreement or any Purchase Order issued hereunder:

(i) ensure that Equipment/Services comply with EHS Laws;

(ii) ensure the Equipment, and any and all parts, components, or material thereof, as Delivered by Supplier, bear all markings, labels, warnings, notices or other information required under applicable EHS Laws at the time of such Delivery; and

(iii) comply with any applicable substance declarations and other requirements set forth in Exhibit C.

19.2. On-Site Environmental and Safety Responsibility. Where the Purchase Order includes the presence of Supplier or its Representatives on the premises of Buyer, Buyer's customer, or any other location other than the premises of Supplier ("Work Site"), Supplier shall: (1) be responsible for the safety, health, medical surveillance, industrial hygiene, training and all other matters required under EHS Laws relating to safety and health of its Representatives at the Work Site, (2) appoint a competent person as its representative for environmental, health and safety who shall take part in safety discussions with Buyer, its Representatives, customer, or the owner of the Work Site, (3) be responsible for the handling, use, transportation and disposal of any and all substances regulated under the EHS Laws which Supplier or its Representatives bring onto the Work Site or generate in the performance of Supplier's work pursuant to the applicable Purchase Order, including but not limited to excess, waste or residue, containers or any of such substances not consumed, and for any spills, releases or discharges of such substances to the extent attributable to acts or omissions of Supplier or its Representatives, strictly in accordance with EHS Laws, and (4) ensure Supplier's Representatives participate in any site-specific safety training and comply with all rules and requirements of Buyer, its customer, or such other owner of the Work Site, in each case, of which Buyer provides Supplier advance written notice.

19.3. Health and Safety Plan. Prior to commencing any Services at a Work Site, Supplier shall, in accordance with EHS Laws provide and comply with a site specific health and safety plan, Work Site requirements, and shall make the same available to Buyer or its Representatives at Buyer's request. If Supplier fails to comply with this Article 19, Buyer may, at its sole option and without limiting its other rights, order Supplier or its Representatives to cease Services until Supplier complies at Supplier's sole cost and expense. If Supplier is unable or refuses to take corrective action hereunder Buyer may contract with a third party or otherwise continue such Services at the Work Site and charge Supplier any excess cost reasonably incurred by Buyer. Buyer shall have the right, at its sole discretion, to remove Supplier or its Representatives from a Work Site for violation of this Article 19.

20. OPEN SOURCE SOFTWARE.

Supplier shall inform Buyer no later than ten (10) Business Days following receipt of any written request from Buyer in connection with a Purchase Order, whether the Equipment/Services contemplated thereby include "Open Source Software." As used herein "Open Source Software" means any Software that is licensed royalty-free (i.e., fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor can be permitted) under any license terms or other contract terms ("Open License Terms") which require, as a condition of use, modification and/or distribution of such Software and/or any other Software incorporated into, derived from or distributed with such software ("Derivative Software"), either of the following: (i) that the source code of such Software and/or any Derivative Software be made available to third parties; or (ii) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties. If Open Source Software is included, Supplier shall deliver to Buyer, not later than the date of order confirmation, (A) a schedule of all Open Source Software files known to be used, indicating the relevant license(s) to the extent known by Supplier; and (B) a written notice that Supplier is not aware of any violation of such license(s) due to such Use of Open Source Software.

21. EXPORT CONTROL AND FOREIGN TRADE REGULATIONS.

21.1. Acknowledgement and Compliance. The Parties acknowledge that all Equipment to be delivered and Services to be provided according to this Agreement are subject to export control and sanctions laws and regulations, including, without limitation, the U.S. Export Administration Regulations ("EAR") (15 C.F.R. §§ 730-774), the U.S. Foreign Trade Regulations (15 C.F.R. Part 30), and the regulations, rules, and executive orders administered by OFAC (collectively, the "Export Controls and Sanctions Laws"). Each Party agrees to comply with all Export Controls and Sanctions Laws applicable to any such Equipment/Services and shall not take any action that will cause the other Party to violate or be subject to penalty under the Export Controls and Sanctions Laws.

21.2. Export Licenses. Supplier shall obtain all necessary export licenses, unless Buyer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Export Controls and Sanctions Laws. To the extent Supplier is requested to deliver Equipment/Services regulated under the Arms Export Control Act or the Atomic Energy Act, Supplier shall advise Buyer in advance of order or contract acceptance.

21.3. Provision of Trade Data. At the request of Buyer, Supplier shall provide Buyer for Equipment and Services delivered the following trade data as applicable: (i) "Export Control Classification Number" according to the EAR's Commerce Control List (ECCN) or the Munitions List Category Designation according to the US International Traffic in Arms Regulations, and all other export control list numbers; (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates, Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers) such as NAFTA certificates of origin.

21.4. Changes. In the event Supplier has knowledge of any alterations to origin and/or characteristics of the Equipment/Services, it shall notify the Buyer not later than ten (10) Business Days after discovery thereof.

21.5. Additional Buyer's Obligations. Buyer agrees that it will not, in violation of applicable Export Controls and Sanctions Laws:

(a) directly or indirectly, export, reexport, or transfer Equipment or Services to, or transship Equipment or Services through, a Sanctioned Country;

(b) directly or indirectly, release, sell, provide, export, reexport, transfer, divert, loan, lease, consign, allow access to, or otherwise dispose of Equipment or Services to a Prohibited Person; or

(c) use Equipment or Services to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.

21.6. Certain Relief. No Party shall be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

22. BUYER CODE OF CONDUCT.

Supplier shall comply with the principles and requirements of the "Code of Conduct for AES Suppliers and Third Party Intermediaries" attached hereto as Exhibit D (hereinafter the "Code of Conduct"). If and as requested by Buyer, Supplier shall, not more than once a year (at its option), provide to Buyer either (A) a written self-assessment in substantially the form provided by Buyer or (B) a written report reasonably acceptable to Buyer describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct. In addition to any other rights and remedies Buyer may have, in the event of Supplier's material or repeated failure to comply with the Code of Conduct, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Buyer may terminate any outstanding Purchase Orders under this Agreement without any liability whatsoever. Material failures include, but are not limited to, incidents of child labor, corruption and bribery. The notice and remedy provisions herein shall not apply to material failures set forth in the preceding sentence.

23. COMPLIANCE WITH LAWS AND PERMITS.

The Parties and their Representatives shall comply with all Applicable Laws in the course of the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder. In addition, Supplier and Buyer shall each obtain all required licenses, permits, authorizations, registrations or approvals required with respect to the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder.

24. DISPUTE RESOLUTION.

24.1. Referral to Senior Management. Except as otherwise provided by this Agreement, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof (which breach or alleged breach by a

Party remains uncured within ten (10) Business Days after receipt of written notice thereof from another Party) or the validity or termination hereof or the relationship created between the Parties by and/or through this Agreement (a "Dispute") shall first be settled as far as possible by good faith negotiations between the parties to the Dispute, in the form of meetings between senior- management level representatives of such Parties, upon the written request by any such Party to the other parties to the Dispute, which writing shall set forth in reasonable detail the nature and extent of the Dispute.

24.2. Referral to Arbitration. If the parties to the Dispute are unable for any reason to resolve a Dispute within thirty (30) days after receipt by any Party of written notice of a Dispute, then any Party may submit the Dispute to arbitration to be finally and exclusively resolved under the Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein, with respect to Equipment and Services to be provided to a Customer with the United States (as applicable, the "Rules"). There shall be three (3) arbitrators. If there are two (2) parties to the Dispute, each of the parties to the Dispute shall nominate one (1) arbitrator in accordance with the Rules. If there are more than two (2) parties to the Dispute, the arbitrators shall be nominated in accordance with the Rules; provided, however, that any Party and its Affiliates shall be entitled to nominate only one (1) such arbitrator. The arbitrators so nominated, once confirmed by the AAA, shall nominate an additional arbitrator to serve as chairman, such nomination to be made within fifteen (15) days of the confirmation by the AAA of the second arbitrator. If the initial arbitrators shall fail to nominate an additional arbitrator within such fifteen (15) day period, such additional arbitrator shall be appointed by the AAA. The arbitrators shall be required to submit a written statement of their findings and conclusions. Except as otherwise agreed by the parties to such Dispute, exclusive venue of arbitration with AAA will be Wilmington, Delaware, and the language of the arbitration shall be English. Each of the Parties will submit to the non-exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware for preliminary relief in aid of arbitration and for the enforcement of any arbitral award from AAA. By agreeing to arbitration, the Parties do not intend to deprive any national court of its jurisdiction to issue any pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings.

24.3. Neutral Arbitrators. None of the Parties or the arbitrators shall select any arbitrator for the arbitral tribunal who has any interest in the Dispute or who has, or within the immediately preceding five (5) years has had, any economic or other relationship with any party to the Dispute.

24.4. Procedures and Costs. The arbitrators shall not have the right to award consequential, incidental, indirect, special, treble, multiple or punitive damages. The arbitral tribunal shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur, and the arbitral tribunal shall decide the Dispute under the substantive laws of the State of Delaware, without regard to applicable choice of law provisions thereof. The arbitration award shall be decided by majority opinion and issued in writing in the English language and shall state the reasons upon which it is based. It may be made public only with the consent of each participating Party or as may be required by law or regulatory authority or as necessary for enforcement of such award. The arbitrators shall allocate the fees and costs of the arbitration. The losing Party(ies) shall pay the prevailing Party(ies)' attorney's fees and costs and the costs associated with the arbitration, including the expert fees and costs and the arbitrators' fees and costs borne by the prevailing Party(ies), all as determined by the arbitrators. Each Party shall bear its own fees and costs until the

arbitrators determine which, if any, Party is the prevailing Party(ies) and the amount that is due to such prevailing Party(ies).

24.5. Award. The award rendered by the arbitrators shall be final and binding on the participating Parties and shall be the sole and exclusive remedy between and among the participating Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. The award shall be issued no later than one hundred twenty (120) days from the signing or ratification of the Terms of Reference (as defined in the Rules) or as soon thereafter as practicable. The award shall be paid within thirty (30) days after the date it is issued and shall be paid in U.S. Dollars in immediately available funds, free and clear of any Liens, Taxes or other deductions. A judgment confirming or enforcing such award may be rendered by any court of competent jurisdiction.

24.6. Confidentiality. The arbitration shall be confidential. No Party may disclose the fact of the arbitration, any award relating thereto or any settlement relating to any Dispute without the prior consent of the other Party(ies); provided, that such matters may be disclosed without the prior consent of the other Party(ies) to lenders, auditors, tax or other Governmental Authority or as may be required by law or regulatory authorities or as necessary to enforce any award.

24.7. Continued Performance; Provisional Remedies. Notwithstanding the existence of any Dispute, the Parties shall continue to perform their respective obligations under this Agreement unless the Parties otherwise mutually agree in writing. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it, prevent the Parties from seeking temporary injunctive relief at any time as may be available under Law or in equity to preserve its rights pending the outcome of any arbitration. Without prejudice to such provisional remedies as may be available under the jurisdiction of a national court, the arbitral tribunal shall have full authority to grant provisional remedies or order the Parties to request that a court modify or vacate any temporary or preliminary relief issued by a court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect. The Parties agree that any issue regarding the arbitrability of any claims or disputes arising under, relating to or in connection with this Agreement is an issue solely for the arbitrators, not a court, to decide.

24.8. Waiver of Jury Trial. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY OR OTHERWISE ON ANY CLAIM, CAUSE OF ACTION, SUIT OR PROCEEDING PERMITTED UNDER THIS ARTICLE 24. THE PROVISIONS OF THIS AGREEMENT RELATING TO WAIVER OF TRIAL BY JURY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

25. MISCELLANEOUS.

25.1. Governing Law. This Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Equipment of April 11, 1980 shall be excluded.

25.2. Records. Supplier and its Representatives shall maintain accurate and complete records of all contracts, papers, correspondence, copybooks, applications, accounts, invoices, and/or other information reasonably relating to this Agreement and any Purchase Orders issued hereunder (collectively, "Records") in accordance with recognized commercial

accounting practices, and shall retain such Records for a period of seven (7) years unless a longer period is required under Applicable Law.

25.3. Intentionally Omitted.

25.4. Insurance. Supplier and its Representatives shall comply with the Insurance requirements set forth in Exhibit E attached hereto.

25.5. Assignment; Successors. Neither Party may assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment which fails to comply with the requirements of this Section 25.5 shall be null and void. Notwithstanding the foregoing: (i) either Party may, without the prior written consent of the other Party, assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, to an Affiliate, which will accept such assignment and assume all obligations related to this Agreement and any applicable Purchase Orders (including by executing a joinder to this Agreement in the form of Exhibit B hereto); provided that, notwithstanding any such assignment, the assigning Party shall not be relieved of any of its obligations hereunder by reason of such assignment and shall remain liable hereunder to the same degree that the assigning Party would be responsible had there been no assignment.

25.6. Subcontracting. Supplier shall be solely responsible for the proper selection, supervision, acts and omissions of its subcontractors.

25.7. Other Terms and Amendments. The terms and conditions contained in any sales order, acknowledgment, invoice, website, letter, writing, software or file (such as “clickwrap”, “shrinkwrap”, or website terms of use), or other document or medium shall not be applicable or amend this Agreement or any Purchase Order issued hereunder nor bind the Parties hereto or their Affiliates or Representatives. This Agreement and any Purchase Order issued hereunder may only be amended by a written instrument signed by authorized Representatives of the Parties.

25.8. Government Contracts. When the Equipment/Services are to be used in the performance of a contract or subcontract with a Governmental Authority, applicable government contract requirements attached to this Agreement shall apply and are incorporated herein by reference.

25.9. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, employee-employer relationship, trust or other association of any kind between the Parties and each Party shall be individually responsible only for its obligations as set forth in this Agreement. Any Services provided by Supplier, its Affiliates and Representatives pursuant to this Agreement are provided as independent contractors of Buyer and not in the capacity of an employee or agent of Buyer.

25.10. Publicity. No Party hereto shall refer to or use, or permit any persons to refer to or use, any other Party’s name, trademarks, service marks or logos in any advertising, promotional materials, press releases or other publicity without obtaining the prior written consent of the applicable Party.

25.11. Non-Exclusive Remedies and Non-Waivers. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. Any waiver authorized on one occasion must be made in writing and is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The rights and remedies of the Parties herein shall not be exclusive and are in addition to any other rights and remedies provided by Applicable Law or in equity.

25.12. Severability. Any provision of this Agreement or any Purchase Order issued hereunder that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (provided the substance of the agreement between the Parties is not thereby materially altered), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Laws, the Parties hereto hereby waive any provision of Applicable Law which renders any provision hereof prohibited or unenforceable in any respect.

25.13. Survival. The Title and Risk of Loss, Warranties, Intellectual Property, Defaults and Remedies, Indemnification, Limitations of Liability, Confidentiality, Export Control and Foreign Trade Regulations, Dispute Resolution and Miscellaneous sections of this Agreement, and any provision that contemplates performance or observance subsequent to termination or expiration shall survive termination or expiration of this Agreement.

25.14. Affirmative Action. Supplier shall, to the extent applicable, comply with Buyer's requirements as promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs set forth in Exhibit F.

25.15. Complete Agreement and Counterparts. This Agreement, together with all Purchase Orders issued hereunder, shall constitute the entire agreement between Buyer and Supplier and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof. The headings used in this Agreement are for reference and shall not limit or affect the meaning or interpretation of any of the terms hereof. Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated and superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

25.16. Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

25.17. No Pre-Printed Terms. Pre-printed terms or conditions in any invoice, quotation, shipping notice or order acknowledgement issued by Buyer or Supplier shall be of no force or effect, except to the extent included in a Pricing Notice. The terms and conditions applicable to each Purchase Order issued by Buyer shall be those set forth herein and in such Purchase Order and the applicable Pricing Notice therefor.

25.18. Priority. In the event of inconsistency between or among the provisions of this Agreement, a Purchase Order and the applicable Pricing Notice therefor, the following order of precedence, from highest to lowest, shall govern:

(a) mutually agreed Change Orders;

(b) Purchase Order;

(c) this Agreement.

25.19. Notices.

(a) All notices and other communications which either Party is required or may desire to serve upon the other shall be addressed to the Party to be served as follows, unless a different address is designated in writing by the Party to be served:

To Buyer:

AES Grid Stability, LLC
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
Attention: Paul Freedman, General Counsel of The AES Corporation
Email: paul.freedman @aes.com

With a copy to:

AES Grid Stability, LLC
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
Attention: Chris Shelton, Senior Vice President, Chief Product Officer and President, AES Next
Email: chris.shelton@aes.com

To Supplier:

Fluence Energy, LLC
4602 N. Fairfax Drive
Suite 600
Arlington, VA 22203
Attn: Dennis Fehr, SVP and Chief Financial Officer
Email: dennis.fehr@fluenceenergy.com

With a copy to:

Fluence Energy, LLC
4601 N. Fairfax Drive
Suite 600
Arlington, VA 22203
Attn: Francis A. Fuselier, SVP, General Counsel and Secretary

Email: frank.fuselier@fluenceenergy.com

(b) All notices, requests, consents and other communications under this Agreement must be in writing and shall be deemed to have been duly given and effective (i) immediately (or, if not delivered or sent on a Business Day, the next Business Day) if delivered or sent and received by electronic mail, (ii) on the date of delivery if by hand delivery (or, if not delivered on a Business Day, the next Business Day) or (iii) on the first Business Day following the date of dispatch (or, if not sent on a Business Day, the next Business Day after the date of dispatch) if by a nationally recognized overnight delivery service (all fees prepaid). In the case of notice via email, each Party shall provide confirmation of receipt or non-receipt upon the request of the transmitting Party.

(c) All notices, requests, consents and other communications under this Agreement shall include reference to the applicable Purchase Order number, if any.

25.20. Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or Exhibits hereto.

25.21. Language of the Agreement, Correspondence, Documentation. The language of this Agreement shall be English. Unless to the extent agreed otherwise, correspondence, technical and commercial documents as well as any other information exchanged between the Consortium Members relating to this Agreement shall be in English.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

AES Grid Stability, LLC

By: J. Chris Shelton
3F82616737B443E...
Name: J. Chris Shelton
Title: President

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

AES Grid Stability, LLC

By: _____
Name: Chris Shelton
Title: President

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

AES Grid Stability, LLC

By: _____
Name: Chris Shelton
Title: President

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

Schedule 1.1(a)

The information contained in columns C and D is provided for informational purposes only. For purposes of this Agreement, the definition of "Applications" shall include Column E.

A No	B Application	C Typical Customer	D Typical system Size in MW	E Definition
1	Flexible capacity	Power Plant	50 to 100 MW	Flexible capacity is the use of energy storage as a substitute for peak generating capacity or to meet flexible dispatch ability needs in order to secure grid stability. Such fast acting power sources are an integral part of the grid to provide the required flexible capacity. The control system is designed such to monitor the grid condition, recognize the need and acts immediately until the grid returns to stable condition, or to be dispatched by the grid operator. The system is connected to Grids with a Voltage level > 1kV. The control system makes sure the storage is at the needed stage of charge (subject to setting)
2	Conventional hybrid	Power Plant	up to 10MW	Conventional hybrid is the use of energy storage in conjunction with a conventional generation resource to react on e.g. peak demands. The system is connected to Grids with a Voltage level > 1kV. The storage is monitoring and acting based on its own control system
3	Frequency Control	TSO / DSO & PP / Investor	up to 50MW and greater single system size	Frequency regulation is the use of energy storage to regulate electric system frequency as a primary, secondary, or contingency reserve resource. Energy Storage system is installed usually before the meter and secures the power grid frequency within the frequency band defined by the regulator. Spinning reserve is a subset of frequency control to deliver the mandatory reserve power out of a storage unit instead of a Power Plant. The system is connected to Grids with a Voltage level > 1kV.
4	Renewable hybrid	TSO / DSO & PP / Investor	up to 5MW	Renewable hybrid is the use of energy storage in conjunction with a renewable generation resource; (e.g. wind and solar) to control (integral control system) the ramp-up and ramp-down of the power generation or to make the power injection into the power grid stable in relation to the forecast considering parameter such as weather forecast. The system is connected to Grids with a Voltage level > 1kV.
5	T&D investment/ replacement deferment	TSO / DSO	up to 10MW	Transmission and distribution investment, replacement and deferral is the use of energy storage to replace or defer investment in new conventional electric transmission or distribution infrastructure assets. The system is connected to Grids with a Voltage level > 1kV. The storage is monitoring and acting based on its TSO / DSO up to 10MW own control system
6	T&D capacity release	TSO / DSO	up to 10MW	Transmission and distribution capacity release is the use of energy storage to improve the utilization of existing conventional electric transmission or distribution infrastructure assets. The system is connected to Grids with a Voltage level > 1kV. The own Storage

A No	B Application	C Typical Customer	D Typical system Size in MW	E Definition
				control system is monitoring the grid conditions and takes corrective action if needed
7	Microgrid and Islands*	On shore Microgrid owners and utilities on geographical islands	1-3MW	Energy Storage systems combined with a Microgrid controller providing the micro or island grid master role resulting in a maximized usage of renewable power generation vs. conventional power generation on a geographical or grid island while keeping system voltage and frequency stable monitored and controlled by the storage control systems. Improving the efficiency of conventional diesel generation where applicable. The system is connected to Grids with a Voltage level > 1kV.
8	Power Quality (MS UPS)*	Industry / Transportation	1-25MW	Energy Storage system placed behind the meter typically in an industrial environment injecting power in case of grid failure and or voltage dip. The ability to disconnect ultrafast (<10ms) from the grid to avoid the storage feeding a grid failure. In addition the system can bridge 15 to 30 minutes power interruption, possibly combined with a diesel power generation. The system operates on Voltage level > 1kV. The storage control system is monitoring and acting driven by its on control system.
9	Consumer peak shaving (demand charge mgmt.)	Industry / Transportation	1-25MW	Consumer peak shaving, the use of energy storage to reduce an electric consumer's bill, optimize an electric consumer's consumption, or to provide other reliability services to the electric consume r. This energy Storage system is placed behind the meter. The system operates on Voltage level > 1kV. The 1 – 25 MW storage control system is monitoring and acting automatically following the given settings.
10	Black start	Gas Turbine power Plants and wind power generation	1-25MW	Black start, the use of energy storage to support generation start-up during recovery from a partial or total shutdown of an electric system as an emergency Gas turbine start up solution. The Energy Storage system providing power according a defined process until ignition of a gas turbine. The system operates on Voltage level > 1kV. The initiation of the Black Start is usually manually, the control system makes sure the black star process as such is following a defined procedure.

* Included in the definition of "Application" solely for purposes of Section 4.3.

Exhibit A

Form of Purchase Order

The following sets forth the minimum terms and conditions to be included on a Purchase Order under this Agreement, which terms and conditions may be modified or supplemented by the mutual agreement of the Parties:

Equipment:

1. Type of Equipment
2. Quantity of Equipment
3. Unit Price of Equipment
4. Total Price of Equipment on this Purchase Order
5. Manufacturing Location
6. Incoterms and Delivery Location
7. Guaranteed Delivery Date
8. Insurance
9. Equipment Warranty Period
10. IP/Software Terms
11. Supplier Documents
12. Technical Specifications
13. Special Packaging Requirements

Services:

1. Type of Services
2. Amount of Services
3. Price of Services
4. Total Price of Services on this Purchase Order
5. Performance Location
6. Performance Date(s)
7. Insurance
8. Services Warranty Period
9. IP/Software Terms

10. Supplier Documents

11. Specifications

Other Terms:

1. Electronic Banking Method for Payments

2. Buyer Furnished Property

EXHIBIT B

Joinder Agreement Template

This Joinder Agreement (the "Joinder Agreement") to the Amended and Restated Storage Core Frame Purchase Agreement, dated _____, 2021 between AES GRID STABILITY, LLC and FLUENCE ENERGY, LLC is made and entered into

by and between

___
with its registered seat in [Place], [Country]

- hereinafter referred to as "Supplier" -

and

AES (Local Company) ___,
with its registered seat in [Place], [Country]

- hereinafter referred to as "Buyer" -

- Supplier and Buyer are hereinafter individually referred to as a "Party" and collectively as the "Parties" -

WHEREAS, Supplier and AES GRID STABILITY, LLC (“AES”) entered on XXXXX, 2021 into the Amended and Restated Storage Core Frame Purchase Agreement (the "Agreement") which is attached hereto as Annex 1;

WHEREAS, Buyer is an Affiliate of AES and wishes to become a party to the Agreement and to adopt the terms and conditions thereof, and consequently Supplier and Buyer wish to enter into this Joinder Agreement.

NOW THEREFORE, in consideration of the mutual covenants and premises contained herein, the Parties agree as follows:

ADOPTION OF THE AGREEMENT

a) Buyer hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, Buyer shall be deemed a party to the Agreement for all purposes of the Agreement, and shall have all of the obligations of a “Buyer” under the Agreement, as though an original party to the Agreement. Buyer hereby ratifies, as of the date hereof, and agrees to be bound by, and subject to, all of the covenants, terms, provisions and conditions applicable to “Buyer” contained in the Agreement. The terms and conditions as set out in the Agreement are incorporated herein by reference and are made applicable between the Parties.
b) Without limiting the generality of the foregoing, Buyer hereby represents and warrants that each of the representations and warranties of “Buyer” contained in the Agreement is true and correct as of the date of the execution and delivery of this Joinder Agreement.
c) This Joinder Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles.
d) This Joinder Agreement contains the entire agreement between the Parties and supersedes any and all prior negotiations, correspondence, understandings between the Parties concerning the subject matter hereof. It may not be changed orally, but only by an agreement in writing signed by both Parties hereto.
e) This Joinder Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Joinder Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

SPECIFIC STIPULATIONS UNDER THIS JOINDER AGREEMENT

[ONLY country specific deviations from the Agreement are to be stipulated here.]

a) [Delivery and Payment terms]

b) [Term and Termination]

c) [Country specific regulations (jurisdiction, governing law, tax etc.)]

d) ...

ORDER OF PRECEDENCE BETWEEN THE AGREEMENT AND THE ADOPTION AGREEMENT

In the event of any conflict or inconsistency between the terms of this Joinder Agreement and the Agreement, the Joinder Agreement shall prevail over the Agreement.

Supplier	Buyer	
Place, Date:	Place, Date:	
_____	_____	
_____	_____	_____
Name:	Name:	Name:
_____	_____	_____
(Print)	(Print)	(Print)
Title:	Title:	Title:
_____	_____	_____

Annex 1: Amended and Restated Storage Core Frame Purchase Agreement

Exhibit C

Substance Declaration

If Supplier furnishes Equipment that are subject to restrictions, rules or regulations for Hazardous Materials or other substances comprising, part of or contained in such Equipment, including but not limited to statutes, rules, regulations, codes, rules, standards and requirements of (1) EHS Laws, (2) governing, controlling or regulating Hazardous Materials, including but not limited to the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (hereinafter "RoHS"), Directives 2002/96/EC and 2012/19/EU as well as their respective incorporation into EU member states' legislation including any amendments thereto (hereinafter "WEEE"), (3) the Regulation EC 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals including any amendment thereto (hereinafter "REACH"), (4) EC Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators and/or (5) TSCA, without limiting Supplier's obligations under this Purchase Order, Supplier shall comply with the requirements of this "Substance Declaration".

Supplier shall submit to Buyer with each Equipment, the chemical substances contained therein or in the Service deliverable, and/or Material Safety Data Sheets, Safety Data Sheets or other such documentation as required by Applicable Laws (including without limitation the OSHA Hazardous Communication Standard 29 CFR 1910.1200 et seq.). If Supplier furnishes Equipment that are subject to substance restrictions, rules or regulations including but not limited to those identified in this Exhibit, Supplier shall declare such substances on the Buyer's web database BOMcheck (www.BOMcheck.net) or, only if and approved in writing in advance by Buyer, in another reasonable format provided to Buyer no later than first delivery date of the Equipment, and Supplier shall prior to Supplier 's first delivery of Equipment complete and comply with the Declarable Substances-Form (hereinafter "Substance Declaration") in the Buyer supplier portal "SCM STAR" or in hard copy forwarded to Buyer. In addition, for Equipment that are subject to substance restrictions, rules or regulations Supplier shall provide ordering entity with a safety data sheet required in Article 31of the Regulation EC 1907/2006 (REACH) and Supplier shall keep this Substance Declaration up to date.

Should a delivery hereunder contain "dangerous goods" as so classified pursuant to Applicable Laws, Supplier shall notify Buyer in writing in sufficient detail to identify the Equipment, the hazards, and the laws, rules or regulations applicable thereto no later than three (3) business days after receipt of the Purchase Order.

Exhibit D

Code of Conduct for AES Suppliers and Third Party Intermediaries

This Code of Conduct defines the basic requirements placed on AES' suppliers and third party intermediaries concerning their responsibilities towards their stakeholders and the environment. AES reserves the right to reasonably change the requirements of this Code of Conduct. In such event AES expects the supplier to accept such reasonable changes.

The supplier and/or third party intermediary declares herewith:

- Legal compliance
  - to comply with the laws of the applicable legal Equipment and Services.
- Prohibition of corruption and bribery
  - to tolerate no form of and not to engage directly or indirectly in any form of corruption or bribery and not to grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage.
- Fair competition, anti-trust laws and intellectual property rights
  - to act in accordance with national and international competition laws and not to participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors;
  - to respect the intellectual property rights of others.
- Conflicts of interest
  - to avoid all conflicts of interest that may adversely influence business relationships.
- Respect for the basic human rights of employees
  - to promote equal opportunities for and treatment of its employees irrespective of skin color, race, nationality, social background, disabilities, sexual orientation, political or religious conviction, sex or age;
  - to respect the personal dignity, privacy and rights of each individual;
  - to refuse to employ or make anyone work against his will;
  - to refuse to tolerate any unacceptable treatment of employees, such as mental cruelty, sexual harassment or discrimination;
  - to prohibit behavior including gestures, language and physical contact, that is sexual, coercive, threatening, abusive or exploitative;
  - to provide fair remuneration and to guarantee the applicable national statutory minimum wage;
  - to comply with the maximum number of working hours laid down in the applicable laws;
  - to recognize, as far as legally possible, the right of free association of employees and to neither favor nor discriminate against members of employee organizations or trade unions.
- Prohibition of child labor
  - to employ no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, to employ no workers under the age of 14.
- Health and safety of employees
  - to take responsibility for the health and safety of its employees;
  - to control hazards and take the best reasonably possible precautionary measures against accidents and occupational diseases;

- to provide training and ensure that employees are educated in health and safety issues;
- to set up or use a reasonable occupational health & safety management system.

- Environmental protection
  - to act in accordance with the applicable statutory and international standards regarding environmental protection;
  - to minimize environmental pollution and make continuous improvements in environmental protection;
  - to set up or use a reasonable environmental management system.
- Supply chain
  - to use reasonable efforts to promote among its suppliers compliance with this Code of Conduct;
  - to comply with the principles of nondiscrimination with regard to supplier selection and treatment.
- Conflict Minerals
  - to take reasonable efforts to avoid in its products the use of raw materials which directly or indirectly finance armed groups who violate human rights.

Exhibit E

Insurance

(A) Supplier shall, at its sole expense, maintain the types of insurance coverage(s) listed below. The coverage limits for each type of insurance listed below shall be the greater of: (i) the coverage limits listed below; or (ii) if the Purchase Order requires Supplier to maintain higher limits, then the coverage limits specified in the Purchase Order. Evidence of insurance required by this Purchase Order is to be furnished before any Goods/Services is commenced. Supplier and its Representatives shall maintain such insurance in full force and effect during the term of this Purchase Order, and, in addition, for as long as Supplier is under any warranty obligations arising out of this Purchase Order. All insurers on required insurance coverage(s) shall have an A.M. Best Rating of A- /VIII or better. Customer and its subsidiaries, Affiliates, and its or their Representatives, and/or any other party designated on the Purchase Order as applicable shall be named as an additional insured, with respect to the Commercial General Liability and Automobile Liability policies/coverage(s). All insurance certificates shall be in a form satisfactory to Customer. Supplier shall deliver the certificates of insurance, naming Customer and, if applicable, Customer's customer/end user, as the Certificate Holder. All of Supplier's policies of insurance, except for Workers' Compensation and Employers Liability, shall be primary insurance and noncontributing with any other insurance maintained by Customer, Customer's customer/end user and/or other parties. All of Supplier's policies of insurance, except for Worker's Compensation and Employer's Liability, shall contain a cross-liability or severability of interest clause. The limits of insurance set forth below may be satisfied by any combination of excess and primary insurance coverage. Supplier shall require all its insurers to waive all rights of subrogation against Customer, Customer's customer/end user, and their respective subsidiaries, Affiliates, and Representatives, and any other party designated as an additional insured.

(B) Supplier shall maintain the following insurance coverage(s):

(i) Worker's Compensation Insurance in accordance with the statutory requirements of the location in which the Purchase Order is performed. If there is an exposure to injury to Supplier's employee under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage required by law shall be provided for same.

(ii) Employer's Liability Insurance with the following limits of liability:

- $1,000,000 for each occurrence;
- $1,000,000 Disease Policy
- $1,000,000 Each Employee.

(iii) Commercial General Liability Insurance, in occurrence coverage form, with minimum limits of $5,000,000 per occurrence, including the following coverages:

- Products and Completed Operations
- Contractual Liability insuring the indemnity obligations assumed by Supplier under this Purchase Order

- Premises/Operations
- Underground, Undermining, Explosion and Collapse (XCU) Hazard,
- Broad Form Property Damage (including Completed Operations)

(iv) Automobile Liability Insurance, including coverage for owned, hired, and non-owned automobiles and trucks used by or on behalf of the Supplier providing insurance for bodily injury, liability and property damage liability with minimum limits for each type of coverage of $5,000,000 per occurrence.

(C) The following coverages are specifically required if a Purchase Order involves: (i) [intentionally omitted]; (ii) watercraft owned, operated or chartered by Supplier or its Representatives, liability arising out of such watercraft shall be insured by the General Liability or by Protection and Indemnity Insurance with a CSL of no less than $1,000,000 per each occurrence; (iii) the hauling and/or rigging of property in excess of $100,000, Supplier shall carry "All Risk" Transit Insurance, or "All Risk" Motor Truck Cargo Insurance (Such insurance shall provide a limit of not less than the replacement cost of the highest value single lift or highest value being moved, whichever is greater, and insuring the interest of Supplier, Customer and Customer's customer/end user, as their respective interests may appear); (iv) aircraft (fixed wing or helicopter) owned, operated or chartered by Supplier or its Representatives, liability arising out of such aircraft shall be insured for not less than $1,000,000 CSL each occurrence; (v) access, storage, transmission or processing of Customer's, its customer's /end user's, its or their Representatives' confidential information, a Cyber Liability Errors and Omissions Policy shall be procured by Supplier providing coverage, for acts, errors, omissions, and negligence of employees and contractors giving rise to potential liability, financial and other losses relating to data security and privacy, including cost of defense and settlement, in an amount of at least $2,000,000 each claim and in the aggregate; (vi) engineering, design and/or development services, Supplier shall procure Professional Liability and Errors and Omissions Liability Insurance providing coverage for acts, errors, omissions arising out of insured's negligence in an amount not less than $5,000,000 (USD) per claim and in the aggregate; (viii) Supplier, its Affiliates and/or its and their respective Representative being granted access to Customer or Customer's Affiliate's facilities, premises and/or systems, Supplier shall procure Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by its personnel, acting alone or with others, in an amount not less than $1,000,000 (USD) per occurrence. Furthermore, on a case by case basis, where a Purchase Order specifies that environmental liability insurance is required for that specific project, then Supplier shall obtain Environmental Impairment Liability Insurance for such project with limits of $5,000,000 per occurrence and in the aggregate.

(D) The procurement, maintenance or acceptance of insurance coverage by Customer, if any, shall not: (i) relieve Supplier of liability for loss or damage in excess of the policy coverage limits specified herein; or (ii) limit or release Supplier of its obligations or liabilities under the Purchase Order.

(E) No delay or failure in declaring any default or in enforcing any of the requirements of this Exhibit E, and no course of dealing between Customer and Supplier shall constitute a waiver of any of the requirements of this Exhibit E.

Exhibit F

Affirmative Action

Should Buyer become a federal contractor/subcontractor, Buyer will be required to comply with certain federal regulations, including the regulations promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"). Should Buyer become a federal contractor, Buyer will also be required to ensure compliance of the OFCCP by its subcontractors, vendors and suppliers covered under the OFCCP (each, a "Covered Party"). Supplier is hereby notified of Buyer's policy related to affirmative action and its mutual OFCCP obligations to the extent Supplier, its subcontractors, vendors or suppliers is a Covered Party.

Buyer is an equal opportunity/affirmative action employer and does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, age, physical or mental disability, marital status, pregnancy, genetic information, sexual orientation, gender identity, protected veteran or military status, or any other consideration not related to the person's ability to do the job or otherwise made unlawful by federal, state or local law in the following employment practices, including among others: recruiting, hiring, placement, transfer, promotion, demotion, selection for training, layoff, termination, shift assignment, determination of service, rates of pay, benefit plans, and all forms of compensation and other personnel actions.

Should Buyer become a federal contractor/subcontractor, Buyer's Covered Parties (including Supplier and its Covered Parties, if applicable) will also have an obligation to comply with equal opportunity and affirmative action principles. Therefore, Buyer's Covered Parties (including Supplier and its Covered Parties, if applicable) will take appropriate action in support of these principles. Through our mutual effort and cooperation, we will continue to provide a working environment that appreciates and encourages diversity, promotes equal employment opportunity and is free from any type of discrimination.

Supplier and its Covered Parties, if applicable, shall abide by the requirements of the "Equal Opportunity Clause" in Section 202 of Executive Order 11246. See 41 CFR 60-1.4(a).

The following shall also apply if the Supplier is a Covered Party:

For contracts of $100,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

For contracts of $10,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Exhibit G

Key Agreements

1. Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC, dated as of October 27, 2021.
2. Amended and Restated AES License Agreement, dated as of June 9, 2021, between Fluence Energy, LLC and AES Grid Stability LLC.
3. Amended and Restated AES License Agreement, dated as of June 9, 2021, between Fluence Energy, LLC and The AES Corporation.
4. Services Agreement, dated as of January 1, 2018, between The AES Corporation, Fluence Energy, LLC and such other companies as set forth therein.
5. Amended and Restated Storage Core Frame Purchase Agreement, dated as of the date hereof, between AES Grid Stability, LLC and Fluence Energy, LLC
6. Amended and Restated Company Name Affix and Trademark License Agreement, dated October 27, 2021, between The AES Corporation and Fluence Energy, LLC.
7. Amended and Restated Credit Support and Reimbursement Agreement, dated as of June 9, 2021, by and among Fluence Energy, LLC, The AES Corporation and Siemens Industry, Inc.

Attachment A

DESCRIPTION OF SUPPLIER'S BATTERY STORAGE EQUIPMENT AND SERVICES

[to be added]

Exhibit 10.23

EXECUTION VERSION

Amended and Restated

Storage Core Frame Purchase Agreement

by and between

Siemens Industry, Inc.

as Buyer

and

Fluence Energy, LLC

as Supplier

dated October 27, 2021

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Attachment A Description of Supplier's Battery Storage Equipment and Services

THIS AMENDED AND RESTATED STORAGE CORE FRAME PURCHASE AGREEMENT (this "Agreement") is made and entered into on October 27, 2021 between Siemens Industry, Inc. hereinafter referred to as "Buyer" and Fluence Energy, LLC, whose principal place of business is 4601 N. Fairfax Drive, Suite 600, Arlington, Virginia 22203 hereinafter referred to as "Supplier". This Agreement shall become effective upon the Effective Date defined in Section 2.1 below. Each of Buyer and Supplier are referred to herein as a "Party" and collectively are referred to herein as the "Parties."

WHEREAS, Buyer is a company providing products, services and solutions to the buildings and energy markets;

WHEREAS, Buyer may want to purchase energy storage equipment and related services to incorporate within its electrical transmission and distribution projects;

WHEREAS, Supplier sells energy storage equipment and related services; WHEREAS, Supplier wishes to cooperate with Buyer in order to fulfill Buyer's requirements and provide preferred purchasing conditions to Buyer for those energy storage equipment and related services;

WHEREAS, Supplier and Buyer are parties to that certain Storage Core Frame Purchase Agreement, dated as of January 1, 2018, by and between Supplier and Buyer (the "Prior Agreement"); and

WHEREAS, Buyer is party to the Second Amended and Restated Limited Liability Company Agreement of Supplier, dated as of June 9, 2021(the "LLC Agreement");

WHEREAS, Supplier, Buyer and certain other parties are entering into a series of transactions in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("Issuer") to serve as the vehicle through which the public will own indirect interests in Supplier through an initial public offering;

WHEREAS, in connection with the closing of initial public offering, the LLC Agreement is being amended and restated in its entirety by the Third Amended and Restated Limited Liability Company Agreement, dated on or about the date hereof (the "Restated LLC Agreement"), to, among other things, reflect Issuer's ownership of Supplier and the restructuring of Supplier and its Affiliates; and

NOW, THEREFORE, the Parties agree that on the Effective Date, the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and further agree as follows:

1. DEFINITIONS; INTERPRETATION.

1.1. Definitions. Initially-capitalized terms used in this Agreement (including the preamble and Recitals hereto) and not otherwise defined herein shall have the meanings specified below.

"AES Grid Stability" means AES Grid Stability, LLC.

"AES Storage Core Frame Purchase Agreement" means that certain Amended and Restated Storage Core Frame Purchase Agreement, dated of even date herewith, between AES Grid Stability and Supplier.

"Affiliate" means, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons. No Person shall be considered an Affiliate of another Person or under the Control of such other Person so long as (i) it is owned less than 50% by such other Person, (ii) such other Person has no capacity to elect or appoint the majority of the board of directors or similar governing body of the subject Person, (iii) such other Person does not consolidate the subject Person in its financial reporting and (iv) there is no other management or services agreement pursuant to which such other Person exerts control over the subject Person. With respect to Buyer, none of Gamesa Corporación Technológica S.A., Siemens Healthineers AG nor any of their respective Subsidiaries shall be considered an Affiliate of Buyer.

"Agreement" has the meaning set forth in the Preamble hereto.

"Applicable Law" means any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision or declaration of a Governmental Authority having valid jurisdiction.

"Application" means one of the stationary, battery based energy storage solutions and services for the grid connected storage market (including systems both in front of and behind the meter) set forth on Schedule 1.1(a).

"Battery" means a battery included within the Equipment supplied pursuant to this Agreement.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Buyer" has the meaning set forth in the Preamble hereto.

"Buyer Data" has the meaning set forth in Section 13.10(b).

"Buyer Event of Default" has the meaning set forth in Section 14.2.

"Buyer Furnished Property" has the meaning set forth in Article 9.

"Change Order" has the meaning set forth in Section 12.1.

"Change Order Information" has the meaning set forth in Section 12.2.

"Claims" has the meaning set forth in Section 15.1.

"Confidential Information" has the meaning set forth in Section 17.1.

"Control" means, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings.

"Defect" means any material defect in design, manufacturing, materials or workmanship in or to the Equipment, or any failure of the Equipment to materially comply with the Technical Specifications, excluding in all cases any of the foregoing attributable to or caused by ordinary wear and tear of the Warranted Equipment.

"Deliver", "Delivered" or "Delivery" means that Supplier has caused the delivery of the applicable Equipment to the Delivery Point in accordance with the terms of this Agreement.

"Delivery Point" means the delivery location set forth in a Pricing Notice, provided that, if no such location is specified in the applicable Pricing Notice, the Delivery Point for Equipment comprised of batteries shall be at the facility of the supplier thereof and the Delivery Point for all other Equipment shall the location of Supplier's facility.

"Derivative Software" has the meaning set forth in Article 20.

"EAR" has the meaning set forth in Section 21.1.

"eBoP" shall have the meaning assigned to such term in Section 4.3(d).

"Effective Date" shall have the meaning assigned to such term in Section 2.1.

"EHS Laws" has the meaning set forth in Section 19.1.

"Enforcement Action" has the meaning set forth in Section 13.11.

"Equipment" means any energy storage equipment offered for sale by Supplier pursuant to this Agreement, as set forth in Attachment A.

"Equipment Warranty" has the meaning set forth in Section 8.1.

"Equipment Warranty Period" has the meaning set forth in Section 8.1.

"Exclusive Activities" means the development, marketing and sale of an Integrated Solution for one or more Applications, where the size of such Integrated Solution is equal to or greater than 500 kilowatts, including those Integrated Solutions marketed, sold and delivered through a Buyer sales channel or another Supplier sales channel as contemplated in Supplier's then current business plan.

"Export Controls and Sanctions Laws" has the meaning set forth in Section 21.1.

"Force Majeure" means any event which is not within the reasonable control of the Party affected and with the exercise of due diligence could not reasonably be prevented, avoided or removed by such Party, which causes the affected Party to be delayed, in whole or in part, or unable, using commercially reasonable efforts, to partially or wholly perform its obligations under this Agreement (other than an obligation for the payment of money) and is not caused by or resulting from the negligence or breach or failure of such Party to perform its obligations under this Agreement, which, subject to the foregoing, may include: acts of God or the public enemy, natural disasters, war, terrorism, insurrection, sabotage, unavoidable accidents, orders, decrees, rulings and policies of any Governmental Authority, fires, floods, earthquakes, volcanic activity, severe weather

conditions not reasonably foreseeable taking into account the location of performance and the climate patterns applicable thereto, explosions, riots, general strikes and area lockouts. Force Majeure shall not include a Party's financial inability to perform under this Agreement or any Purchase Order.

"Further Siemens Contracting Parties" has the meaning set forth in Section 3.2.

"Governmental Authority" means a federal, state, local or foreign governmental authority (including any regulatory authority); a state, province, commonwealth, territory or district thereof; a county; a city, town, township, or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, system, service, office, commission, committee, council or other administrative body of any of the foregoing; any court or other judicial body; and any officer, official or other representative of any of the foregoing.

"Guaranteed Delivery Date" has the meaning set forth in Section 5.2.

"Hazardous Materials" has the meaning set forth in Section 19.1.

"Indemnified Party" has the meaning set forth in Section 15.1.

"Indemnifying Party" has the meaning set forth in Section 15.1.

"Infringement Claim Costs" means any and all judgments, damages, fines, awards, penalties, and interest associated with any of the foregoing, that, in each case, are finally awarded in a claim for which an Indemnifying Party is obligated to indemnify an Indemnified Party under Section 15.2 or 15.3, as applicable, and costs and expenses, including reasonable attorneys' fees, court costs and other reasonable costs of suit, arbitration, dispute resolution or other similar proceedings, associated with such claim.

"Integrated Solution" means an integrated, stationary, battery based energy storage solution, comprised of inverters, a control system including software, and electrical battery. Notwithstanding the foregoing, the following will not be considered Integrated Solutions: (i) uninterruptable power supply (UPS) systems (other than for use in Applications), (ii) a virtual energy storage network built out of individual, connected, geographically distributed product units of less than 150 kilowatts per unit (a "swarm"), (iii) static synchronous compensators (Statcom), (iv) supercapacitors, (v) the technology for the storage medium (e.g. batteries), (vi) energy storage inverters, (vii) stationary storage systems sold as part of an integrated product in conjunction with the sale of energy storage systems on board of vessels, vehicles or locomotives, where the main purpose of the stationary storage system is to charge or to be charged by such on board energy storage system or the vehicle brake energy and (viii) stationary storage systems providing power directly and primarily to electric vehicle charging stations.

"Intellectual Property" means United States and foreign: (a) Patents; (b) Trademarks; (c) copyrights, whether registered or unregistered, and all applications and registrations therefor, web sites, proprietary domain names, mask works, and all applications and registrations therefor; (d) Know-How; (e) Software; and (f) similar or other intellectual property rights, subject matter of any of the foregoing, tangible embodiments of any of the foregoing, licenses in, to and under any of the foregoing.

"Key Agreements" means the various contracts between Supplier and certain of its members or their Affiliates listed on Exhibit G, as the same may be amended and/or restated from time to time.

"Know-How" means all proprietary and confidential information and data (irrespective as to whether such information or data is available by way of documentation, orally or in electronic format, or protected by copyrights), including business and trade secrets, technical and business information and data, know-how and similar proprietary rights in confidential information and processes, discoveries, analytic models, improvements, techniques, devices, methods, patterns, formulations and specifications, all to the extent that such information and data are proprietary and confidential and neither Software nor a Patent.

"License" has the meaning set forth in Section 13.1.

"Licensed Technology" means, collectively, all of the following to the extent owned by, or licensed (with the right to grant sublicenses) to, Supplier, relating to the Equipment or the uses and purposes contemplated in connection with this Agreement or any Purchase Order issued hereunder for such Equipment: (a) Software embedded in or integrated with the Equipment, (b) any other trade secrets, proprietary information, know-how or other Intellectual Property incorporated into or embedded within the Equipment or necessary for the installation, operation, maintenance, and ownership of the Equipment, (c) any improvements of or updates to any of the foregoing provided to Buyer pursuant to this Agreement, if any, and (d) all Intellectual Property rights of Supplier in the Licensed Technology listed in any of clauses (a) through (d) above, in each case, for use solely in connection with the installation, commissioning, operation and maintenance of the Equipment at the Project Site or such other site as Buyer shall elect.

"LLC Agreement" has the meaning set forth in the Recitals hereto.

"Lockup Period" shall have the meaning assigned to such term in Section 4.3(a).

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Open License Terms" has the meaning set forth in Article 20.

"Open Source Software" has the meaning set forth in Article 20.

"Party" has the meaning set forth in the Preamble hereto.

"Parties" has the meaning set forth in the Preamble hereto.

"Patents" means all patents, utility models, patent and utility model applications, and all priorities and rights related thereto, including all reissues, reexaminations, divisions, continuations, continuations-in-part, provisionals, continued prosecution applications, substitutions, extensions, additions or renewals of any of the foregoing.

"Person" means any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not

having separate legal personality), and shall include any successor (by merger or otherwise) of such entity.

"Potential Project" shall have the meaning assigned to such term in Section 4.3(b)(ii).

"Pricing Notice" has the meaning set forth in Section 4.1.

"Pricing Request" has the meaning set forth in Section 4.1.

"Prohibited Person" means (i) any individual or entity that has been determined by competent authority to be the subject of a prohibition in any law, regulation, rule, or executive order administered by OFAC or the U.S. Department of State; (ii) the government, including any political subdivision, agency or instrumentality thereof, of a Sanctioned Country; (iii) any individual or entity that acts on behalf of or is owned or controlled by the government of a Sanctioned Country; (iv) any individual or entity that has been identified on the OFAC Specially Designated Nationals and Blocked Persons List (Appendix A to 31 C.F.R. Ch. V) or any other similar list published by OFAC, including, but not limited to, the Foreign Sanctions Evaders List, the Part 561 List, and the Non SDN Iranian Sanctions List; (v) any individual or entity that has been designated on any similar list or order published by the United States government, including, without limitation, the Denied Persons List, Entity List, or Unverified List of the U.S. Department of Commerce, or the Debarred List or Nonproliferation Sanctions List of the U.S. Department of State; or (vi) any entity beneficially owned or controlled, directly or indirectly, by, any of the individuals or entities listed in subparagraphs (i)-(v) above.

"Project Bid" shall have the meaning assigned to such term in Section 4.3(b)(iv).

"Prudent Industry Practices" means those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by electrical utility industry members, including Supplier, in the U.S. as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

"Purchase Order" means a purchase order in the form attached hereto as Exhibit A issued for the purchase of Equipment and Services pursuant to and in accordance with the terms and conditions of this Agreement.

"Representatives" means, with respect to any Person, such Person's shareholders, members, officers, directors, employees, accountants, consultants, legal counsel, financial advisors and other representatives and agents.

"Revised Project Bid" shall have the meaning assigned to such term in Section 4.3(b)(v).

"Sanctioned Country" means any country or territory against which the United States maintains comprehensive economic sanctions or embargoes, including, without limitation, Crimea, Cuba, Iran, North Korea, Sudan and Syria.

"Services" means any Equipment related services offered for sale by Supplier pursuant to this Agreement, as set forth in Attachment A.

"Services Warranty" has the meaning set forth in Section 8.2.

"Services Warranty Period" has the meaning set forth in Section 8.2.

"**Shares"** means (i) the Class A Common Stock of the Issuer, calculated on a fully diluted basis and assuming that all options, warrants and any other rights to purchase shares of Class A Common Stock of the Issuer have been exercised in full, including, for sake of clarity, the Underlying Class A Shares plus (ii) any other equity securities now or hereafter issued by the Issuer, together with any options thereon and any other shares of stock or other equity securities issued or issuable with respect thereto (whether by way of a stock dividend, stock split or in exchange for or in replacement or upon conversion of such shares or otherwise in connection with a combination of shares, recapitalization, merger, consolidation or other corporate reorganization); provided, however, that in no event shall the Shares include the Class B Common Stock of the Issuer.

"Siemens AG" means Siemens Aktiengesellschaft, a German corporation headquartered in Munich and Berlin.

"Siemens BUs" means, separately and collectively in the aggregate, Siemens DG, Siemens DS and Siemens EP. In the event the lines of business conducted by Siemens DG, Siemens DS or Siemens EP as of the date hereof are transferred to other business units within the Siemens organizational structure, such lines of business shall continue to be subject to the terms and conditions of this Agreement to the same extent as if they remained part of the applicable Siemens BUs.

"Siemens DG" means the business unit of Siemens AG that serves as a global supplier of hardware and software products, systems, solutions, micro-grid solutions, information technology integration, engineering, consulting and services for protections and control, automation and control, power quality and substation automation of infrastructure grids for utilities (power transmission, distribution, generation, multi-utilities), municipalities, industry, critical infrastructure (e.g. but not limited to dams/water reservoirs, bridges, telecommunication towers/stations) and other related infrastructure or such business as conducted by any successor thereto.

"Siemens DS" means the business units of Siemens AG that serves as a global supplier of products, systems, solutions and services for the distribution of electrical power to its customers (primarily utility companies and industrial customers), whose portfolio currently includes utility scale and large commercial scale battery based electrical energy storage systems and solutions, low-voltage power distribution products and solutions, medium-voltage switchgear and devices, eBoP, emobility or such business as conducted by any successor thereto.

"Siemens EP" means the business unit of Siemens AG that serves as a global supplier of low and medium voltage distribution products, control components and systems for industrial applications, infrastructure, buildings and low voltage power grids (M4 market excluded) or such business as conducted by any successor thereto.

"Software" means all computer programs, operating systems, applications, systems, firmware, and software of any nature, whether operational, active, under development, or design, non-operational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, test scripts, user manuals, and other documentation therefore, whether in machine-readable form, programming language, or any other language or symbols, and whether stored, encoded, recorded, or written on disk, tape, film, memory device, paper, or other media of any nature and all databases necessary or appropriate to operate any such computer program, operating system, applications system, firmware, or software.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing member, general partner or analogous controlling Person of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times that such Person has one or more Subsidiaries.

"Sunset Date" means the earlier to occur of (i) the seventh (7^{th}) anniversary of the Effective Date and (ii) that date on which Buyer and Affiliates collectively hold Shares representing less than twenty percent (20%) of the then outstanding Voting Power.

"Supplier" has the meaning set forth in the Preamble hereto.

"Supplier Documents" means the documents and deliverables to be provided by Supplier to Buyer to the extent reasonably required for the installation, commissioning, operation and maintenance of the Equipment, as more fully set forth in the applicable Purchase Order.

"Supplier Event of Default" has the meaning set forth in Section 14.1.

"Taxes" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including income tax, withholding tax, corporation tax, capital gains tax, capital transfer tax, sales tax, business and occupation tax, inheritance tax, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and generally any tax, duty, impost, levy, rate or other amount and any interest, penalty or fine in connection therewith.

"Technical Specifications" means the technical specifications for the Equipment as set forth in the applicable Purchase Order.

"Term" has the meaning set forth in Section 2.1.

"Terminating Event" shall have the meaning assigned to such term in Section 4.3(a)(i).

"Territory" means (i) for purposes of the sales and marketing by Buyer of the Equipment, worldwide and (ii) for all other use of the Equipment, the country in which the Equipment is installed for use.

"Third Party" means any Person, other than a member of Supplier or such member's Affiliates.

"Trademarks" means all trademarks, trademark applications, service marks, service mark applications, trade dress, trade names, identifying symbols, words, colors, designs, product names, company names, slogans, logos or insignia, whether registered or unregistered, and all applications and registrations therefor, and all goodwill associated therewith.

"TSCA" has the meaning set forth in Section 19.1.

"Underlying Class A Shares" means all shares of Class A Common Stock of the Issuer issuable upon redemption of Common Units of the Supplier, assuming all such Common Units are redeemed for Class A Common Stock of the Issuer on a one for one basis.

"Voting Power" means the total voting power of all Shares entitled to vote generally in the election of directors (for clarity, on a basis that assumes that all Common Units of Supplier have been redeemed for shares of Class A Common Stock of the Issuer on a one for one basis and that there are no shares of Class B Common Stock of the Issuer outstanding).

"Work Site" has the meaning set forth in Section 19.2.

1.2. Interpretation.

(a) References to Recitals, Articles, Sections, Exhibits, Annexes and Attachments are, unless otherwise indicated, to Recitals, Articles, Sections, Exhibits, Annexes and Attachments to this Agreement. All Exhibits, Annexes and Attachments to this Agreement are incorporated herein by this reference and made a part hereof for all purposes.

(b) As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.

(c) Unless expressly stated otherwise, references to a Person include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.

(d) As used in this Agreement, references to "days" shall mean calendar days, unless the term "Business Days" is used. If the term "Business Days" is used and the time for performing an obligation under this Agreement expires on a day that is not

a Business Day, the time shall be extended until that time on the next Business Day.

(e) As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words "herein," "hereunder" and "hereof" refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement; "including" means "including, for example and without limitation," and other forms of the verb "to include" are to be interpreted similarly.

(f) As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.

2. TERM AND TERMINATION OF AGREEMENT.

2.1. Term. This Agreement shall become effective and the term shall commence on the day on which the Class A Common Stock of the Issuer is issued to the underwriters in its initial public offering (the "Effective Date"); provided, that if the Effective Date does not occur on or prior to December 31, 2021, this Agreement shall be deemed terminated as of such date and of no force or effect without further notice or action by the Parties, and the Prior Agreement shall remain in full force and effect without any amendment thereto. The term of this Agreement shall continue from the Effective Date until the date that the obligations contained in Section 4.4(a) (Non-Competition) cease to apply to Buyer (the "Term"). The expiration or early termination of the Term of this Agreement shall not affect any Purchase Orders executed between the Parties prior to the date of termination or expiration, and in such event the Parties shall attempt, in fair dealing and good faith, to agree on reasonable post-termination or post-expiration procedures in compliance with Applicable Law and antitrust requirements.

3. SCOPE OF AGREEMENT.

3.1. Scope Generally. This Agreement shall apply to all purchases by Buyer from Supplier of Equipment and Services during the Term. Notwithstanding the foregoing, nothing herein shall be construed to mean that either Buyer or Supplier is committing to any specific level of business or quantity of Equipment and Services to be purchased or supplied other than that specified in Purchase Orders issued to Supplier during the Term of this Agreement by Buyer. Attachment A hereto sets forth the various standard Equipment and Services offerings of Supplier, it being understood that any project-specific requirements associated with any particular order hereunder shall be as set forth in the applicable Purchase Order therefor. Supplier may from time to time update the Equipment and Services offered for sale hereunder by furnishing to Buyer an update to Attachment A hereto, it being agreed that no such update shall affect any previously issued Purchase Order unless and to the extent set forth in a Change Order thereto.

3.2. Further Siemens Contracting Parties. Siemens AG and its Subsidiary companies (hereinafter referred to as "Further Siemens Contracting Parties") shall be entitled to

conclude individual Purchase Orders under the terms of this Agreement provided that such Further Siemens Contracting Parties either: (a) execute a joinder agreement acceptable to Supplier and otherwise in the form of Exhibit B hereto or (b) agree that the terms of this Agreement will govern the subject transaction by including a conspicuous cross-reference in the applicable Purchase Order which confirms that the terms of this Agreement will apply to the Purchase Order.

4. ORDERS.

4.1. Pricing Requests. If Buyer desires to purchase Equipment and Services from Supplier during the Term, Buyer shall furnish Supplier with written request (a "Pricing Request") detailing the Equipment and Services it wishes to purchase and requesting pricing therefor from Supplier, including in such Pricing Request such information as may be reasonably necessary for Supplier to determine pricing therefor and any other project-specific requirements, including Buyer's requested delivery schedule. Supplier shall endeavor to provide an initial response to any Pricing Request within five (5) Business Days, indicating (i) whether or not Supplier intends to furnish an offer to Buyer for the requested Equipment and Services on the timeline requested by Buyer and (ii) indicating what, if any, additional information Supplier may need in order to furnish such offer. Within fourteen (14) days after a final written scope of work is agreed with Buyer, or one of its Affiliates, Supplier shall provide Buyer with a written notice (a "Pricing Notice") detailing Supplier's pricing and delivery schedule for the Equipment and Services that Buyer wishes to purchase (including therein any terms, conditions and specifications required by Supplier in connection with the particular project and/or purchase contemplated by Buyer, which terms and conditions may be different than, and shall supersede, those set forth in this Agreement), which Pricing Notice Supplier shall endeavor to provide within ten (10) Business Days of receipt of Buyer's Pricing Request. If Buyer does not issue a Purchase Order to Supplier pursuant to Section 4.2 in response to the Pricing Notice within ten (10) Business Days of issuance thereof, the Pricing Notice shall be deemed rejected.

4.2. Purchase Orders. If Buyer desires to purchase the Equipment and Services on the terms specified in a Pricing Request, it shall issue a Purchase Order to Supplier in the form attached hereto as Exhibit A, which Purchase Order shall include: (i) the pricing and any other terms, conditions and specifications set forth in Supplier's Pricing Notice; and (ii) a detailed description of the Equipment and Services to be purchased, consistent with those set forth in the Pricing Request and to the extent modified thereby, the Pricing Notice. Purchase Orders shall only be binding when issued in compliance with the requirements of this Agreement and sent by e-mail, by fax or by electronic data interchange to Supplier. Supplier shall accept or reject a Purchase Order within ten (10) Business Days after receipt. Acceptance or rejection shall be declared in the form of the Purchase Order. If a Purchase Order is neither accepted nor rejected within ten (10) Business Days after receipt, it shall be deemed rejected.

4.3. Exclusivity and Certain Related Priorities.

(a) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Buyer shall cause the Siemens BUs to:

(i) purchase exclusively from Supplier any battery-based energy storage technology systems/solutions that are (A) within the Exclusive Activities (provided that for the purposes of this paragraph only, the term "Application"

within Exclusive Activities shall also include power quality and microgrid/island applications (in each case as described on Schedule 1.1(a))) and (B) offered for sale by Supplier; provided, however, it is hereby agreed that the exclusive purchase obligations contained in this Section 4.3(a)(i)4.3(a)(i) shall immediately cease to apply with respect to the particular purchase opportunity in the event that (1) either (x) Supplier fails to provide an initial response within five (5) Business Days following receipt of a Pricing Request from Buyer, or one of its Affiliates, or (y) Supplier fails to submit a bona fide Pricing Notice within fourteen (14) days after a final written scope of work is agreed with Buyer, or one of its Affiliates, provided that if a shorter response time is required for a final bid by the customer or project related thereto, the parties will discuss and mutually agree on such shorter time period, or (2) the prerequisite of a public tender specifies using a particular vendor, other than Supplier, to provide such battery-based energy storage technology systems/solutions (the matters set forth in the immediately preceding clause (1) and clause (2), may each individually be referred to herein as a "Terminating Event"); and

(ii) prioritize the purchase of any other battery-based energy storage technology systems/solutions that are offered for sale by Supplier and request that each of the Siemens BUs notify Supplier if it intends to purchase such systems/solutions, such that Supplier shall have an opportunity to sell such systems/solutions thereto. It is hereby agreed that any opportunity described above is subject to other factors, including that such systems/solutions offered by Supplier are competitive in the discretion of the Siemens BUs, taking into account economic, financial and technological aspects as well as the ability to perform and deliver in terms of timeframes and logistics, that such systems/solutions comply with specific customer requirements, country-specific requirements or mandatory external regulation and in all cases subject to Applicable Laws.

In each case of clause (i) and Error! Reference source not found. above, the above provisions shall apply to the extent that such systems/solutions are needed as components of, or parts for, its other products/services or for its own needs or for reselling; excluding, however, inverters, which may be sourced independently.

(b) With respect to Section 4.3(a)(ii), it is hereby agreed that the following shall apply with respect to any requirement to prioritize the purchase of any battery-based energy storage technology systems/solutions that are offered for sale by Supplier:

(i) (A) any such opportunity described therein is subject to other factors, including that such systems/solutions offered by Supplier are competitive in the discretion of the applicable Siemens BU, taking into account economic, financial and technological aspects as well as the ability to perform and deliver in terms of timeframes and logistics, that such systems/solutions comply with specific customer requirements, country-specific requirements or mandatory external regulation and in all cases subject to Applicable Laws and (B) the purchase priority obligations contained in Section 4.3(a)(ii) shall immediately cease to apply with respect to the particular purchase opportunity upon the occurrence of a Terminating Event;

(ii) Buyer shall cause the Siemens' BUs to consult regarding Supplier's products, solutions and technology and keep regular contact with the Siemens' BUs concerning projects and opportunities for which Supplier's products, solutions and technology may be suitable (each, a "Potential Project");

(iii) Buyer shall cause the Siemens BUs to notify Supplier of each such Potential Project and support Supplier's preparing bids or proposals therefor, subject to Applicable Law and Third Party contractual restrictions;

(iv) In the event that Supplier makes a formal bid or proposal with respect to a Potential Project (each, a "Project Bid") and such Project Bid is not accepted by the applicable Siemens BU, subject to Applicable Law and Third Party contractual restrictions, Buyer shall cause the applicable Siemens BU to inform Supplier of the main considerations of such Siemens BU which led to Supplier's Project Bid not being accepted with respect to such Potential Project;

(v) If Supplier is able to submit a revised Project Bid to the applicable Siemens BU (the "Revised Project Bid"), and such Revised Project Bid is not accepted, subject to Applicable Law and Third Party contractual restrictions, Buyer shall cause the applicable Siemens BU to inform Supplier of the main considerations of such Siemens BU which led to Supplier's Revised Project Bid not being accepted with respect to such Potential Project. If Supplier is able to submit a Project Bid and, if applicable, a Revised Project Bid to the applicable Siemens BU for the Potential Project and such Revised Project Bid is satisfactory to such Siemens BU in all respects and is deemed by such Siemens BU in its judgment to be the best bid for the Potential Project, then such Siemens BU shall proceed with Supplier's Revised Project Bid. In the event that Supplier is ultimately not chosen by such Siemens BU for such Potential Project based on its initial Project Bid or subsequent Revised Project Bid, Buyer shall cause such Siemens BU to discuss with Supplier how Supplier can improve the competitiveness of its products, solutions and technology for future offerings.

(c) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, Supplier will offer its Equipment and Services to Buyer and the Siemens BUs at Most Favored Nation Pricing in the Pricing Notice. "Most Favored Nation Pricing" shall be reasonably determined by the Supplier by reference to recent (last six (6) months) sales arrangements with customers, resellers or project developers, as applicable, taking into account purchase volumes, regional market conditions, the geographic location of the projects, and the relative size and technology to be used. Supplier shall not be obligated to provide such pricing if it no longer offers the relevant products or services for sale and Supplier shall have no obligations to offer or continue to offer any such products or services for sale. If requested by Buyer, Supplier shall furnish to Buyer a certificate executed by an executive officer of Supplier and attesting to the methodology used by Supplier in determining the Most Favored Nation Pricing set forth in the applicable Pricing Notice. Supplier shall provide Buyer with supporting information concerning the comparable purchase volumes, regional market

conditions, the geographic location of the projects, relative size and technology to be used, and any other variables that Supplier considered when determining the Most Favored Nation Pricing; provided that Suppler may always anonymize information about other customers' projects, in Supplier's sole discretion. In the event that Buyer believes the price indicated in the Pricing Notice does not accurately reflect Most Favored Nation Pricing, then the parties shall retain a mutually-agreeable auditing firm to independently and confidentially review Supplier's methodology and pricing inputs and to render a decision regarding whether Supplier must offer a lower price in order to satisfy its Most Favored Nation Pricing obligation as set forth above. The decision of the independent auditor shall be final and binding on both Parties. The costs of the independent auditor shall be shared equally between Supplier and Buyer.

(d) Subject to Applicable Law, during the period from the Effective Date until the Sunset Date, if Supplier seeks certain non-exclusive supply agreements to make use of Buyer electrical balance of plant ("eBoP") components (e.g. inverters, switch gear or other electrical components etc.) and/or services, in each case, as used in the Core Offering (as defined in Supplier's then current business plan) where applicable, Buyer shall provide "most favored nation pricing" to Supplier for such eBoP components and/or services, it being understood that Buyer shall not be obligated to provide such pricing if it no longer offers the relevant products or services for sale and Buyer shall have no obligation to offer or continue to offer any such products or services for sale.

4.4. Non-Competition.

(a) Subject to compliance with Applicable Law or regulatory requirements, Buyer agrees that until the earlier to occur of (i) the seventh (7th) anniversary of the Effective Date and (ii) that date on which Buyer and Affiliates collectively hold Shares representing less than ten percent (10%) of the then outstanding Voting Power, neither it nor its Affiliates will directly or indirectly engage in any Exclusive Activities; provided, however, that beginning on October 1, 2023, if Supplier has not achieved at least $25,000,000 in average annual gross revenues over a rolling period of three fiscal years (such rolling period commencing on October 1, 2020) for Application No. 9 (as set forth on Schedule 1.1(a)), then Buyer, at its sole discretion, may, upon written notice to the other members of Supplier, remove Application No. 9 as an Exclusive Activity for all purposes hereunder). If Buyer removes Application No. 9 as an Exclusive Activity pursuant to this Section 4.4(a), then Application No. 9 shall simultaneously and automatically also be removed as an "Exclusive Activity" under the AES Storage Core Frame Purchase Agreement. In addition, if AES Grid Stability removes Application No. 4 as an "Exclusive Activity" pursuant to the AES Storage Core Frame Purchase Agreement, then Application No. 4 shall simultaneously and automatically also be removed as an Exclusive Activity under this Agreement.

(b) Notwithstanding the foregoing, the restrictions set forth in this Section 4.4 shall not affect or prohibit Buyer or its Affiliates from:

(i) (A) engaging in activities expressly permitted or contemplated herein or in the Key Agreements, or as otherwise approved by Issuer as Supplier's managing member, (B) selling Supplier's Equipment and Services to

Buyer's customers with Supplier acting as a sub-supplier to Buyer, or (C) engaging in the development and sale of larger solutions incorporating an Integrated Solution from a Third Party, which is subject to the provisions of Section 4.3 hereof;

(ii) acquiring and owning, through its venture capital or growth capital activities, a non-controlling interest of up to thirty-five percent (35%) of the equity or debt securities of any legal entity that is engaged in whole or in part in any Exclusive Activity, provided, that the products and/or services of such legal entity that are included within the scope of Exclusive Activities are not sold or marketed by Buyer or its Affiliates; or

(iii) acquiring or owning any debt or equity securities of any legal entity engaged in whole or in part in any Exclusive Activities through any employee benefit or pension plan maintained by Buyer or its Affiliates or solely for purposes of asset or treasury management; or

(iv) acquiring control of a business or legal entity (an "Acquired Business") engaged in whole or in part in any Exclusive Activities (a "Competing Business") where the annual revenues attributable to the Competing Business of the Acquired Business over its previous fiscal year were less than both (A) twenty-five percent (25%) of the total annual revenues of the Acquired Business for such fiscal year, and (B) twenty-five percent (25%) of the total annual revenues of the Issuer and its Subsidiaries for such fiscal year(collectively, the "Non-Triggering Acquisition Thresholds"); provided, that the Non-Triggering Acquisition Threshold set forth in clause (B) above shall only apply in the case where the annual revenues attributable to the Competing Business of the Acquired Business over its previous fiscal year were more than $25.0 million; and provided, further, that in each case where revenue is only available for a part of a fiscal year, references to annual revenues in this Section 4.4(b)(iv) and in Section 4.4(b)(v) shall mean the annualized revenues reasonably determined by extrapolation from such partial fiscal year revenues;

(v) either (i) acquiring control of an Acquired Business where at the time of such acquisition the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year (x) equal or exceed either of the Non-Triggering Acquisition Thresholds and (y) are less than forty percent (40%) of the total annual revenues of the Acquired Business for its most recently completed fiscal year,(ii) acquiring control of an Acquired Business where at the time of such acquisition the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year (x) equal or exceed forty percent (40%) of the total annual revenues of the Acquired Business for its most recently completed fiscal year and (y) are equal to or less than twenty-five million dollars ($25,000,000) for its most recently completed fiscal year, or (iii) continuing to own and control a Competing Business of an Acquired Business at any time after such acquisition when the non-compete restrictions herein apply, once the annual revenues attributable to the Competing Business of the Acquired Business over its most recent fiscal year equal or exceed both twenty-five percent (25%) of the total annual

revenues of the Issuer and its Subsidiaries for such fiscal year and twenty-five million dollars ($25,000,000) (either such circumstance as described in clauses (i), (ii) or (iii) above, a "Triggering Event"); provided, that, within thirty (30) days following the occurrence of such Triggering Event, Buyer shall, or shall cause its Affiliate to, (A) offer to sell the equity interests or assets comprising the Competing Business to Issuer for a price not greater than the Fair Market Value thereof (appropriately taking into account the assumption of liabilities and Indebtedness of (to the extent not included in determining or calculating the purchase price or valuation for)), the Competing Business (which, in the case of a Triggering Event existing as of the closing of an acquisition of an Acquired Business, shall not exceed that portion of the price paid by Buyer or its Affiliate that was allocable in good faith to the Competing Business) (each, a "Competing Business Offer") and (B) provide Issuer with such material information regarding the applicable Competing Business, subject to any restrictions of confidentiality or Applicable Law, that Buyer or its Affiliate determines in good faith will permit Issuer to make an informed decision as to whether to accept or reject such Competing Business Offer.

(c) Buyer or its Affiliate shall provide such additional information regarding the applicable Competing Business, subject to any restrictions of confidentiality or Applicable Law, as may be reasonably requested by Issuer following Issuer's receipt of the Competing Business Offer that it determines is reasonably necessary to permit Issuer to make an informed decision as to such Competing Business Offer.

(d) In the event that the Issuer accepts a Competing Business Offer, Buyer and Supplier shall (and shall cause their respective Affiliates to) act in good faith to consummate the acquisition of such Competing Business which is the subject of the Competing Business Offer, including with respect to securing financing, either through equity or debt financing, as necessary;

(e) Issuer shall have eighteen (18) months from receipt of such Competing Business Offer to enter into a legally binding commitment with Buyer or its Affiliate to acquire the Competing Business which is the subject of the Competing Business Offer. In addition, Issuer shall have up to six (6) months after entering into such legally binding commitment to consummate such acquisition, or such longer period as may be reasonably required to obtain any required regulatory approvals. Failure to meet either of the timelines set forth above notwithstanding the good faith efforts of Buyer, Supplier, and their respective Affiliates to consummate the transaction will be deemed to be a rejection of the Competing Business Offer.

(f) In case of rejection of a Competing Business Offer, Buyer or its Affiliate shall be free to continue to own and control the Competing Business.

4.5. Payment Terms. Unless otherwise provided in a Pricing Notice, all payments for Equipment are due and payable net thirty (30) days following invoice. Payment terms will be mutually agreed in the Purchase Order and may be milestone based such that payments match cost outflow timing and conditions similar to 20%, 30%, 40%, 10% for Order, Delivery, Project Substantial Completion, Project Final Completion. Unless otherwise provided in a Purchase Order, all payments for Services are due and payable

net thirty (30) days following invoice based on progress of the Services being performed. Payment(s) shall be by electronic banking method identified on the Purchase Order. Buyer will not make payments to Supplier in cash or bearer instruments, nor to an account other than that specified in the Purchase Order. Buyer will make no unlawful payments, nor make payments through any trust, intermediate entity or other party. Buyer will not make payment(s) to an individual, employee, or other designee of Supplier.

4.6. Disputed Payments. If a dispute arises regarding the payments to be made hereunder, Buyer or Supplier, as applicable, shall pay all undisputed amounts, and the Parties shall attempt in good faith to resolve the dispute as promptly as practicable.

4.7. Late Payments. Any amount owed by a Party hereunder beyond the date that such amount first becomes due and payable under this Agreement shall accrue interest from the date that it first became due and payable until the date that it is paid at the lesser of (a) LIBOR plus four percent (4%) per annum or (b) the maximum rate permitted by Applicable Law.

4.8. Taxes; Export and Import Duties. Notwithstanding anything herein to the contrary, (i) Supplier shall collect and withhold any and all sales taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment and imposed by any Governmental Authority having jurisdiction over Supplier at the Delivery Point and (ii) Buyer shall be responsible for any and all other Taxes arising in connection with or relating to the supply, sale or Delivery of the Equipment, any and all export duties from the jurisdiction or jurisdictions in which the Equipment is manufactured or from which the Equipment may be shipped and any and all import duties, in each case, arising in connection with or relating to the supply, sale or Delivery of the Equipment. Buyer shall also be responsible for and pay all Taxes in relation to the operation of its business, including in connection with the use of the Equipment. Buyer and Seller shall cooperate to obtain exemption from, or to minimize, any Taxes.

5. DELIVERY.

5.1. Delivery Terms; Inspection. Unless otherwise provided in a Pricing Notice, delivery of Equipment comprised of Batteries shall be made FCA (Incoterms 2010) at facility of the supplier thereof and delivery of all other Equipment shall be FCA (Incoterms 2010) Supplier location. Prior to Delivery a representative of Supplier and a representative of Buyer may inspect the Equipment for damage and record such damage, if any.

5.2. Guaranteed Delivery Date. Supplier shall use commercially reasonable efforts to Deliver Equipment to the applicable Delivery Point by the applicable guaranteed Delivery date therefore, if any, as set forth in the applicable Purchase Order, subject to extension as provided under this Agreement (as may be extended hereunder, the "Guaranteed Delivery Date"). Any other dates in a Purchase Order for performance by Supplier of any work and any other obligations of Supplier pursuant to such Purchase Order are estimated, and not guaranteed, dates. The failure of Supplier to timely achieve such other Supplier milestones or obligations by the applicable dates set forth in the Purchase Order shall not be a breach under this Agreement. Neither the Purchase Order nor any milestone date contained therein, including the Guaranteed Delivery Date for the Equipment, may be changed unless the same has been modified by a duly executed Change Order. If an unexcused delay originates with Supplier or its Representatives,

Supplier shall be solely responsible for expedited delivery and other charges to meet Delivery dates.

5.3. Delay Liquidated Damages. Except as may be otherwise agreed in a Purchase Order, if Delivery of the Equipment has not occurred by the Guaranteed Delivery Date for reasons that are not excused hereunder, and Buyer can prove that as a direct result thereof it must pay delay liquidated damages to its Customer, Supplier shall reimburse Buyer for such delay liquidated damages (such reimbursement not to exceed an amount equal to 0.5% of the price set forth in the Purchase Order allocable to the delayed Equipment for every completed week of delay) for each completed week after the Guaranteed Delivery Date that Buyer pays such liquidated damages to its Customer as a result of Supplier's delay, provided, however, that the amount of delay liquidated damages payable by Supplier shall be reduced by any amounts received by Buyer under any delay in startup insurance policies providing coverage for any such losses or damages. Payment of the delay liquidated damages shall be the sole and exclusive remedy of Buyer for delay and under no circumstances shall the total aggregate liability of Supplier exceed five percent (5%) of the price set forth in the applicable Purchase Order.

5.4. Buyer Caused Delay. If Buyer fails to perform any obligations under a Purchase Order or otherwise causes a delay in the performance by Supplier of its obligations under a Purchase Order, and such failure or delay results in an increase in Supplier's costs and/or impacts Supplier's ability to meet any Supplier milestone in accordance with the schedule contemplated by the applicable Purchase Order, Supplier shall be entitled to a Change Order increasing the price payable under the applicable Purchase Order and extending the date for completion of any Supplier milestones commensurate with such delay and added cost, including overtime charges for labor and equipment.

6. TITLE, RISK OF LOSS AND CARE, CUSTODY AND CONTROL.

6.1. Transfer of Title and Risk of Loss. Title, care, custody, control and risk of loss of any portion of the Equipment shall pass to Buyer upon Delivery of the Equipment to the Delivery Point. Notwithstanding the foregoing, in no event will title to the Licensed Technology or any other Intellectual Property used in the Equipment or otherwise provided to Buyer, including any Software, transfer to Buyer.

6.2. Warranty of Title. Supplier warrants to Buyer that, when title to the Equipment or any portion thereof is transferred to Buyer in accordance herewith, Buyer shall have good title to the Equipment or such portion thereof free and clear of all Liens, other than any such Liens which may arise in connection with Buyer's failure to make payments as they become due under this Agreement. In the event of any nonconformity with the foregoing, Supplier, at its own expense, upon written notice of such failure, shall indemnify Buyer from the consequences of such nonconformity and defend the title to such Equipment, and Supplier shall either promptly replace such Equipment or any affected portion thereof or remedy the title defect.

7. INSPECTION AND QUALITY CONTROL.

7.1. Inspection Rights. Supplier shall permit Buyer, its Representatives and/or customer(s), at Buyer's expense, to inspect Equipment/Services during manufacture at Supplier's facilities or during performance and shall use commercially reasonable efforts to facilitate similar inspections at the manufacturing facilities of third party suppliers. Buyer shall

provide Supplier with written notice of its intent to make any such inspection not less than ten (10) Business Days prior to the proposed inspection date. Buyer's inspections/tests will not unduly interfere with Supplier's business or the business of its third party suppliers.

7.2. Quality Control. Supplier shall maintain quality control with respect to the Equipment and Services as mutually agreed upon by the Parties and provide Buyer with quality assurance documentation, manuals or certifications.

8. WARRANTIES.

8.1. Equipment Warranty. Supplier warrants to Buyer that (i) the Equipment as Delivered shall be new at the time of Delivery and shall have been manufactured using new components and (ii) during the Equipment Warranty Period the Equipment shall be free of any Defects (the "Equipment Warranty"). As used herein, the "Equipment Warranty Period" means the period of time commencing on the earlier to occur of (i) the date that the Equipment is placed into service as evidenced by the operation thereof for commercial purposes and (ii) the day that is sixty (60) days after the date of Delivery of the Equipment and continuing to and ending on the first (1st) anniversary of such date. Notwithstanding the foregoing, (i) the Parties may agree in any particular Purchase Order to address defect warranties with respect to Batteries separately and (ii) any performance guarantees with respect to Batteries shall be solely as set forth in the applicable Purchase Order.

8.2. Services Warranty. Supplier warrants to Buyer that any Services shall at the time of performance thereof and during the Services Warranty Period be (i) performed in a good and workmanlike manner and free of any fault, defect or deficiency that would preclude or impair the ability of such Services to fulfill the purposes set forth in the applicable Purchase Order therefor in all material respects, (ii) consistent with a level of care, skill and judgment which conforms with Prudent Industry Practices, and (iii) in compliance with the requirements of this Agreement and the applicable Purchase Order (the "Services Warranty"). As used herein, the "Services Warranty Period" means the period of time commencing on the date of performance of the applicable Service and continuing to and ending on the first (1st) anniversary of such date.

8.3. Notification Requirements. Buyer shall promptly (but in any event within ten (10) Business Days after obtaining notice or knowledge thereof) notify Supplier of any failure of the Equipment to satisfy the Equipment Warranty or any failure of the Services to satisfy the Services Warranty, in each case by delivering written notice to Supplier of a warranty claim. The written notice of warranty claim shall, to the extent reasonably practicable, identify the applicable failure and the circumstances or conditions observed by Buyer that indicates the presence of such failure.

8.4. Corrective Action. If, at any time prior to the expiration of the Equipment Warranty Period, either Party discovers any Defect, Supplier agrees that it shall Deliver a replacement for the applicable Defective part, without cost or expense to Buyer. When a Defective part has been Delivered to Buyer, such replaced part shall be covered by the Equipment Warranty until the later of (a) twelve (12) months from the time such replacement part was Delivered to Buyer, and (b) the end of the Equipment Warranty Period. All replacement parts shall be of good and workmanlike quality and shall be new or newly refurbished. If, at any time prior to the expiration of the Services Warranty Period, either Party discovers any failure of the Services to satisfy the Services Warranty, Supplier agrees that it shall, in its sole discretion, either correctly re-perform or otherwise correct the defective

Services, without cost or expense to Buyer. When a defective Service has been remedied, such remedied Service shall be covered by the Services Warranty until the later of (a) twelve (12) months from the time such remedy was completed, and (b) the end of the Services Warranty Period.

8.5. Warranty Exclusions. The Equipment Warranty and the Services Warranty shall not apply if (a) the applicable Defect or failure is attributable to Buyer's failure to operate, repair or maintain the Equipment in material compliance with the procedures set forth in any Supplier Documents furnished to Buyer, which procedures are identified therein as necessary to maintain the effectiveness of the warranties or (b) the applicable Defect or failure is attributable to Buyer's or Buyer's contractor's misuse or abuse of the Equipment (c) if the Equipment has been used in a manner contrary to Supplier's instructions set forth in the Supplier Documents that are identified therein as necessary to maintain the effectiveness of the warranties; (d) the applicable Defect or failure is attributable to any materials or equipment provided by Buyer; or (e) if the Equipment has failed as a result of ordinary wear and tear.

8.6. NO IMPLIED WARRANTIES. THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT ARE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. THE REMEDIES SET FORTH HEREIN WITH RESPECT TO SUCH WARRANTIES ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES, AND SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY BREACH OF SUCH WARRANTIES. OTHER THAN THE WARRANTIES OF SUPPLIER SET FORTH IN THIS AGREEMENT, SUPPLIER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER EXPRESS WARRANTIES AND ALL OTHER WARRANTIES, CONDITIONS, DUTIES AND OBLIGATIONS, STATUTORY OR OTHERWISE, IMPLIED IN LAW, INCLUDING THOSE OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CUSTOM, USAGE, OR OTHERWISE. THERE ARE NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, OR UNDERSTANDINGS, WHETHER OR NOT IN A CONTEMPORANEOUSLY EXECUTED OR DATED AGREEMENT OR SPECIFICATION, THAT EXTEND BEYOND THOSE SET FORTH HEREIN AND NO OTHER WARRANTIES, CONDITIONS, AGREEMENTS, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, WHICH MIGHT HAVE BEEN GIVEN BY AN EMPLOYEE, AGENT OR REPRESENTATIVE OF SUPPLIER OR ITS AFFILIATES ARE AUTHORIZED BY SUPPLIER.

8.7. Reserved Rights. Without limiting Supplier's obligations hereunder to remedy Defects, Supplier reserves the right (i) to make changes and improvements in its equipment and products without incurring any obligation to make such changes and improvements to any Equipment previously sold under a Purchase Order pursuant to this Agreement; and (ii) to change the terms of the warranty it provides to other Persons in the future without incurring any right or obligation to make the revised terms applicable to any Equipment previously sold under a Purchase Order pursuant to this Agreement. The provisions of this Section 8.7 shall survive the termination or expiration of this Agreement.

8.8. Access to Buyer Data. Real time access on a 24/7 basis to all Buyer Data shall be determined on a case by case basis and set forth in the applicable Purchase Order.

9. BUYER FURNISHED PROPERTY.

The term "Buyer Furnished Property" shall mean all tools, patterns, equipment, materials or other property which is either supplied by, or purchased by or on behalf of, Buyer or its Representatives to Supplier to perform the Services or furnish the Equipment. Title to Buyer Furnished Property shall remain with Buyer and risk of loss shall be with the Party who has possession. For Buyer Furnished Property in Supplier's possession, custody or control, Supplier shall insure against loss and damage in an amount equal to full replacement cost. Buyer Furnished Property shall carry no guarantee or warranty, express or implied. Supplier shall not use Buyer Furnished Property on any work other than the Equipment/Services. Supplier shall clearly mark Buyer Furnished Property to show Buyer's ownership and prevent a lien, encumbrance or challenge to Buyer's title thereto. Supplier shall, at its own expense, maintain and repair Buyer Furnished Property returning it to Buyer in the condition in which received, reasonable wear and tear excepted. Upon expiration or termination of the Purchase Order, Supplier shall dispose of Buyer Furnished Property as Buyer directs in writing. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer. The applicable Purchase Order pursuant to which Buyer Furnished Property was furnished to Seller shall remain in effect so long as Supplier possesses Buyer Furnished Property.

10. PACKAGING.

Except where the Purchase Order includes alternative requirements, Supplier shall be responsible for packaging Equipment, and the clear and conspicuous marking of Equipment and packaging, in accordance with Applicable Law, industry standards and in a manner sufficient to permit efficient handling, to provide adequate protection and comply with requirements of carrier and Applicable Law. Packing slips identifying the Purchase Order number, and part number must accompany each shipment. The exterior of each shipping container or package will be clearly marked with Buyer's Purchase Order number and country of origin, which shall also be marked on Equipment, in a clear, conspicuous and permanent manner. Supplier shall provide all necessary shipping documents, including, but not limited to, customs invoices and packing lists in accordance with Buyer's requirements and Applicable Law. Damages and costs incurred by Buyer, its Representative or customer resulting from Supplier or its Representative's failure to comply with this Article 10 shall be paid by Supplier. If Supplier imports wood packaging materials, in accordance with 7 CFR 319.40, Supplier warrants that such wood packaging material is treated and marked under an official program developed and overseen by the National Plant Protection Organization in the country of export.

11. FORCE MAJEURE.

11.1. Effect of Force Majeure. A Party shall not be considered to be in breach or default of this Agreement or any Purchase Order hereunder if and to the extent that its failure or delay in performance or its efforts to cure are prevented by Force Majeure.

11.2. Procedures. If either Party, as a result of the occurrence of a Force Majeure, is rendered wholly or partially unable to perform its obligations under this Agreement or any Purchase Order, such Party shall comply with the following:

(a) the affected Party shall promptly notify the other Party hereto in writing, and in any event within five (5) Business Days after the affected Party becomes aware of the occurrence of such Force Majeure event, describing in such notice the particulars of the occurrence;

(b) the affected Party shall give the other Party written notice estimating the event's expected duration and probable impact on the performance of such Party's obligations under this Agreement, and such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the event;

(c) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the event;

(d) no liability of either Party which arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence;

(e) the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party, promptly taking appropriate and sufficient corrective action, including the expenditure of all reasonable sums of money;

(f) the affected Party shall use all reasonable efforts to continue to perform its obligations under this Agreement and to correct or cure the event excusing performance; and

(g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall promptly resume performance and give the other Party written notice to that effect.

11.3. Termination for Extended Force Majeure. If Supplier experiences a Force Majeure Event completely preventing Supplier's performance for more than forty-five (45) consecutive days, Buyer shall have the right to terminate the applicable Purchase Order and shall be entitled to a refund of all monies advanced to Supplier.

12. CHANGE ORDERS.

12.1. Change Order. A "Change Order" is a written instrument signed by the Parties and stating their mutual agreement upon a change in the obligations of the Parties under this Agreement or any Purchase Order, including if applicable the amount of the adjustment in the purchase price and the extent of any adjustment to the Delivery schedule, including the Guaranteed Delivery Date.

12.2. Change Order Process. In addition to circumstances set forth herein where the Parties are entitled to a Change Order, either Party may request changes in the obligations of the Parties under this Agreement within the scope of this Agreement consisting of additions, deletions, or other revisions to such obligations. If either Buyer or Supplier wishes to change such obligations, it shall submit a change request to the other Party in writing. If the requested change relates to a change to the Equipment supply obligations or results from a condition in which Supplier is entitled to a Change Order under this Agreement, then, within fifteen (15) Business Days following receipt or delivery, as applicable, of the requested change, Supplier shall submit a proposal to Buyer stating (i) the increase or decrease, if any, in the purchase price and changes to the Delivery schedule and/or the Guaranteed Delivery Date, if any, that would result from such change (collectively, the "Change Order Information"). If the proposed change relates to any other matter, the requesting Party, at the time the request for the change is made, shall provide the proposed Change Order Information. Within five (5) Business Days following receipt of the Change Order Information, the Parties shall meet and, acting reasonably, negotiate in

good faith a mutually acceptable Change Order in accordance with the principles set forth herein. Following agreement on the terms and conditions of the Change Order, the Parties shall execute the same. If the Parties do not agree upon the terms and conditions of the Change Order, and the proposed change relates to circumstances in which a Party is entitled to a Change Order under this Agreement, then either Party may submit the matter to dispute resolution pursuant to Article 24.

12.3. Change Order Restrictions. Notwithstanding anything herein to the contrary, Buyer shall not be entitled reduce the scope of the Equipment supply obligations under any Purchase Order.

12.4. No Change. Supplier shall not be obligated to proceed with any change in the Equipment supply obligations requested by Buyer unless and until a Change Order is executed by the Parties in relation to such change. Further, Supplier shall not be required to implement a requested change in the Equipment supply obligations by Buyer if Supplier reasonably believes the implementation of such change would impair Supplier's ability to comply with any of the warranties or the covenants set forth in this Agreement or the applicable Purchase Order.

13. INTELLECTUAL PROPERTY.

13.1. Grant of License. Upon transfer of title with respect to any Equipment purchased hereunder and upon providing parts under the Equipment Warranty hereunder, Supplier hereby grants to Buyer a non-exclusive, transferable, fully paid-up with no further royalty obligation, worldwide, license in and to, all Intellectual Property owned or licensed by Supplier which are necessary for the use and enjoyment by Buyer of Equipment hereunder (the "License") to import into the Territory and use the Licensed Technology (including any Intellectual Property in the Licensed Technology) within the Territory, and solely in accordance with the terms of this Agreement. Such license includes a perpetual license to use software provided for the operation of the Equipment, including but not limited to all modifications or additions to software upon payment of commercially reasonable service charges to be negotiated, as well as all related documentation and technical information. With respect to any Confidential Information contained within the Licensed Technology, Buyer may disclose such Confidential Information to third party contractors who have a need to know such parts of the Licensed Technology solely for Buyer's use and operation of the Equipment and in accordance with the terms of this Agreement; provided that such third parties shall first execute a confidentiality agreement consistent with this Agreement containing restrictions on disclosure and use at least as restrictive as those in Article 17 (and such third party contractors shall not be permitted to disclose the Licensed Technology to any other third party). The Licensed Technology is Confidential Information of Supplier as defined in Section 17.1 even if not marked as "confidential," "proprietary" or with other such similar language, except where an exception in Section 17.3 applies.

13.2. No Copies. Except as otherwise permitted by this Agreement, Buyer shall not make any copies of the Licensed Technology without first obtaining express written permission from Supplier. Notwithstanding the foregoing, Buyer may make such number of copies of (i) the documentation and manuals for the Equipment or other Intellectual Property licensed hereunder that is not embedded in the Equipment as are required for Buyer's normal use and operation hereunder (including such copies as may be included in or attached to electronic mail messages by Buyer for delivery to Persons who are otherwise permitted recipients of Supplier's Confidential Information hereunder) and (ii) the Licensed

Technology as are reasonably required for back-up, disaster recovery and archival purposes.

13.3. Proprietary Notices. Buyer shall not remove or alter, or permit to be removed or altered, any proprietary notices that appear on or with the Licensed Technology. Buyer shall include on and with the Licensed Technology a written notice stating: "Confidential and Proprietary Information of Supplier. Access and Use Restricted by License." or such other or additional notice as Supplier reasonably may prescribe.

13.4. Security. Buyer shall take all reasonable steps to ensure that no unauthorized persons have access to the Licensed Technology, and to ensure that no persons authorized to have such access shall take any action which would be in violation of this Agreement. Such steps shall include, but shall not be limited to, imposing password restrictions on use of the Licensed Technology securing Buyer's network on which such Licensed Technology resides from outside intrusion, preventing the making of unauthorized copies of the Licensed Technology and administering and monitoring use of the Licensed Technology.

13.5. No Reverse Engineering. The Licensed Technology includes trade secrets of Supplier or its Affiliates. In order to protect the Licensed Technology, Buyer shall not modify, translate, decompile, reverse engineer, decrypt, extract or disassemble the Licensed Technology or otherwise reduce or attempt to reduce any Software in the Licensed Technology to source code form. Buyer shall ensure, both during and (if Buyer still has possession of the Licensed Technology) after the performance of this Agreement, that (a) Persons who are not bound by a confidentiality agreement consistent with this Agreement shall not have access to the Licensed Technology and (b) Persons who are so bound are put on written notice that the Licensed Technology contains trade secrets, owned by and proprietary to Supplier or its Affiliates.

13.6. Open Source Software. Buyer shall not sell, sublicense, or otherwise make available the Licensed Technology or any part thereof as Open Source Software, nor combine the Licensed Technology with any Open Source Software in a manner that could require the release, disclosure or distribution of the Licensed Technology, or otherwise infect the Licensed Technology so as to impose any obligation on Supplier or diminish any rights Supplier may have therein.

13.7. Reporting. Buyer shall promptly report to Supplier any actual or suspected violation of this Article 13, and shall take such further steps as may reasonably be requested by Supplier to prevent or remedy any such violation.

13.8. Relief. Because unauthorized use or transfer of the Licensed Technology is likely to diminish substantially the value of such Licensed Technology and irreparably harm Supplier and will not be susceptible of cure by the payment of monetary damages, if Buyer breaches the provisions of this Article 13, Supplier shall be entitled to injunctive and/or other equitable relief, in addition to other remedies afforded by law, to prevent or restrain such breach.

13.9. Improvements.

(a) By Supplier. Any improvement hereafter made by or for Supplier or any of its Affiliates in the Licensed Technology that is approved and adopted by Supplier for use by Buyer under this Agreement shall be included in the Licensed Technology

for purposes of the License. The Parties agree that Supplier may decide in its sole discretion which improvements it shall approve and adopt for purposes of Buyer's use under the License; provided, however, that if Supplier makes improvements available to buyers similarly situated to Buyer in terms of project scope and fees paid, Supplier also shall make such improvements available to Buyer on terms at least as favorable to Buyer as the terms generally provided to such similarly situated buyers.

(b) By Buyer. Buyer may not modify the Licensed Technology except as expressly permitted in this Section 13.9(b). Buyer may suggest modifications in the Licensed Technology to Supplier. Any modification in the Licensed Technology suggested by Buyer must first be approved by Supplier in its sole discretion in writing before it is used by Buyer hereunder. If Buyer develops any material modification or improvement in the Licensed Technology (whether permitted or not), it shall promptly disclose it to Supplier in writing. If and only if, and to the extent, Applicable Law mandates that Buyer own any modifications to or improvements in the Licensed Technology, in whole or in part, and notwithstanding the terms of this Agreement, Buyer hereby grants to Supplier and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to make, have made, import, offer for sale, sell, copy, make derivative works, use and sublicense others to use these modifications or improvements.

13.10. Ownership.

(a) Supplier. As between the Parties, Supplier or its Affiliates shall own the Licensed Technology, including any modifications, discoveries, derivative works and improvements derived from or based on it, whether developed by Supplier, by Buyer, or by the Parties jointly, all Intellectual Property therein and any Intellectual Property developed during, or arising out of, the performance of Supplier's obligations under this Agreement, to the extent permitted by Applicable Law. Buyer acquires only certain rights to use the Licensed Technology under the License, strictly in compliance with the terms of this Agreement, and does not acquire any ownership rights or title to it.

(b) Buyer. As between the Parties, Buyer or its Affiliates shall own (1) any Intellectual Property developed or acquired by Buyer prior to or independently of this Agreement, (2) all data generated or collected by the Equipment or Buyer or its customer during the commercial use of the Equipment (the "Buyer Data"), and (3) all Intellectual Property therein, excluding in each case any of the Licensed Technology incorporated therein or any Intellectual Property in any combination of the Licensed Technology and Buyer Data.

(c) Cooperation. Buyer shall reasonably cooperate with Supplier to assist in perfecting Supplier's ownership in any Intellectual Property in modifications, discoveries, derivative works and improvements to Licensed Technology developed by Supplier or by the Parties jointly, including by executing declarations, oaths, assignments or other formalities documents as needed.

13.11. Enforcement. Each Party shall notify the other promptly in writing of any suspected infringement by a third party of the Licensed Technology or any of the Intellectual Property therein. Supplier shall have the exclusive right to enforce and defend the rights

appurtenant to the Licensed Technology or the Intellectual Property therein in Supplier's sole discretion and shall have the sole right of control of any such enforcement action or proceeding it elects to initiate (an "Enforcement Action"), at Supplier's sole cost and expense. Supplier shall keep Buyer timely and reasonably informed as to significant events during the course of all such Enforcement Actions as would reasonably be expected to affect Buyer's use of the Licensed Technology whether conducted for Supplier's or Buyer's account. Buyer shall provide on Supplier's written request reasonable assistance in preparing and advancing Supplier's case, in consideration of which Supplier shall reimburse Buyer's reasonable out-of-pocket costs incurred in doing so (including reasonable attorneys' fees). Supplier may retain any monetary damages or other compensation or recovery awarded to it in any Enforcement Action under this Section 13.11. Notwithstanding the foregoing, Buyer may participate and be represented in any Enforcement Action by its own counsel at its own expense, to the extent such participation and representation does not materially interfere with Supplier's right to control such Enforcement Action. Supplier shall not settle any such Enforcement Action in a manner materially and adversely affecting Buyer's rights in this Agreement, or in a manner including an admission of wrongdoing by Buyer, without obtaining the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer has no right to enforce Supplier's Intellectual Property in the Licensed Technology against any third parties.

13.12. Duration and Transfers. Subject to termination in accordance with this Agreement, the License (i) shall continue for so long as Buyer or any successor retains ownership of the Equipment and continues operating the same (ii) shall terminate automatically if and when the Equipment is permanently removed from service (subject to earlier termination in accordance herewith) and (iii) shall transfer as part of an assignment that is permitted under Section 25.5. If Buyer sells or transfers the Equipment, or any portion thereof, apart from an Assignment of this Agreement, the License will terminate as to Buyer with respect to the Equipment, or any portion thereof sold or transferred and Buyer must, as a condition thereof, notify Supplier in writing and assign to the transferee thereof the License with respect to the Equipment, or any portion thereof sold or transferred, and procure from the transferee an assumption of such License, on substantially the same terms as set forth in this Article 13 and in form subject to Supplier's prior reasonable approval, to the extent the License is applicable to the assets being sold or transferred. The License may not be assigned, transferred or sublicensed except as expressly permitted in this Section 13.12. Buyer shall be responsible for, and indemnify, defend and hold harmless Supplier, Supplier's Parent, Supplier's Affiliates, and their respective officers, directors, members, agents and employees from and against any damage, injury or loss resulting from the failure of Buyer to comply with the terms of this Article 13. Supplier may terminate the License, except with respect to any Licensed Technology that is integrated in any Equipment as to which title has transferred to Buyer hereunder, on written notice to Buyer if Buyer (a) fails to cure any material breach of an obligation in this Article 13 which is capable of being cured within thirty (30) days after Supplier's written notice specifying the breach, or (b) on more than two (2) occasions in any five (5) year period, Buyer is found, through resolution of a Dispute, whether by settlement or otherwise, to have materially breached the terms and conditions of this Article 13 in substantially the same manner.

13.13. Government End Users. The Software portion of the Licensed Technology is a "commercial item" as that term is defined at 48 CFR 2.101, and includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and in the event the Licensed Technology is provided to the

US Government, such Licensed Technology shall be provided to the US Government only as a commercial end item. Consistent with 48 CFR 12.212, civilian US Government end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 12.212(a)(1) and (a)(2); Department of Defense end users acquire the Software and documentation with only those license rights set forth herein as restricted by 48 CFR 227.7202-1 through 227.7202-4.

13.14. Reservation of Rights. Supplier reserves all rights in the Licensed Technology not expressly granted to Buyer in this Agreement. No right or license is granted (expressly or by implication or estoppel) by Supplier to Buyer or its Affiliates under any tangible, Intellectual Property, or other proprietary right.

14. DEFAULTS AND REMEDIES.

14.1. Supplier Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Supplier hereunder (a "Supplier Event of Default"):

(a) Supplier fails to pay to Buyer any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Supplier voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Supplier and such proceedings remain undismissed or unstayed for a period of ninety (90) days;

(d) Supplier fails to deliver Equipment by the date upon which Supplier exhausts its liability for liquidated damages for delayed deliveries under Section 5.3; or

(e) Except as otherwise expressly provided for in this Section 14.1, Supplier is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Buyer.

14.2. Buyer Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Buyer hereunder (a "Buyer Event of Default"):

(a) Buyer fails to pay to Supplier any payment required under this Agreement (which is not subject to a good faith dispute) when due, and such failure continues for ten (10) Business Days after receipt of written notice of such failure;

(b) Buyer voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors;

(c) Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Buyer and such proceeding remains undismissed or unstayed for a period of ninety (90) days;

(d) Any Assignment by Buyer not in conformity with Section 25.5; or

(e) Except as otherwise expressly provided for in this Section 14.2, Buyer is in material breach of its obligations under this Agreement and such material breach continues uncured for sixty (60) days after receipt of written notice from Supplier.

14.3. Remedies. Upon the occurrence of a Supplier Event of Default, Buyer may, by written notice to Supplier, terminate the outstanding Purchase Order(s) under which the Supplier Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Upon the occurrence of a Buyer Event of Default, Supplier may, by written notice to Buyer, terminate the outstanding Purchase Order(s) under which the Buyer Event of Default has arisen and/or shall be entitled to such rights and remedies as may be available at law or in equity. Any rights and remedies available under Applicable Law upon termination of this Agreement pursuant to this Section 14.3 shall be limited in all respects by the limitations of liability set forth in Article 16. For sake of clarity, in the event that there are more than one Buyer under this Agreement, (i) a Buyer Event of Default by one such Buyer shall not constitute a Buyer Event of Default by any other Buyer and any remedies available to Supplier shall be exercisable only as against the defaulting Buyer and as regards the non-defaulting Buyer(s) this Agreement and any related Purchase Orders shall continue in full force and effect, and (ii) a Supplier Event of Default with respect to any particular Purchase Order shall only count as a Supplier Event of Default for the applicable Purchase Order and as regards any other Purchase Orders and any other Buyer(s), this Agreement and any related Purchase Orders shall continue in full force and effect.

15. INDEMNIFICATION.

15.1. General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its Affiliates, and their Representatives and assigns (the "Indemnified Party") from and against all claims, suits, causes of action, losses, liabilities, liens, damages, assessments, costs, expenses, demands, complaints or actions including but not limited to reasonable attorneys' fees and court costs (collectively, "Claims") of third parties concerning: (i) death, personal injury, or property damage of third parties, (ii) nonpayment of wages, benefits, fees, amounts owed, and/or any taxes (including penalties and interest) associated therewith arising from the Indemnifying Party's Representatives, suppliers, contractors, and/or materialmen which may include liens or encumbrances on the Equipment/Services or the premises on which located and (iii) violations by the Indemnifying Party or any Person for whom the Indemnifying Party is responsible of Applicable Law; in each case to the extent arising or resulting from the Indemnifying Party's or its Representative's negligence, willful misconduct, or breach of this Agreement. For sake of clarity, if both Parties are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this Section 15.1 shall continue, but the Indemnifying Party shall indemnify the Indemnified Party only for the percentage of responsibility for the damage or injuries attributable to the Indemnifying Party.

15.2. Infringement Indemnification by Supplier.

(a) Indemnity. If an action is brought or threatened against Buyer claiming that Buyer's use, as permitted herein, of the Licensed Technology within the Territory infringes any Intellectual Property arising or existing under Applicable Law, Supplier shall defend, indemnify and hold harmless Buyer, its Affiliates, and their Representatives and assigns at Supplier's expense from and against any and all Infringement Claim Costs of Buyer to the extent arising from such action or claim.

(b) Corrective Actions. If Buyer's permitted use of the Licensed Technology within the Territory is materially impaired or if Supplier's performance of the Equipment supply obligations under this Agreement or any other obligation is materially impaired by reason of such third party claim, Supplier shall use commercially reasonable efforts, at its expense, to continue its performance of the Equipment supply obligations under this Agreement or the other affected obligations, including at its own election and expense (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent or better or (iii) to obtain for Buyer the right to continue using such item or process. Supplier shall, prior to proceeding with any of the foregoing actions, consult with Buyer as to the proposed action and consider in good faith any reasonable request of Buyer in respect thereof. Nothing herein constitutes a guarantee by Supplier that such efforts will succeed in avoiding the infringement claim or that Supplier will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness. If Supplier reasonably believes that an injunction against use of the Licensed Technology in the Territory may be granted against Buyer, either imminently or with the passage of time, Supplier may at its expense, and upon reasonable prior written notice to Buyer, take any of the foregoing actions in order to minimize its liability.

(c) Exclusions. This Section 15.2 does not apply to, and Supplier assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise) to the extent that such claims relate, in whole or in part, to (i) Buyer's modification or alteration of the Licensed Technology (except to the extent permitted by this Agreement) or the Equipment, in either case made without Supplier's written consent or contrary to Supplier's instructions, (ii) the combination of the Licensed Technology with other Software, products, materials, equipment, parts or apparatus and not approved in writing by Supplier or (iii) a failure to promptly install an update required by Supplier.

(d) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 15.2 STATE THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND ITS AFFILIATES AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY BY THE EQUIPMENT OR THE LICENSED TECHNOLOGY OR ANY PART THEREOF, EXCEPT TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED IN ACCORDANCE WITH MANDATORY LEGAL REQUIREMENTS.

(e) Notifications. Buyer shall promptly notify Supplier in writing following receipt of written notice of any claims alleging infringement of patents or other proprietary rights (including Intellectual Property) in connection with Buyer's permitted use of

the Licensed Technology or Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations, and shall provide Supplier with all information in its possession relevant to such claim. In turn, Supplier shall notify Buyer as soon as practical in writing of any claims which Supplier may receive alleging infringement of patents or other proprietary rights which may affect Supplier's performance of the Equipment supply obligations under this Agreement or Equipment Warranty obligations under this Agreement or Buyer's right to own, operate and maintain the Equipment.

15.3. Infringement Indemnification by Buyer.

(a) Indemnity. If an action is brought or threatened against Supplier claiming that any condition or event described in Section 15.2(c) results in an infringement upon any Intellectual Property within the Territory arising or existing under Applicable Law, Buyer shall defend, indemnify and hold harmless the Supplier Indemnified Parties at Buyer's expense from and against any and all Infringement Claim Costs of Supplier to the extent arising from such action or claim.

(b) Corrective Actions. If performance of Supplier's obligations hereunder is enjoined by reason of a claim subject to Section 15.3(a), Buyer shall use commercially reasonable efforts, at its option and expense, at its own election (i) to substitute an equivalent non-infringing item or process for the allegedly infringing item or process, (ii) to modify the allegedly infringing item or process so that it no longer infringes but remains functionally equivalent, or (iii) to obtain for Supplier the right to continue using such item or process. Nothing herein constitutes a guarantee by Buyer that such efforts will succeed in avoiding the infringement claim or that Buyer will be able to replace the infringing item or process with an item or process of comparable functionality or effectiveness.

(c) Exclusions. This Section 15.3 does not apply to, and Buyer assumes no liability with respect to, claims for patent infringement or copyright infringement or improper use of other proprietary rights (including any license or Intellectual Property, whether by way of copyright or otherwise), to the extent that such claims relate, in whole or in part, to (i) a modification to the Licensed Technology or the Equipment requested by Buyer but executed by Supplier or with Supplier's supervision and control or (ii) the combination of the Licensed Technology with other products, materials, equipment, parts or apparatus approved in writing by Supplier.

15.4. Indemnification Procedures.

(a) If an Indemnified Party receives written notice of a Claim, the Indemnified Party shall give prompt written notice to the Indemnifying Party, including a reasonably detailed description of the facts and circumstances relating to such Claim, a complete copy of all notices, pleadings and other papers related thereto, and a description in reasonable detail of the basis for the potential claim for indemnification with respect thereto. The Indemnified Party's delay or deficiency in notifying Supplier shall not relieve Supplier of liability or obligation except to the extent (and only to the extent) such delay materially impacts the defense of the Claim.

(b) The Indemnifying Party shall be entitled to assume the defense and to represent the interests of the Indemnified Party, which shall include the right to select and direct legal counsel and other consultants (all of whom shall be reasonably acceptable to the Indemnified Party), appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement, subject to Section 15.4(c) below, all at its sole cost. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants or participating in its own defense at its own cost and expense. Notwithstanding the foregoing, if (i) the claim is primarily for non-monetary damages against the Indemnified Party, or primarily for an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) there is a material actual or potential conflict of interest that makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend (and in the case of clause (iii) above, compromise and settle), such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party; however the settlement of any claim pursuant to clauses (i) and (ii) above shall be governed by Section 15.4(c) below. Notwithstanding anything to the contrary herein, for sake of clarity, the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

(c) Notwithstanding anything to the contrary herein, the Indemnifying Party shall not compromise or settle, or admit any liability with respect to any third party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the relief consists solely of (i) money damages (all of which the Indemnifying Party shall pay), and (ii) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto. If the Indemnified Party assumes the defense of or represents their own interests, no settlement shall be made without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

15.5. Limited Waiver of Certain Immunities. Each of the Parties hereby specifically and expressly agrees that with respect to any and all claims against an Indemnified Party by any representative of an Indemnifying Party, any indemnification available hereunder shall not be limited by reason of any immunity to which such Indemnifying Party may be entitled under any workers compensation and/or industrial insurance acts, disability benefit acts, or other employee benefits acts and any limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party to such representative with respect to any such claim. For the sake of clarity, the Indemnifying Party's waiver of immunity by the provisions of this section extends only to indemnification claims against the Indemnifying Party by or on behalf of the Indemnified Party under or pursuant to this Agreement, and does not apply to any claims made by the Indemnifying Party's representatives directly against the Indemnifying Party.

15.6. Survival. The indemnities set forth in this Article 15 shall survive the termination or expiration of this Agreement.

16. LIMITATIONS OF LIABILITY.

16.1. WAIVER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE, WHETHER BASED IN CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM BUYER'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

16.2. MAXIMUM LIABILITY. SUPPLIER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE SET FORTH IN THE APPLICABLE PURCHASE ORDER PURSUANT TO WHICH THE APPLICABLE CLAIM AROSE.

16.3. EFFECTIVENESS. THE PARTIES AGREE THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 16 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT OR ANY PURCHASE ORDER EXECUTED HEREUNDER AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF SUPPLIER HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 16 EXTEND TO THE PARTIES' RESPECTIVE AFFILIATES, PARTNERS, PRINCIPALS, MEMBERS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.

16.4. Commencement of Claims. Except with respect to claims arising under Article 13, Article 15 or Article 17, any legal action of either Party arising under this Agreement or any Purchase Order issued hereunder must be commenced within two (2) years after the Delivery of the applicable Equipment or performance of the applicable Service. To the maximum extent permitted by Applicable Law, each Party hereby waives any right to commence any claim or action after such two (2) year period.

17. CONFIDENTIALITY.

17.1. Confidential Information. Each Party shall, and shall cause its respective Affiliates and Representatives to, keep confidential any information which it may have or acquire before or after the date of this Agreement, concerning the other Party and its assets, business, operations, affairs, financial condition or such information, "Confidential Information").

17.2. Non-Disclosure. Neither Party shall use any Confidential Information in any manner detrimental to the other Party nor shall any of them disclose, publish or make accessible, directly or indirectly, any Confidential Information to any person. In addition, the Parties shall exercise all reasonable efforts to prevent any other person from gaining access to such Confidential Information and take such protective measures as may be or become reasonably necessary to preserve the confidentiality of such Confidential Information.

17.3. Exceptions. Notwithstanding Section 17.1 and Section 17.2, either Party may disclose Confidential Information:

(a) to any Representative of such Party, provided that such Representative has a need to know and has been informed of the confidential nature of the information pursuant to Section 17.4;

(b) to the extent required by (i) any Applicable Law of any Governmental Authority (including any rule or regulation of the Securities and Exchange Commission), (ii) any stock exchange rule or regulation or (iii) any binding judgment, order or requirement of any court or other Governmental Authority of competent jurisdiction; provided, that the Party required to disclose Confidential Information, as the case may be, has delivered written notice to and consulted, to the extent practicable, with the other Party prior to disclosure of such Confidential Information; and

(c) to the extent such Confidential Information becomes available within the public domain (otherwise than as a result of a breach of this Article 17).

17.4. Representatives Bound. Each Party shall inform any representative to whom it provides Confidential Information that such information is confidential and shall instruct them (a) to keep such Confidential Information confidential and (b) not to disclose it to any third party (other than those persons to whom such Confidential Information has already been disclosed in accordance with the terms of this Agreement). The disclosing Party shall be responsible for any breach of this Article 17 by the person to whom the Confidential Information is disclosed.

17.5. Survival. Notwithstanding anything herein to the contrary, the provisions of this Article 17 shall survive the termination of this Agreement for a period of three (3) years and, with respect to each Party, shall survive for a period of three (3) years following the date on which such Party is no longer a Party.

18. REPRESENTATIONS AND WARRANTIES.

18.1. Representations of the Parties. As of the Effective Date (or, with respect to each Further Siemens Contracting Party that becomes a Buyer hereunder, as of the time of execution of a joinder hereto), and as of the entry into of each Purchase Order hereunder, each Party represents to the other Party as follows:

(a) Due Formation. Such Party (i) is a duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) has the requisite power and authority to own its properties and carry on its business as now being conducted and currently proposed to be conducted and to execute, deliver and perform its obligations under this Agreement, and (iii) is qualified to do business in every jurisdiction in which failure so to qualify could be reasonably be expected to

have a material adverse effect on such Party's ability to perform its obligations hereunder.

(b) Authorization; Enforceability. Such Party has taken all action necessary to authorize it to execute, deliver and perform its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms, subject to bankruptcy, reorganization, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and subject to general principles of equity.

(c) No Conflict. The execution, delivery and performance by such Party of this Agreement does not and will not (i) violate any Applicable Law, (ii) result in any breach of such Party's constituent documents or (iii) conflict with, violate or result in a breach of or constitute a default under any agreement or instrument to which such Party or any of its properties or assets is bound or result in the imposition or creation of any lien or security interest in or with respect to any of such Party's property or assets, other than in each case any such violations, conflicts, breaches or impositions which could not be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(d) No Authorization. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any third party (other than those which have been obtained) is required for the due execution, delivery and performance by such Party of this Agreement, other than any such authorizations, approvals or actions the failure of which to obtain could not reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

(e) Litigation. Such Party is not a party to any legal, administrative, arbitration or other proceeding, and, to such Party's knowledge, no such proceeding is threatened, before any Governmental Authority that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of this Agreement, the subject matter hereof, or that which could be reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations hereunder.

18.2. Additional Representations of Supplier. In addition to representations and warranties set forth elsewhere in this Agreement, Supplier hereby represents and warrants as of the Effective Date and as of the entry into of each Purchase Order hereunder as follows:

(a) None of Supplier, its Affiliates or Representatives is the target of or designated under any sanctions program that is established by statute or regulation of the United States, by Executive Order of the President of the United States, or by designations of any department or agency of the United States government including but not limited to those designations reflected in the "list of Specially Designated Nationals and Blocked Persons" of the Office of Foreign Asset Control, U.S. Department of the Treasury;

(b) Supplier's Representatives are legally authorized to work in the United States and Supplier shall complete as required by Applicable Law the Department of Labor's Form I-9 and to retain it for the statutorily designated period and, if requested by

Buyer, Supplier shall provide copies of such Forms I-9 to Buyer unless such disclosure shall be prohibited by Applicable Law;

(c) For Services provided at Buyer's, it's customer or third party's premises, Supplier has examined the worksite in order to acquaint itself with the local conditions, including applicable regulations codes, permits, licenses, registrations, environmental standards, and notification requirements concerning site safety and/or security;

Supplier has not and will not, absent prior written approval from Buyer, take any actions that: (i) create, or purport to create, any obligation on behalf of Buyer, or (ii) grant, or purport to grant, any rights or immunities to any third party under Buyer's intellectual property or proprietary rights; and

(d) The bank account named by Supplier to Buyer for all payments to be effected in connection with any Purchase Order hereunder is held in Supplier's name and solely for its account.

19. ENVIRONMENT, HEALTH AND SAFETY.

19.1. Compliance and Related Matters.

(a) Each of the Parties shall, in addition to other obligations set forth in this Agreement, during the course of performance of their respective obligations under this Agreement or any Purchase Order issued hereunder:

(i) comply with Applicable Laws concerning health, the environment, safety, or pertaining to or regulating pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes, including without limitation the handling, transportation and disposal thereof, or governing or regulating the health and safety of personnel, including but not limited to the Occupational Safety and Health Act of 1970, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act ("TSCA"), as amended (collectively referred to as "EHS Laws") (pollutants, contaminants, or hazardous, toxic or radioactive substances, materials or wastes as defined under EHS Laws shall be referred to collectively as "Hazardous Materials");

(ii) take reasonable and prudent measures, as appropriate, consistent with applicable industry standards, to mitigate hazards to the environment and to the health and safety of persons;

(iii) select and use only equipment, including but not limited to personal protection equipment, that comports with EHS Laws, implement programs to train its Representatives in the use of such equipment in a safe and lawful manner, and maintain such equipment in good working order at all times; and

(iv) promptly notify the other Party of any incident involving death, injury or damage to any person or property in connection with any Equipment or Purchase Order.

(b) Supplier shall, in addition to other obligations set forth in this Agreement, during the course of performance of its obligations under this Agreement or any Purchase Order issued hereunder:

(i) ensure that Equipment/Services comply with EHS Laws;

(ii) ensure the Equipment, and any and all parts, components, or material thereof, as Delivered by Supplier, bear all markings, labels, warnings, notices or other information required under applicable EHS Laws at the time of such Delivery; and

(iii) comply with any applicable substance declarations and other requirements set forth in Exhibit C.

19.2. On-Site Environmental and Safety Responsibility. Where the Purchase Order includes the presence of Supplier or its Representatives on the premises of Buyer, Buyer's customer, or any other location other than the premises of Supplier ("Work Site"), Supplier shall: (1) be responsible for the safety, health, medical surveillance, industrial hygiene, training and all other matters required under EHS Laws relating to safety and health of its Representatives at the Work Site, (2) appoint a competent person as its representative for environmental, health and safety who shall take part in safety discussions with Buyer, its Representatives, customer, or the owner of the Work Site, (3) be responsible for the handling, use, transportation and disposal of any and all substances regulated under the EHS Laws which Supplier or its Representatives bring onto the Work Site or generate in the performance of Supplier's work pursuant to the applicable Purchase Order, including but not limited to excess, waste or residue, containers or any of such substances not consumed, and for any spills, releases or discharges of such substances to the extent attributable to acts or omissions of Supplier or its Representatives, strictly in accordance with EHS Laws, and (4) ensure Supplier's Representatives participate in any site-specific safety training and comply with all rules and requirements of Buyer, its customer, or such other owner of the Work Site, in each case, of which Buyer provides Supplier advance written notice.

19.3. Health and Safety Plan. Prior to commencing any Services at a Work Site, Supplier shall, in accordance with EHS Laws provide and comply with a site specific health and safety plan, Work Site requirements, and shall make the same available to Buyer or its Representatives at Buyer's request. If Supplier fails to comply with this Article 19, Buyer may, at its sole option and without limiting its other rights, order Supplier or its Representatives to cease Services until Supplier complies at Supplier's sole cost and expense. If Supplier is unable or refuses to take corrective action hereunder Buyer may contract with a third party or otherwise continue such Services at the Work Site and charge Supplier any excess cost reasonably incurred by Buyer. Buyer shall have the right, at its sole discretion, to remove Supplier or its Representatives from a Work Site for violation of this Article 19.

20. OPEN SOURCE SOFTWARE.

Supplier shall inform Buyer no later than ten (10) Business Days following receipt of any written request from Buyer in connection with a Purchase Order, whether the Equipment/Services contemplated thereby include "Open Source Software." As used herein "Open Source Software" means any Software that is licensed royalty-free (i.e.,

fees for exercising the licensed rights are prohibited, whereas fees for reimbursement of costs incurred by licensor can be permitted) under any license terms or other contract terms ("Open License Terms") which require, as a condition of use, modification and/or distribution of such Software and/or any other Software incorporated into, derived from or distributed with such software ("Derivative Software"), either of the following: (i) that the source code of such Software and/or any Derivative Software be made available to third parties; or (ii) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties. If Open Source Software is included, Supplier shall deliver to Buyer, not later than the date of order confirmation, (A) a schedule of all Open Source Software files known to be used, indicating the relevant license(s) to the extent known by Supplier; and (B) a written notice that Supplier is not aware of any violation of such license(s) due to such Use of Open Source Software.

21. EXPORT CONTROL AND FOREIGN TRADE REGULATIONS.

21.1. Acknowledgement and Compliance. The Parties acknowledge that all Equipment to be delivered and Services to be provided according to this Agreement are subject to export control and sanctions laws and regulations, including, without limitation, the U.S. Export Administration Regulations ("EAR") (15 C.F.R. §§ 730-774), the U.S. Foreign Trade Regulations (15 C.F.R. Part 30), and the regulations, rules, and executive orders administered by OFAC (collectively, the "Export Controls and Sanctions Laws"). Each Party agrees to comply with all Export Controls and Sanctions Laws applicable to any such Equipment/Services and shall not take any action that will cause the other Party to violate or be subject to penalty under the Export Controls and Sanctions Laws.

21.2. Export Licenses. Supplier shall obtain all necessary export licenses, unless Buyer or any party other than Supplier is required to apply for the export licenses pursuant to the applicable Export Controls and Sanctions Laws. To the extent Supplier is requested to deliver Equipment/Services regulated under the Arms Export Control Act or the Atomic Energy Act, Supplier shall advise Buyer in advance of order or contract acceptance.

21.3. Provision of Trade Data. At the request of Buyer, Supplier shall provide Buyer for Equipment and Services delivered the following trade data as applicable: (i) "Export Control Classification Number" according to the EAR's Commerce Control List (ECCN) or the Munitions List Category Designation according to the US International Traffic in Arms Regulations, and all other export control list numbers; (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates, Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates (in case of non-European suppliers) such as NAFTA certificates of origin.

21.4. Changes. In the event Supplier has knowledge of any alterations to origin and/or characteristics of the Equipment/Services, it shall notify the Buyer not later than ten (10) Business Days after discovery thereof.

21.5. Additional Buyer's Obligations. Buyer agrees that it will not, in violation of applicable Export Controls and Sanctions Laws:

(a) directly or indirectly, export, reexport, or transfer Equipment or Services to, or transship Equipment or Services through, a Sanctioned Country;

(b) directly or indirectly, release, sell, provide, export, reexport, transfer, divert, loan, lease, consign, allow access to, or otherwise dispose of Equipment or Services to a Prohibited Person; or

(c) use Equipment or Services to produce products that will be shipped, sold, or supplied, directly or indirectly, to a Sanctioned Country or a Prohibited Person.

21.6. Certain Relief. No Party shall be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

22. BUYER CODE OF CONDUCT.

Supplier shall comply with the principles and requirements of the "Code of Conduct for Siemens Suppliers and Third Party Intermediaries" attached hereto as Exhibit D (hereinafter the "Code of Conduct"). If and as requested by Buyer, Supplier shall, not more than once a year (at its option), provide to Buyer either (A) a written self-assessment in substantially the form provided by Buyer or (B) a written report reasonably acceptable to Buyer describing the actions taken or to be taken by Supplier to assure compliance with the Code of Conduct. In addition to any other rights and remedies Buyer may have, in the event of Supplier's material or repeated failure to comply with the Code of Conduct, after providing Supplier reasonable notice and a reasonable opportunity to remedy, Buyer may terminate any outstanding Purchase Orders under this Agreement without any liability whatsoever. Material failures include, but are not limited to, incidents of child labor, corruption and bribery. The notice and remedy provisions herein shall not apply to material failures set forth in the preceding sentence.

23. COMPLIANCE WITH LAWS AND PERMITS.

The Parties and their Representatives shall comply with all Applicable Laws in the course of the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder. In addition, Supplier and Buyer shall each obtain all required licenses, permits, authorizations, registrations or approvals required with respect to the performance of their respective obligations under this Agreement and any Purchase Orders issued hereunder.

24. DISPUTE RESOLUTION.

24.1. Referral to Senior Management. Except as otherwise provided by this Agreement, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof (which breach or alleged breach by a Party remains uncured within ten (10) Business Days after receipt of written notice thereof from another Party) or the validity or termination hereof or the relationship created between the Parties by and/or through this Agreement (a "Dispute") shall first be settled as far as possible by good faith negotiations between the parties to the Dispute, in the form of meetings between senior- management level representatives of such Parties, upon the written request by any such Party to the other parties to the Dispute, which writing shall set forth in reasonable detail the nature and extent of the Dispute.

24.2. Referral to Arbitration. If the parties to the Dispute are unable for any reason to resolve a Dispute within thirty (30) days after receipt by any Party of written notice of a Dispute, then any Party may submit the Dispute to arbitration to be finally and exclusively resolved under the Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein, with respect to Equipment and Services to be provided to a Customer with the United States (as applicable, the "Rules"). There shall be three (3) arbitrators. If there are two (2) parties to the Dispute, each of the parties to the Dispute shall nominate one (1) arbitrator in accordance with the Rules. If there are more than two (2) parties to the Dispute, the arbitrators shall be nominated in accordance with the Rules; provided, however, that any Party and its Affiliates shall be entitled to nominate only one (1) such arbitrator. The arbitrators so nominated, once confirmed by the AAA, shall nominate an additional arbitrator to serve as chairman, such nomination to be made within fifteen (15) days of the confirmation by the AAA of the second arbitrator. If the initial arbitrators shall fail to nominate an additional arbitrator within such fifteen (15) day period, such additional arbitrator shall be appointed by the AAA. The arbitrators shall be required to submit a written statement of their findings and conclusions. Except as otherwise agreed by the parties to such Dispute, exclusive venue of arbitration with AAA will be Wilmington, Delaware, and the language of the arbitration shall be English. Each of the Parties will submit to the non-exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware for preliminary relief in aid of arbitration and for the enforcement of any arbitral award from AAA. By agreeing to arbitration, the Parties do not intend to deprive any national court of its jurisdiction to issue any pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings.

24.3. Neutral Arbitrators. None of the Parties or the arbitrators shall select any arbitrator for the arbitral tribunal who has any interest in the Dispute or who has, or within the immediately preceding five (5) years has had, any economic or other relationship with any party to the Dispute.

24.4. Procedures and Costs. The arbitrators shall not have the right to award consequential, incidental, indirect, special, treble, multiple or punitive damages. The arbitral tribunal shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur, and the arbitral tribunal shall decide the Dispute under the substantive laws of the State of Delaware, without regard to applicable choice of law provisions thereof. The arbitration award shall be decided by majority opinion and issued in writing in the English language and shall state the reasons upon which it is based. It may be made public only with the consent of each participating Party or as may be required by law or regulatory authority or as necessary for enforcement of such award. The arbitrators shall allocate the fees and costs of the arbitration. The losing Party(ies) shall pay the prevailing Party(ies)' attorney's fees and costs and the costs associated with the arbitration, including the expert fees and costs and the arbitrators' fees and costs borne by the prevailing Party(ies), all as determined by the arbitrators. Each Party shall bear its own fees and costs until the arbitrators determine which, if any, Party is the prevailing Party(ies) and the amount that is due to such prevailing Party(ies).

24.5. Award. The award rendered by the arbitrators shall be final and binding on the participating Parties and shall be the sole and exclusive remedy between and among the participating Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. The award shall be issued no later than one hundred twenty (120) days from the signing or ratification of the Terms of Reference (as defined in the Rules) or as soon thereafter as practicable. The award shall be paid within thirty (30) days after

the date it is issued and shall be paid in U.S. Dollars in immediately available funds, free and clear of any Liens, Taxes or other deductions. A judgment confirming or enforcing such award may be rendered by any court of competent jurisdiction.

24.6. Confidentiality. The arbitration shall be confidential. No Party may disclose the fact of the arbitration, any award relating thereto or any settlement relating to any Dispute without the prior consent of the other Party(ies); provided, that such matters may be disclosed without the prior consent of the other Party(ies) to lenders, auditors, tax or other Governmental Authority or as may be required by law or regulatory authorities or as necessary to enforce any award.

24.7. Continued Performance; Provisional Remedies. Notwithstanding the existence of any Dispute, the Parties shall continue to perform their respective obligations under this Agreement unless the Parties otherwise mutually agree in writing. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it, prevent the Parties from seeking temporary injunctive relief at any time as may be available under Law or in equity to preserve its rights pending the outcome of any arbitration. Without prejudice to such provisional remedies as may be available under the jurisdiction of a national court, the arbitral tribunal shall have full authority to grant provisional remedies or order the Parties to request that a court modify or vacate any temporary or preliminary relief issued by a court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect. The Parties agree that any issue regarding the arbitrability of any claims or disputes arising under, relating to or in connection with this Agreement is an issue solely for the arbitrators, not a court, to decide.

24.8. Waiver of Jury Trial. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY OR OTHERWISE ON ANY CLAIM, CAUSE OF ACTION, SUIT OR PROCEEDING PERMITTED UNDER THIS ARTICLE 24. THE PROVISIONS OF THIS AGREEMENT RELATING TO WAIVER OF TRIAL BY JURY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

25. MISCELLANEOUS.

25.1. Governing Law. This Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Equipment of April 11, 1980 shall be excluded.

25.2. Records. Supplier and its Representatives shall maintain accurate and complete records of all contracts, papers, correspondence, copybooks, applications, accounts, invoices, and/or other information reasonably relating to this Agreement and any Purchase Orders issued hereunder (collectively, "Records") in accordance with recognized commercial accounting practices, and shall retain such Records for a period of seven (7) years unless a longer period is required under Applicable Law.

25.3. Intentionally Omitted.

25.4. Insurance. Supplier and its Representatives shall comply with the Insurance requirements set forth in Exhibit E attached hereto.

25.5. Assignment; Successors. Neither Party may assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment which fails to comply with the requirements of this Section 25.5 shall be null and void. Notwithstanding the foregoing: (i) either Party may, without the prior written consent of the other Party, assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, to an Affiliate, which will accept such assignment and assume all obligations related to this Agreement and any applicable Purchase Orders (including by executing a joinder to this Agreement in the form of Exhibit B hereto); provided that, notwithstanding any such assignment, the assigning Party shall not be relieved of any of its obligations hereunder by reason of such assignment and shall remain liable hereunder to the same degree that the assigning Party would be responsible had there been no assignment.

25.6. Subcontracting. Supplier shall be solely responsible for the proper selection, supervision, acts and omissions of its subcontractors.

25.7. Other Terms and Amendments. The terms and conditions contained in any sales order, acknowledgment, invoice, website, letter, writing, software or file (such as "clickwrap", "shrinkwrap", or website terms of use), or other document or medium shall not be applicable or amend this Agreement or any Purchase Order issued hereunder nor bind the Parties hereto or their Affiliates or Representatives. This Agreement and any Purchase Order issued hereunder may only be amended by a written instrument signed by authorized Representatives of the Parties.

25.8. Government Contracts. When the Equipment/Services are to be used in the performance of a contract or subcontract with a Governmental Authority, applicable government contract requirements attached to this Agreement shall apply and are incorporated herein by reference.

25.9. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, employee-employer relationship, trust or other association of any kind between the Parties and each Party shall be individually responsible only for its obligations as set forth in this Agreement. Any Services provided by Supplier, its Affiliates and Representatives pursuant to this Agreement are provided as independent contractors of Buyer and not in the capacity of an employee or agent of Buyer.

25.10. Publicity. No Party hereto shall refer to or use, or permit any persons to refer to or use, any other Party's name, trademarks, service marks or logos in any advertising, promotional materials, press releases or other publicity without obtaining the prior written consent of the applicable Party.

25.11. Non-Exclusive Remedies and Non-Waivers. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. Any waiver authorized on one occasion must be made in writing and is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The rights and remedies of the Parties herein shall not

be exclusive and are in addition to any other rights and remedies provided by Applicable Law or in equity.

25.12. Severability. Any provision of this Agreement or any Purchase Order issued hereunder that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (provided the substance of the agreement between the Parties is not thereby materially altered), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Laws, the Parties hereto hereby waive any provision of Applicable Law which renders any provision hereof prohibited or unenforceable in any respect.

25.13. Survival. The Title and Risk of Loss, Warranties, Intellectual Property, Defaults and Remedies, Indemnification, Limitations of Liability, Confidentiality, Export Control and Foreign Trade Regulations, Dispute Resolution and Miscellaneous sections of this Agreement, and any provision that contemplates performance or observance subsequent to termination or expiration shall survive termination or expiration of this Agreement.

25.14. Affirmative Action. Supplier shall, to the extent applicable, comply with Buyer's requirements as promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs set forth in Exhibit F.

25.15. Complete Agreement and Counterparts. This Agreement, together with all Purchase Orders issued hereunder, shall constitute the entire agreement between Buyer and Supplier and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof. The headings used in this Agreement are for reference and shall not limit or affect the meaning or interpretation of any of the terms hereof. Upon the effectiveness of this Agreement, the Prior Agreement shall be deemed amended and restated and superseded and replaced in its entirety by this Agreement, and shall be of no further force or effect.

25.16. Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

25.17. No Pre-Printed Terms. Pre-printed terms or conditions in any invoice, quotation, shipping notice or order acknowledgement issued by Buyer or Supplier shall be of no force or effect, except to the extent included in a Pricing Notice. The terms and conditions applicable to each Purchase Order issued by Buyer shall be those set forth herein and in such Purchase Order and the applicable Pricing Notice therefor.

25.18. Priority. In the event of inconsistency between or among the provisions of this Agreement, a Purchase Order and the applicable Pricing Notice therefor, the following order of precedence, from highest to lowest, shall govern:

(a) mutually agreed Change Orders;

(b) Purchase Order;

(c) this Agreement.

25.19. Notices.

(a) All notices and other communications which either Party is required or may desire to serve upon the other shall be addressed to the Party to be served as follows, unless a different address is designated in writing by the Party to be served:

To Buyer:

Siemens Industry, Inc.
4800 North Point Parkway
Alpharetta, GA 30005
Attn: Craig Langley, Associate General Counsel
Email: langley.craig@siemens.com

To Supplier:

Fluence Energy, LLC
4601 N. Fairfax Drive, Suite 600
Arlington, VA 22203
Attn: Marek Wolek, SVP – Strategy & Partnerships
Email: marek.wolek@fluenceenergy.com

With a copy to:

Fluence Energy, LLC
4601 N. Fairfax Drive, Suite 600
Arlington, VA 22203
Attn: Frank Fuselier, General Counsel
Email: frank.fuselier@fluenceenergy.com

(b) All notices, requests, consents and other communications under this Agreement must be in writing and shall be deemed to have been duly given and effective (i) immediately (or, if not delivered or sent on a Business Day, the next Business Day) if delivered or sent and received by electronic mail, (ii) on the date of delivery if by hand delivery (or, if not delivered on a Business Day, the next Business Day) or (iii) on the first Business Day following the date of dispatch (or, if not sent on a Business Day, the next Business Day after the date of dispatch) if by a nationally recognized overnight delivery service (all fees prepaid). In the case of notice via email, each Party shall provide confirmation of receipt or non-receipt upon the request of the transmitting Party.

(c) All notices, requests, consents and other communications under this Agreement shall include reference to the applicable Purchase Order number, if any.

25.20. Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the

drafting party shall not be employed in the interpretation of this Agreement, or any amendments or Exhibits hereto.

25.21. Language of the Agreement, Correspondence, Documentation. The language of this Agreement shall be English. Unless to the extent agreed otherwise, correspondence, technical and commercial documents as well as any other information exchanged between the Consortium Members relating to this Agreement shall be in English.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

Gratzke Ruth Digitally signed by Gratzke Ruth DN: cn=Gratzke Ruth, o=Siemens, Date: 2021.10.26 17:06:53 -04'00'

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

Smith Marsha Digitally signed by Smith Marsha DN: cn=Smith Marsha, o=Siemens, Date: 2021.10.26 17:47:30 -04'00'

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first below above.

Siemens Industry, Inc.

By: _____
Name: Ruth Gratzke
Title: Chief Executive Officer

By: _____
Name: Marsha Smith
Title: Chief Financial Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

Schedule 1.1(a)

The information contained in columns C and D is provided for informational purposes only. For purposes of this Agreement, the definition of "Applications" shall include Column E.

A No	B Application	C Typical Customer	D Typical system Size in MW	E Definition
1	Flexible capacity	Power Plant	50 to 100 MW	Flexible capacity is the use of energy storage as a substitute for peak generating capacity or to meet flexible dispatch ability needs in order to secure grid stability. Such fast acting power sources are an integral part of the grid to provide the required flexible capacity. The control system is designed such to monitor the grid condition, recognize the need and acts immediately until the grid returns to stable condition, or to be dispatched by the grid operator. The system is connected to Grids with a Voltage level > 1kV. The control system makes sure the storage is at the needed stage of charge (subject to setting)
2	Conventional hybrid	Power Plant	up to 10MW	Conventional hybrid is the use of energy storage in conjunction with a conventional generation resource to react on e.g. peak demands. The system is connected to Grids with a Voltage level > 1kV. The storage is monitoring and acting based on its own control system
3	Frequency Control	TSO / DSO & PP / Investor	up to 50MW and greater single system size	Frequency regulation is the use of energy storage to regulate electric system frequency as a primary, secondary, or contingency reserve resource. Energy Storage system is installed usually before the meter and secures the power grid frequency within the frequency band defined by the regulator. Spinning reserve is a subset of frequency control to deliver the mandatory reserve power out of a storage unit instead of a Power Plant. The system is connected to Grids with a Voltage level > 1kV.
4	Renewable hybrid	TSO / DSO & PP / Investor	up to 5MW	Renewable hybrid is the use of energy storage in conjunction with a renewable generation resource; (e.g. wind and solar) to control (integral control system) the ramp-up and ramp-down of the power generation or to make the power injection into the power grid stable in relation to the forecast considering parameter such as weather forecast. The system is connected to Grids with a Voltage level > 1kV.
5	T&D investment/ replacement deferment	TSO / DSO	up to 10MW	Transmission and distribution investment, replacement and deferral is the use of energy storage to replace or defer investment in new conventional electric transmission or distribution infrastructure assets. The system is connected to Grids with a Voltage level > 1kV. The storage is monitoring and acting based on its TSO / DSO up to 10MW own control system
6	T&D capacity release	TSO / DSO	up to 10MW	Transmission and distribution capacity release is the use of energy storage to improve the utilization of existing conventional electric transmission or distribution infrastructure assets. The system is connected to Grids with a Voltage level > 1kV. The own Storage

A No	B Application	C Typical Customer	D Typical system Size in MW	E Definition
				control system is monitoring the grid conditions and takes corrective action if needed
7	Microgrid and Islands*	On shore Microgrid owners and utilities on geographical islands	1-3MW	Energy Storage systems combined with a Microgrid controller providing the micro or island grid master role resulting in a maximized usage of renewable power generation vs. conventional power generation on a geographical or grid island while keeping system voltage and frequency stable monitored and controlled by the storage control systems. Improving the efficiency of conventional diesel generation where applicable. The system is connected to Grids with a Voltage level > 1kV.
8	Power Quality (MS UPS)*	Industry / Transportation	1-25MW	Energy Storage system placed behind the meter typically in an industrial environment injecting power in case of grid failure and or voltage dip. The ability to disconnect ultrafast (<10ms) from the grid to avoid the storage feeding a grid failure. In addition the system can bridge 15 to 30 minutes power interruption, possibly combined with a diesel power generation. The system operates on Voltage level > 1kV. The storage control system is monitoring and acting driven by its on control system.
9	Consumer peak shaving (demand charge mgmt.)	Industry / Transportation	1-25MW	Consumer peak shaving, the use of energy storage to reduce an electric consumer's bill, optimize an electric consumer's consumption, or to provide other reliability services to the electric consume r. This energy Storage system is placed behind the meter. The system operates on Voltage level > 1kV. The 1 – 25 MW storage control system is monitoring and acting automatically following the given settings.
10	Black start	Gas Turbine power Plants and wind power generation	1-25MW	Black start, the use of energy storage to support generation start-up during recovery from a partial or total shutdown of an electric system as an emergency Gas turbine start up solution. The Energy Storage system providing power according a defined process until ignition of a gas turbine. The system operates on Voltage level > 1kV. The initiation of the Black Start is usually manually, the control system makes sure the black star process as such is following a defined procedure.

* Included in the definition of "Application" solely for purposes of Section 4.3.

Exhibit A

Form of Purchase Order

The following sets forth the minimum terms and conditions to be included on a Purchase Order under this Agreement, which terms and conditions may be modified or supplemented by the mutual agreement of the Parties:

Equipment:

1. Type of Equipment
2. Quantity of Equipment
3. Unit Price of Equipment
4. Total Price of Equipment on this Purchase Order
5. Manufacturing Location
6. Incoterms and Delivery Location
7. Guaranteed Delivery Date
8. Insurance
9. Equipment Warranty Period
10. IP/Software Terms
11. Supplier Documents
12. Technical Specifications
13. Special Packaging Requirements

Services:

1. Type of Services
2. Amount of Services
3. Price of Services
4. Total Price of Services on this Purchase Order
5. Performance Location
6. Performance Date(s)
7. Insurance
8. Services Warranty Period
9. IP/Software Terms

10. Supplier Documents

11. Specifications

Other Terms:

1. Electronic Banking Method for Payments

2. Buyer Furnished Property

EXHIBIT B

Joinder Agreement Template

This Joinder Agreement (the "Joinder Agreement") to the Amended and Restated Storage Core Frame Purchase Agreement, dated [●], 2021 between SIEMENS INDUSTRY, INC. and FLUENCE ENERGY, LLC is made and entered into

by and between

___
with its registered seat in [Place], [Country]

- hereinafter referred to as "Supplier" -

and

Siemens (Local Company) ___,
with its registered seat in [Place], [Country]

- hereinafter referred to as "Buyer" -

- Supplier and Buyer are hereinafter individually referred to as a "Party" and collectively as the "Parties" -

WHEREAS, Supplier and SIEMENS INDUSTRY, INC. (“Siemens”) entered on January 1, 2018 into the Amended and Restated Storage Core Frame Purchase Agreement (the "Agreement") which is attached hereto as Annex 1;

WHEREAS, Buyer is an Affiliate of Siemens and wishes to become a party to the Agreement and to adopt the terms and conditions thereof, and consequently Supplier and Buyer wish to enter into this Joinder Agreement.

NOW THEREFORE, in consideration of the mutual covenants and premises contained herein, the Parties agree as follows:

ADOPTION OF THE AGREEMENT

a) Buyer hereby acknowledges, agrees and confirms that, by its execution of this Joinder Agreement, Buyer shall be deemed a party to the Agreement for all purposes of the Agreement, and shall have all of the obligations of a “Buyer” under the Agreement, as though an original party to the Agreement. Buyer hereby ratifies, as of the date hereof, and agrees to be bound by, and subject to, all of the covenants, terms, provisions and conditions applicable to “Buyer” contained in the Agreement. The terms and conditions as set out in the Agreement are incorporated herein by reference and are made applicable between the Parties.
b) Without limiting the generality of the foregoing, Buyer hereby represents and warrants that each of the representations and warranties of “Buyer” contained in the Agreement is true and correct as of the date of the execution and delivery of this Joinder Agreement.
c) This Joinder Agreement shall be controlled by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws principles.
d) This Joinder Agreement contains the entire agreement between the Parties and supersedes any and all prior negotiations, correspondence, understandings between the Parties concerning the subject matter hereof. It may not be changed orally, but only by an agreement in writing signed by both Parties hereto.
e) This Joinder Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Joinder Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

SPECIFIC STIPULATIONS UNDER THIS JOINDER AGREEMENT

[ONLY country specific deviations from the Agreement are to be stipulated here.]

a) [Delivery and Payment terms]

b) [Term and Termination]

c) [Country specific regulations (jurisdiction, governing law, tax etc.)]

d) ...

ORDER OF PRECEDENCE BETWEEN THE AGREEMENT AND THE ADOPTION AGREEMENT

In the event of any conflict or inconsistency between the terms of this Joinder Agreement and the Agreement, the Joinder Agreement shall prevail over the Agreement.

Supplier	Buyer	
Place, Date:	Place, Date:	
_____	_____	
_____	_____	_____
Name:	Name:	Name:
_____	_____	_____
(Print)	(Print)	(Print)
Title:	Title:	Title:
_____	_____	_____

Annex 1: Amended and Restated Storage Core Frame Purchase Agreement

Exhibit C

Substance Declaration

If Supplier furnishes Equipment that are subject to restrictions, rules or regulations for Hazardous Materials or other substances comprising, part of or contained in such Equipment, including but not limited to statutes, rules, regulations, codes, rules, standards and requirements of (1) EHS Laws, (2) governing, controlling or regulating Hazardous Materials, including but not limited to the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (hereinafter "RoHS"), Directives 2002/96/EC and 2012/19/EU as well as their respective incorporation into EU member states' legislation including any amendments thereto (hereinafter "WEEE"), (3) the Regulation EC 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals including any amendment thereto (hereinafter "REACH"), (4) EC Directive 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators and/or (5) TSCA, without limiting Supplier's obligations under this Purchase Order, Supplier shall comply with the requirements of this "Substance Declaration".

Supplier shall submit to Buyer with each Equipment, the chemical substances contained therein or in the Service deliverable, and/or Material Safety Data Sheets, Safety Data Sheets or other such documentation as required by Applicable Laws (including without limitation the OSHA Hazardous Communication Standard 29 CFR 1910.1200 et seq.). If Supplier furnishes Equipment that are subject to substance restrictions, rules or regulations including but not limited to those identified in this Exhibit, Supplier shall declare such substances on the Buyer's web database BOMcheck (www.BOMcheck.net) or, only if and approved in writing in advance by Buyer, in another reasonable format provided to Buyer no later than first delivery date of the Equipment, and Supplier shall prior to Supplier 's first delivery of Equipment complete and comply with the Declarable Substances-Form (hereinafter "Substance Declaration") in the Buyer supplier portal "SCM STAR" or in hard copy forwarded to Buyer. In addition, for Equipment that are subject to substance restrictions, rules or regulations Supplier shall provide ordering entity with a safety data sheet required in Article 31of the Regulation EC 1907/2006 (REACH) and Supplier shall keep this Substance Declaration up to date.

Should a delivery hereunder contain "dangerous goods" as so classified pursuant to Applicable Laws, Supplier shall notify Buyer in writing in sufficient detail to identify the Equipment, the hazards, and the laws, rules or regulations applicable thereto no later than three (3) business days after receipt of the Purchase Order.

Siemens Group Code of Conduct

for Suppliers and Third Party Intermediaries

This Code of Conduct defines the basic requirements placed on the suppliers and third party intermediaries of the Siemens Group concerning their responsibilities towards their stakeholders and the environment. The supplier and/or third party intermediary declares herewith to:

Legal Compliance

- Comply with the laws and regulations of the applicable legal systems.

Human Rights and Labor Practices

To ensure respect of all internationally proclaimed human rights by avoiding causation of and complicity in any human rights violations, heightened attention shall be paid to ensuring respect of human rights of specifically vulnerable rights holders or groups of rights holders such as women, children or migrant workers, or of (indigenous) communities.

- Prohibition of Forced Labor
  - Neither use nor contribute to slavery, servitude, forced or compulsory labor and human trafficking.

- Prohibition of Child Labor
  - Employ no workers under the age of 15 or, in those countries subject to the developing country exception of the ILO Convention 138, employ no workers under the age of 14.
  - Employ no workers under the age of 18 for hazardous work according to ILO Convention 182.

- Non-Discrimination and Respect for Employees
  - Promote equal opportunities and treatment of employees, irrespective of skin color, race, nationality, ethnicity, political affiliation, social background, disabilities, gender, sexual identity and orientation, marital status, religious conviction, or age.
  - Refuse to tolerate any unacceptable treatment of individuals such as mental cruelty, sexual harassment or discrimination including gestures, language and physical contact, that is sexual, coercive, threatening, abusive or exploitative.

- Working Hours, Wages & Benefits for Employees
  - Recognize the legal rights of workers to form or join existing trade unions and to engage in collective bargaining; neither disadvantage nor prefer members of employee organizations or trade unions.
  - Adhere to all applicable working-hours regulations globally.
  - Pay fair wages for labor and adhere to all applicable wage and compensation laws globally.
  - In the event of cross-border personnel deployment adhere to all applicable legal requirements, especially with regard to minimum wages.

- Health & Safety of Employees
  - Act in accordance with the applicable statutory and international standards regarding occupational health and safety and provide safe working conditions.
  - Provide training to ensure employees are educated in health & safety issues.
  - Establish a reasonable occupational health & safety management system[1].

- Grievance Mechanism
  - Provide access to a protected mechanism for their employees to report possible violations of the principles of this Code of Conduct.

SIEMENS

Environmental Protection

- Act in accordance with the applicable statutory and international standards regarding the environment. Minimize environmental pollution and make continuous improvements in environmental protection.
- Establish a reasonable environmental management system[1].

Fair Operating Practices

- Anti-Corruption and Bribery
  - Tolerate no form of and do not engage directly or indirectly in any form of corruption or bribery and do not grant, offer or promise anything of value to a government official or to a counterparty in the private sector to influence official action or obtain an improper advantage. This includes to renounce from giving or accepting improper facilitation payments.

- Fair Competition, Anti-Trust Laws and Intellectual Property Rights
  - Act in accordance with national and international competition laws and do not participate in price fixing, market or customer allocation, market sharing or bid rigging with competitors.
  - Respect the intellectual property rights of others.

- Conflicts of Interest
  - Avoid and/or disclose internally and to Siemens all conflicts of interest that may influence business relationships, and to avoid already the appearance thereof.

- Anti-Money Laundering, Terrorism Financing
  - Not directly or indirectly facilitate money laundering or terrorism financing.

- Data Privacy
  - Process personal data confidentially and responsibly, respect everyone's privacy and ensure that personal data is effectively protected and used only for legitimate purposes.

- Export Control and Customs
  - Comply with the applicable export control and customs regulations.

Responsible Minerals Sourcing

- Take reasonable efforts to avoid in its products the use of raw materials which originate from Conflict-Affected and High-Risk Areas and contribute to human rights abuses, corruption, the financing of armed groups or similar negative effects.

Supply Chain

- Use reasonable efforts to make its suppliers comply with the principles of this Code of Conduct.
- Comply with the principles of non-discrimination with regard to supplier selection and treatment.

[1] www.siemens.com/code-of-conduct/managementsystems

Exhibit E

Insurance

(A) Supplier shall, at its sole expense, maintain the types of insurance coverage(s) listed below. The coverage limits for each type of insurance listed below shall be the greater of: (i) the coverage limits listed below; or (ii) if the Purchase Order requires Supplier to maintain higher limits, then the coverage limits specified in the Purchase Order. Evidence of insurance required by this Purchase Order is to be furnished before any Goods/Services is commenced. Supplier and its Representatives shall maintain such insurance in full force and effect during the term of this Purchase Order, and, in addition, for as long as Supplier is under any warranty obligations arising out of this Purchase Order. All insurers on required insurance coverage(s) shall have an A.M. Best Rating of A- /VIII or better. Customer and its subsidiaries, Affiliates, and its or their Representatives, and/or any other party designated on the Purchase Order as applicable shall be named as an additional insured, with respect to the Commercial General Liability and Automobile Liability policies/coverage(s). All insurance certificates shall be in a form satisfactory to Customer. Supplier shall deliver the certificates of insurance, naming Customer and, if applicable, Customer's customer/end user, as the Certificate Holder. All of Supplier's policies of insurance, except for Workers' Compensation and Employers Liability, shall be primary insurance and noncontributing with any other insurance maintained by Customer, Customer's customer/end user and/or other parties. All of Supplier's policies of insurance, except for Worker's Compensation and Employer's Liability, shall contain a cross-liability or severability of interest clause. The limits of insurance set forth below may be satisfied by any combination of excess and primary insurance coverage. Supplier shall require all its insurers to waive all rights of subrogation against Customer, Customer's customer/end user, and their respective subsidiaries, Affiliates, and Representatives, and any other party designated as an additional insured.

(B) Supplier shall maintain the following insurance coverage(s):

(i) Worker's Compensation Insurance in accordance with the statutory requirements of the location in which the Purchase Order is performed. If there is an exposure to injury to Supplier's employee under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage required by law shall be provided for same.

(ii) Employer's Liability Insurance with the following limits of liability:

- $1,000,000 for each occurrence;
- $1,000,000 Disease Policy
- $1,000,000 Each Employee.

(iii) Commercial General Liability Insurance, in occurrence coverage form, with minimum limits of $5,000,000 per occurrence, including the following coverages:

- Products and Completed Operations
- Contractual Liability insuring the indemnity obligations assumed by Supplier under this Purchase Order
- Premises/Operations
- Underground, Undermining, Explosion and Collapse (XCU) Hazard,
- Broad Form Property Damage (including Completed Operations)

(iv) Automobile Liability Insurance, including coverage for owned, hired, and non-owned automobiles and trucks used by or on behalf of the Supplier providing insurance for bodily injury, liability and property damage liability with minimum limits for each type of coverage of $5,000,000 per occurrence.

(C) The following coverages are specifically required if a Purchase Order involves: (i) [intentionally omitted]; (ii) watercraft owned, operated or chartered by Supplier or its Representatives, liability arising out of such watercraft shall be insured by the General Liability or by Protection and Indemnity Insurance with a CSL of no less than $1,000,000 per each occurrence; (iii) the hauling and/or rigging of property in excess of $100,000, Supplier shall carry “All Risk” Transit Insurance, or “All Risk” Motor Truck Cargo Insurance (Such insurance shall provide a limit of not less than the replacement cost of the highest value single lift or highest value being moved, whichever is greater, and insuring the interest of Supplier, Customer and Customer’s customer/end user, as their respective interests may appear); (iv) aircraft (fixed wing or helicopter) owned, operated or chartered by Supplier or its Representatives, liability arising out of such aircraft shall be insured for not less than $1,000,000 CSL each occurrence; (v) access, storage, transmission or processing of Customer’s, its customer’s /end user’s, its or their Representatives’ confidential information, a Cyber Liability Errors and Omissions Policy shall be procured by Supplier providing coverage, for acts, errors, omissions, and negligence of employees and contractors giving rise to potential liability, financial and other losses relating to data security and privacy, including cost of defense and settlement, in an amount of at least $2,000,000 each claim and in the aggregate; (vi) engineering, design and/or development services, Supplier shall procure Professional Liability and Errors and Omissions Liability Insurance providing coverage for acts, errors, omissions arising out of insured’s negligence in an amount not less than $5,000,000 (USD) per claim and in the aggregate; (vii) [intentionally omitted]; (viii) Supplier, its Affiliates and/or its and their respective Representative being granted access to Customer or Customer’s Affiliate’s facilities, premises and/or systems, Supplier shall procure Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by its personnel, acting alone or with others, in an amount not less than $1,000,000 (USD)

per occurrence. Furthermore, on a case by case basis, where a Purchase Order specifies that environmental liability insurance is required for that specific project, then Supplier shall obtain Environmental Impairment Liability Insurance for such project with limits of $5,000,000 per occurrence and in the aggregate.

(D) The procurement, maintenance or acceptance of insurance coverage by Customer, if any, shall not: (i) relieve Supplier of liability for loss or damage in excess of the policy coverage limits specified herein; or (ii) limit or release Supplier of its obligations or liabilities under the Purchase Order.

(E) No delay or failure in declaring any default or in enforcing any of the requirements of this Exhibit E, and no course of dealing between Customer and Supplier shall constitute a waiver of any of the requirements of this Exhibit E.

Exhibit F

Affirmative Action

As a federal contractor/subcontractor, Siemens is required to comply with certain federal regulations, including the regulations promulgated by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"). As a federal contractor, Siemens is also required to ensure compliance of the OFCCP by its subcontractors, vendors and suppliers covered under the OFCCP (each, a "Covered Party"). Supplier is hereby notified of Siemens' policy related to affirmative action and our mutual OFCCP obligations to the extent Supplier, its subcontractors, vendors or suppliers is a Covered Party.

Siemens is an equal opportunity/affirmative action employer and does not discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, age, physical or mental disability, marital status, pregnancy, genetic information, sexual orientation, gender identity, protected veteran or military status, or any other consideration not related to the person's ability to do the job or otherwise made unlawful by federal, state or local law in the following employment practices, including among others: recruiting, hiring, placement, transfer, promotion, demotion, selection for training, layoff, termination, shift assignment, determination of service, rates of pay, benefit plans, and all forms of compensation and other personnel actions.

As a federal contractor/subcontractor, Siemens' Covered Parties (including Supplier and its Covered Parties, if applicable) also have an obligation to comply with equal opportunity and affirmative action principles. Therefore, Siemens' Covered Parties (including Supplier and its Covered Parties, if applicable) will take appropriate action in support of these principles. Through our mutual effort and cooperation, we will continue to provide a working environment that appreciates and encourages diversity, promotes equal employment opportunity and is free from any type of discrimination.

Supplier and its Covered Parties, if applicable, shall abide by the requirements of the "Equal Opportunity Clause" in Section 202 of Executive Order 11246. See 41 CFR 60-1.4(a).

The following shall also apply if the Supplier is a Covered Party:

For contracts of $100,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

For contracts of $10,000 or more, Supplier shall comply with the following: This Supplier, contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Exhibit G

Key Agreements

1. Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC, dated as of October 27, 2021.

2. Amended and Restated Credit Support and Reimbursement Agreement dated as of June 9, 2021, among The AES Corporation, Siemens Industry, Inc. and Fluence Energy, LLC.
3. Amended and Restated Siemens License Agreement, dated as of June 9, 2021, between Fluence Energy, LLC and Siemens Aktiengesellschaft.
4. Amended and Restated Siemens License Agreement, dated as of June 9, 2021, between Fluence Energy, LLC and Siemens Industry, Inc.
5. Siemens Master Sales Cooperation Agreement, dated as of October 27, 2021, by and between Fluence Energy, LLC and Siemens Industry, Inc.
6. Services Agreement, dated as of January 1, 2018, between Siemens Aktiengesellschaft, Fluence Energy, LLC and such other companies as set forth therein.
7. Amended and Restated Company Name Affix and Trademark License Agreement, dated October 27, 2021, between Siemens Aktiengesellschaft and Fluence Energy, LLC.
8. Amended and Restated Equipment Services and Purchase Agreement, dated October 27, 2021, between Siemens Industry, Inc. and Fluence Energy, LLC.

Attachment A

DESCRIPTION OF **SUPPLIER'S BATTERY STORAGE EQUIPMENT AND SERVICES**

[to be added]

Exhibit 10.24

EXECUTION VERSION

SECOND AMENDMENT TO **COMPANY NAME AFFIX AND TRADEMARK LICENSE AGREEMENT**

This SECOND AMENDMENT TO COMPANY NAME AFFIX AND TRADEMARK LICENSE AGREEMENT (this "Second Amendment"), is dated as of October 27, 2021, by and between The AES Corporation, a corporation incorporated and validly existing under the laws of the State of Delaware ("AES") and Fluence Energy, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Licensee"). AES and the Licensee may herein collectively be referred to as the "Parties"

WHEREAS, AES and Licensee are parties to that certain Company Name Affix and Trademark License Agreement, dated on or about July 9, 2017, which was amended by that certain Amendment to Company Name Affix and Trademark License Agreement, dated on or about June 9th, 2021 (collectively, the "Trademark License Agreement");

WHEREAS, certain other parties are entering into a series of transactions in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("Issuer") to serve as the vehicle through which the public will own indirect interests in Licensee through an initial public offering (the "IPO");

WHEREAS, in connection with the IPO, the Parties desire to further amend the Trademark License Agreement as set forth in this Second Amendment, with such Second Amendment to take effect as of the Effective Date (as defined in Section 3 hereof), without any further action necessary on the part of the Parties; and

WHEREAS, this Second Amendment is duly made by the Parties pursuant to Section 17.2 of the Trademark License Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth in this Second Amendment, and subject to the terms and conditions set forth in this Second Amendment, the Parties agree as follows:

1. Capitalized Terms. Capitalized terms used and not otherwise defined in this Second Amendment shall have the respective meanings ascribed to them in the Trademark License Agreement.

2. Amendments. The Parties agree to amend the Trademark License Agreement as follows:

(a) Definitions. Article 1 of the Trademark Agreement is hereby amended to add the following definitions:

"AES Grid Stability" shall mean AES Grid Stability, LLC, a Delaware limited liability company.

"Affiliate" shall mean, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons. No Person shall be considered an Affiliate of another Person or under the Control of such other Person so long as (i) it is owned less than 50% by such other Person, (ii) such other Person has no capacity to elect or appoint the majority of the board of directors or similar governing body of the subject Person, (iii) such other Person does not consolidate the subject Person in its financial reporting and (iv) there is no other management or services agreement pursuant to which such other Person exerts control over the subject Person. With respect to Siemens, none of Gamesa Corporación Technológica S.A., Siemens Healthineers AG nor any of their respective Subsidiaries shall be considered an Affiliate of Siemens.

"Control" shall mean, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings

"Person" shall mean any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not having separate legal personality), and shall include any successor (by merger or otherwise) of such entity

"Shares" shall mean (i) the Class A Common Stock of the Issuer, calculated on a fully diluted basis and assuming that all options, warrants and any other rights to purchase shares of Class A Common Stock of the Issuer have been exercised in full, including, for sake of clarity, the Underlying Class A Shares plus (ii) any other equity securities now or hereafter issued by the Issuer, together with any options thereon and any other shares of stock or other equity securities issued or issuable with respect thereto (whether by way of a stock dividend, stock split or in exchange for or in replacement or upon conversion of such shares or otherwise in connection with a combination of shares, recapitalization, merger, consolidation or other corporate reorganization); provided, however, that in no event shall the Shares include the Class B Common Stock of the Issuer.

"SII" shall mean Siemens Industry, Inc., a Delaware corporation.

"Third Party" shall mean any Person other than SII and its Affiliates or AES Grid Stability and its Affiliates.

"Underlying Class A Shares" shall mean all shares of Class A Common Stock of the Issuer issuable upon redemption of Common Units of the Licensee, assuming all such Common Units are redeemed for Class A Common Stock of the Issuer on a one for one basis

"Voting Power" shall mean the total voting power of all Shares entitled to vote generally in the election of directors (for clarity, on a basis that assumes that all Common Units of Licensee have been redeemed for shares of Class A Common Stock of the Issuer on a one for one basis and that there are no shares of Class B Common Stock of the Issuer outstanding).

(b) Termination. Section 12.2 of the Trademark License Agreement is hereby amended and restated in its entirety as follows:

"12.2 During the period commencing on the Effective Date and ending on January 1, 2024 (the "Lock-up Period"), Siemens may terminate this Agreement only in the event of one of the following (each, a "Termination Event"), in each case with immediate effect by giving written notice thereof to Licensee: (i) for cause as set forth in 12.3 below, (ii) if at any time, the then outstanding Voting Power represented by the Shares held collectively by SII and its Affiliates is ten (10) percentage points or more than the then outstanding Voting Power represented by the Shares held collectively by AES Grid Stability and its Affiliates at such time (measured by the total Voting Power of all outstanding shares), (iii) if at any time, SII and AES Grid Stability, together with their respectively Affiliates, collectively no longer hold Shares representing more than fifty percent (50%) of the then outstanding Voting Power, (iv) if at any time, any Third Party together with its Affiliates, collectively holds Shares representing a higher percentage of the then outstanding Voting Power as compared to the then outstanding Voting Power represented by the Shares held by either (A) SII and its Affiliates, or (B) AES Grid Stability and its Affiliates, at such time. After the conclusion of the Lock-up Period, provided this Agreement is not earlier terminated pursuant to a Termination Event, Siemens is entitled to terminate the rights and licenses granted under this Agreement upon 90 day written notice to Licensee without having to present to Licensee the reasons for such termination."

3. Effectiveness of this Second Amendment. Each of the Parties, by its signature below, does hereby give its written consent to the amendment of the Trademark License Agreement in accordance with this Second Amendment. This Second Amendment will become effective as of the day on which the Class A Common Stock of the Issuer is issued to the underwriters in the Issuer's IPO (the "Effective Date"); provided, that if the Effective Date does not occur on or prior to December 31, 2021, this Second Amendment shall be deemed terminated as of such date and of no force or effect without further notice or action by the Parties, and the Trademark License Agreement shall remain in full force and effect without any amendment thereto.

4. No Other Amendments. Except as expressly modified by this Second Amendment, the Trademark License Agreement (as heretofore modified) shall remain unmodified and in full force and effect.

5. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one (1) and the same Second Amendment. A signed copy of this Second Amendment delivered by facsimile or email will be deemed to have the same legal effect as delivery of an original signed copy of such Second Amendment.

6. Execution and Delivery. A .pdf, or other reproduction of this Second Amendment may be executed by one or more parties hereto and delivered by such Party by email or any similar electronic transmission device pursuant to which the signature of or on behalf of such Party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any Party hereto, all parties hereto agree to execute and deliver an original of this Second Amendment as well as any .pdf or other reproduction hereof.

7. Governing Law. This Second Amendment is exclusively governed by, and shall be exclusively construed in accordance with the laws of the United States and the laws of the State of Delaware, without regard to any conflict of law rules that require the application of the laws of any other jurisdiction.

[Signature page follows]

DocuSign Envelope ID: 4E7B666D-8FF2-4DCF-B247-692703A250D6

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first above written.

The AES Corporation

DocuSigned by:
By: J. Chris Shelton
3F826107370443E...
Name: J. Chris Shelton
Title: Senior Vice President and Chief Product Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first above written.

The AES Corporation

By: _____
Name: Chris Shelton
Title: Senior Vice President and Chief Product Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

Exhibit 10.25
EXECUTION VERSION

SECOND AMENDMENT TO **COMPANY NAME AFFIX AND TRADEMARK LICENSE AGREEMENT**

This SECOND AMENDMENT TO COMPANY NAME AFFIX AND TRADEMARK LICENSE AGREEMENT (this "Second Amendment"), is dated as of October 27, 2021, by and between Siemens Aktiengesellschaft, with registered seats in Berlin and Munich, Federal Republic of Germany ("Siemens") and Fluence Energy, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("Licensee"). Siemens and the Licensee may herein collectively be referred to as the "Parties"

WHEREAS, Siemens and Licensee are parties to that certain Company Name Affix and Trademark License Agreement, dated on or about July 9, 2017, which was amended by that certain Amendment to Company Name Affix and Trademark License Agreement, dated on or about June 9th, 2021 (collectively, the "Trademark License Agreement");

WHEREAS, Siemens Industry, Inc., a Delaware corporation and affiliate of Siemens ("SII"), Licensee, and certain other parties are entering into a series of transaction in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("Issuer") to serve as the vehicle through which the public will own indirect interests in Licensee through an initial public offering (the "IPO");

WHEREAS, in connection with the IPO, the Parties desire to further amend the Trademark License Agreement as set forth in this Second Amendment, with such Second Amendment to take effect as of the Effective Date (as defined in Section 3 hereof), without any further action necessary on the part of the Parties; and

WHEREAS, this Second Amendment is duly made by the Parties pursuant to Section 17.2 of the Trademark License Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth in this Second Amendment, and subject to the terms and conditions set forth in this Second Amendment, the Parties agree as follows:

1. Capitalized Terms. Capitalized terms used and not otherwise defined in this Second Amendment shall have the respective meanings ascribed to them in the Trademark License Agreement.

2. Amendments. The Parties agree to amend the Trademark License Agreement as follows:

(a) Definitions. Article 1 of the Trademark Agreement is hereby amended to add the following definitions:

"AES" shall mean AES Grid Stability, LLC, a Delaware limited liability company.

"Affiliate" shall mean, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons. No Person shall be considered an Affiliate of another Person or under the Control of such other Person so long as (i) it is owned less than 50% by such other Person, (ii) such other Person has no capacity to elect or appoint the majority of the board of directors or similar governing body of the subject Person, (iii) such other Person does not consolidate the subject Person in its financial reporting and (iv) there is no other management or services agreement pursuant to which such other Person exerts control over the subject Person. With respect to Siemens, none of Gamesa Corporación Technológica S.A., Siemens Healthineers AG nor any of their respective Subsidiaries shall be considered an Affiliate of Siemens.

"Control" shall mean, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings

"Person" shall mean any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not having separate legal personality), and shall include any successor (by merger or otherwise) of such entity

"Shares" shall mean (i) the Class A Common Stock of the Issuer, calculated on a fully diluted basis and assuming that all options, warrants and any other rights to purchase shares of Class A Common Stock of the Issuer have been exercised in full, including, for sake of clarity, the Underlying Class A Shares plus (ii) any other equity securities now or hereafter issued by the Issuer, together with any options thereon and any other shares of stock or other equity securities issued or issuable with respect thereto (whether by way of a stock dividend, stock split or in exchange for or in replacement or upon conversion of such shares or otherwise in connection with a combination of shares, recapitalization, merger, consolidation or other corporate reorganization); provided, however, that in no event shall the Shares include the Class B Common Stock of the Issuer.

"Third Party" shall mean any Person other than SII and its Affiliates or AES and its Affiliates.

"Underlying Class A Shares" shall mean all shares of Class A Common Stock of the Issuer issuable upon redemption of Common Units of the Licensee, assuming all such Common Units are redeemed for Class A Common Stock of the Issuer on a one for one basis

"Voting Power" shall mean the total voting power of all Shares entitled to vote generally in the election of directors (for clarity, on a basis that assumes that all Common Units of Licensee have been redeemed for shares of Class A Common Stock of the Issuer on a one for one basis and that there are no shares of Class B Common Stock of the Issuer outstanding).

(b) Termination. Section 12.2 of the Trademark License Agreement is hereby amended and restated in its entirety as follows:

"12.2 During the period commencing on the Effective Date and ending on January 1, 2024 (the "Lock-up Period"), Siemens may terminate this Agreement only in the event of one of the following (each, a "Termination Event"), in each case with immediate effect by giving written notice thereof to Licensee: (i) for cause as set forth in 12.3 below, (ii) if at any time, the then outstanding Voting Power represented by the Shares held collectively by AES and its Affiliates is ten (10) percentage points or more than the then outstanding Voting Power represented by the Shares held collectively by SII and its Affiliates at such time (for example, AES holding Voting Power equal to 30% (or more than 30%) and Siemens holding Voting Power equal to 20%), (iii) if at any time, SII and AES, together with their respectively Affiliates, collectively no longer hold Shares representing more than fifty percent (50%) of the then outstanding Voting Power, (iv) if at any time, any Third Party together with its Affiliates, collectively holds Shares representing a higher percentage of the then outstanding Voting Power as compared to the then outstanding Voting Power represented by the Shares held by either (A) SII and its Affiliates, or (B) AES and its Affiliates, at such time. After the conclusion of the Lock-up Period, provided this Agreement is not earlier terminated pursuant to a Termination Event, Siemens is entitled to terminate the rights and licenses granted under this Agreement upon 90 day written notice to Licensee without having to present to Licensee the reasons for such termination."

3. Effectiveness of this Second Amendment. Each of the Parties, by its signature below, does hereby give its written consent to the amendment of the Trademark License Agreement in accordance with this Second Amendment. This Second Amendment will become effective as of the day on which the Class A Common Stock of the Issuer is issued to the underwriters in the Issuer's IPO (the "Effective Date"); provided, that if the Effective Date does not occur on or prior to December 31, 2021, this Second Amendment shall be deemed terminated as of such date and of no force or effect without further notice or action by the Parties, and the Trademark License Agreement shall remain in full force and effect without any amendment thereto.

4. No Other Amendments. Except as expressly modified by this Second Amendment, the Trademark License Agreement (as heretofore modified) shall remain unmodified and in full force and effect.

5. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one (1) and the same Second Amendment. A signed copy of this Second Amendment delivered by facsimile or email will be deemed to have the same legal effect as delivery of an original signed copy of such Second Amendment.

6. Execution and Delivery. A .pdf, or other reproduction of this Second Amendment may be executed by one or more parties hereto and delivered by such Party by email or any similar electronic transmission device pursuant to which the signature of or on behalf of such Party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any Party hereto, all parties hereto agree to execute and deliver an original of this Second Amendment as well as any .pdf or other reproduction hereof.

7. Governing Law. This Second Amendment is exclusively governed by, and shall be exclusively construed in accordance with, the substantive laws of Germany with the exclusion of the Vienna Convention on the International Sale of Goods and without regard to any conflict of law rules that require the application of the laws of any other jurisdiction. This includes, without limitation, the legal concepts and terms contained in this Second Amendment, the English translation of which may not be identical with the original German terms in their respective legal understanding. Any possible current of future obligations between Parties which fall under the EC Regulations No. 864/2007 on the Law Applicable to Non-Contractual Obligation ("Rome II") are governed by German Law, the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law rules that require the application of the laws of any other jurisdiction being excluded.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first above written.

Siemens Aktiengesellschaft



By: _____
Name: Dr. Volkmar Bonn
Title: Authorized Officer



By: _____
Name: Carsten Johne
Title: Senior IP Counsel

Fluence Energy, LLC

By: Fluence Energy, Inc.
Its: Managing Member

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the day and year first above written.

Siemens Aktiengesellschaft

By: _____
Name:
Title:

By: _____
Name:
Title:

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member,

By: _____
Name: Francis A. Fuselier
Title: General Counsel and Secretary

Exhibit 10.26
EXECUTION VERSION

Master Sales Cooperation Agreement (2021)

between

Siemens Industry, Inc. – Smart Infrastructure

with its principal place of business at 100 Technology Drive, Alpharetta GA 30005

- hereinafter referred to as “Siemens” -

and

Fluence Energy, LLC

with its principal place of business at 4300 Wilson Blvd., #1100, Arlington VA 22203

- hereinafter referred to as “Fluence” -

- Siemens and Fluence hereinafter referred to individually
as “Party” or collectively as “Parties”

Article 1 - Purpose

1.1 Fluence is a company providing battery energy storage solutions (“BESS”) and related services for the installation, commissioning, operation and maintenance of BESS products in an industrial environment.

1.2 Siemens is a company providing products, services and solutions to the buildings and energy markets and also intending to provide its customer base with BESS as part of larger solutions.

1.3 Siemens, as a major shareholder of Fluence, has an interest that Fluence further succeeds in addressing its markets.

1.4 The Parties previously entered into a January 1, 2018 Master Sales Cooperation Agreement (“Initial MSCA”) for the intent of cooperating to ensure meeting customer demands, timely delivery of high-quality BESS and related service and effective order planning and processing. In order to accelerate the adoption of energy storage in the market and to leverage Siemens’ extensive sales reach, Fluence is using Siemens sales organizations and customer relationships in some countries to bring Fluence’s BESS to Siemens customers as well as working together to assist Siemens in offering BESS as part of a larger solution. Fluence benefits from the extensive global sales reach of Siemens and its established customer relationships.

1.5 The Parties agree that the Initial MSCA is terminated effective as of the date of the signing of this Master Sales Cooperation Agreement (“MSCA 2021”) and that this MSCA 2021 replaces the Initial MSCA in its entirety.

1.6 Each Party shall endeavor to provide the other Party with information reasonably required for the purpose of the MSCA 2021.

Article 2 - Scope

2.1 The Parties intend to cooperate and to deliver value to each of the Parties’ customers ("Cooperation"). It is the objective of the Parties to benefit from this Cooperation by expanding their individual capabilities, making use of their combined capabilities, and achieving synergies where possible.

(1) The Parties intend to continue and further grow their mutual supplier relationship in accordance with the Storage Core Frame Purchase Agreement and the Equipment and Services Purchase Agreement (both dated January 1, 2018), as the same may be amended from time to time.

(2) Siemens intends to support Fluence in a potential usage of the Siemens sales organization worldwide. The specific support any Siemens affiliate can provide, and related terms of support (including potential commission), will be

defined by a country specific agreement and/or project related agreements. Those agreements are expected to include arrangements covering among others: Dedicated Siemens resources, services (e.g. grid studies) and equipment deliveries, Siemens commission rates and expectations for Fluence.

2.2 Special Cooperation sales models between the Parties (e.g. consortium approach) shall be defined on a project specific basis.

2.3 The decision to pursue any specific project or transactions under any of the agreements shall be made independently and at the sole discretion of the Parties.

2.4 Any Cooperation activities are non-exclusive and are always subject to all applicable antitrust laws. The Parties will continuously review with their antitrust experts whether the intended sharing of project leads is admissible under the applicable antitrust laws before discussing any opportunities with each other.

Article 3 - Legally binding provisions

3.1 The Parties shall not be legally committed to provide any Cooperation activities as described in Article 2 above. The Parties will in their sole discretion decide whether to provide the Cooperation activities and in their sole discretion decide upon the length of time that it will offer the Cooperation activities. Neither Party will be liable for deciding not to provide Cooperation activities nor for deciding to cease providing Cooperation activities.

3.2 Each Party shall bear its own internal and external costs related to drafting and execution of this MSCA 2021.

3.3 Neither Party shall have grounds for any claim under any theory of law (including, without limitation, claims for damages and cost reimbursement) against the other Party as it relates to this MSCA 2021.

3.4 Each Party shall treat the negotiations and the contents of this MSCA 2021 as confidential unless the other Party gives its prior written consent to the disclosure of such information to a third-party. This confidentiality obligation shall not apply to information which is generally known, which can be shown to have been independently developed by the recipient, or which has been acquired from a third party without nondisclosure obligation to the disclosing Party. This obligation shall likewise not apply to the extent a Party is required by statutory regulations, governmental orders, legal process or stock exchange requirements to reveal this MSCA 2021 or any of the information such Party has obtained. This obligation shall survive the term of this MSCA 2021 for a period of three (3) years.

3.5 The substantive law governing this MSCA 2021 shall be that of the State of Delaware.

Siemens Industry, Inc. –
Smart Infrastructure

By: Gratzke Ruth Digitally signed by Gratzke Ruth DN: cn=Gratzke Ruth, o=Siemens,Date: 2021.10.26 17:07:12 -04'00'

Name: Ruth Gratzke

Title: Chief Executive Officer

Date: October 27, 2021

By: Smith Marsha Digitally signed by Smith Marsha DN: cn=Smith Marsha, o=Siemens,Date: 2021.10.26 17:47:48 -04'00'

Name: Marsha Smith

Title: Chief Financial Officer

Date: October 27, 2021

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

Date: _____

By: _____

Name: Dennis Fehr

Title: Chief Financial Officer

Date: _____

Siemens Industry, Inc. –
Smart Infrastructure

By: _____

Name: Ruth Gratzke

Title: Chief Executive Officer

Date: _____

By: _____

Name: Marsha Smith

Title: Chief Financial Officer

Date: _____

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

Date: October 27, 2021

By: _____

Name: Dennis Fehr

Title: Chief Financial Officer

Date: _____

Siemens Industry, Inc. –
Smart Infrastructure

By: _____

Name: Ruth Gratzke

Title: Chief Executive Officer

Date: _____

By: _____

Name: Marsha Smith

Title: Chief Financial Officer

Date: _____

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

Date: _____

By: _____

Name: Dennis Fehr

Title: Chief Financial Officer

Date: October 27, 2021

Exhibit 10.27

EXECUTION VERSION

Amended and Restated Cooperation Agreement

between

Fluence Energy, LLC

and

The AES Corporation

Dated as of October 27, 2021

THIS AMENDED AND RESTATED COOPERATION AGREEMENT (this "Agreement") is made and entered into on October 27, 2021 (the "Effective Date"), between The AES Corporation, whose principal place of business is at 4300 Wilson Boulevard, Arlington, VA 22203 hereinafter referred to as "AES" and Fluence Energy, LLC, whose principal place of business is 4601 N. Fairfax Drive, Suite 600, Arlington, VA 22203 hereinafter referred to as "Fluence". Each of AES and Fluence are referred to herein as a "Party" and collectively are referred to herein as the "Parties."

WHEREAS, AES is a company headquartered in Arlington, Virginia with electrical transmission, distribution and power generation subsidiaries located globally, supplying power services to utilities, power systems, and end customers;

WHEREAS, Fluence is a company headquartered in Arlington, Virginia with a battery storage system business, and seeks to sell Battery Energy Storage Systems and Solutions to owners of power projects and assets;

WHEREAS, Fluence and AES are parties to that certain Cooperation Agreement, dated as of January 1, 2018, by and between Fluence and AES (the "Prior Agreement"); and

WHEREAS, AES Grid Stability LLC ("AES LLC"), a Delaware limited liability company and wholly-owned subsidiary of AES, owns a 43.18% membership interest in Fluence as of the Effective Date, but prior to the initial public offering described in the recitals below;

WHEREAS, AES LLC is party to the Second Amended and Restated Limited Liability Company Agreement of Fluence, dated as of June 9, 2021(the "Second A&R LLC Agreement");

WHEREAS, Fluence, AES LLC and certain other parties are entering into a series of transactions in connection with the formation of Fluence Energy, Inc., a Delaware corporation ("Issuer") to serve as the vehicle through which the public will own indirect interests in Fluence through an initial public offering;

WHEREAS, in connection with the initial public offering, the Second A&R LLC Agreement is being amended and restated in its entirety by the Third Amended and Restated Limited Liability Company Agreement, dated on or about the date hereof (the "Third A&R LLC Agreement"), to, among other things, reflect Issuer's ownership of Fluence and the restructuring of Fluence and its Affiliates; and

NOW, THEREFORE, the Parties agree that the Prior Agreement is hereby amended and restated in its entirety by this Agreement, and further agree as follows:

Article 1. Definitions

1.1 Definitions. The terms used in this Agreement, with their initial letters capitalized, shall, unless the context thereof otherwise requires, have the meanings specified in this Section 1.1.

"AAA" shall have the meaning assigned to such term in Section 13.2.

"AES" has the meaning set forth in the Preamble hereto.

"AES Entity" shall mean either AES or an Affiliate of AES, as the case may be.

"AES LLC" has the meaning set forth in the Recitals hereto.

"AES Representative" shall have the meaning assigned to such term in Section 6.1.

"AES Strategic Business Unit" shall mean one of the primary regional business groupings managed by a SBU President in AES.

"Affiliate" means, at any time, and with respect to any Person or group of Persons, a Person that at such time directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person or group of Persons..

"Agreement" has the meaning set forth in the Preamble hereto.

"Application" has the meaning set forth in the LLC Agreement.

"Battery Energy Storage Systems and Solutions" means any battery based energy storage system and related services offered for sale from time to time by Fluence, including such as may be purchased pursuant to the Storage Core Frame Purchase Agreement.

"Branding Agreement" means that certain Branding Agreement entered into as of the Effective Date between AES and Fluence.

"Claim" shall have the meaning assigned to such term in Section 9.1.

"Compliance Breach" shall have the meaning assigned to such term in Section 8.2.

"Confidential Information" shall have the meaning assigned to such term in Section 12.1.

"Control" means, with respect to the relationship between two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise. The terms "Controlled" or "under common Control with" have correlative meanings.

"Customer" is the end-use customer for any Battery Energy Storage Solutions proposed as part of a project owned by AES Entity.

"Dispute" shall have the meaning assigned to such term in Section 13.1.

"Effective Date" has the meaning set forth in the Preamble hereto.

"Fluence" has the meaning set forth in the Preamble hereto.

"Fluence Entity" shall mean either Fluence or an Affiliate of Fluence, as the case may be.

"Fluence Representative" shall have the meaning assigned to such term in Section 6.1.

"Government Official" shall mean any officer or employee or family member of an officer or employee of a government, department (whether executive, legislative, judicial or administrative), agency or instrumentality of such government, or any person acting in an official

capacity for or on behalf of such government or any candidate for public office or representative of a political party.

"Governmental Authority" means a federal, state, local or foreign governmental authority (including any regulatory authority); a state, province, commonwealth, territory or district thereof; a county; a city, town, township, or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, authority, board, department, system, service, office, commission, committee, council or other administrative body of any of the foregoing; any court or other judicial body; and any officer, official or other representative of any of the foregoing.

"Indemnified Party" shall have the meaning assigned to such term in Section 9.1.

"Indemnifying Party" shall have the meaning assigned to such term in Section 9.1.

"Initial Term" shall have the meaning assigned to such term in Section 10.1.

"Integrated Solution" has the meaning set forth in the LLC Agreement.

"Issuer" has the meaning set forth in the Recitals hereto.

"LLC Agreement" means the Second A&R LLC Agreement prior to the effectiveness of the Third A&R LLC Agreement, and thereafter means the Third A&R LLC Agreement.

"Parties" has the meaning set forth in the Preamble hereto.

"Party" has the meaning set forth in the Preamble hereto.

"Person" means any natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company or any other entity (whether or not having separate legal personality), and shall include any successor (by merger or otherwise) of such entity.

"Prohibited Payment" means any offer, gift, payment, promise to pay, or authorization of the payment of any money or anything of value, directly or indirectly, to a Government Official for the purpose of either (i) influencing any act or decision of the Government Official in his or her official capacity, (ii) inducing the Government Official to do or omit to do any act in violation of his or her lawful duty, (iii) securing any improper advantage or (iv) inducing the Government Official to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist in obtaining or retaining business or in directing business to any party.

"Prohibited Transaction" means any of the following: (i) receiving, transferring, transporting, retaining, using, structuring, diverting or hiding the proceeds of any criminal activity whatsoever, including drug trafficking, fraud or bribery of a Government Official; (ii) engaging or becoming involved in, financing, or supporting financially or otherwise, sponsoring, facilitating, or giving aid to any terrorist person, activity or organization; or (iii) participating in any transaction or otherwise conducting business with any Person that appears on any list issued by a United States or European Union Governmental Authority, the World Bank or the United Nations with respect to money laundering, terrorism financing, drug trafficking or economic or arms embargoes.

"Representatives" means, with respect to any person, such person's shareholders, officers, directors, employees, accountants, consultants, legal counsel, financial advisors and other representatives and agents.

"Rules" shall have the meaning assigned to such term in Section 13.2.

"Second A&R LLC Agreement" has the meaning set forth in the Recitals hereto.

"SLA" shall have the meaning assigned to such term in Section 5.2.

"Storage Core Frame Purchase Agreement" means that certain Amended and Restated Storage Core Frame Purchase Agreement entered into as of the Effective Date between AES LLC and Fluence pursuant to which AES Entities may from time to time purchase Battery Energy Storage Solutions from Fluence.

"Third A&R LLC Agreement" has the meaning set forth in the Recitals hereto.

1.2 Interpretation.

1.2.1 When a reference is made in this Agreement to an Article, Section clause, Exhibit or Schedule, such reference shall be to an Article, Section or clause of, Exhibit or Schedule to, this Agreement unless otherwise indicated, and the words "Agreement," "hereby," "herein," "hereof," "hereunder" and words of similar import refer to this Agreement as a whole (including any Exhibits) and not merely to the specific section, paragraph or clause in which such word appears. The table of contents and the Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and do not in any way affect the meaning or interpretation of this Agreement. The phrases "the date of this Agreement," "the date hereof" and terms of similar import, shall be deemed to refer to the Effective Date. References to any statute are to that statute, as amended from time to time, and to the rules and regulations promulgated thereunder. Unless otherwise expressly provided herein, references to any agreement or document shall be a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include reference to all exhibits, schedules and other documents or agreements attached thereto or incorporated therein, including waivers or consents. Unless otherwise expressly provided herein, references to any Person include the successors and permitted assigns of that Person. Whenever the content of this Agreement permits, the masculine gender shall include the feminine and neuter genders, and a reference to singular or plural shall be interchangeable with the other. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. As used in this Agreement: (i) the term "including" and words of similar import mean "including, without limitation" unless otherwise specified, (ii) "$" and "dollars" refer to the currency of the United States of America, and (iii) "any" shall mean "one or more". Unless the defined term "Business Days" is used, references to "days" in this Agreement refer to calendar days.

1.2.2 The Parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

1.2.3 No summary of this Agreement prepared by or on behalf of any Party shall affect the meaning or interpretation of this Agreement.

Article 2. Scope

2.1 Scope. The Parties shall use commercially reasonable efforts to maximize opportunities to use Battery Energy Storage Solutions on a global basis across the AES fleet. AES shall cause the AES Entities to apply this Agreement on a global basis, with the same understanding as to applicable laws concerning transfer pricing.

2.2 AES Entities. In the case of non-controlled AES Entities, AES agrees to promote and educate those entities about the benefits of energy storage and Fluence. AES agrees to use commercially reasonable efforts to enable interactions between Fluence and non-controlled entities for the purpose of exploring energy storage project investments, enabling the participation of Fluence in any energy storage procurements, and creating a preferred vendor role for Fluence where permitted and applicable.

2.3 Key Interfaces. During the term of this Agreement, each Party shall provide the other Party with contact persons to serve as liaisons for effective cooperation and communication between AES and Fluence regarding the implementation of the terms of this Agreement. These contact persons shall schedule regular meetings. These contact persons include, but are not limited to, the following:

2.3.1 Management: The Fluence Representative and the AES Representative will be the respective interfaces at the management level for this Agreement. The Fluence Representative will manage the business plan and competitiveness of the Battery Energy Storage Solutions, and the AES Representative will manage interaction across AES Strategic Business Units with respect to energy storage project development. The Fluence Representative and the AES Representative shall both manage his or her respective teams independently and will be his or her respective Party's representative with respect to escalated matters to be resolved, including but not limited to target sharing, availability of agreed technical sales support, capacity planning, and project delivery matters which cannot be resolved by Fluence sales people and the AES Strategic Business Units or individual AES project leads.

Article 3. Offer Management Process – Supporting BD at AES

3.1 BD Process. It is recognized that AES projects will move through several life cycle stages from original conception to investment implementation. Fluence will provide support to AES as a preferred vendor of Battery Energy Storage Solutions throughout this process. AES will manage its project development process at its own discretion and will make information, pricing, support, or other needs known to Fluence for use in AES internal investment reviews, external bid processes, or other activities aimed at expanding the market for energy storage. AES will have the sole discretion to pursue project development investments. AES and Fluence agree that each will bear their own cost of these activities.

3.2 Bid Support. From time to time, AES may participate in bid or RFP processes to win contracted projects from Customers. Fluence will support AES as a key vendor in these processes with information, diagrams, processes, and personal representation as suitable and agreed upon request. AES will have the sole discretion to bid or not bid in any process. AES and Fluence agree that each will bear their own cost of these activities.

3.3 Advanced Projects. As AES projects advance in maturity, AES will have the sole discretion for whether to continue to fund and develop its own projects for investment. Fluence will support this effort in a manner consistent with a key project vendor. Any financial support,

credit support, warranty support, or other commitment by Fluence will be subject to a specific Purchase Order under the Storage Core Purchase Agreement.

Article 4. Marketing Cooperation and Related Matters

4.1 Business Planning. As needed, but at least on an annual basis, the Parties shall jointly review the Fluence business plan and the AES outlook for project investments that could include energy storage, including discussion of any new technical requirements or needs from Fluence to assist AES in realizing project opportunities.

4.2 Joint Marketing. Joint marketing activities and trade events, including, but not limited to, marketing and trade fairs within a broader AES context, shall be agreed and planned in the business planning discussed in Section 4.1 between AES and Fluence. The Parties will mutually discuss in good faith proposals for joint marketing and fair participations. For agreed joint marketing or trade fair events in which AES enables Fluence to participate, Fluence will be responsible to pay any added fees or costs for materials related to its participation. AES shall be permitted to utilize images, product names, and materials from Fluence at events and in promotional efforts related to the sale of Battery Energy Storage Solutions, subject to compliance by AES with Fluence's usage and brand guidelines and the Branding Agreement.

Article 5. AES Business Development

5.1 Staffing. The staffing and hiring of personnel of AES and AES Entities shall be under the sole discretion of the AES Entity. Fluence shall have no right under this Agreement to make any decisions with respect to AES Business Development.

5.2 Funding. Funding of AES Business Development shall be the exclusive responsibility of the AES Entity's own budget at its own expense and as needed to achieve project development objectives. In a rare case and for a limited purpose, Fluence may conclude a separate service level agreement ("SLA") with the AES Entity to provide a fixed payment for a certain period of time to fund additional storage development resources. Any such SLA shall be negotiated in good faith between the parties and shall include development personnel as mutually agreed upon by the AES Entity and Fluence as well as customary reporting/feedback on performance.

5.3 Compensation. No AES Entity shall be entitled to any compensation payment from Fluence or any Fluence Entity in connection with any sales of Battery Energy Storage Solutions facilitated pursuant to this Agreement, except and then only to the extent that a specific SLA for sales resources as contemplated by Section 5.2 above applies.

5.4 Training. The Parties shall work together to develop a training program to facilitate the development of projects that utilize Battery Energy Storage Solutions by the AES Strategic Business Units. AES will name specific management and business development personnel to participate. The travel costs and expenses of the participants shall be borne by AES, and the costs and expenses for trainer and training facilities shall be borne by Fluence. Fluence shall provide initial training to the nominated personnel at regional training sessions within 180 days of the Effective Date. The Parties agree that such training program will continue on an ongoing basis throughout the Term and that they will work together in good faith to ensure that the AES business development team is properly trained at all times.

Article 6. Contact Persons

6.1 Nomination. The Parties shall nominate permanent contact persons on both sides to act as liaison for communications between the AES Entity and Fluence (the "AES Representative" and the "Fluence Representative" respectively). These contact persons shall schedule regular meetings in order to exchange relevant information regarding (i) current project development activities, (ii) trade fairs, (iii) roadmaps for budgeting tools, and (iv) marketing activities.

6.2 Initial Contact Persons. The nominated contact person from AES (subject to replacement by AES on prior written notice to Fluence) is:

The AES Corporation
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
Attention: Paul Freedman, General Counsel of The AES Corporation
Email: paul.freedman@aes.com

The nominated contact person from Fluence (subject to replacement by Fluence on prior written notice to AES) is:

Fluence Energy, LLC
4601 N. Fairfax Drive
Suite 600
Arlington, Virginia 22203 USA
Attention: President, Americas
Email: john.zahurancik@fluenceenergy.com

Article 7. No Restrictions

7.1 No Fluence Restrictions. AES acknowledges and agrees that notwithstanding anything to the contrary in this Agreement or the LLC Agreement, AES does not have any exclusive rights to market and sell the Battery Energy Storage Systems and Solutions, and that the relationship contemplated by this Agreement shall not restrict Fluence in any way from utilizing the services of other Persons for the marketing and sale of Battery Energy Storage Solutions or from itself marketing and selling such Battery Energy Storage Solutions directly.

Article 8. Compliance

8.1 Compliance Representations and Obligations.

8.1.1 Both Parties shall ensure that they and their respective Affiliates and Representatives comply fully with all applicable anti-bribery, anti-corruption, anti-terrorism, economic sanctions and anti-money laundering Applicable Laws and regulations, including, without limitation, international anti-corruption conventions such as the United Nations Convention Against Bribery, and the United States Foreign Corrupt Practices Act, and in each case, any applicable implementing legislation, with respect to their respective obligations under this Agreement.

8.1.2 Both Parties represent and warrant that neither they nor any of their respective Affiliates or Representatives, have, either directly or indirectly, made a Prohibited

Payment or engaged in a Prohibited Transaction with respect to their respective obligations under this Agreement.

8.1.3 Both Parties shall ensure that neither they nor any of their respective Affiliates or Representatives, will, either directly or indirectly, make, promise or authorize the making of a Prohibited Payment or engage in a Prohibited Transaction with respect to their respective obligations under this Agreement.

8.1.4 Both Parties agree to notify the other Party immediately upon gaining knowledge that a Prohibited Transaction or Prohibited Payment related to the obligations set forth in this Agreement and/or the sales and marketing efforts with respect to the Battery Energy Storage Solutions may have occurred and to cooperate in good faith with each other to determine whether a Prohibited Transaction or Prohibited Payment has occurred.

8.1.5 Both Parties agree that, if the other Party has any reasonable grounds to believe that a Prohibited Transaction has taken place or a Prohibited Payment has been made, it shall cooperate in good faith with the other Party in determining whether such a violation occurred by taking necessary measures, which could include engaging an independent third party to investigate the matter and to provide a written report of its findings to the Parties.

8.1.6 Both Parties acknowledge receipt of a copy of the other Party's Code of Conduct and understands the standards to which the other Party expects all its contractors to comply with when performing services for or on behalf of the other Party.

8.1.7 In order to mitigate potential exposure to risk, the Parties shall perform due diligence on any subcontractors, consultants or agents prior to their engagement pursuant to the standards set forth in the other Party's compliance program. The Parties shall execute a written agreement with each subcontractor, consultant, agent or representative which shall include the provisions at least as restrictive as those contained in this Article 8.

8.1.8 For the purpose of detecting potential violations of Applicable Law, the Parties shall perform periodic internal or independent audits of its financial books, accounts and records.

8.1.9 The Parties agree to provide an effective education and training program about the requirements and prohibitions of applicable anti-corruption laws for its subcontractors, consultants, agents and representatives who perform services under this Agreement.

8.2 Compliance Breaches. The Parties agree that a material breach of one or more of the covenants or representations ("Compliance Breach") in this Article 8 shall be sufficient cause for the other Party to terminate this Agreement, , in each case in whole or in part, and to declare all or any of them null and void, in which case the breaching Party agrees that it shall forfeit any claim to any additional payments due to it under any of such terminated agreements, other than payments for services previously rendered under such terminated agreements, in addition to being liable for any damages or remedies available to the other Party under Applicable Law. the breaching Party shall indemnify and hold harmless the other Party from any claims, costs, liabilities, obligations, and damages the other Party incurs (including, without limitation, for the fees of any legal counsel Company may retain or engage) as a result of such Compliance Breach.

8.3 Survival. All the provisions in this Article 8 are material and shall survive the termination of the Agreement between AES and Fluence.

Article 9. Indemnification

9.1 General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party, its Affiliates, and their Representatives and assigns (the "Indemnified Party") from and against all claims, suits, causes of action, losses, liabilities, liens, damages, assessments, costs, expenses, demands, complaints or actions including but not limited to reasonable attorneys' fees and court costs (collectively, "Claims") of third parties concerning: (i) death, personal injury, or property damage of third parties, (ii) nonpayment of wages, benefits, fees, amounts owed, and/or any taxes (including penalties and interest) associated therewith arising from the Indemnifying Party's Representatives, suppliers, contractors, and/or materialmen and (iii) violations by the Indemnifying Party or any Person for whom the Indemnifying Party is responsible of Applicable Law; in each case to the extent arising or resulting from the Indemnifying Party's or its Representative's negligence, willful misconduct, or breach of this Agreement. For sake of clarity, if both Parties are negligent or otherwise at fault or strictly liable without fault, then the obligations of indemnification under this Section 9.1 shall continue, but the Indemnifying Party shall indemnify the Indemnified Party only for the percentage of responsibility for the damage or injuries attributable to the Indemnifying Party.

9.2 Indemnification Procedures.

9.2.1 If an Indemnified Party receives written notice of a Claim, the Indemnified Party shall give prompt written notice to the Indemnifying Party, including a reasonably detailed description of the facts and circumstances relating to such Claim, a complete copy of all notices, pleadings and other papers related thereto, and a description in reasonable detail of the basis for the potential claim for indemnification with respect thereto. The Indemnified Party's delay or deficiency in notifying the Indemnifying Party shall not relieve the Indemnifying Party of liability or obligation except to the extent (and only to the extent) such delay materially impacts the defense of the Claim.

9.2.2 The Indemnifying Party shall be entitled to assume the defense and to represent the interests of the Indemnified Party, which shall include the right to select and direct legal counsel and other consultants (all of whom shall be reasonably acceptable to the Indemnified Party), appear in proceedings on behalf of the Indemnified Party and to propose, accept or reject offers of settlement, subject to Section 9.2.3 below, all at its sole cost. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants or participating in its own defense at its own cost and expense. Notwithstanding the foregoing, if (i) the claim is primarily for non-monetary damages against the Indemnified Party, or primarily for an injunction or other equitable relief that, if granted, would reasonably be expected to be material to the Indemnified Party, (ii) there is a material actual or potential conflict of interest that makes representation of the Indemnifying Party and the Indemnified Party by the same counsel or the counsel selected by the Indemnifying Party inappropriate, or (iii) the claim is a criminal proceeding, then in each case the Indemnified Party may, upon notice to the Indemnifying Party, assume the exclusive right to defend (and in the case of clause (iii) above, compromise and settle), such claim and the reasonable fees and expenses of the Indemnified Party's separate counsel shall be borne by the Indemnifying Party; however the settlement of any claim pursuant to clauses (i) and (ii) above shall be governed by Section 9.2.3 below. Notwithstanding anything to the contrary herein, for sake of clarity, the Parties agree that the foregoing provisions shall not be construed so as to permit the Indemnified Party to control or assume the defense of any action, lawsuit, proceeding, investigation, demand or other claim brought against the Indemnifying Party concurrently with or in a joint proceeding in respect of any claim that is the subject of an indemnification claim hereunder by the Indemnified Party.

9.2.3 Notwithstanding anything to the contrary herein, the Indemnifying Party shall not compromise or settle, or admit any liability with respect to any third party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), unless the relief consists solely of (i) money damages (all of which the Indemnifying Party shall pay), and (ii) includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto. If the Indemnified Party assume the defense of or represents their own interests, no settlement shall be made without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

9.3 Limited Waiver of Certain Immunities. Each of the Parties hereby specifically and expressly agrees that with respect to any and all claims against an Indemnified Party by any representative of an Indemnifying Party, any indemnification available hereunder shall not be limited by reason of any immunity to which such Indemnifying Party may be entitled under any workers compensation and/or industrial insurance acts, disability benefit acts, or other employee benefits acts and any limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party to such representative with respect to any such claim. For the sake of clarity, the Indemnifying Party's waiver of immunity by the provisions of this section extends only to indemnification claims against the Indemnifying Party by or on behalf of the Indemnified Party under or pursuant to this agreement, and does not apply to any claims made by the Indemnifying Party's representatives directly against the Indemnifying Party.

9.4 Survival. The indemnities set forth in this Article 9 shall survive the termination or expiration of this Agreement.

Article 10. Term and Termination

10.1 Term. The term of this Agreement shall commence as of the Effective Date and shall continue until the fourth (4th) anniversary thereof (the "Initial Term") and thereafter shall be automatically extended in successive one (1) year increments (the Initial Term together with any such extensions, the "Term").

10.2 Early Termination. Either Party may terminate this Agreement effective upon the expiration of the Initial Term or the expiration of any extension thereof upon not less than six (6) months prior written notice of termination furnished to the other Party. No termination of this Agreement pursuant to this Section 10.2 shall affect any Purchase Orders executed between the Parties prior to the date of termination or any Consortium Agreement then in effect.

10.3 Transition. If this Agreement is terminated pursuant to this Section 10.2, the Parties shall cooperate to manage any projects or opportunities in progress so as to ensure minimal disruption to the end customer, subject to compliance with Applicable Law (including antitrust requirements). Each Party shall submit a list of opportunities in progress for which the Parties agree to continue working together and where existing sales arrangements will be honored through completion.

10.4 Termination for Cause and other Remedies. A Party may terminate this Agreement for cause and/or pursue such other rights and remedies as may be available to it at law or in equity, upon thirty (30) days prior written notice in the event the other Party hereto materially breaches this Agreement and fails to cure the breach within thirty (30) days after receipt of written demand therefor.

Article 11. Limitations of Liability

11.1 WAIVER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE, WHETHER BASED IN CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COSTS OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION AND DATA, LOSS OF POWER, VOLTAGE IRREGULARITIES OR FREQUENCY FLUCTUATION, CLAIMS ARISING FROM THE OTHER PARTY'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE.

11.2 EFFECTIVENESS. THE PARTIES AGREE THAT THE EXCLUSIONS AND LIMITATIONS IN THIS ARTICLE 12 WILL PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THIS AGREEMENT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF A PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS ARTICLE 12 EXTEND TO THE PARTIES' RESPECTIVE AFFILIATES, PARTNERS, PRINCIPALS, MEMBERS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS, AND SUCCESSORS AND ASSIGNS.

11.3 Commencement of Claims. Except with respect to claims arising under Article 10 or Article 13, any legal action of either Party arising under this Agreement must be commenced within two (2) years after the earlier to occur of (i) such Party having obtained knowledge of such claim or (ii) the expiration or termination of this Agreement. To the maximum extent permitted by Applicable Law, each Party hereby waives any right to commence any claim or action after such two (2) year period.

Article 12. Confidentiality

12.1 Confidential Information. Each Party shall, and shall cause its respective Affiliates and Representatives to, keep confidential any information which it may have or acquire before or after the date of this Agreement, concerning the other Party and its assets, business, operations, affairs, financial condition or such information, "Confidential Information").

12.2 Non-Disclosure. Neither Party shall use any Confidential Information in any manner detrimental to the other Party nor shall any of them disclose, publish or make accessible, directly or indirectly, any Confidential Information to any person. In addition, the Parties shall exercise all reasonable efforts to prevent any other person from gaining access to such Confidential Information and take such protective measures as may be or become reasonably necessary to preserve the confidentiality of such Confidential Information.

12.3 Exceptions. Notwithstanding Section 12.1 and Section 12.2, either Party may disclose Confidential Information:

12.3.1 to any Representative of such Party, provided that such Representative has a need to know and has been informed of the confidential nature of the information pursuant to Section 12.4;

12.3.2 to the extent required by (i) any applicable law of any Governmental Authority (including any rule or regulation of the Securities and Exchange Commission), (ii) any stock exchange rule or regulation or (iii) any binding judgment, order or requirement of any court or other Governmental Authority of competent jurisdiction; provided, that the Party required to disclose Confidential Information, as the case may be, has delivered written notice to and consulted, to the extent practicable, with the other Party prior to disclosure of such Confidential Information; and

12.3.3 to the extent such Confidential Information becomes available within the public domain (otherwise than as a result of a breach of this Article 12).

12.4 Representatives Bound. Each Party shall inform any representative to whom it provides Confidential Information that such information is confidential and shall instruct them (a) to keep such Confidential Information confidential and (b) not to disclose it to any third party (other than those persons to whom such Confidential Information has already been disclosed in accordance with the terms of this Agreement). The disclosing Party shall be responsible for any breach of this Article 12 by the person to whom the Confidential Information is disclosed.

12.5 Survival. Notwithstanding anything herein to the contrary, the provisions of this Article 12 shall survive the termination of this Agreement for a period of three (3) years.

Article 13. Dispute Resolution and Choice of Law

13.1 Referral to Senior Management. Except as otherwise provided by this Agreement, any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof (which breach or alleged breach by a Party remains uncured within ten (10) Business Days after receipt of written notice thereof from another Party) or the validity or termination hereof or the relationship created between the Parties by and/or through this Agreement (a "Dispute") shall first be settled as far as possible by good faith negotiations between the parties to the Dispute, in the form of meetings between senior-management level representatives of such Parties, upon the written request by any such Party to the other parties to the Dispute, which writing shall set forth in reasonable detail the nature and extent of the Dispute. For this purpose a senior-management level representative of AES shall be named and the senior-management level representative of Fluence shall be its Chief Executive Officer.

13.2 Referral to Arbitration. If the parties to the Dispute are unable for any reason to resolve a Dispute within thirty (30) days after receipt by any Party of written notice of a Dispute, then any Party may submit the Dispute to arbitration to be finally and exclusively resolved under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein. There shall be three (3) arbitrators. If there are two (2) parties to the Dispute, each of the parties to the Dispute shall nominate one (1) independent arbitrator in accordance with the Rules. If there are more than two (2) parties to the Dispute, the independent arbitrators shall be nominated in accordance with the Rules; provided, however, that any Party and its Affiliates shall be entitled to nominate only one (1) such independent arbitrator. The arbitrators so nominated, once confirmed by the AAA, shall nominate an additional arbitrator to serve as chairman, such nomination to be made within fifteen (15) days of the confirmation by

the AAA of the second arbitrator. If the initial arbitrators shall fail to nominate an additional arbitrator within such fifteen (15) day period, such additional arbitrator shall be appointed by the AAA. The arbitrators shall be required to submit a written statement of their findings and conclusions. Except as otherwise agreed by the parties to such Dispute, exclusive venue of arbitration shall be New York, New York, and the language of the arbitration shall be English and each of the Parties hereby submits to the non-exclusive jurisdiction of the state and federal courts located in New York, New York for preliminary relief in aid of arbitration and for the enforcement of any arbitral award. By agreeing to arbitration, the Parties do not intend to deprive any national court of its jurisdiction to issue any pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings.

13.3 Neutral Arbitrators. None of the Parties or the arbitrators shall select any arbitrator for the arbitral tribunal who has any interest in the Dispute or who has, or within the immediately preceding five (5) years has had, any economic or other relationship with any party to the Dispute.

13.4 Procedures and Costs. The arbitrators shall not have the right to award consequential, incidental, indirect, special, treble, multiple or punitive damages. The arbitral tribunal shall not be empowered to decide any dispute ex aequo et bono or amiable compositeur, and the arbitral tribunal shall decide the Dispute under the substantive laws of the State of Delaware pursuant to the Rules of AAA, without regard to applicable choice of law provisions thereof. The arbitration award shall be decided by majority opinion and issued in writing in the English language and shall state the reasons upon which it is based. It may be made public only with the consent of each participating Party or as may be required by law or regulatory authority or as necessary for enforcement of such award. The arbitrators shall allocate the fees and costs of the arbitration. The losing Party(ies) shall pay the prevailing Party(ies)' attorney's fees and costs and the costs associated with the arbitration, including the expert fees and costs and the arbitrators' fees and costs borne by the prevailing Party(ies), all as determined by the arbitrators. Each Party shall bear its own fees and costs until the arbitrators determine which, if any, Party is the prevailing Party(ies) and the amount that is due to such prevailing Party(ies).

13.5 Award. The award rendered by the arbitrators shall be final and binding on the participating Parties and shall be the sole and exclusive remedy between and among the participating Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. The award shall be issued no later than one hundred twenty (120) days from the last hearing held by the arbitrators or as soon thereafter as practicable. The award shall be paid within thirty (30) days after the date it is issued and shall be paid in U.S. Dollars in immediately available funds, free and clear of any Liens, Taxes or other deductions. A judgment confirming or enforcing such award may be rendered by any court of competent jurisdiction.

13.6 Confidentiality. The arbitration shall be confidential. No Party may disclose the fact of the arbitration, any award relating thereto or any settlement relating to any Dispute without the prior consent of the other Party(ies); provided, that such matters may be disclosed without the prior consent of the other Party(ies) to lenders, auditors, tax or other Governmental Authority or as may be required by law or regulatory authorities or as necessary to enforce any award.

13.7 Continued Performance; Provisional Remedies. Notwithstanding the existence of any Dispute, the Parties shall continue to perform their respective obligations under this Agreement unless the Parties otherwise mutually agree in writing. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to, nor shall it, prevent the Parties from seeking temporary injunctive relief at any time as may be available under Law or in equity to preserve its rights pending the outcome of any arbitration. Without prejudice to such

provisional remedies as may be available under the jurisdiction of a national court, the arbitral tribunal shall have full authority to grant provisional remedies or order the Parties to request that a court modify or vacate any temporary or preliminary relief issued by a court, and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect. The Parties agree that any issue regarding the arbitrability of any claims or disputes arising under, relating to or in connection with this Agreement is an issue solely for the arbitrators, not a court, to decide.

13.8 Waiver of Jury Trial. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY OR OTHERWISE ON ANY CLAIM, CAUSE OF ACTION, SUIT OR PROCEEDING PERMITTED UNDER THIS ARTICLE 13. THE PROVISIONS OF THIS AGREEMENT RELATING TO WAIVER OF TRIAL BY JURY SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT IT IS RELYING ON THE WAIVER CONTAINED HEREIN 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 CERTIFICATES IN THIS SECTION 13.8.

Article 14. Miscellaneous

14.1 Governing Law. This Agreement (including any Dispute) shall be deemed made and prepared and shall be governed, construed and interpreted in accordance with the internal laws of the State of Delaware, without regard to principles of conflict of laws thereof which may require the application of the law of another jurisdiction.

14.2 Assignment; Successors. Neither Party may assign all or any part of this Agreement, or any rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment which fails to comply with the requirements of this Section 14.2 shall be null and void. Notwithstanding the foregoing: (i) either Party may, without the prior written consent of the other Party, assign all or any part of this Agreement or any Purchase Order issued hereunder, or any rights or obligations hereunder or thereunder, to an Affiliate, which will accept such assignment and assume all obligations related to this Agreement; provided that, notwithstanding any such assignment, the assigning Party shall not be relieved of any of its obligations hereunder by reason of such assignment and shall remain liable hereunder to the same degree that the assigning Party would be responsible had there been no assignment. It shall be reasonable for a Party to withhold consent to a proposed assignment where the proposed assignee is identified on Exhibit D to the LLC Agreement.

14.3 Compliance with Applicable Law. The Parties agree to comply with all applicable laws and regulations. The Parties' obligations to fulfill this Agreement are subject to the condition that the fulfillment is not prohibited by any national and/or international foreign trade and customs regulations or any embargos or other applicable sanctions.

14.4 Amendments. Any modification or amendment to this Agreement must be made in writing and signed by authorized representatives of the Parties to be effective.

14.5 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, employee-employer relationship, trust or other association of any kind between the Parties and each Party shall be individually responsible only for its obligations as set forth in this Agreement. In each case where a AES Entity referred to in

this Agreement is an Affiliate of AES, such reference shall be deemed to mean that AES shall cause such AES Affiliate to comply with the applicable obligation, and in each case where a Fluence Entity referred to in this Agreement is an Affiliate of Fluence, such reference shall be deemed to mean that Fluence shall cause such Fluence Affiliate to comply with the applicable obligation.

14.6 Publicity. No Party hereto shall refer to or use, or permit any persons to refer to or use, any other Party's name, trademarks, service marks or logos in any advertising, promotional materials, press releases or other publicity without obtaining the prior written consent of the applicable Party, except when, and to the extent that, such communication is required by applicable laws, regulations or stock exchange rules.

14.7 Non-Exclusive Remedies and Non-Waivers. No delay or omission by the Parties in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy nor shall it be construed as a bar to or waiver of any such right or remedy on any future occasion. Any waiver authorized on one occasion must be made in writing and is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. The rights and remedies of the Parties herein shall not be exclusive and are in addition to any other rights and remedies provided by Applicable Law or in equity.

14.8 Severability. Any provision of this Agreement issued hereunder that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof (provided the substance of the agreement between the Parties is not thereby materially altered), and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Laws, the Parties hereto hereby waive any provision of Applicable Law which renders any provision hereof prohibited or unenforceable in any respect.

14.9 Survival. The Indemnification, Limitations of Liability, Confidentiality, Dispute Resolution and Miscellaneous sections of this Agreement, and any provision that contemplates performance or observance subsequent to termination or expiration shall survive termination or expiration of this Agreement.

14.10 Complete Agreement and Counterparts. This Agreement shall constitute the entire agreement between the Parties and shall supersede all previous communications, representations, agreements or understandings, whether oral or written, with respect to the subject matter hereof. The headings used in this Agreement are for reference and shall not limit or affect the meaning or interpretation of any of the terms hereof.

14.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall constitute a duplicate original and all counterparts together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by electronic mail shall be effective as delivery of an executed counterpart of this Agreement.

14.12 Notices.

14.12.1 All notices and other communications which either Party is required or may desire to serve upon the other shall be addressed to the Party to be served as follows, unless a different address is designated in writing by the Party to be served:

To AES:

The AES Corporation
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
Attention: Paul Freedman, General Counsel of The AES Corporation
Email: paul.freedman@aes.com

With a copy to:

AES Grid Stability, LLC
4300 Wilson Boulevard
Suite 1100
Arlington, VA 22203
Attention: Chris Shelton, Senior Vice President, Chief Product Officer and President, AES Next
Email: chris.shelton@aes.com

To Fluence:

To the contact person designated pursuant to Article 6 above

With a copy to:

Fluence Energy, LLC
Attn: General Counsel
Email: frank.fuselier@fluenceenergy.com

14.12.2 All notices, requests, consents and other communications under this Agreement must be in writing and shall be deemed to have been duly given and effective (i) immediately (or, if not delivered or sent on a Business Day, the next Business Day) if delivered or sent and received by electronic mail , (ii) on the date of delivery if by hand delivery (or, if not delivered on a Business Day, the next Business Day) or (iii) on the first Business Day following the date of dispatch (or, if not sent on a Business Day, the next Business Day after the date of dispatch) if by a nationally recognized overnight delivery service (all fees prepaid). In the case of notice via email, each Party shall upon request of the other Party expressly acknowledge or deny receipt of such notice.

14.13 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement, or any amendments or Exhibits hereto.

14.14 Language of the Agreement, Correspondence, Documentation. The language of this Agreement shall be English. Unless to the extent agreed otherwise, correspondence, technical and commercial documents as well as any other information exchanged between the Consortium Members relating to this Agreement shall be in English.

[Signature page follows]

IN WITNESS WHEREOF, Fluence and AES have caused their duly appointed representatives to execute this Agreement.

The AES Corporation

DocuSigned by:
J. Chris Shelton
By: _____
3F826167370443E...
Name: J. Chris Shelton
Title: Senior Vice President and Chief Product Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, Fluence and AES have caused their duly appointed representatives to execute this Agreement.

The AES Corporation

By: _____
Name: Chris Shelton
Title: Senior Vice President and Chief Product Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

IN WITNESS WHEREOF, Fluence and AES have caused their duly appointed representatives to execute this Agreement.

The AES Corporation

By: _____
Name: Chris Shelton
Title: Senior Vice President and Chief Product Officer

Fluence Energy, LLC

By: Fluence Energy, Inc., as managing member

By: _____
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: _____
Name: Dennis Fehr
Title: Chief Financial Officer

Exhibit 21.1

Subsidiaries of Fluence Energy, Inc.

Legal Name	State or Other Jurisdiction of Incorporation or Organization
Fluence Energy, LLC	Delaware
Fluence Energy GmbH	Germany
Fluence Energy Pty Ltd	Australia
Fluence Energy Global Production Operation, LLC	Delaware
Fluence Energy Singapore Energy Singapore PTE. LTD.	Singapore
Fluence Energy Inc.	Philippines

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-260544) pertaining to the Fluence Energy, Inc 2021 Incentive Award Plan, Fluence Energy, LLC Phantom Equity Incentive Plan and the 2020 Unit Option Plan of Fluence Energy, LLC of our report dated December 14, 2021, with respect to the consolidated financial statements of Fluence Energy, Inc included in this Annual Report (Form 10-K) for the year ended September 30, 2021.

/s/ Ernst & Young LLP

Tysons, Virginia
December 14, 2021

Exhibit 31.1

CERTIFICATION PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT, AS AMENDED,
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Manuel Perez Dubuc, certify that:

1. I have reviewed this Annual Report on Form 10-K 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)) 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, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) [Omitted.]

   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 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: December 14, 2021

Fluence Energy, Inc.
By: /s/ Manuel Perez Dubuc
Manuel Perez Dubuc
Chief Executive Officer

Exhibit 31.2

**CERTIFICATION PURSUANT TO RULES 13a-14(a) AND 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT, AS AMENDED,
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dennis Fehr, certify that:

1. I have reviewed this Annual Report on Form 10-K 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)) 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, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) [Omitted.]

   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 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: December 14, 2021

Fluence Energy, Inc.
By: /s/ Dennis Fehr
Dennis Fehr
Chief Financial Officer

Exhibit 32.1

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 Annual Report on Form 10-K of Fluence Energy, Inc. (the "Company") for the fiscal year ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Manuel Perez Dubuc, Chief Executive Officer of the Company, certifies, 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: December 14, 2021

By: /s/ Manuel Perez Dubuc
Manuel Perez Dubuc
Chief Executive Officer

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL 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 Annual Report on Form 10-K of Fluence Energy, Inc. (the "Company") for the fiscal year ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Dennis Fehr, Chief Financial Officer of the Company, certifies, 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: December 14, 2021

By: /s/ Dennis Fehr
Dennis Fehr
Chief Financial Officer