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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934
Date of Report (Date of earliest event reported): October 27, 2021

Fluence Energy, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-40978
(Commission
File Number)

87-1304612
(IRS Employer
Identification Number)

4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
(Address of principal executive offices, including Zip Code)
Registrant's telephone number, including area code: (833) 358-3623

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common Stock, \$0.00001 par value per share	FLNC	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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.

Item 1.01 Entry into a Material Definitive Agreement.

In connection with the initial public offering (the “**Offering**”) by Fluence Energy, Inc. (the “**Company**”) of its Class A common stock, par value \$0.00001 (the “**Common Stock**”), described in the prospectus (the “**Prospectus**”), dated October 27, 2021, filed with the Securities and Exchange Commission pursuant to Rule 424(b) of the Securities Act of 1933, as amended (the “**Securities Act**”), which is deemed to be part of the Registration Statement on Form S-1 (File No. 333-259839) (as amended, the “**Registration Statement**”), the following agreements were entered into:

- the Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC, a Delaware limited liability company (“**Fluence LLC**”), dated October 27, 2021, by and among the Company and its Members (as defined therein) (the “**A&R LLCA**”);
- the Tax Receivable Agreement, dated November 1, 2021, by and among the Company, Fluence LLC and the TRA Parties (as defined therein);
- the Registration Rights Agreement, dated November 1, 2021, by and among the Company and the Original Equity Owners (as defined therein); and
- the Stockholders Agreement, dated October 27, 2021, by and among the Company and the Stockholders (as defined therein).

The A&R LLCA, Tax Receivable Agreement, Registration Rights Agreement and Stockholders Agreement are filed herewith as Exhibits 10.1, 10.2, 10.3 and 10.4, respectively, and are incorporated herein by reference. The terms of these agreements are substantially the same as the terms set forth in the forms of such agreements previously filed as exhibits to the Registration Statement and as described therein. Certain parties to certain of these agreements have various relationships with the Company. For further information, see “Certain Relationships and Related Party Transactions” in the Prospectus.

Item 3.02 Unregistered Sales of Equity Securities.

In connection with the consummation of the Offering, 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, LLC, a Delaware limited liability company and 58,586,695 shares issued to Siemens Industry, Inc., a Delaware corporation, on a one-to-one basis equal to the number of LLC Interests (as defined in the Prospectus) they own, respectively, in exchange for nominal consideration and (ii) 18,493,275 shares of the Common Stock to Qatar Holding LLC, a Delaware corporation, as consideration in the Blocker Mergers (as defined in the Prospectus) undertaken in connection with the Offering, in exchange for the LLC Interests the Blocker Company (as defined in the Prospectus) 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.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Item 5.03 below is incorporated by reference in this Item 3.03.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On October 27, 2021, the Company’s Amended and Restated Certificate of Incorporation (the “**Charter**”), in the form previously filed as Exhibit 3.2 to the Registration Statement, and the Company’s Amended and Restated Bylaws (the “**Bylaws**”), in the form previously filed as Exhibit 3.4 to the Registration Statement, became effective. The Charter, among other things, provides that the Company’s authorized capital stock consists of 1,200,000,000 shares of Class A common stock, 300,000,000 shares of Class B-1 common stock, 300,000,000 shares of Class B-2 common stock and 10,000,000 shares of preferred stock. A description of the Company’s capital stock, after giving effect to the adoption of the Charter and Bylaws, has previously been reported by the Company in the Registration Statement. The Charter and Bylaws are filed herewith as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

Item 8.01 Other Events.

On November 1, 2021, the Company completed the Offering of 35,650,000 shares of its Class A common stock at a price to the public 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 gross proceeds to the Company from the initial public offering were \$998.2 million, before deducting underwriting discounts and commissions and estimated offering expenses payable by the Company.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
<u>3.1</u>	<u>Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</u>
<u>3.2</u>	<u>Amended and Restated Bylaws of Fluence Energy, Inc.</u>
<u>10.1</u>	<u>Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC, dated as of October 27, 2021</u>
<u>10.2</u>	<u>Tax Receivable Agreement, dated as of November 1, 2021, by and among Fluence Energy, Inc. and the TRA Parties</u>
<u>10.3</u>	<u>Registration Rights Agreement, dated November 1, 2021, by and among Fluence Energy, Inc. and the Original Equity Owners</u>
<u>10.4</u>	<u>Stockholders Agreement, dated October 27, 2021, by and among Fluence Energy, Inc., Fluence Energy, LLC and the Stockholders</u>

SIGNATURES

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

FLUENCE ENERGY, INC.

Date: November 3, 2021

By: /s/ Francis Fuselier
Francis Fuselier
General Counsel and Secretary

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

FLUENCE ENERGY, INC.

Fluence Energy, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation was filed with the Office of the Secretary of State of the State of Delaware on June 21, 2021 (the “*Original Certificate*”).
2. The Corporation is filing this Amended and Restated Certificate of Incorporation of the Corporation, which restates, integrates and further amends the Original Certificate, as heretofore amended (the “*Certificate of Incorporation*”), and was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by all necessary action of the board of directors of the Corporation and the stockholders of the Corporation in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.
3. The text of the Original Certificate is hereby amended and restated in its entirety by this Certificate of Incorporation to read in full as follows:

ARTICLE I.

The name of the corporation is Fluence Energy, Inc. (the “*Corporation*”).

ARTICLE II.

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III.

The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “*DGCL*”), including, without limitation, (i) investing in securities of Fluence Energy, LLC, a Delaware limited liability company, or any successor entities thereto (“*Fluence LLC*”) and any of its subsidiaries, (ii) exercising all rights, powers, privileges and other incidents of ownership or possession with respect to the Corporation’s assets, including managing, holding, selling and disposing of such assets and (iii) engaging in any other activities incidental or ancillary thereto.

ARTICLE IV.

Section 4.1 Authorized Stock. The total number of shares of all classes of stock that the Corporation is authorized to issue is one billion six hundred and ten million (1,610,000,000), consisting of:

- (a) One billion two hundred million (1,200,000,000) shares of Class A common stock, with a par value of \$0.00001 per share (the “*Class A Common Stock*”);
 - (b) Two hundred million (200,000,000) shares of Class B-1 common stock, with a par value of \$0.00001 per share (the “*Class B-1 Common Stock*”);
 - (c) Two hundred million (200,000,000) shares of Class B-2 common stock, with a par value of \$0.00001 per share (the “*Class B-2 Common Stock*”) and together with the Class A Common Stock and Class B-1 Common Stock, the “*Common Stock*”); and
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(d) Ten million (10,000,000) shares of preferred stock, with a par value of \$0.00001 per share (the “**Preferred Stock**”).

Section 4.2 **Preferred Stock**. The board of directors of the Corporation (the “**Board of Directors**”) is authorized, subject to any limitations prescribed by law or by that certain stockholders agreement, dated as of October 27, 2021, by and among the Corporation and the other Persons party thereto (as it may be amended from time to time in accordance with its terms, the “**Stockholders Agreement**”) (for so long as it remains in effect), to provide, out of the unissued shares of Preferred Stock, for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a “**Preferred Stock Designation**”), to establish from time to time the number of shares to be included in each such series and to fix the powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including, without limitation, the authority to fix or alter the dividend rights, dividend rates, conversion rights, exchange rights, voting rights, rights and terms of redemption (including sinking and purchase fund provisions), the redemption price or prices, restrictions on the issuance of shares of such series, the dissolution preferences and the rights in respect of any distribution of assets of any wholly unissued series of Preferred Stock and the number of shares constituting any such series, and the designation thereof, or any of them and to increase (but not above the total number of authorized shares of Preferred Stock) or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series so created (except where otherwise provided in the Preferred Stock Designation), subsequent to the issue of that series. In case the authorized number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series. There shall be no limitation or restriction on any variation between any of the different series of Preferred Stock as to the designations, powers preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof; and the several series of Preferred Stock may vary in any and all respects as fixed and determined by the resolution or resolutions of the Board of Directors or by a committee of the Board of Directors, providing for the issuance of the various series of Preferred Stock.

Section 4.3 **Number of Authorized Shares**. Subject to any limitations prescribed by the Stockholders Agreement, and except as set forth in any Preferred Stock Designation, the number of authorized shares of any of the Class A Common Stock, Class B-1 Common Stock, Class B-2 Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the DGCL, and no vote of the holders of shares of Class A Common Stock, Class B-1 Common Stock, Class B-2 Common Stock or Preferred Stock, or of any series thereof, separately as a class shall be required therefor.

Section 4.4 **Common Stock**. The powers, preferences and rights of the Class A Common Stock, the Class B-1 Common Stock and the Class B-2 Common Stock, and the qualifications, limitations or restrictions thereof are as follows:

(a) **Voting Rights**. Except as otherwise required by law,

(i) Each share of Class A Common Stock shall entitle the record holder thereof as of the applicable record date to one (1) vote per share in person or by proxy on all matters submitted to a vote of the holders of Class A Common Stock, whether voting separately as a class or otherwise.

(ii) Each share of Class B-1 Common Stock shall entitle the record holder thereof as of the applicable record date to five (5) votes per share in person or by proxy on all matters submitted to a vote of the holders of Class B-1 Common Stock, whether voting separately as a class or otherwise.

(iii) Each share of Class B-2 Common Stock shall entitle the record holder thereof as of the applicable record date to one (1) vote per share in person or by proxy on all matters submitted to a vote of the holders of Class B-2 Common Stock, whether voting separately as a class or otherwise.

(iv) Except as otherwise required in this Certificate of Incorporation or by applicable law, the holders of shares of Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock shall vote together as a single class (or, if any holders of shares of Preferred Stock are entitled to vote together with the holders of Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock, as a single class with such holders of Preferred Stock) on all matters submitted to a vote of stockholders of the Corporation.

(v) Except as otherwise required by law, holders of Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(vi) If at any time the ratio at which Common Units (as defined below) are redeemable or exchangeable for shares of Class A Common Stock is amended or adjusted pursuant to the LLC Agreement (as defined below), (A) the number of votes per share of Class B-1 Common Stock to which holders of shares of Class B-1 Common Stock are entitled pursuant to Section 4.4(a)(ii) of this Article IV shall be automatically adjusted so that from and after such time the aggregate number of votes that a holder of Class B-1 Common Stock is entitled to vote with respect to all shares of Class B-1 Common Stock held by such holder is equal to the number of Class A Common Stock subject to be exchanged or redeemed for all Common Units held by such holder and (B) the number of votes per share of Class B-2 Common Stock to which holders of shares of Class B-2 Common Stock are entitled pursuant to Section 4.4(a)(iii) of this Article IV shall be automatically adjusted so that from and after such time the aggregate number of votes that a holder of Class B-2 Common Stock is entitled to vote with respect to all shares of Class B-2 Common Stock held by such holder is equal to the number of Class A Common Stock subject to be exchanged or redeemed for all Common Units held by such holder.

(b) Dividends; Stock Splits or Combinations.

(i) Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or of any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock out of the assets or funds of the Corporation that are by law available therefor, at such times and in such amounts as the Board of Directors in its discretion shall determine. Dividends shall not be declared or paid on the Class B-1 Common Stock or the Class B-2 Common Stock; the holders of shares of Class B-1 Common Stock shall have no right to receive dividends in respect of such shares of Class B-1 Common Stock; and the holders of shares of Class B-2 Common Stock shall have no right to receive dividends in respect of such shares of Class B-2 Common Stock.

(ii) In no event will any stock dividend, stock split, reverse stock split, combination of stock, reclassification or recapitalization be declared or made on the Class A Common Stock, the Class B-1 Common Stock or the Class B-2 Common Stock (each, a “**Stock Adjustment**”) unless (A) a corresponding Stock Adjustment on the Class A Common Stock, the Class B-1 Common Stock or the Class B-2 Common Stock, as the case may be, at the time outstanding is made in the same proportion and the same manner and (B) the Stock Adjustment has been reflected in the same economically equivalent manner on all LLC Units.

(iii) Stock dividends paid on (A) the Class A Common Stock may only be paid in shares of Class A Common Stock, (B) the Class B-1 Common Stock may only be paid with shares of Class B-1 Common Stock and (C) the Class B-2 Common Stock may only be paid with shares of Class B-2 Common Stock.

(c) Liquidation Rights. In the event of liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and after making provisions for preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to payments in liquidation shall be entitled, the remaining assets and funds of the Corporation available for distribution shall be divided among and paid ratably to the holders of all outstanding shares of Class A Common Stock in proportion to the number of shares of Class A Common Stock held by them. Without limiting the rights of the holders of Class B-1 Common Stock or Class B-2 Common Stock to have their Common Units redeemed or exchanged in accordance with Article IX of the LLC Agreement, neither the holders of shares of Class B-1 Common Stock nor the holders of Class B-2 Common Stock shall be entitled to receive any assets of the Corporation in any liquidation, dissolution or winding up. A consolidation, reorganization or merger of the Corporation with any other Person or Persons (as defined below), or a sale of all or substantially all of the assets of the Corporation, shall not be considered to be a dissolution, liquidation or winding up of the Corporation within the meaning of this Section 4.4(c).

(d) Class B-1 Common Stock and Class B-2 Common Stock.

(i) From and after the effectiveness of this Certificate of Incorporation with the Secretary of State of the State of Delaware (the “**Effective Time**”), (x) shares of Class B-1 Common Stock and Class B-2 Common Stock may be issued only to, and registered only in the name of, the Existing Owners and their respective Permitted Transferees (as defined below) in accordance with Section 4.5 (including all subsequent Permitted Transferees) (the Existing Owners together with such persons, collectively, the “**Permitted Owners**”) and (y) the aggregate number of shares of Class B-1 Common Stock and Class B-2 Common Stock at any time registered in the name of each such Permitted Owner must be equal to the aggregate number of Common Units held of record at such time by such Permitted Owner under the LLC Agreement (as defined below). As used in this Certificate of Incorporation, (A) “**Existing Owner**” means each of the holders of Common Units (other than the Corporation) of Fluence LLC, as set forth on Schedule A hereto, (B) “**Common Unit**” means a limited liability company interest in Fluence LLC, authorized and issued under the Third Amended and Restated Limited Liability Company Agreement of Fluence LLC, dated as of the date hereof, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time (the “**LLC Agreement**”), and constituting a “Common Unit” as defined in such LLC Agreement and (C) “**Permitted Transferee**” means (1) the Corporation and any of its subsidiaries, (2) any Affiliate (as defined below) of the respective transferor, and (3) any transferee of Common Units pursuant to a transfer made in compliance with the LLC Agreement.

(ii) Shares of Class B-1 Common Stock and Class B-2 Common Stock may be issued or transferred only in connection with the simultaneous issuance or transfer of an identical number of Common Units. Any purported issuance or transfer of shares of Class B-1 Common Stock or Class B-2 Common Stock not accompanied by a issuance or transfer of the identical number of Common Units shall be null and void and no force or effect, and the shares of Class B-1 Common Stock or Class B-2 Common Stock, as applicable, so issued or transferred shall be automatically transferred and to the Corporation and cancelled for no consideration.

(iii) Each outstanding share of Class B-1 Common Stock shall automatically convert into one (1) validly issued, fully paid and nonassessable share of Class B-2 Common Stock upon the earliest of (A) any transfer by an Existing Owner of such shares of Class B-1 Common Stock other than to an Affiliate of such Existing Owner, (B) with respect to each Existing Owner and its Affiliates, 5:00 p.m. (New York City time) on a date fixed by the Board of Directors that is not less than 60 days nor more than 180 days following the date that such Existing Owner, together with its Affiliates, ceases to hold an aggregate number of shares of all classes of Common Stock representing at least twenty percent (20%) of the aggregate number of all outstanding shares of all classes of Common Stock, and (C) 5:00 p.m. (New York City time) on the date that is seven (7) years following the closing of the Corporation’s initial public offering of Class A Common Stock in a firm commitment underwritten offering pursuant to an effective registration statement under the Securities Act of 1933, as amended.

(iv) In the event that there is a merger, consolidation or Change of Control (as defined below) of the Corporation, without limiting the rights of the holders of Class B-1 Common Stock and Class B-2 Common Stock to have their Common Units redeemed or exchanged in accordance with Article IX of the LLC Agreement, neither the holders of shares of Class B-1 Common Stock nor the holders of shares of Class B-2 Common Stock shall be entitled to receive any assets of the Corporation, whether in the form of consideration for such shares or in the form of a distribution of the proceeds of a sale of all or substantially all of the assets of the Corporation with respect to such shares.

(e) Ratio of Common Stock to Common Units. The Corporation shall, to the fullest extent permitted by law, undertake all necessary and appropriate action within its control to ensure that (i) the number of shares of Class A Common Stock issued by the Corporation at any time is equal to the aggregate number of Common Units held of record by the Corporation, and (ii) the number of shares of Class B-1 Common Stock and Class B-2 Common Stock issued by the Corporation at any time to, or otherwise held of record by, any Permitted Owner is no more than the aggregate number of Common Units held of record by such Permitted Owner, in each case, in accordance with the terms of the LLC Agreement.

Section 4.5 Transfer of Class B-1 Common Stock and Class B-2 Common Stock.

(a) A holder of Class B-1 Common Stock or Class B-2 Common Stock may surrender and transfer shares of such Class B-1 Common Stock or Class B-2 Common Stock, as applicable, to the Corporation for cancellation for no consideration at any time. Following the surrender and transfer, or other acquisition, of any shares of Class B-1 Common Stock or Class B-2 Common Stock to or by the Corporation, the shares shall automatically be cancelled and retired and such shares shall not be re-issued by the Corporation.

(b) Except as set forth in Section 4.5(a), a holder of Class B-1 Common Stock or Class B-2 Common Stock may Transfer shares of Class B-1 Common Stock or Class B-2 Common Stock only to a Permitted Transferee of such holder, and only if such holder Transfers an equal number of such holder's Common Units to such Permitted Transferee in compliance with the LLC Agreement. The Transfer restrictions described in this Section 4.5(b) are referred to as the "**Restrictions**".

(c) Any purported Transfer of shares of Class B-1 Common Stock or Class B-2 Common Stock in violation of the Restrictions shall be null and void *ab initio*. If, notwithstanding the Restrictions, a Person, voluntarily or involuntarily (including by way of a foreclosure), purportedly becomes or attempts to become, the purported owner (the "**Purported Owner**") of shares of Class B-1 Common Stock or Class B-2 Common Stock in violation of the Restrictions, then the Purported Owner shall not obtain any rights in, to or with respect to such shares of Class B-1 Common Stock or Class B-2 Common Stock (the "**Restricted Shares**"), and each Restricted Share shall automatically, without any further action on the part of the Corporation, be transferred to the Corporation for no consideration and cancelled.

(d) The Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by law or otherwise, regulations and procedures not inconsistent with the provisions of this Section 4.5 for determining whether any Transfer or acquisition of shares of Class B-1 Common Stock or Class B-2 Common Stock would violate the Restrictions, and for the orderly application, administration and implementation of the provisions of this Section 4.5. Any such procedures and regulations shall be kept on file with the Secretary of the Corporation and with the Corporation's transfer agent and shall be made available for inspection by and, upon written request shall be mailed to, any requesting holders of shares of Class B-1 Common Stock or Class B-2 Common Stock, as applicable.

(e) As used in this Section 4.5, the term "Transfer", as it relates to the shares of Class B-1 Common Stock or Class B-2 Common Stock, shall not be deemed to include any *bona fide* pledge or collateralization by a holder thereof to a financial institution in connection with any *bona fide* loan or debt transaction, but such term shall include any foreclosure on such shares by such financial institution following or in connection with any such pledge or collateralization.

Section 4.6 Certificates. All certificates or book entries representing shares of Class B-1 Common Stock or Class B-2 Common Stock shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN THE CERTIFICATE OF INCORPORATION OF THE CORPORATION (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR).

ARTICLE V.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting a redemption of the Common Units, such number of shares of Class A Common Stock as shall from time to time be sufficient to effect the redemption of all outstanding Common Units (other than those held by the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) in exchange for shares of Class A Common Stock.

ARTICLE VI.

Subject to the Stockholders Agreement (for so long as it remains in effect), the Board of Directors is expressly authorized to adopt, amend, repeal or rescind the bylaws of the Corporation (the “*Bylaws*”). The affirmative vote of at least a majority of the Board of Directors then in office shall be required in order for the Board of Directors to adopt, amend, repeal, or rescind the Bylaws. The stockholders shall also have power to adopt, repeal, alter, amend or rescind the Bylaws. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Certificate of Incorporation (including any Preferred Stock outstanding at any time), such adoption, repeal, alteration, amendment or rescission of the Bylaws by the stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE VII.

Section 7.1 Ballot. Elections of directors (each such director, in such capacity, a “*Director*”) need not be by written ballot unless the Bylaws shall so provide.

Section 7.2 Number and Terms of the Board of Directors. Subject to the terms of the Stockholders Agreement (for so long as it remains in effect) and the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of Directors shall be fixed from time to time exclusively by resolution adopted by a majority of the total number of authorized directors (from time to time) whether or not there exist any vacancies in previously authorized directorships; provided, that for as long as the Stockholders Agreement is in effect, the number of Directors shall never be less than the aggregate number of Directors that the parties to the Stockholders Agreement are entitled to designate from time to time pursuant to Section 1 thereof.

Section 7.3 Newly Created Directorships and Vacancies. Except as otherwise required by law and subject to the Stockholders Agreement (for so long as it remains in effect) and the separate rights of the holders of any series of Preferred Stock then outstanding, unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from the death, resignation, disqualification, removal from office or other cause shall be filled only by a majority vote of the Directors then in office, though less than a quorum, or by a sole remaining Director entitled to vote thereon, and not by the stockholders. Subject to the Stockholders Agreement (for so long as it remains in effect), any Director so chosen shall hold office until his or her successor shall be elected and qualified.

Section 7.4 Notice. Advance notice of stockholder nominations for election of Directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws.

ARTICLE VIII.

Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred stock, from and after the Voting Threshold Date (as defined below), any action required or permitted to be taken at any annual or special meeting of stockholders may only be taken at a duly called annual or special meeting of stockholders and may not be taken by written consent in lieu of a meeting. “*Voting Threshold Date*” shall mean 5:00 p.m. (New York City time) on the first day falling on or after the date on which the aggregate number of outstanding shares of Class B-1 Common Stock and Class B-2 Common Stock, voting together as a single class, cease to represent at least fifty percent (50%) of the total voting power of the outstanding shares of capital stock of the Corporation then entitled to vote generally in the election of directors.

ARTICLE IX.

Subject to the Stockholders Agreement (for so long as it remains in effect), the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation; provided that, notwithstanding any other provision of this Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of the Corporation, and, as applicable, such other approvals of the Board of Directors, as are required by law or by this Certificate of Incorporation, (A) the affirmative vote of the holders of sixty-six and two-thirds percent (66 2/3%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal, or adopt any provision of this Certificate of Incorporation inconsistent with, Article IV, Article V, Article VI, Article VII, Article VIII, this Article IX, Article X, Article XI, Article XII, and Article XIII; and (B) for so long as any shares of Class B-1 Common Stock or Class B-2 Common Stock are outstanding, (i) the affirmative vote of the holders at least eighty percent (80%) of the shares of Class B-1 Common Stock and Class B-2 Common Stock outstanding at the time of such vote, voting together as a single class, shall be required to amend or repeal, or adopt any provision of this Certificate of Incorporation inconsistent with Section 4.4 of Article IV or this clause (B) of Article IX, and (ii) the affirmative vote of the holders of a majority of the shares of Class A Common Stock outstanding at the time of such vote, voting as a separate class, shall be required to amend or repeal, by merger or otherwise, or adopt any provision of this Certificate of Incorporation that provides the holders of the Class B-1 Common Stock or Class B-2 Common Stock (1) any rights to receive Dividends or any other kind of distribution, (2) other than redemptions as permitted by the LLC Agreement, any right to convert into or be exchanged for shares of Class A Common Stock or (3) any other economic rights.

If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any Person or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any sentence of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other Persons and circumstances shall not in any way be affected or impaired thereby.

ARTICLE X.

The Corporation is authorized to indemnify, and to advance expenses to, each current or former Director, officer, employee or agent of the Corporation to the fullest extent permitted by Section 145 of the DGCL as it presently exists or may hereafter be amended. To the fullest extent permitted by the laws of the State of Delaware as it exists on the date hereof or as it may hereafter be amended, no Director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of his or her fiduciary duties as a director. No amendment to, or modification or repeal of, this Article X shall adversely affect any right or protection of a Director or of any officer, employee or agent of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, modification or repeal.

ARTICLE XI.

Section 11.1 Corporate Opportunity.

(a) To the fullest extent permitted by the laws of the State of Delaware and in accordance with Section 122(17) of the DGCL, (i) the Corporation hereby renounces all interest and expectancy that it otherwise would be entitled to have in, and all rights to be offered an opportunity to participate in, any business opportunity that from time to time may be presented to (1) AES Grid Stability, any Directors who are employees of or Affiliates of AES Grid Stability (other than any such Director who is also an employee of the Corporation or its subsidiaries), (2) Siemens Industry, any Directors who are employees of or Affiliates of Siemens Industry (other than any such Director who is also an employee of the Corporation or its subsidiaries), (3) QIA, any Directors who are employees of or Affiliates of QIA (other than any such Director who is also an employee of the Corporation or its subsidiaries) or (4) any Director or stockholder who is not employed by the Corporation or its subsidiaries (each such Person in clauses (1) through (4), an “**Exempt Person**”); (ii) no Exempt Person will have any duty to refrain from (1) engaging in a corporate opportunity in the same or similar lines of business in which the Corporation or its subsidiaries from time to time is engaged or proposes to engage or (2) otherwise competing, directly or indirectly, with the Corporation or any of its subsidiaries; and (iii) if any Exempt Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for such Exempt Person or any of his or her respective Affiliates, on the one hand, and for the Corporation or its subsidiaries, on the other hand, such Exempt Person shall have no duty to communicate or offer such transaction or business opportunity to the Corporation or its subsidiaries and such Exempt Person may take any and all such transactions or opportunities for itself or offer such transactions or opportunities to any other Person. Notwithstanding the foregoing, the preceding sentence of this Section 11.1(a) shall not apply to any potential transaction or business opportunity (x) that is expressly offered to a Director, executive officer or employee of the Corporation or its subsidiaries, solely in his or her capacity as a Director, executive officer or employee of the Corporation or its subsidiaries or (y) is agreed to be offered to the Corporation by AES Grid Stability or Siemens Industry pursuant to contractual arrangements among such parties.

(b) To the fullest extent permitted by the laws of the State of Delaware, no potential transaction or business opportunity may be deemed to be a corporate opportunity of the Corporation or its subsidiaries unless (i) the Corporation or its subsidiaries would be permitted to undertake such transaction or opportunity in accordance with this Certificate of Incorporation, (ii) the Corporation or its subsidiaries at such time have sufficient financial resources to undertake such transaction or opportunity, (iii) the Corporation or its subsidiaries have an interest or expectancy in such transaction or opportunity and (iv) such transaction or opportunity would be in the same or similar line of business in which the Corporation or its subsidiaries are then engaged or a line of business that is reasonably related to, or a reasonable extension of, such line of business.

Section 11.2 Liability. To the fullest extent permitted by law, no stockholder and no Director will be liable to the Corporation or its subsidiaries or stockholders for breach of any duty solely by reason of any activities or omissions of the types referred to in this Article XI, except to the extent such actions or omissions are in breach of this Article XI.

ARTICLE XII.

Unless the Corporation consents in writing to the selection of an alternative forum, (A) 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) shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any current or former director, officer, employee, agent or stockholder of the Corporation arising pursuant to any provision of the DGCL or the Corporation’s Certificate of Incorporation or Bylaws (as either may be amended and/or restated from time to time) 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 Corporation that is governed by the internal affairs doctrine; and (B) subject to the preceding provisions of this Article XII, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Notwithstanding the foregoing, this Article XII shall not apply to claims seeking solely to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the U.S. federal courts have exclusive jurisdiction.

To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

ARTICLE XIII.

Section 13.1 Section 203 of the DGCL. The Corporation expressly elects not to be governed by Section 203 of the DGCL and the restrictions and limitations set forth therein.

Section 13.2 Interested Stockholder Transactions. Notwithstanding anything to the contrary set forth in this Certificate of Incorporation, the Corporation shall not engage in any Business Combination (as defined below) at any point in time at which the Corporation's Class A Common Stock or Class B-1 Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act with any Interested Stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an Interested Stockholder, unless:

(a) prior to such time that such stockholder became an Interested Stockholder, the Board of Directors approved either the Business Combination or the transaction which resulted in such stockholder becoming an Interested Stockholder; or

(b) at or subsequent to such time that such stockholder became an Interested Stockholder, the Business Combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the outstanding shares of capital stock of the Corporation which is not owned by such Interested Stockholder; or

(c) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least eighty-five percent (85%) of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

(d) a stockholder becomes an interested stockholder inadvertently and (A) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (B) would not, at any time within the three- year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or

(e) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (A) constitutes one of the transactions described in the second sentence of this Section 13 of Article XIII; (B) the business combination is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board; and (C) is approved or not opposed by a majority of the directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the Corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the Corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation (other than to any direct or indirect wholly-owned subsidiary or to the Corporation) having an aggregate market value equal to fifty percent (50%) or more of either that aggregate market value of all of the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock (as defined hereinafter) of the Corporation; or (z) a proposed tender or exchange offer for fifty percent (50%) or more of the outstanding voting stock of the Corporation. The Corporation shall give not less than 20 days' notice to all interested stockholders prior to the consummation of any of the transactions described in clause (x) or (y) of the second sentence of this Section 13(ii) of Article XIII.

Section 13.3 Definitions. As used in this Certificate of Incorporation, the following terms shall have the following meaning:

- (a) **“AES Grid Stability”** means AES Grid Stability, LLC, a Delaware limited liability company.
- (b) **“AES Related Parties”** means AES Grid Stability and its Affiliates.
- (c) **“Affiliate”** means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person;
- (d) **“Associate”**, when used to indicate a relationship with any Person, means: (i) any corporation, partnership, unincorporated association or other entity of which such Person is a director, officer or partner or is, directly or indirectly, the owner of twenty percent (20%) or more of any class of shares of voting stock of the Corporation; (ii) any trust or other estate in which such Person has at least a twenty percent (20%) beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such Person, or any relative of such spouse, who has the same residence as such Person.
- (e) **“Business Combination”** means (i) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation with the Interested Stockholder or (ii) any sale, lease, exchange, mortgage, pledge, Transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the Interested Stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding shares of capital stock of the Corporation.
- (f) **“Change of Control”** means the occurrence of any of the following events: (1) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares of Class A Common Stock, Class B-1 Common Stock, Preferred Stock and/or any other class or classes of capital stock of the Corporation (if any) representing in the aggregate more than fifty percent (50%) of the voting power of all of the outstanding shares of capital stock of the Corporation entitled to vote; (2) the stockholders of the Corporation approve a plan of complete liquidation or dissolution of the Corporation or there is consummated a transaction or series of related transactions for the sale), lease, exchange or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation’s assets (including a sale of all or substantially all of the assets of Fluence LLC); (3) there is consummated a merger or consolidation of the Corporation with any other corporation or entity, and, immediately after the consummation of such merger or consolidation, the voting securities of the Corporation immediately prior to such merger or consolidation do not continue to represent, or are not converted into, voting securities representing more than fifty percent (50%) of the combined voting power of the outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a subsidiary, the ultimate parent thereof; or (4) the Corporation ceases to be the sole managing member of Fluence LLC; provided, however, that a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of related transactions immediately following which (a) the beneficial owners of the Class A Common Stock, Class B-1 Common Stock, Preferred Stock and/or any other class or classes of capital stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions or (b) in the case of the foregoing clauses (1) or (3), either the AES Related Parties or the Siemens Related Parties are the “beneficial owner” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares of Class A Common Stock, Class B-1 Common Stock, Preferred Stock and/or any other class or classes of capital stock of the Corporation (if any) representing in the aggregate more than fifty percent (50%) of the voting power of all of the outstanding shares of capital stock of the Corporation entitled to vote (or), in the case of a transaction described in the foregoing clause (3), more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a subsidiary, the ultimate parent thereof).
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(g) **“Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended, and any applicable rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

(h) **“Interested Stockholder”** means any Person (other than the Corporation and any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the beneficial owner (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of fifteen percent (15%) or more of the outstanding shares of capital stock of the Corporation that are entitled to vote generally in an election of directors, or (ii) is an Affiliate of the Corporation and was the beneficial owner of fifteen percent (15%) or more of the outstanding shares of capital stock of the Corporation that are entitled to vote generally in an election of directors at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such Person is an Interested Stockholder, and the Affiliates and Associates of such Person. Notwithstanding anything in this Article XIII to the contrary, the term “Interested Stockholder” shall not include: (x) the AES Related Parties or any of their current or future Affiliates (so long as such Affiliate remains an Affiliate) or Associates or any other Person with whom any of the foregoing are acting as a group or in concert for the purpose of acquiring, holding, voting or disposing of shares of capital stock of the Corporation, (y) the Siemens Related Parties or any of their current or future Affiliates (so long as such Affiliate remains an Affiliate) or Associates, or any other Person with whom any of the foregoing are acting as a group or in concert for the purpose of acquiring, holding, voting or disposing of shares of capital stock of the Corporation, or (z) any Person who acquires beneficial ownership of fifteen percent (15%) or more of the then- outstanding shares of capital stock of the Corporation that are entitled to vote generally in an election of directors directly or indirectly from a AES Related Party or a Siemens Related Party, and excluding, for the avoidance of doubt, any Person who acquires voting stock of the Corporation through a broker’s transaction executed on any securities exchange or other over-the-counter market or pursuant to an underwritten public offering.

(i) **“Person”** means any individual, corporation, partnership, limited liability company, unincorporated association or other entity.

(j) **“QIA”** refers to QIA Florence Holding LLC.

(k) **“Securities Act”** means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations promulgated thereunder, and any successor to such statute, rules or regulations.

(l) **“Siemens Industry”** refers to Siemens Industry, Inc., a Delaware corporation.

(m) **“Siemens Related Parties”** means Siemens Industry and its Affiliates.

(n) **“Transfer”** (and, with a correlative meaning, **“Transferring”**) means any sale, transfer, assignment, redemption or other disposition of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of Law) (a) any interest (legal or beneficial) in any shares of capital of stock of the Corporation or (b) any equity or other interest (legal or beneficial) in any stockholder if substantially all of the assets of such stockholder consist solely of shares of capital stock of the Corporation.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Incorporation to be signed on October 27, 2021.

FLUENCE ENERGY, INC.

By: /s/ Manuel Perez Dubuc

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

[Signature Page to Amended and Restated Certificate of Incorporation]

SCHEDULE A

ISSUANCE OF CLASS B-1 COMMON STOCK

NAME AND ADDRESS OF MEMBER

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

Siemens Industry, Inc.

4800 North Point Parkway

Alpharetta, GA 30005

Attention: Craig Langley

Email: Langley.craig@siemens.com

AMENDED AND RESTATED BYLAWS

OF

FLUENCE ENERGY, INC.

Dated as of October 27, 2021

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ARTICLE I.
MEETINGS OF STOCKHOLDERS

Section 1.01 Place of Meetings. Meetings of stockholders of Fluence Energy, Inc., a Delaware corporation (the “**Corporation**”; and such stockholders, the “**Stockholders**”), may be held at any place, within or without the State of Delaware, as may be designated by or in the manner determined by the board of directors of the Corporation (the “**Board of Directors**”). In the absence of such designation, meetings of Stockholders shall be held at the principal executive office of the Corporation. The Board of Directors may, in its sole discretion, determine that a meeting of Stockholders shall not be held at any place, but may instead be held solely by means of remote communication authorized by and in accordance with Section 211(a) of the General Corporation Law of the State of Delaware (the “**DGCL**”).

Section 1.02 Annual Meetings. The annual meeting of Stockholders shall be held for the election of members of the Board of Directors (the “**Directors**”) at such date and time as may be designated by or in the manner determined by resolution of the Board of Directors from time to time. Any other business as may be properly brought before the annual meeting of Stockholders may be transacted at the annual meeting of Stockholders. The Board of Directors may postpone, reschedule or cancel any annual meeting of Stockholders previously scheduled by the Board of Directors.

Section 1.03 Special Meetings. Special meetings of the Stockholders may be called only by such persons and only in such manner as may be set forth in the Certificate of Incorporation of the Corporation (as the same may be amended, restated, amended and restated or otherwise modified from time to time, the “**Certificate of Incorporation**”) and in these bylaws. From and after the Voting Threshold Date (as defined in the Certificate of Incorporation), special meetings of Stockholders for any purpose or purposes may be called only by (i) the chairperson of the Board of Directors (the “**Chairperson**”) or (ii) an officer of the Corporation pursuant to a resolution adopted by a majority of the Directors then in office. Special meetings of Stockholders validly called in accordance with this Section 1.03 of these bylaws (as the same may be amended, restated, amended and restated or otherwise modified from time to time, these “**Bylaws**”) may be held at such date and time as specified in the applicable notice of such meeting. Notice of every special meeting of Stockholders shall state the purpose or purposes of the meeting, and the business transacted at any special meeting of Stockholders shall be limited to the purpose or purposes stated in the notice. Upon the prior written consent of a majority of the Directors then in office, the Board of Directors may postpone, reschedule or cancel any special meeting of Stockholders previously scheduled by the Chairperson or Board of Directors.

Section 1.04 Notice of Meetings. Whenever Stockholders are required or permitted to take any action at a meeting of Stockholders, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the Stockholders entitled to vote at the meeting (if such date is different from the record date for Stockholders entitled to notice of the meeting) and, in the case of a special meeting of Stockholders, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law, the Certificate of Incorporation or these Bylaws, the notice of any meeting of Stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each Stockholder entitled to vote at the meeting as of the record date for determining the Stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder’s address as it appears on the records of the Corporation.

Section 1.05 Adjournments. Any meeting of Stockholders, annual or special, may be adjourned from time to time by the chairperson of the meeting (or by the Stockholders in accordance with Section 1.06) to reconvene at the same or some other place, if any, and the same or some other time, and notice need not be given to the Stockholders of any such adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting of Stockholders, the Corporation may transact any business which might have been transacted at the original meeting of Stockholders. If the adjournment is for more than 30 days, a notice of the adjourned meeting of Stockholders shall be given to each Stockholder of record entitled to vote at the adjourned meeting of Stockholders. If after the adjournment a new record date for determination of Stockholders entitled to vote is fixed for the adjourned meeting of Stockholders, the Board of Directors shall fix a new record date for determining Stockholders entitled to notice of such adjourned meeting of Stockholders in accordance with Section 1.09(a) of these Bylaws, and shall give notice of the adjourned meeting of Stockholders to each Stockholder of record entitled to vote at such adjourned meeting of Stockholders as of the record date fixed for notice of such adjourned meeting of Stockholders. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the Stockholder at such Stockholder's address as it appears on the records of the Corporation.

Section 1.06 Quorum. At any meeting of the Stockholders, the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation ("**Stock**") entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by applicable law, the rules of any stock exchange upon which the Corporation's securities are listed, the Certificate of Incorporation or these Bylaws. In the absence of a quorum, then either (i) the chairperson of the meeting or (ii) the Stockholders by the affirmative vote of a majority of the voting power of the outstanding shares of Stock entitled to vote thereon, present in person or represented by proxy, shall have the power to adjourn the meeting of Stockholders from time to time in the manner provided in Section 1.05 of these Bylaws until a quorum is present or represented. Where a separate vote by a class or classes or series of Stock is required by applicable law or the Certificate of Incorporation, the holders of a majority of voting power of the shares of such class or classes or series of Stock issued and outstanding and entitled to vote on such matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

Section 1.07 Organization. Meetings of Stockholders shall be presided over by the Chairperson or by such other officer of the Corporation or Director as designated by the Board of Directors or the Chairperson, or in the absence of such person or designation, by a chairperson chosen at the meeting by the affirmative vote of a majority of the voting power of the outstanding shares of Stock present or represented at the meeting and entitled to vote at the meeting (provided there is a quorum). The Secretary of the Corporation ("**Secretary**") shall act as secretary of the meeting, but in his or her absence, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.08 Voting; Proxies. Each Stockholder entitled to vote at any meeting of Stockholders shall be entitled to the number of votes, if any, for each share of Stock held of record by such Stockholder which has voting power upon the matter in question as set forth in the Certificate of Incorporation. Each Stockholder entitled to vote at a meeting of Stockholders or express consent to corporate action in writing without a meeting (if permitted by the Certificate of Incorporation) may authorize another person or persons to act for such Stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy may be authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person (or by means of remote communication, if applicable) or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of Stockholders need not be by written ballot. Unless otherwise provided in the Certificate of Incorporation, at all meetings of Stockholders for the election of Directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect Directors. No holder of shares of Stock shall have the right to cumulate votes. All other elections and questions presented to the Stockholders at a meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority of votes cast (excluding abstentions and broker non-votes) on such matter, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter.

Section 1.09 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the Stockholders entitled to notice of any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by applicable law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the Stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining Stockholders entitled to notice of and to vote at a meeting of Stockholders shall be at the close of business on the day immediately preceding the day on which notice is given, or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of Stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for Stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of Stockholders entitled to vote in accordance with the foregoing provisions of this Section 1.09(a) at the adjourned meeting.

(b) In order that the Corporation may determine the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining Stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the Stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining Stockholders entitled to consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by applicable law or the Certificate of Incorporation, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law and (ii) if prior action by the Board of Directors is required by applicable law or the Certificate of Incorporation, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 1.10 List of Stockholders Entitled to Vote. The Corporation shall prepare, at least 10 days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the Stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the Stockholders entitled to vote as of the 10th day before the meeting date), arranged in alphabetical order, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder as of the record date (or such other date). Such list shall be open to the examination of any Stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of Stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any Stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the “stock ledger” shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders required by this Section 1.10 or to vote in person or by proxy at any meeting of Stockholders. For purposes of these Bylaws, the term “stock ledger” means one or more records administered by or on behalf of the Corporation in which the names of all of the Corporation’s Stockholders of record, the address and number of shares registered in the name of each such Stockholder, and all issuances and transfers of stock of the Corporation are recorded.

Section 1.11 Action by Written Consent in Lieu of a Meeting. Any action required or permitted to be taken at any annual or special meeting of Stockholders may be taken without a meeting, without prior notice and without a vote, only (i) to the extent set forth in the Certificate of Incorporation of the Corporation, and (ii) if a consent or consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares of the relevant class(es) or series of Stock representing not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of Stock then issued and outstanding (other than treasury Stock) entitled to vote thereon were present and voted and are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 1.12 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of Stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of Stockholders, the person presiding at the meeting may, and to the extent required by law, shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of Stock outstanding and the voting power of each such share, (ii) determine the shares of Stock represented at the applicable meeting of the Stockholders and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of Stock represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by applicable law. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.13 Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting of the Stockholders shall be announced at the meeting by the person presiding over the meeting designated in accordance with Section 1.07 of these Bylaws. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of Stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of Stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to Stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to such meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the applicable meeting of Stockholders, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.14 Advance Notice Procedures for Business Brought before a Meeting. This Section 1.14 shall apply to any business that may be brought before an annual meeting of Stockholders other than nominations for election to the Board of Directors at such a meeting, which shall be governed by Section 1.15 of these Bylaws. Stockholders seeking to nominate Persons for election to the Board of Directors must comply with Section 1.15 of these Bylaws, and this Section 1.14 shall not be applicable to nominations for election to the Board of Directors except as expressly provided in Section 1.15 of these Bylaws.

(a) At an annual meeting of the Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting of the Stockholders, business must be (a) specified in a notice of meeting of the Stockholders given by or at the direction of the Board of Directors or a duly authorized committee thereof, (b) if not specified in a notice of meeting of the Stockholders, otherwise brought before the meeting by the Board of Directors or the chairperson of the meeting, or (c) otherwise properly brought before the meeting by a Stockholder present in person who (A)(1) was a Stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 1.14 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 1.14 or (B) properly made such proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the “**Exchange Act**”). The foregoing clause (c) shall be the exclusive means for a Stockholder to propose business to be brought before an annual meeting of the Stockholders. The only matters that may be brought before a special meeting of the Stockholders are the matters specified in the Corporation’s notice of meeting of the Stockholders given by or at the direction of the Person calling the meeting pursuant to the Certificate of Incorporation and Section 1.03 of these Bylaws. For purposes of these Bylaws, “**Person**” shall mean any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity. For purposes of this Section 1.14 and Section 1.15 of these Bylaws, “**present in person**” shall mean that the Stockholder proposing that the business be brought before the annual meeting or special meeting of the Stockholders, as applicable, or, if the proposing Stockholder is not an individual, a qualified representative of such proposing Stockholder, appear in person at such annual or special meeting, and a “qualified representative” of such proposing Stockholder shall be, if such proposing Stockholder is (x) a general or limited partnership, any general partner or Person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (y) a corporation or a limited liability company, any officer or Person who functions as an officer of the corporation or limited liability company or any officer, director, general partner or Person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (z) a trust, any trustee of such trust.

(b) Without qualification, for business to be properly brought before an annual meeting of the Stockholders by a Stockholder, the Stockholder must (a) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary and (b) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.14. To be timely, a Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the one-year anniversary of the immediately preceding year's annual meeting (which anniversary, in the case of the first annual meeting of the Stockholders following the closing of the Corporation's initial public offering, shall be deemed to be February 28, 2022); *provided, however*, that if the date of the annual meeting of the Stockholders is more than 30 days before or more than 60 days after such anniversary date, notice by such Stockholder to be timely must be so delivered, or mailed and received, not later than the later of (A) the 90th day prior to such annual meeting and (B) the 10th day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "**Timely Notice**"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 1.14, a Stockholder's notice to the Secretary shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the number of shares of each class or series of Stock of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of Stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "**Stockholder Information**");

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (“**Synthetic Equity Position**”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of Stock of the Corporation; *provided* that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided, further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of Stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or Directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (F) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the applicable meeting of the Stockholders pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (F) are referred to as “**Disclosable Interests**”); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the Stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the Stockholder proposes to bring before the annual meeting of the Stockholders, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and the text of any proposed amendment to these Bylaws), (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other Person or entity (including their names) in connection with the proposal of such business by such Stockholder and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; *provided, however*, that the disclosures required by this Section 1.14(c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the Stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(d) For purposes of this Section 1.14, the term “**Proposing Person**” shall mean (a) the Stockholder providing the notice of business proposed to be brought before an annual meeting of the Stockholders, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting of the Stockholders is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such Stockholder in such solicitation.

(e) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting of the Stockholders, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.14 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof).

(f) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting of the Stockholders that is not properly brought before the meeting in accordance with this Section 1.14. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 1.14, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(g) In addition to the requirements of this Section 1.14 with respect to any business proposed to be brought before an annual meeting of the Stockholders, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 1.14 shall be deemed to affect the rights of Stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(h) For purposes of these Bylaws, “public disclosure” shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

Section 1.15 Advance Notice Procedures for Nominations of Directors.

(a) Nominations of any Person for election to the Board of Directors at an annual meeting or at a special meeting of the Stockholders (but only if the election of Directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (a) by or at the direction of the Board of Directors, including by any committee or Persons authorized to do so by the Board of Directors or these Bylaws, or (b) by a Stockholder present in Person (as defined in Section 1.14) (1) who was a Stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 1.15 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 1.15 as to such notice and nomination. Other than as provided in that certain stockholders agreement, dated as of October 27, 2021, by and among the Corporation and the other Persons party thereto (as it may be amended from time to time in accordance with its terms, the “**Stockholders Agreement**”) for so long as it remains in effect, the foregoing clause (b) shall be the exclusive means for a Stockholder to make any nomination of a Person or Persons for election to the Board of Directors at any annual meeting or special meeting of Stockholders.

(i) Without qualification, for a Stockholder to make any nomination of a Person or Persons for election to the Board of Directors at an annual meeting of the Stockholders, the Stockholder must (a) provide Timely Notice (as defined in Section 1.14(b) of these Bylaws) thereof in writing and in proper form to the Secretary at the principal executive offices of the Corporation, (b) provide the information, agreements and questionnaires with respect to such Stockholder and its candidate for nomination as required by this Section 1.15, and (c) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.15.

(ii) Without qualification, if the election of Directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting of the Stockholders, then for a Stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting of the Stockholders, the Stockholder must (a) provide timely notice thereof in writing and in proper form to the Secretary at the principal executive offices of the Corporation, (b) provide the information, agreements and questionnaires with respect to such Stockholder and its candidate for nomination required by this Section 1.15, and (c) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.15. To be timely for purposes of this Section 1.15(b)(ii), a Stockholder’s notice for nominations to be made at a special meeting of the Stockholders must be delivered to, or mailed to and received by the Secretary not earlier than the 120th day prior to such special meeting and not later than the 90th day prior to such special meeting or, if later, the 10th day following the day on which public disclosure (as defined in Section 1.14(h)) of the date of such special meeting was first made.

(iii) In no event shall any adjournment or postponement of an annual meeting or special meeting of the Stockholders or the announcement thereof commence a new time period for the giving of a Stockholder's notice as described above.

(iv) In no event may a Nominating Person (as defined below) provide notice under this Section 1.15 or otherwise with respect to a greater number of Director candidates than are subject to election by Stockholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of Directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (i) the conclusion of the time period for Timely Notice (with respect to an annual meeting of the Stockholders), (ii) the date set forth in Section 1.15(b)(ii) (with respect to a special meeting) or (iii) the 10th day following the date of public disclosure (as defined in Section 1.14(h)) of such increase.

(b) To be in proper form for purposes of this Section 1.15, a Stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person, the Stockholder Information (as defined in Section 1.14(c)(i) of these Bylaws) except that for purposes of this Section 1.15, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 1.14(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 1.14(c)(ii)), except that for purposes of this Section 1.15 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 1.14(c)(ii) and the disclosure with respect to the business to be brought before the meeting of the Stockholders in Section 1.14(c)(iii) shall be made with respect to nomination of each Person for election as a Director at such meeting); and

(iii) As to each candidate whom a Nominating Person proposes to nominate for election as a Director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a Stockholder's notice pursuant to this Section 1.15 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of Directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a Director if elected), (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a Director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as "**Nominee Information**"), and (D) a completed and signed questionnaire, representation and agreement as provided in Section 1.15(f).

(c) For purposes of this Section 1.15, the term “*Nominating Person*” shall mean (a) the Stockholder providing the notice of the nomination proposed to be made at the meeting of the Stockholders, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made and (c) any other participant in such solicitation.

(d) A Stockholder providing notice of any nomination proposed to be made at a meeting of the Stockholders shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.15 shall be true and correct as of the record date for notice of the meeting and as of the date that is 10 business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of 10 business days prior to the meeting or any adjournment or postponement thereof).

(e) To be eligible to be a candidate for election as a Director at an annual or special meeting of the Stockholders, a candidate must be nominated in the manner prescribed in this Section 1.15 and the candidate for nomination, whether nominated by the Board of Directors or by a Stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board of Directors), to the Secretary at the principal executive offices of the Corporation, (a) a completed written questionnaire (in the form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such candidate for nomination and (b) a written representation and agreement (in the form provided by the Corporation) that such candidate for nomination (A) is not, and will not become a party to, any agreement, arrangement or understanding with any Person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a Director that has not been disclosed in such written questionnaire and (B) if elected as a Director, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to all Directors and in effect during such Person’s term in office as a Director (and, if requested by any candidate for nomination, the Secretary shall provide to such candidate for nomination all such policies and guidelines then in effect).

(f) The Board of Directors may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of Stockholders at which such candidate’s nomination is to be acted upon in order for the Board of Directors to determine the eligibility of such candidate for nomination to be an independent Director in accordance with the Corporation’s Corporate Governance Guidelines.

(g) In addition to the requirements of this Section 1.15 with respect to any nomination proposed to be made at a meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(h) No candidate shall be eligible for nomination as a Director unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with this Section 1.15, as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 1.15, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(i) Notwithstanding anything in these Bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a Director unless nominated and elected in accordance with this Section 1.15.

(j) Notwithstanding anything in this Section 1.15 to the contrary, the requirements of this Section 1.15 shall not apply to a Stockholder exercising its rights to designate persons for nomination for election to the Board of Directors in accordance with the provisions of the Stockholders Agreement for so long as it remains in effect.

ARTICLE II. BOARD OF DIRECTORS

Section 2.01 Number; Tenure; Qualifications. Subject to the Certificate of Incorporation, the terms of the Stockholders Agreement (for so long as it remains in effect) and the separate rights of holders of any series of Preferred Stock to elect Directors, the total number of Directors constituting the entire Board of Directors shall be fixed from time to time exclusively by resolution adopted by a majority of the Directors then in office. Each Director shall hold office until such time as provided in the Certificate of Incorporation. Directors need not be Stockholders to be qualified for election or service as a Director.

Section 2.02 Election; Resignation; Removal; Vacancies. Except as otherwise provided in the Certificate of Incorporation or these Bylaws, Directors shall be elected at the annual meeting of Stockholders by such Stockholders that have the right to vote on such election. Any Director may resign at any time upon written or electronic notice to the Corporation. Such resignation shall be effective upon delivery unless otherwise specified. Subject to the rights of holders of any series of Preferred Stock and the terms of the Stockholders Agreement (for so long as it remains in effect), Directors may be removed only as expressly provided in the Certificate of Incorporation. Except as otherwise required by applicable law, and subject to and in accordance with the rights of the holders of any series of Preferred Stock then outstanding and the terms of the Stockholders Agreement (for so long as it remains in effect), unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of Directors or any vacancies on the Board of Directors resulting from the death, resignation, disqualification, removal from office or other cause shall be filled only by a majority vote of the Directors then in office, though less than a quorum, or by a sole remaining Director entitled to vote thereon, and not by the Stockholders. Any Director so chosen shall hold office until his or her successor shall be elected and qualified.

Section 2.03 Regular Meetings. Regular meetings of the Board of Directors may be held at such places, if any, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. A notice of regular meetings of the Board of Directors shall not be required.

Section 2.04 Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson, the Chief Executive Officer or a majority of the Directors then in office and shall be held at such time, date and place, if any, within or without the State of Delaware as he or she or they shall fix. Notice to Directors of the date, place and time of any special meeting of the Board of Directors shall be given to each Director by the Secretary or by the officer or one of the Directors calling the meeting. Such notice may be given in person, by recognized international express courier service, or by e-mail, telephone, telecopier, facsimile or other means of electronic transmission. If the notice is delivered in person, by e-mail, telephone, telecopier, facsimile or other means of electronic transmission, it shall be delivered or sent at least 24 hours before the time of holding of the meeting. If the notice is sent by recognized international express courier service, it shall be deposited with such courier service at least seven days before the time of the holding of the meeting.

Section 2.05 Telephonic Meetings Permitted. Members of the Board of Directors may participate in any meetings of the Board of Directors thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting of the Board of Directors pursuant to this Section 2.05 shall constitute presence in person at such meeting.

Section 2.06 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the total number of authorized Directors shall constitute a quorum for the transaction of business; *provided* that, solely for the purposes of filling vacancies pursuant to Section 2.02 of these Bylaws, a meeting of the Board of Directors may be held if a majority of the Directors then in office participate in such meeting. The affirmative vote of a majority of the Directors present at any meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors, except as may be otherwise specifically required by applicable law, the Certificate of Incorporation or these Bylaws.

Section 2.07 Organization. Meetings of the Board of Directors shall be presided over by the Chairperson, or in his or her absence by the person whom the Chairperson shall designate, or in the absence of the foregoing persons by a chairperson chosen at the meeting by the affirmative vote of a majority of the Directors present at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.08 Action by Unanimous Consent of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting of the Board of Directors if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission. Thereafter, the writing or writings or electronic transmissions shall be filed with the minutes of proceedings of the Board of Directors or such committee in accordance with applicable law.

Section 2.09 Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary or other compensation as a Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for attending committee meetings. Any Director may decline any or all such compensation payable to such Director in his or her discretion.

Section 2.10 Chairperson. Subject to the provisions of the Stockholders Agreement for so long as it is in effect, the Board of Directors may appoint from its members a Chairperson. The Board of Directors may, in its sole discretion, from time to time appoint one or more vice chairpersons (each, a "**Vice Chairperson**"), each of whom in such capacity shall report directly to the Chairperson.

ARTICLE III. COMMITTEES

Section 3.01 Committees. Subject to the provisions of the Stockholders Agreement for so long as it is in effect, the Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of any committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by applicable law and to the extent provided in a resolution of the Board of Directors, shall have and may exercise all of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation (if one be adopted) to be affixed to all papers which may require it. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee (or resolution of the committee designating the subcommittee, if applicable), a majority of the Directors then serving on a committee or subcommittee, as applicable, shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee or subcommittee, as applicable, present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, as applicable. Special meetings of any committee of the Board of Directors may be held at any time or place, if any, within or without the State of Delaware whenever called by the Chairperson or a majority of the members of such committee.

Section 3.02 Committee Minutes. Each committee of the Board of Directors shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.03 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each such committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV.
OFFICERS

Section 4.01 Officers. The officers of the Corporation shall be a Chief Executive Officer, a President and a Secretary. The offices of Chief Executive Officer and President may be held by the same person. The Corporation may also have, at the discretion of the Board of Directors, a Chairperson of the Board of Directors (subject to the requirements of the Stockholders Agreement for so long as it is in effect), a Vice Chairperson of the Board of Directors, a Chief Financial Officer, one or more Senior Vice Presidents, one or more Vice Presidents, a Treasurer (who may be the same person as the Chief Financial Officer), one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Each officer of the Corporation shall hold office for such term as may be prescribed by the Board of Directors and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No officer need be a Stockholder or Director.

Section 4.02 Appointment of Officers. The Board of Directors shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 4.03 of these Bylaws.

Section 4.03 Subordinate Officers. The Board of Directors may appoint, or empower the Chief Executive Officer of the Corporation or, in the absence of a Chief Executive Officer of the Corporation, the President of the Corporation, to appoint, such other officers and agents as the business of the Corporation may require (any such officer or agent, a "Subordinate Officer"). Each of such Subordinate Officer shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

Section 4.04 Removal and Resignation of Officers. Any officer may be removed, either with or without cause, by an affirmative vote of the Board of Directors at any regular or special meeting of the Board of Directors; *provided further* that any Subordinate Officer may also be removed, either with or without cause, by the Chief Executive Officer of the Corporation or, in the absence of a Chief Executive Officer of the Corporation, the President of the Corporation. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. If a resignation is made effective at a later date and the Corporation accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor shall not take office until the effective date. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 4.05 Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or as provided in Section 4.03.

Section 4.06 Chief Executive Officer. Subject to any supervisory powers as may be given by the Board of Directors to the Chairperson (if any), the Chief Executive Officer of the Corporation shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the Stockholders and, in the absence or nonexistence of a Chairperson, at all meetings of the Board of Directors at which he or she is present and shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 4.07 President. The Board of Directors may, but is not obligated to, appoint a President of the Corporation. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairperson (if any) or the Chief Executive Officer, the President of the Corporation, if appointed, shall have general supervision, direction, and control of the business and other officers of the Corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 4.08 Vice Presidents and Senior Vice Presidents. The Board of Directors may, but is not obligated to, appoint one or more Vice Presidents and Senior Vice Presidents of the Corporation. The Vice Presidents and Senior Vice Presidents of the Corporation, if appointed, shall have supervision, direction, and control of those functions and departments the business of the Corporation as the Board of Directors or the Chief Executive Officer prescribe for such persons from time to time.

Section 4.09 Secretary. The Secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of the Board of Directors, committees of the Board of Directors, and Stockholders. The minutes shall show the time and place of each such meeting, the names of those present at such Directors' meetings or committee meetings, the number of shares of Stock present or represented at such Stockholders' meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board of Directors, a share register, or a duplicate share register, showing the names of all Stockholders and their addresses, the number and classes of shares of Stock held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give, or cause to be given, notice of all meetings of the Stockholders and of the Board of Directors required to be given by applicable law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by these Bylaws. The Board of Directors or the Chief Executive Officer may, but are not obligated to, appoint one or more Assistant Secretaries to assist the Secretary in his or her duties and to perform such duties during any absence of the Secretary.

Section 4.10 Chief Financial Officer. The Chief Financial Officer of the Corporation shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any Director. The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the President, if any is appointed, the Chief Executive Officer, or the Directors, upon request, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws. If at any time there shall be no Treasurer of the Corporation, then the Chief Financial Officer shall be the Treasurer.

Section 4.11 Treasurer. The Board of Directors or the Chief Executive Officer may, but shall not be obligated to, appoint a Treasurer of the Corporation to assist and hold office separate from the Chief Financial Officer of the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the Chief Financial Officer, the Chief Executive Officer, or the Directors, upon request, an account of all his or her transactions as Treasurer, and shall have other powers and perform such other duties as may be prescribed by the Board of Directors, the Chief Executive Officer or these Bylaws. The Board of Directors or the Chief Executive Officer may, but are not obligated to, appoint one or more Assistant Treasurers to assist the Treasurer in his or her duties and to perform such duties during any absence of the Treasurer.

Section 4.12 Representation of Shares of Other Entities. Unless otherwise directed by the Board of Directors, the Chief Executive Officer, or any other person authorized by the Board of Directors or the Chief Executive Officer, is authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares, securities or interests of any other corporation or entity standing in the name of the Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

Section 4.13 Authority and Duties of Officers. All officers of the Corporation shall respectively have such powers and authority and shall perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors.

Section 4.14 Compensation. The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board of Directors. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a Director.

ARTICLE V.
STOCK

Section 5.01 Certificates. The shares of Stock shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of Stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of Stock represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the DGCL.

Section 5.02 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate for shares of Stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. The Board of Directors may establish regulations, rules or procedures concerning the proof required for adequately alleging the loss, theft or destruction of any Stock certificate and concerning the giving of a satisfactory bond or bonds of indemnity.

ARTICLE VI.
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.01 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law (including as it presently exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), any person (a "**Covered Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (any such action, suit or proceeding, a "**proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another Person, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees, judgments, fines ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.04 of these Bylaws or with respect to any compulsory counterclaim brought by such Covered Person, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors.

Section 6.02 Indemnification of Others. The Corporation shall have the power (but not the obligation) to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any proceeding by reason of the fact that he or she, or a Person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Person, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such Person in connection with any such proceeding.

Section 6.03 Advancement of Expenses. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided, however*, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.04 Claims. If a claim for indemnification under this Article VI (following the final disposition of such proceeding) is not paid in full within 60 days after the Corporation has received a written claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VI is not paid in full within 30 days after the Corporation has received a written statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by applicable law. In any such action, the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.05 Non-exclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquires under any applicable statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of Stockholders or disinterested Directors or otherwise.

Section 6.06 Insurance. The Corporation may purchase and maintain insurance on behalf of any Person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Person against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

Section 6.07 Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another Person shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other Person.

Section 6.08 Continuation of Indemnification. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article VI shall continue as to a Person who has ceased to be a Director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such Person.

Section 6.09 Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws or an amendment to the Certificate of Incorporation after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses is sought.

Section 6.10 Other Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII. MISCELLANEOUS

Section 7.01 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 7.02 Execution of Corporate Contracts and Instruments. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 7.03 Dividends. The Board of Directors, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its Stock. Dividends may be paid in cash, in property or in shares of the Corporation's Stock. The Board of Directors may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

Section 7.04 Registered Stockholders. The Corporation: (i) shall be entitled to recognize the exclusive right of a Person registered on its books as the owner of shares of Stock to receive dividends and to vote as such owner; and (ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

Section 7.05 Corporate Seal. The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 7.06 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

Section 7.07 Manner of Notice.

(a) *Notice by Electronic Transmission*. Without limiting the manner by which notice otherwise may be given effectively to Stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to Stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission to the extent permitted by applicable law.

Subject to the provisions of the Stockholders Agreement for so long as it is in effect, any notice given pursuant to the preceding paragraph shall be deemed given (a) if by facsimile telecommunication, when directed to a number at which the Stockholder has consented to receive notice; (b) if by electronic mail, when directed to such Stockholder's electronic mail address unless the Stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail; (c) if by a posting on an electronic network together with separate notice to the Stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the Stockholder. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For the purposes of these Bylaws, an "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) *Notice to Stockholders Sharing an Address*. Without limiting the manner by which notice otherwise may be given effectively to Stockholders, and except as prohibited by applicable law, any notice to Stockholders given by the Corporation under any provision of applicable law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a single written notice to Stockholders who share an address if consented to by the Stockholders at that address to whom such notice is given. Any such consent shall be revocable by the Stockholder by written notice to the Corporation. Any Stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 7.07, shall be deemed to have consented to receiving such single written notice.

(c) *Notice to Directors.* Except as otherwise provided herein or permitted by applicable law, notices to any Director may be in writing and delivered personally, or delivered by recognized international courier service to such Director at such Director's address appearing on the books of the Corporation, or mailed to such Director at such Director's address appearing on the books of the Corporation, or may be given by telephone or by any means of electronic transmission (including, without limitation, electronic mail) directed to an address for receipt by such Director of electronic transmissions appearing on the books of the Corporation.

Section 7.08 Waiver of Notice of Meetings of Stockholders, Directors and Committees. A written waiver of any notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, Board of Directors, or committee or subcommittee of the Board of Directors need be specified in a waiver of notice.

Section 7.09 Form of Records. Any records maintained by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method or one or more electronic networks or databases, provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and the stock ledger is maintained in accordance with applicable law.

Section 7.10 Amendment of Bylaws. Except as otherwise provided in the Certificate of Incorporation and subject to the Stockholders Agreement (for so long as it remains in effect), these Bylaws may be altered, amended or repealed, and new bylaws made, only by the affirmative vote of (i) at least a majority of the Directors then in office or (ii) holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the then outstanding shares of Stock entitled to vote generally in the election of Directors, voting together as a single class.

* * *

**THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

of

FLUENCE ENERGY, LLC

Dated as of October 27, 2021

THE LIMITED LIABILITY COMPANY INTERESTS IN FLUENCE ENERGY, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT, THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS, AND HAVE BEEN OR ARE BEING ISSUED IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH INTERESTS MAY BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY STATE AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT; AND (III) ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BETWEEN THE MANAGING MEMBER AND ANY HOLDER OF SUCH INTERESTS.

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Schedule A Member Schedule

THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of FLUENCE ENERGY, LLC, a Delaware limited liability company (the "Company"), dated as of October 27, 2021 (the "Restatement Date"), by and among the Company, FLUENCE ENERGY, INC., a Delaware corporation ("PubCo", as the Managing Member as defined below), and the Members (as defined below).

W I T N E S E T H:

WHEREAS, the Company was formed as a limited liability company under the Act by the filing a Certificate of Formation with the Secretary of State of the State of Delaware on June 30, 2017;

WHEREAS, AES Grid Stability, LLC ("AES"), a limited liability company duly organized and validly existing under the laws of Delaware, and Siemens Industry, Inc. ("Siemens"), a corporation duly organized and validly existing under the laws of Delaware, executed the Amended and Restated Limited Liability Company Agreement of the Company on January 1, 2018 (the "A&RLLCA"), which was further amended by that certain Amendment No. 1 to the Amended and Restated Limited Liability Company Agreement, dated June 29, 2020 ("Amendment No. 1") and that certain Amendment No. 2 to the Amended and Restated Limited Liability Company Agreement, dated December 27, 2020 ("Amendment No. 2"), and the A&RLLCA as amended by Amendment No. 1 and Amendment No. 2, the "Prior Agreement";

WHEREAS, the Company amended and restated the Prior Agreement in its entirety, and entered into that certain Second Amended & Restated Limited Liability Company Agreement, dated as of June 9, 2021 (the "Second Restated Agreement"), pursuant to which AES and Siemens remained Class A Members, certain Persons were admitted as Class B Members and certain provisions regarding the rights, powers and interests of the Members with respect to the Company and their Membership Interests therein were revised, which the Class A Members and the Class B Members executed in their capacity as members (including pursuant to consents and joinders thereto) (collectively, the "Pre-IPO Members");

WHEREAS, in connection with the IPO (as defined below), the Company is, substantially concurrently with the execution of this Agreement, a party to a series of reorganization transactions with PubCo (the "Transactions") and various other parties pursuant to which, among other matters, (i) Fluence Energy Merger Sub, LLC, a wholly-owned subsidiary of PubCo, merged with and into QIA Florence Holding LLC ("QIA Blocker"), with QIA Blocker surviving (the "Merger"), with shares of Class A Common Stock being issued to QIA Blocker's sole member, Qatar Holding LLC, in consideration for the Merger and (ii) subsequently, QIA Blocker was merged with and into PubCo, with PubCo surviving, and PubCo was admitted as a Pre-IPO Member;

WHEREAS, in connection with the IPO, the Company, PubCo and the other Pre-IPO Members have authorized the conversion of certain of the Original Units (as defined below) into Common Units (as defined below), to be held by PubCo, AES and Siemens (collectively, the "Recapitalization") as set forth herein;

WHEREAS, PubCo will sell shares of its Class A Common Stock to public investors in the IPO and will contribute the net proceeds received from the IPO (the “IPO Net Proceeds”) to the Company in exchange for newly issued Common Units pursuant to the IPO Common Unit Subscription Agreement and issue shares of its Class B Common Stock to AES and Siemens; and

WHEREAS, in connection with the foregoing matters, the Company and the Members desire to continue the Company without dissolution and amend and restate the Second Restated Agreement in its entirety as of the date hereof to reflect, among other things, (a) the Recapitalization, (b) the addition of PubCo as a Member and its designation as sole Managing Member of the Company and (c) the other rights and obligations of the Members, the Company and PubCo, in each case, as provided and agreed upon in the terms of this Agreement as of the date hereof, at which time the Second Restated Agreement shall be superseded entirely by this Agreement and shall be of no further force or effect.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Second Restated Agreement is hereby amended and restated in its entirety and the Company, PubCo and the other Members, each intending to be legally bound, each hereby agree as follows:

ARTICLE I.

DEFINITIONS AND USAGE

Section 1.01 Definitions.

- (a) The following terms shall have the following meanings for the purposes of this Agreement:

“Act” has the meaning set forth in Section 8.04.

“Additional Member” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the issuance of new Units to such Person after the Restatement Date.

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentence in Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of “Adjusted Capital Account Deficit” is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“AES” shall have the meaning assigned to such term in the recitals of this Agreement.

“AES Initial Member” means AES.

“AES Member” means collectively, the AES Initial Member and any Subsequent Transferee of the AES Initial Member (unless the AES Member notifies the Managing Member prior to any Transfer that such Subsequent Transferee shall not be an AES Member, in which case such Person shall be deemed a Member) and any Affiliate of the AES Member who becomes a Member in accordance with the provisions of this Agreement. In the event that the AES Member refers to multiple Persons, any action required or permitted to be taken or determination required or permitted to be made by the AES Member shall require the approval of one or more Persons holding a majority of the Common Units held by all AES Members.

“Affiliate” of any specified Person means any other Person directly or indirectly Controlling, Controlled by or under direct or indirect common Control with such first specified Person; provided, that for purposes of this Agreement, (i) no Member (or equityholder of such Member) shall be deemed to be an Affiliate of any other Member (or equityholder of such Member) solely by virtue of this Agreement and (ii) the Company, on the one hand, and each of the Members (and each equityholder of any such Member), on the other hand, shall not be deemed to be Affiliates of each other solely by virtue of this Agreement.

“Agreement” has the meaning set forth in the Preamble.

“Available Cash” means, as of a particular date, the amount of cash on hand which the Managing Member, in its reasonable discretion, deems available for distribution to the Members, taking into account all debts, liabilities and obligations of the Company then due and amounts that the Managing Member, in its reasonable discretion, deems necessary to expend or retain for working capital or to place into reserves for customary and usual claims with respect to the Company’s operations.

“Black-Out Period” means any “black-out” or similar period under PubCo’s policies covering trading in PubCo’s securities (including any Trading Policy) to which the applicable Redeeming Member is subject (or may be subject at such time as it owns Class A Common Stock), which period restricts the ability of such Redeeming Member to immediately resell shares of Class A Common Stock to be delivered to such Redeeming Member in connection with a Share Settlement.

“Business Day” means any day excluding Saturday, Sunday or any day on which commercial banks in New York, New York are authorized or required by Law or other governmental action to close.

“Capital Account” means the capital account established and maintained for each Member pursuant to Section 5.02.

“Capital Contribution” means, with respect to any Member, the amount of money and the initial Carrying Value of any Property (other than money) contributed to the Company with respect to any Units held or purchased by such Member.

“Carrying Value” means, with respect to any Property (other than money), such Property’s adjusted basis for U.S. federal income tax purposes, except as follows:

(a) the initial Carrying Value of any such Property contributed by a Member to the Company shall be the fair market value of such Property, as determined by the Managing Member; and

(b) the Carrying Values of all Properties may, as determined by the Managing Member, be adjusted to equal their respective fair market values in accordance with Section 5.02(c).

In the case of any Property that has a Carrying Value that differs from its adjusted basis for U.S. federal income tax purposes, the Carrying Value shall be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss.

“Cash Settlement” means, with respect to any Redemption, immediately available funds in U.S. dollars in an amount equal to the number of Redeemed Units subject thereto, multiplied by the Common Unit Redemption Price.

“Certificate” means the Company’s Certificate of Formation as filed with the Secretary of State of the State of Delaware, as amended or amended and restated from time to time.

“Change of Control” means the occurrence of any of the following events:

(a) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares of Class A Common Stock, Class B Common Stock, preferred stock and/or any other class or classes of capital stock of PubCo (if any) representing in the aggregate more than fifty percent (50%) of the voting power of all of the outstanding shares of capital stock of PubCo entitled to vote;

(b) the stockholders of PubCo approve a plan of complete liquidation or dissolution of PubCo or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by PubCo of all or substantially all of PubCo’s assets (including a sale of all or substantially all of the assets of the Company);

(c) there is consummated a merger or consolidation of PubCo with any other corporation or entity, and, immediately after the consummation of such merger or consolidation, the voting securities of PubCo immediately prior to such merger or consolidation do not continue to represent, or are not converted into, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(d) PubCo ceases to be the sole Managing Member of the Company.

Notwithstanding the foregoing, a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock, Class B Common Stock, preferred stock and/or any other class or classes of capital stock of PubCo immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of PubCo immediately following such transaction or series of transactions.

“Change of Control Exchange Date” has the meaning set forth in Section 9.06(a).

“Class A Common Stock” means, as applicable, (a) Class A common stock, \$0.00001 par value per share, of PubCo or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person or cash or other property that become payable in consideration for the Class A Common Stock or into which the Class A Common Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

“Class B Common Stock” means, as applicable, (a) Class B common stock, \$0.00001 par value per share, of PubCo or (b) following any consolidation, merger, reclassification or other similar event involving PubCo, any shares or other securities of PubCo or any other Person or cash or other property that become payable in consideration for the Class B Common Stock or into which the Class B Common Stock is exchanged or converted as a result of such consolidation, merger, reclassification or other similar event.

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

“Common Unit” means a limited liability company interest in the Company, designated herein as a “Common Unit.”

“Common Unit Redemption Price” means, with respect to any Redemption Date, the price for a share of Class A Common Stock on the Stock Exchange, as reported on bloomberg.com or such other reliable source as determined by the Managing Member in good faith, at the close of trading on the last full Trading Day immediately prior to the Redemption Date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. In the event the shares of Class A Common Stock are not publicly traded at the time of a Redemption, then the Managing Member shall determine the Common Unit Redemption Price in good faith.

“Company” has the meaning set forth in the Preamble.

“Company Minimum Gain” means “partnership minimum gain,” as defined in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

“Company Representative” has, with respect to taxable periods beginning after December 31, 2017, the meaning assigned to the term “partnership representative” in Section 6223 of the Code and any Treasury Regulations or other administrative or judicial pronouncements promulgated thereunder and, with respect to taxable periods beginning on or before December 31, 2017, the meaning assigned to the term “tax matters partner” as defined in Code Section 6231(a)(7) prior to its amendment by Title XI of the Bipartisan Budget Act of 2015, in each case as appointed pursuant to Section 6.01(a).

“Confidential Information” has the meaning set forth in Section 12.11.

“Control” (including the terms “Controlling” and “Controlled”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of such subject Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise.

“Controlled Entities” has the meaning set forth in Section 10.02(c)(ii).

“Covered Person” means (i) each Member or an Affiliate thereof, in each case in such capacity, (ii) each officer, director, equityholder, member, partner, employee, representative, agent or trustee of a Member or an Affiliate thereof, in each case in such capacity, and (iii) each officer, director, shareholder, member, partner, employee, representative, agent or trustee of the Managing Member, the Company or an Affiliate controlled thereby of, in each case in such capacity.

“Delaware Act” means the Delaware Limited Liability Company Act, as amended from time to time.

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Carrying Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Carrying Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero (0), Depreciation with respect to such asset shall be determined with reference to such beginning Carrying Value using any reasonable method selected by the Managing Member.

“DGCL” means the Delaware General Corporation Law, as amended from time to time.

“Direct Redemption” has the meaning set forth in Section 9.01(c).

“Dissolution Event” has the meaning set forth in Section 11.01(c).

“Election Notice” has the meaning set forth in Section 9.01(a).

“Equity Plan” means any stock or equity purchase plan, restricted stock or equity plan or other similar equity compensation plan now or hereafter adopted by PubCo.

“Equity Securities” means, as applicable, (a) any capital stock, membership interests or other share capital, (b) any securities directly or indirectly convertible into or exchangeable for any capital stock, membership interests or other share capital or containing any profit participation features, (c) any rights or options directly or indirectly to subscribe for or to purchase any capital stock, membership interests, other share capital or securities containing any profit participation features or to subscribe for or to purchase any securities directly or indirectly convertible into or exchangeable for any capital stock, membership interests, other share capital or securities containing any profit participation features, (d) any share appreciation rights, phantom share rights or other similar rights, or (e) any Equity Securities issued or issuable with respect to the securities referred to in clauses (a) through (d) above in connection with a combination of units (or shares), recapitalization, merger, consolidation or other reorganization.

“Event of Withdrawal” means the bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company. “Event of Withdrawal” shall not include an event that (a) terminates the existence of a Member for income tax purposes (including, without limitation, (i) a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, (ii) a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or (iii) merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member) but that (b) does not terminate the existence of such Member under applicable state law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all the Units of such trust that is a Member).

“Exchange Act” means the Exchange Act of 1934, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Exchange Act shall be deemed to include any corresponding provisions of future Law.

“Expenses” has the meaning set forth in Section 10.02(c)(ii).

“Fair Market Value” of a specific asset of the Company will mean the amount which the Company would receive in an all-cash sale of such asset in an arms-length transaction with a willing unaffiliated third party, with neither party having any compulsion to buy or sell, consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), as such amount is determined by the Managing Member (or, if pursuant to a Liquidation, the liquidators) in its good faith judgment using all factors, information and data it deems to be pertinent.

“Fiscal Year” means (i) the Company’s fiscal year, which shall initially be the twelve (12) month period ending on September 30 of each year and which may be changed from time to time as determined by the Managing Member; and, (ii) for purposes of the allocations described in Article V, any other tax period for which such allocations will be made.

“Governmental Authority” means any transnational, domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof and the SEC, any non-U.S. regulatory agency and any other regulatory authority or body (including any state or provincial securities authority and any self-regulatory organization) with jurisdiction over the Company or any of its Subsidiaries.

“Indemnification Sources” has the meaning set forth in Section 10.02(c)(ii).

“Indemnitee-Related Entities” has the meaning set forth in Section 10.02(c)(ii)(A).

“Initial Capital Account Balance” means, with respect to any Member, the positive Capital Account balance of such Member as of immediately following the execution hereof, the amount of which is set forth on the Member Schedule.

“IPO” means the initial underwritten public offering of shares of PubCo’s Class A Common Stock.

“IPO Common Unit Subscription” has the meaning set forth in Section 3.04(b).

“IPO Common Unit Subscription Agreement” means that certain Common Unit Subscription Agreement, dated as of or about the date of this Agreement, by and between PubCo and the Company.

“IPO Net Proceeds” has the meaning set forth in the Recitals.

“IPO Unit Redemption” has the meaning set forth in the Recitals.

“Jointly Indemnifiable Claims” has the meaning set forth in Section 10.02(c)(ii)(B).

“Law” means, with respect to any Person, any federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person or its assets, in each case, as amended unless expressly specified otherwise.

“Liquidation” means a liquidation or winding up of the Company.

“Managing Member” means (i) PubCo so long as PubCo has not withdrawn as the Managing Member pursuant to Section 7.02 and (ii) any successor thereof appointed as Managing Member in accordance with Section 7.02.

“Market Price” means, with respect to a share of Class A Common Stock as of a specified date, the last sale price per share of Class A Common Stock, regular way, or if no such sale took place on such day, the average of the closing bid and asked prices per share of Class A Common Stock, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the Stock Exchange or, if the Class A Common Stock is not listed or admitted to trading on the Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Class A Common Stock is listed or admitted to trading or, if the Class A Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if the Class A Common Stock is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in shares of Class A Common Stock selected by the PubCo Board or, in the event that no trading price is available for the shares of Class A Common Stock, the fair market value of a share of Class A Common Stock, as determined in good faith by the PubCo Board.

“Member” means any Person named as a Member of the Company on Schedule A and the books and records of the Company, as the same may be amended from time to time to reflect any Person admitted as an Additional Member or a Substitute Member, for so long as such Person continues to be a Member of the Company.

“Member Nonrecourse Debt” has the same meaning as the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means an amount with respect to each “partner nonrecourse debt” (as defined in Treasury Regulations Section 1.704-2(b)(4)) equal to the Company Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Treasury Regulations Section 1.752-1(a)(2)) determined in accordance with Treasury Regulations Section 1.704-2(i)(3).

“Member Nonrecourse Deductions” has the same meaning as the term “partner nonrecourse deductions” in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

“Member Schedule” has the meaning set forth in Section 3.01(b).

“Net Income” and “Net Loss” means, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of “Net Income” and “Net Loss” shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition of “Net Income” and “Net Loss,” shall be subtracted from such taxable income or loss;

(c) gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Carrying Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Carrying Value;

(d) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;

(e) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Loss;

(f) if the Carrying Value of any Company asset is adjusted in accordance with clause (b) of the definition of Carrying Value, the amount of such adjustment shall be taken into account in the taxable year of such adjustment as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss; and

(g) notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 5.04(b) shall not be taken into account in computing Net Income and Net Loss.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 5.04(b) shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (e) above.

“Nonrecourse Deductions” has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

“Officers” has the meaning set forth in Section 7.05(a).

“Original Units” means the (i) Class A Common Units of the Company as of immediately prior to the Recapitalization, (ii) Class A-1 Common Units of the Company as of immediately prior to the Recapitalization, and (iii) Class B Common Units as of immediately prior to the Recapitalization.

“Partnership Tax Audit Rules” means Sections 6221 through 6241 of the Code, as amended, together with any final or temporary Treasury Regulations, Revenue Rulings, and case law and other official guidance interpreting Sections 6221 through 6241 of the Code, as amended (and any analogous provision of state or local tax law).

“Percentage Interest” means, with respect to any Member, a fractional amount, expressed as a percentage: (i) the numerator of which is the aggregate number of Common Units owned of record thereby and (ii) the denominator of which is the aggregate number of Common Units issued and outstanding. The sum of the outstanding Percentage Interests of all Members shall at all times equal 100%.

“Permitted Transferees” means any person or entity to whom a Member is permitted to transfer such Common Units pursuant to Section 8.02 of this Agreement.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, estate, joint venture, Governmental Authority or other entity.

“Pre-IPO Members” has the meaning set forth in the Recitals.

“Prime Rate” means the rate of interest from time to time identified by *The Wall Street Journal*, as being the “prime” rate (or if *The Wall Street Journal* does not identify such a rate, the “prime” rate as identified by another newspaper of national circulation).

“Process Agent” has the meaning set forth in Section 12.05(a).

“Property” means an interest of any kind in any real or personal (or mixed) property, including cash, and any improvements thereto, and shall include both tangible and intangible property.

“PubCo” has the meaning set forth in the Preamble.

“PubCo Board” means the board of directors of PubCo.

“PubCo Approved Change of Control” means any Change of Control of PubCo that meets the following conditions: (i) such Change of Control was approved by the board of directors of PubCo prior to such Change of Control, (ii) such Change of Control results in an early termination of and acceleration of payments under the Tax Receivable Agreement, (iii) the terms of such Change of Control provide for the consideration for the Units in such Change of Control to consist solely of (A) freely and immediately tradeable common equity securities of an issuer listed on a national securities exchange and/or (B) cash and (iv) if such common equity securities would be Registrable Securities (as defined in the Registration Rights Agreement) of such issuer for any stockholder party to the Registration Rights Agreement, the issuer of such listed equity securities has become a party thereto as a successor to PubCo effective upon closing of such Change of Control.

“PubCo Approved Recap Transaction” has the meaning set forth in Section 9.06(b).

“PubCo Modified Distribution Amount” has the meaning set forth in Section 5.03(e)(ii).

“Recapitalization” has the meaning set forth in the Recitals.

“Redeemed Units” has the meaning set forth in Section 9.01(a).

“Redeeming Member” has the meaning set forth in Section 9.01(a).

“Redemption” has the meaning set forth in Section 9.01(a).

“Redemption Date” has the meaning set forth in Section 9.01(a).

“Redemption Notice” has the meaning set forth in Section 9.01(a).

“Redemption Right” has the meaning set forth in Section 9.01(a).

“Registration Rights Agreement” means that certain Registration Rights Agreement, dated on or about the date hereof, by and among PubCo, certain stockholders of PubCo and the Members (as it may be amended from time to time in accordance with its terms).

“Regulatory Allocations” has the meaning set forth in Section 5.04(c).

“Relative Percentage Interest” means, with respect to any Member relative to another Member or Members, a fractional amount, expressed as a percentage, the numerator of which is the Percentage Interest of such Member; and the denominator of which is (x) the Percentage Interest of such Member plus (y) the aggregate Percentage Interest of such other Member or Members.

“Restatement Date” has the meaning set forth in the Preamble.

“Restricted Person” has the meaning set forth in that certain letter agreement dated as of the date hereof by and among the Company, AES and Siemens.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

“Share Settlement” means, with respect to any applicable Redemption, a number of shares of Class A Common Stock equal to the number of Redeemed Units.

“Siemens” shall have the meaning assigned to such term in the recitals of this Agreement.

“Siemens Initial Member” means Siemens.

“Siemens Member” means collectively, the Siemens Initial Member and any Subsequent Transferee of the Siemens Initial Member (unless the Siemens Member notifies the Managing Member prior to any Transfer that such Subsequent Transferee shall not be a Siemens Member, in which case such Person shall be deemed a Member) and any Affiliate of the Siemens Member who becomes a Member in accordance with the provisions of this Agreement. In the event that the Siemens Member refers to multiple Persons, any action required or permitted to be taken or determination required or permitted to be made by the Siemens Member shall require the approval of one or more Persons holding a majority of the Common Units held by all Siemens Members.

“Specified Audit” has the meaning set forth in Section 5.07(b).

“Specified Covenants” has the meaning set forth in Section 10.02(a).

“Sponsor Members” means AES and Siemens, provided that such Persons are Members.

“Stock Exchange” means the Nasdaq Stock Market or such other securities exchange or interdealer quotation system on which shares of Class A Common Stock are then listed or quoted.

“Stockholders Agreement” means the Stockholders Agreement, dated as of the date hereof, by and among PubCo and the other persons party thereto or that may become parties thereto from time to time, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time.

“Subsequent Transferees” means, with respect to any Member, each Person that becomes a Substitute Member of the Company by virtue of such Person’s receiving all or a portion of its Units from such Member or from such Member’s Subsequent Transferees, in each case, in accordance with this Agreement.

“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 and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“Substitute Member” means any Person admitted as a Member of the Company pursuant to Section 3.02 in connection with the Transfer of then-existing Units to such Person.

“Tax Distribution” means a distribution made by the Company pursuant to Section 5.03(e)(i) or Section 5.03(e)(ii).

“Tax Distribution Amount” means, with respect to any Member, an amount equal to the excess of (i) the product of (A) the Tax Rate multiplied by (B) the estimated or actual cumulative taxable income or gain of the Company, as determined for U.S. federal income tax purposes, allocated to such Member for any Fiscal Year (or portion thereof) beginning on or after the Restatement Date (including, without duplication, the amount of any income required to be recognized by such Member pursuant to Section 951 of the Code, Section 951A of the Code or Section 956 of the Code, in each case, as a result of such Member’s ownership of interests in the Company), less prior taxable loss or deductions of the Company allocated to such Member for full or partial Fiscal Years commencing on or after the Restatement Date, in each case, as reasonably determined by the Managing Member over (ii) the cumulative distributions made to such Member after the Restatement Date pursuant to Section 5.03(e) with respect to Fiscal Years (including any portion thereof) beginning on or after the Restatement Date. The Tax Distribution Amount with respect to PubCo for a Fiscal Year shall in no event be less than an amount that will enable PubCo to meet its tax obligations and PubCo’s obligations pursuant to the Tax Receivable Agreement for the relevant Fiscal Year. The Tax Distribution Amounts of the Members shall be determined without taking into account the effects of Section 743(b) of the Code.

“Tax Rate” means the highest marginal tax rates for a corporation that is resident in the City of New York applicable to ordinary income, qualified dividend income or capital gains, as appropriate, taking into account the holding period of the assets disposed of and the year in which the taxable net income is recognized by the Company, and taking into account the deductibility of state and local income taxes as applicable at the time for federal income tax purposes and any limitations thereon including pursuant to Section 68 of the Code or Section 164 of the Code.

“Tax Receivable Agreement” means that certain Tax Receivable Agreement, dated as or around the date hereof, by and among PubCo, the Company and the other parties thereto.

“Trading Day” means a day on which the Stock Exchange or such other principal United States securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day).

“Trading Policy” means any exchange and/or insider trading policy that may be established by PubCo, as may be amended from time to time.

“Transfer” means the (a) sale or assignment of, offer to sell, contract or agreement to sell, hypothecate, pledge, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b); provided, that “Transfer” shall be deemed not to include (a) any transfer of equity securities of an entity holding (directly or indirectly) Units of the Company that (A) was not formed for the purpose of investing in the Company or (B) is an “alternative investment vehicle” of an investment fund that was not formed for the purpose of investing in the Company, or (b) any pledge to any third-party pledgee in a bona fide transaction as collateral to secure obligations pursuant to lending or other arrangements, between such third parties (or their affiliates or designees) and a Member and/or its affiliates or any similar arrangement relating to a financing agreement for the benefit of a Member and/or its affiliates. The terms “Transferring” and “Transferred” when used as verbs shall have their correlative meanings.

“Transferor Member” has the meaning set forth in Section 5.02(b).

“Treasury Regulations” means the regulations promulgated under the Code, as amended from time to time, including temporary and (to the extent they can be relied upon) proposed regulations.

“Units” means Common Units or any other type, class or series of limited liability company interests in the Company designated by the Company after the date hereof in accordance with this Agreement; provided, that any type, class or series of Units shall have the designations, preferences and/or special rights set forth or referenced in this Agreement, and the limited liability company interests of the Company represented by such type, class or series of Units shall be determined in accordance with such designations, preferences and/or special rights.

“Unvested PubCo Shares” means shares of Class A Common Stock issuable pursuant to awards granted under any Equity Plan that are not Vested PubCo Shares.

“Value” means (a) for any stock option under any Equity Plan, the Market Price for the Trading Day immediately preceding the date of exercise of such stock option and (b) for any awards under any Equity Plan other than a stock option, the Market Price for the Trading Day immediately preceding the Vesting Date.

“Vested PubCo Shares” means the shares of Class A Common Stock issued pursuant to awards granted under any Equity Plan that are vested pursuant to the terms thereof or any award or similar agreement relating thereto.

“Vesting Date” means the date on which a Person’s rights with respect to all or a portion of Class A Common Stock subject to an Equity Plan may become fully vested.

“Withholding Advances” has the meaning set forth in Section 5.06(b).

(b) Each of the following terms is defined in the Section set forth opposite such term:

Section 1.02 Other Definitional and Interpretative Provisions. The definitions in Section 1.01 shall apply equally to both 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 “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement unless otherwise specified. All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. The terms “clause(s)” and “subparagraph(s)” shall be used herein interchangeably. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. Unless otherwise expressly provided herein, any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified, supplemented or restated, including by waiver or consent, and references to all attachments thereto and instruments incorporated therein, but in the case of each of the foregoing, only to the extent that such amendment, modification, supplement, restatement, waiver or consent is effected in accordance with this Agreement. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. Unless otherwise expressly provided herein, any statute defined or referred to herein or in any agreement or instrument that is referred to herein means such statute as from time to time amended, modified, supplemented or restated, including by succession of comparable successor statutes. Unless otherwise expressly provided herein, when any approval, consent or other matter requires any action or approval of any group of Members, including any holders of any class of Units, such approval, consent or other matter shall require the approval of a majority in interest of such group of Members. Except to the extent otherwise expressly provided herein, all references to any Member shall be deemed to refer solely to such Person in its capacity as such Member and not in any other capacity.

ARTICLE II.

THE COMPANY

Section 2.01 Continuation of the Company. The Company was originally formed on June 30, 2017, as a Delaware limited liability company by the filing of the Certificate with the Secretary of State of the State of Delaware (the filing of such certificate by an “authorized person” of the Company within the meaning of the Delaware Act, being hereby approved and ratified in all respects). The Persons listed on the Schedule of Members as of the date hereof hereby continue or are hereby admitted, as applicable, as the Members of the Company. This Agreement shall be effective on the Restatement Date. The Members as of the date hereof agree and acknowledge that this Agreement replaces the Second Restated Agreement, which is no longer in effect. The rights and obligations of the Members and the terms and conditions of the Company shall be governed by the Delaware Act and this Agreement. To the extent the Delaware Act and this Agreement are inconsistent with respect to any subject matter covered in this Agreement, this Agreement shall govern to the extent permitted by law. The Managing Member shall cause to be executed and filed on behalf of the Company all other instruments or documents, and shall do or cause to be done all such filing, recording, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the continuation and operation of a limited liability company in Delaware and in the other states and jurisdictions in which the Company shall transact business.

Section 2.02 Name. The name of the Company shall be “Fluence Energy, LLC.” The name of the Company shall be the exclusive property of the Company, and no Member shall have any rights, commercial or otherwise, in the Company’s name or any derivation thereof. The Company’s name may be changed only by an amendment to the Certificate of the Company.

Section 2.03 Commencement and Term. The Company commenced on June 30, 2017 as a Delaware limited liability company and shall hereby continue until it is dissolved, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement.

Section 2.04 Principal Place of Business. The principal place of business of the Company shall be at such place as the Managing Member may designate from time to time, which need not be in the State of Delaware. The Company may have such other offices (within or without the State of Delaware) as the Managing Member may designate from time to time.

Section 2.05 Registered Agent and Registered Office. The registered office of the Company required by the Delaware Act to be maintained in Delaware shall be the office identified in the Certificate, or such other office as the Managing Member may designate from time to time in the manner provided by law.

Section 2.06 Purposes. The purposes of the Company shall be to engage in any activity for which limited liability companies may be organized in the State of Delaware, all on the terms and conditions and subject to the limitations set forth in this Agreement. Subject to the Delaware Act and this Agreement, the Company shall operate in a manner similar to that of a Delaware corporation.

Section 2.07 Powers of the Company. The Company shall have the power and authority to take any and all actions necessary, appropriate or advisable to or for the furtherance of the purposes set forth in Section 2.06.

Section 2.08 Partnership Tax Status. The Members agree that the Company shall be classified as a partnership for U.S. federal and applicable state and local tax purposes, and the Members and the Company agree that they shall refrain from making any elections under the Treasury Regulations or other applicable Law, filing any tax returns or reports, and otherwise taking any actions, in each case, that are inconsistent with such classification. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the immediately preceding sentence.

Section 2.09 Regulation of Internal Affairs. The internal affairs of the Company and the conduct of its business shall be regulated by this Agreement, and to the extent not provided for herein, shall be determined by the Managing Member.

Section 2.10 Ownership of Property. Legal title to all Property conveyed to, or held by, the Company or its Subsidiaries shall reside in the Company or its Subsidiaries, as applicable, and shall be conveyed only in the name of the Company or its Subsidiaries, as applicable, and no Member or any other Person, individually, shall have any ownership of such Property.

ARTICLE III.

UNITS; MEMBERS; BOOKS AND RECORDS; REPORTS

Section 3.01 Units; Admission of Members.

(a) (i) In connection with the Transactions, PubCo acquired Original Units (which will be converted into Common Units pursuant to the Recapitalization in accordance with Section 3.04) and was admitted as a Member and (ii) PubCo will acquire additional Common Units pursuant to the IPO Common Unit Subscription Agreement. Each Member's ownership interest in the Company shall be represented by Units, which may be divided into one or more types, classes or series, or subseries of any type, class or series, with each type, class or series, or subseries thereof, having the rights and privileges, set forth in this Agreement.

(b) The number and type of Units issued to each Member shall be set forth opposite such Member's name on the schedule of Members of the Company held by the Company in its books and records (the "Member Schedule"). The Member Schedule shall be maintained by the Managing Member on behalf of the Company in accordance with this Agreement. When any Units or other Equity Securities of the Company are issued, repurchased, redeemed, converted or Transferred in accordance with this Agreement, the Member Schedule shall be amended by the Managing Member to reflect such issuance, repurchase, redemption or Transfer, the admission of Additional Members or Substitute Members and the resulting Percentage Interest of each Member. Following the date hereof, no Person shall be admitted as a Member and no additional Units shall be issued except as expressly provided herein.

(c) No Member shall be required or, except as approved by the Managing Member and in accordance with the other provisions of this Agreement, permitted to (i) loan any money or property to the Company, (ii) borrow any money or property from the Company or (iii) make any additional Capital Contributions.

(d) The Managing Member may cause the Company to authorize and issue from time to time such other Units or other Equity Securities of any type, class or series, in each case, having the designations, preferences and/or special rights as may be determined by the Managing Member. Such Units or other Equity Securities may be issued pursuant to such agreements as the Managing Member shall approve in its discretion. When any such other Units or other Equity Securities are authorized and issued, the Member Schedule and this Agreement shall be amended by the Managing Member to reflect such additional issuances.

(e) Unless the Managing Member otherwise directs, Units will not be represented by certificates.

Section 3.02 Substitute Members and Additional Members.

(a) No Transferee of any Units or Person to whom any Units are issued pursuant to this Agreement shall be admitted as a Member hereunder or acquire any rights hereunder, including any voting rights or the right to receive distributions and allocations in respect of the Transferred or issued Units, as applicable, unless (i) such Units are Transferred or issued in compliance with the provisions of this Agreement (including Article VIII) and (ii) such Transferee or recipient shall have executed and delivered to the Company such instruments as the Managing Member deems necessary or desirable, in its reasonable discretion, to effectuate the admission of such Transferee or recipient as a Member and to confirm the agreement of such Transferee or recipient to be bound by all the terms and provisions of this Agreement. Upon complying with the immediately preceding sentence, without the need for any further action of any Person, a Transferee or recipient shall be deemed admitted to the Company as a Member. A Substitute Member shall enjoy the same rights, and be subject to the same obligations, as the Transferor; provided, that such Transferor shall not be relieved of any obligation or liability hereunder arising prior to the consummation of such Transfer but shall, except as explicitly set forth herein, be relieved of all future obligations with respect to the Units so Transferred. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission of a Substitute Member or Additional Member. In the event of any admission of a Substitute Member or Additional Member pursuant to this Section 3.02(a), this Agreement shall be deemed amended to reflect such admission, and any formal amendment of this Agreement (including Schedule A) in connection therewith shall only require execution by the Company and such Substitute Member or Additional Member, as applicable, to be effective.

(b) If a Member shall Transfer all (but not less than all) of its Units, the Member shall thereupon cease to be a Member of the Company.

Section 3.03 Tax and Accounting Information.

(a) Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Member in accordance with Law and to the extent applicable with accounting methods followed for federal income tax purposes. In making such decisions, the Managing Member may rely upon the advice of the independent accountants of the Company.

(b) Records and Accounting Maintained. For financial reporting purposes, unless otherwise determined by PubCo's audit committee, the books and records of the Company shall be kept on the accrual method of accounting applied in a consistent manner and shall reflect all Company transactions. For tax purposes, the books and records of the Company shall be kept on the accrual method. The Fiscal Year of the Company shall be used for financial reporting and for federal income tax purposes to the extent permitted under applicable Law.

(c) Financial Reports.

(i) The books and records of the Company shall be audited as of the end of each Fiscal Year by the same accounting firm that audits the books and records of PubCo (or, if such firm declines to perform such audit, by an accounting firm selected by the Managing Member).

(ii) In the event that neither PubCo nor the Company is required to file an annual report on Form 10-K or quarterly report on Form 10-Q, the Company shall deliver, or cause to be delivered, the following to each Member:

(A) not later than ninety (90) days after the end of each Fiscal Year of the Company, a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and the related statements of operations and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous year, all in reasonable detail; and

(B) not later than forty five (45) days or such later time as permitted under applicable securities law after the end of each of the first three fiscal quarters of each Fiscal Year, the unaudited consolidated balance sheet of the Company and its Subsidiaries, and the related statements of operations and cash flows for such quarter and for the period commencing on the first day of the Fiscal Year and ending on the last day of such quarter.

(d) Tax Returns.

(i) The Company shall timely cause to be prepared all federal, state, local and foreign tax returns (including information returns) of the Company and its Subsidiaries, which may be required by a jurisdiction in which the Company and its Subsidiaries operate or conduct business for each year or period for which such returns are required to be filed and shall cause such returns to be timely filed. Upon request of any Member, the Company shall furnish to each Member a copy of such tax return.

(ii) The Company shall furnish to each Member (a) as soon as reasonably practicable after the end of each Fiscal Year, information concerning the Company and its Subsidiaries reasonably required for the preparation of federal, state and local income tax returns of such Members (or any beneficial owner(s) of such Member), including a Schedule K-1 within one hundred fifty (150) days following the end of such Fiscal Year, indicating each Member's share of the Company's taxable income, gain, credits, losses and deductions for such year, in sufficient detail to enable such Member to prepare its federal, state and local income tax returns; provided, that the Managing Member shall use commercially reasonable efforts to provide estimates of such information believed by the Managing Member in good faith to be reasonable, (b) as soon as reasonably practicable after the close of the relevant fiscal period, such information concerning the Company as is required to enable such Member (or any beneficial owner of such Member) to pay estimated taxes (and, as soon as reasonably practicable but in no event later than five (5) business days prior to the applicable quarterly estimated tax payment due date, tax information necessary for the Members to make their quarterly estimated tax payments) and (c) as soon as reasonably practicable after a request by such Member, such other information concerning the Company and its Subsidiaries that is reasonably requested by such Member for compliance with its tax obligations (or the tax obligations of any beneficial owner(s) of such Member) or for tax planning purposes.

(e) Inconsistent Positions. No Member shall take a position on its income tax return with respect to any item of Company income, gain, deduction, loss or credit that is different from the position taken on the Company's income tax return with respect to such item unless such Member notifies the Company of the different position the Member desires to take and the Company's regular tax advisors, after consulting with the Member, are unable to provide an opinion that (after taking into account all of the relevant facts and circumstances) the arguments in favor of the Company's position outweigh the arguments in favor of the Member's position. Nothing in this Section 3.03(e) shall limit the other provisions of this Agreement and the Tax Receivable Agreement specifically providing for the tax characterization of transactions contemplated thereby.

Section 3.04 Recapitalization; PubCo's Capital Contribution; PubCo's Purchase of Common Units; the IPO Unit Redemption.

(a) In order to effect the Recapitalization, the number of Original Units that were issued and outstanding and held by the Pre-IPO Members prior to the date hereof as set forth opposite the respective Pre-IPO Member in Schedule A are hereby converted, as of the date hereof, and after giving effect to such conversion and the other transactions related to the Recapitalization, into the number of Common Units, as applicable, set forth opposite the name of the respective Member on the Schedule of Members attached hereto as Schedule A (provided, for the avoidance of doubt, that the number of Common Units set forth on Schedule A shall include the Common Units issued to PubCo pursuant to the IPO Common Unit Subscription Agreement), and such Common Units are hereby issued and outstanding as of the date hereof and the holders of such Common Units are Members hereunder. Following the Recapitalization, the Company shall issue to PubCo, and PubCo will acquire 49,493,275 newly issued Common Units in exchange for a portion of the IPO Net Proceeds payable to the Company upon consummation of the IPO pursuant to the IPO Common Unit Subscription Agreement (the "IPO Common Unit Subscription"). For the avoidance of doubt, PubCo shall be admitted as a Member with respect to all Common Units it holds from time to time.

Section 3.05 Books and Records. The Company shall keep full and accurate books of account and other records of the Company at its principal place of business.

ARTICLE IV.

MANAGING MEMBER OWNERSHIP; RESTRICTIONS ON MANAGING MEMBER UNITS

Section 4.01 Managing Member Ownership.

(a) Except as otherwise determined by the Managing Member, the Company and PubCo shall undertake all actions, including, without limitation, an issuance, reclassification, distribution, division or recapitalization, with respect to the Common Units and the Class A Common Stock to maintain at all times (i) a one-to-one ratio between the number of Common Units owned by PubCo and / or any wholly-owned Subsidiary of PubCo, in the aggregate, and the number of outstanding shares of Class A Common Stock, in the aggregate, and (ii) a one-to-one ratio between the number of Common Units owned by each Member (other than PubCo), directly or indirectly, and the number of outstanding shares of Class B Common Stock owned by such Member in each case, disregarding, for purposes of maintaining the one-to-one ratio contemplated by clause (i) and clause (ii) above, (A) Unvested PubCo Shares (to the extent the shares of Class A Common Stock underlying the applicable award are not actually issued and outstanding), (B) treasury stock, and (C) preferred stock or other debt or equity securities (including, without limitation, warrants, options or rights) issued by PubCo that are convertible into or exercisable or exchangeable for Class A Common Stock (except to the extent the net proceeds from such other securities, including any exercise or purchase price payable upon conversion, exercise or exchange thereof, have been contributed by PubCo to the equity capital of the Company). Except as otherwise determined by the Managing Member, in the event PubCo issues, transfers or delivers from treasury stock or repurchases or redeems PubCo's preferred stock in a transaction not contemplated in this Agreement, the Managing Member and PubCo shall take all actions such that, after giving effect to all such issuances, transfers, deliveries, repurchases or redemptions, PubCo, directly or indirectly, holds (in the case of any issuance, transfer or delivery) or ceases to hold (in the case of any repurchase or redemption) equity interests in the Company which (in the good faith determination by the Managing Member) are in the aggregate substantially economically equivalent to the outstanding preferred stock of PubCo so issued, transferred, delivered, repurchased or redeemed. Except as otherwise determined by the Managing Member in its reasonable discretion, the Company and PubCo shall not undertake any subdivision (by any Common Unit split, stock split, Common Unit distribution, stock distribution, reclassification, division, recapitalization or similar event) or combination (by reverse Common Unit split, reverse stock split, reclassification, division, recapitalization or similar event) of the Common Units, Class A Common Stock or Class B Common Stock, as applicable, that is not accompanied by an identical subdivision or combination of Class A Common Stock, Class B Common Stock or Common Units, respectively, to maintain at all times (x) a one-to-one ratio between the number of Common Units owned by PubCo and / or any wholly-owned subsidiary of PubCo, in the aggregate, and the number of outstanding shares of Class A Common Stock, in the aggregate, or (y) a one-to-one ratio between the number of Common Units owned by each Member (other than PubCo), directly or indirectly, and the number of outstanding shares of Class B Common Stock owned by such Member, directly or indirectly, in each case, unless such action is necessary to maintain at all times a one-to-one ratio between the number of Common Units owned by PubCo and / or any wholly owned subsidiary of PubCo, in the aggregate, and the number of outstanding shares of Class A Common Stock, in the aggregate, or the number of Common Units owned by Members (other than PubCo), directly or indirectly, and the number of outstanding shares of Class B Common Stock, as contemplated by the first sentence of this Section 4.01(a).

(b) The Company shall only be permitted to issue additional Common Units, and/or establish other classes or series of Units or other Equity Securities in the Company to the Persons and on the terms and conditions provided for in Section 3.01, this Section 4.01, Section 4.03 and Section 9.01. Subject to the foregoing, the Managing Member may cause the Company to issue additional Common Units authorized under this Agreement and/or establish other classes or series of Units or other Equity Securities in the Company at such times and upon such terms as the Managing Member shall determine and the Managing Member shall amend this Agreement as necessary in connection with the issuance of additional Common Units and admission of additional Members under this Section 4.01 without the requirement of any consent or acknowledgement of any other Member.

Section 4.02 Restrictions on Managing Member Units. Except as otherwise determined by the Managing Member in connection with the use of cash or other assets held by PubCo, if at any time, any shares of Class A Common Stock are repurchased or redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by PubCo for cash, then the Managing Member shall cause the Company, immediately prior to such repurchase or redemption of Class A Common Stock, to redeem a corresponding number of Common Units held (directly or indirectly) by PubCo, at an aggregate redemption price equal to the aggregate purchase or redemption price of the shares of Class A Common Stock being repurchased or redeemed by PubCo (plus any expenses related thereto) and upon such other terms as are the same for the shares of Class A Common Stock being repurchased or redeemed by PubCo; *provided*, if PubCo uses funds received from distributions from the Company or the net proceeds from an issuance of Class A Common Stock to fund such repurchase or redemption, then the Company shall cancel a corresponding number of Common Units held (directly or indirectly) by PubCo for no consideration. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make any repurchase or redemption if such repurchase or redemption would violate any applicable Law.

Section 4.03 Equity Plans.

(a) If at any time or from time to time, in connection with any Equity Plan, a stock option granted over shares of Class A Common Stock to a Person is duly exercised:

(i) PubCo shall, as soon as practicable after such exercise, make a Capital Contribution to the Company in an amount equal to the exercise price paid to PubCo by such exercising Person in connection with the exercise of such stock option.

(ii) Notwithstanding the amount of the Capital Contribution actually made pursuant to Section 4.03(a)(i), PubCo shall be deemed to have contributed to the Company as a Capital Contribution, in lieu of the Capital Contribution actually made and in consideration of additional Common Units, an amount equal to the Value of a share of Class A Common Stock as of the date of such exercise multiplied by the number of shares of Class A Common Stock then being issued by PubCo in connection with the exercise of such stock option.

(iii) PubCo shall receive in exchange for such Capital Contributions (as deemed made under Section 4.03(a)(ii)), a number of Common Units equal to the number of shares of Class A Common Stock for which such option was exercised.

(b) If at any time or from time to time, in connection with any Equity Plan, any shares of Class A Common Stock are issued to a Person:

(i) PubCo shall issue such number of shares of Class A Common Stock as are to be issued to such Person in accordance with the Equity Plan;

(ii) on the Vesting Date, the following events will be deemed to have occurred: (1) PubCo shall be deemed to have sold such shares of Class A Common Stock to the Company for a purchase price equal to the Value of such shares of Class A Common Stock, (2) the Company shall be deemed to have delivered such shares of Class A Common Stock to such Person, (3) PubCo shall be deemed to have contributed the purchase price for such shares of Class A Common Stock to the Company as a Capital Contribution, and (4) in the case where such Person is an employee of a Subsidiary, the Company shall be deemed to have contributed such amount to the capital of the Subsidiary; and

(iii) the Company shall issue to PubCo on the Vesting Date a number of Common Units equal to the number of shares of Class A Common Stock issued under Section 4.03(b)(i) in consideration for a Capital Contribution that the Corporation is deemed to make to the Company pursuant to clause (3) of Section 4.03(b)(ii) above.

ARTICLE V.

CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS

Section 5.01 Capital Contributions.

(a) From and after the date hereof, no Member shall have any obligation to the Company, to any other Member or to any creditor of the Company to make any further Capital Contribution, except as expressly provided in this Agreement.

(b) Except as expressly provided herein or in the Act, no Member, in its capacity as a Member, shall have the right to receive any Property of the Company.

Section 5.02 Capital Accounts.

(a) Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Member on the books of the Company in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv) and, to the extent consistent with such provisions, the following provisions:

(i) Each Member listed on the Member Schedule shall be credited with the Initial Capital Account Balance set forth on the Member Schedule. The Member Schedule shall be amended by the Managing Member from time to time to reflect adjustments to the Members' Capital Accounts made in accordance with Sections 5.02(a)(ii), 5.02(a)(iii), 5.02(a)(iv), 5.02(c) or otherwise.

(ii) To each Member's Capital Account there shall be credited: (A) such Member's Capital Contributions, (B) such Member's distributive share of Net Income and any item in the nature of income or gain that is allocated pursuant to Section 5.04 and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member.

(iii) To each Member's Capital Account there shall be debited: (A) the amount of money and the Carrying Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Net Loss and any items in the nature of expenses or losses that are allocated to such Member pursuant to Section 5.04 and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company.

(iv) In determining the amount of any liability for purposes of subparagraphs (ii) and (iii) above there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Managing Member shall reasonably determine that it is necessary to modify the manner in which the Capital Accounts or any debits or credits thereto are maintained (including debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members) to comply with the Code and Treasury Regulations, the Managing Member may (acting reasonably and in good faith) make such modification so long as such modification will not have any effect on the amounts distributed to any Person pursuant to Article XI upon the dissolution of the Company. The Managing Member also may (i) make any adjustments that are necessary or appropriate to maintain equality between Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

(b) Succession to Capital Accounts. In the event any Person becomes a Substitute Member in accordance with the provisions of this Agreement, such Substitute Member shall succeed to the Capital Account of the former Member (the "Transferor Member") to the extent such Capital Account relates to the Transferred Units.

(c) Adjustments of Capital Accounts. The Company shall revalue the Capital Accounts of the Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) at the following times: (i) immediately prior to the contribution of more than a *de minimis* amount of money or other property to the Company by a new or existing Member as consideration for one or more Units; (ii) immediately prior to the distribution by the Company to a Member of more than a *de minimis* amount of property in respect of one or more Units; (iii) immediately prior to the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); (iv) in connection with the issuance by the Company of more than a *de minimis* amount of Units as consideration for the provision of services to or for the benefit of the Company (as described in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii)) and (v) at other times as determined by the Managing Member; provided, however, that adjustments pursuant to clauses (i), (ii) and (iv) above need not be made if the Managing Member reasonably determines that such adjustments are not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustments does not adversely and disproportionately affect any Member. The Company shall be entitled to take all actions necessary (as determined by the Managing Member) to comply with the provisions of the Code and Treasury Regulations relating to non-compensatory options.

(d) No Member shall be entitled to withdraw capital or receive distributions except as specifically provided herein. A Member shall have no obligation to the Company, to any other Member or to any creditor of the Company to restore any negative balance in the Capital Account of such Member. Except as expressly provided elsewhere herein, no interest shall be paid on the balance in any Member's Capital Account.

(e) Whenever it is necessary for purposes of this Agreement to determine a Member's Capital Account on a per Unit basis, such amount shall be determined by dividing the Capital Account of such Member attributable to the applicable class of Units held of record by such Member by the number of Units of such class held of record by such Member, with appropriate adjustments if necessary to reflect the economic differences between Units.

Section 5.03 Amounts and Priority of Distributions.

(a) Distributions Generally. Except as otherwise provided in Article XI, distributions shall be made to the Members as set forth in this Section 5.03, at such times and in such amounts as the Managing Member, in its sole discretion, shall determine.

(b) Distributions to the Members. Subject to Section 5.03(e) at such times and in such amounts as the Managing Member, in its sole discretion, shall determine, distributions shall be made to the Members in proportion to their respective Percentage Interests.

(c) PubCo Distributions. Notwithstanding the provisions of Section 5.03(b), the Managing Member, in its sole discretion, may authorize that (i) cash be paid to PubCo (which payment shall be made without pro rata distributions to the other Members) in exchange for the redemption, repurchase or other acquisition of Units held by PubCo to the extent that such cash payment is used to redeem, repurchase or otherwise acquire an equal number of corresponding Equity Securities of PubCo in accordance with Article IV, and (ii) to the extent that the Managing Member determines that expenses or other obligations of PubCo are related to its role as the Managing Member or the business and affairs of PubCo that are conducted through the Company or any of the Company's direct or indirect Subsidiaries, cash (and, for the avoidance of doubt, only cash) distributions may be made to PubCo (which distributions shall be made without pro rata distributions to the other Members) in amounts required for PubCo to pay (w) operating, administrative and other similar costs incurred by PubCo, to the extent the proceeds are used or will be used by PubCo to pay expenses described in this clause (ii), and payments pursuant to any legal, tax, accounting and other professional fees and expenses (but, for the avoidance of doubt, excluding any tax liabilities of PubCo and any amounts that PubCo is required to pay pursuant to the Tax Receivables Agreement), (x) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, PubCo, (y) fees and expenses (including any underwriters' discounts and commissions) related to any securities offering, investment or acquisition transaction (whether or not successful) authorized by PubCo, as the Managing Member and (z) other fees and expenses in connection with the maintenance of the existence of PubCo. For the avoidance of doubt, distributions made under this Section 5.03(c) may not be used to pay or facilitate dividends or distributions on the common stock of PubCo and must be used solely for one of the express purposes set forth under clause (i) or (ii) of the immediately preceding sentence.

(d) Distributions in Kind. Any distributions in kind shall be made at such times and in such amounts as the Managing Member, in its sole discretion, shall determine based on their Fair Market Value as determined by the Managing Member in the same proportions as if distributed in accordance with Section 5.03(b). If cash and property are to be distributed in kind simultaneously, the Company shall distribute such cash and property in kind in the same proportion to each Member.

(e) Tax Distributions.

(i) Notwithstanding any other provision of this Section 5.03 to the contrary (but subject to Section 5.03(e)(ii)), to the extent permitted by Law and consistent with the Company's obligations to its creditors as determined by the Managing Member, to the extent out of Available Cash, the Company shall make cash distributions pursuant to this Section 5.03(e)(i) to each Member at least two (2) Business Days prior to the date on which any U.S. federal corporate estimated tax payments are due (or at such other times as are necessary to permit the Members or their beneficial owners to discharge their U.S. federal, state and local estimated tax payment responsibilities, as reasonably determined by the Managing Member), in an amount equal to such Member's Tax Distribution Amount (estimated on a quarterly basis by the Managing Member, taking into account estimated taxable income or loss of the Company through the end of the relevant quarterly period). A final accounting for Tax Distributions shall be made after the allocation of the Company's actual net taxable income or loss has been determined for a fiscal year (or applicable portion thereof) and, unless otherwise determined by the Managing Member, any shortfall in the amount of Tax Distributions a Member received for such fiscal year based on such final accounting shall, to the extent permitted by law and consistent with the Company's obligations to its creditors as determined by the Managing Member, be promptly distributed to such Member.

(ii) To the extent a Member otherwise would be entitled to receive less than its Percentage Interest of the aggregate Tax Distributions to be paid pursuant to this Section 5.03(e) on any given date, then unless otherwise determined by the Managing Member and such Member acting reasonably and in good faith, the Tax Distributions to such Member shall be increased to ensure that all such Tax Distributions made pursuant to this Section 5.03(e) are made *pro rata* in accordance with the Members' respective Percentage Interests. If, on a Tax Distribution date, there are insufficient funds on hand to distribute to the Members the full amount of the Tax Distributions to which such Members are otherwise entitled, Tax Distributions pursuant to this Section 5.03(e) shall be made to the Members to the extent of available funds in accordance with the Tax Distributions that would have been paid to them had no such limitation existed and the Company shall make future Tax Distributions (pro rata in accordance with the Tax Distributions that would have been paid to the Members had no applicable limitation existed) promptly after funds become available sufficient to pay the remaining portion of Tax Distributions to which such Members would have been entitled had sufficient funds been available. In addition, notwithstanding the foregoing, to the extent that a Tax Distribution that would be made to PubCo exceeds the PubCo Modified Distribution Amount, the Managing Member may reduce the Tax Distribution payable to PubCo in an amount up to the amount of such excess (and, if there are insufficient funds on hand to distribute to the Members other than PubCo the full amount of the Tax Distributions to which such other Members are otherwise entitled, then the Managing Member shall, pursuant to this sentence, reduce the Tax Distribution payable to PubCo in an amount equal to the lesser of (i) the amount of such excess or (ii) the aggregate amount required to permit the other Members to receive Tax Distributions equal to the amount they would have received under this Section 5.03(e) were sufficient cash available to make full Tax Distributions under such provision, with the amount of any such reduction being paid as Tax Distributions to the other Members pro rata in accordance with the Tax Distributions to which such other Members are otherwise entitled). For purposes of this clause (ii), the "PubCo Modified Distribution Amount" shall mean the Tax Distribution Amount of PubCo, adjusted as determined by the Managing Member to (w) reflect the marginal combined corporate income tax rates to which PubCo is subject, (x) reflect any adjustments with respect to PubCo pursuant to Section 743(b) of the Code, (y) include any amounts that PubCo is required to pay pursuant to the Tax Receivable Agreement and (z) take into account other reductions or modifications as determined by the Managing Member. Any distributions paid pursuant to Section 5.03(b) during a fiscal year shall, to the extent of Tax Distributions otherwise required to be paid during such fiscal year, be treated as Tax Distributions paid during such fiscal year.

(iii) Tax Distributions with respect to income or gain allocations made for periods (or portions thereof) beginning on or after the Restatement Date shall be treated as advances of amounts otherwise distributable to any Member pursuant to this Section 5.03 (other than this Section 5.03(e) or Section 11.02(b)(i)), and accordingly shall be applied against and reduce (without duplication) the next amounts that would otherwise be payable to such Member pursuant to such provisions (provided, that in no event will the distributions payable to PubCo in respect of Units transferred to PubCo in connection with a Redemption or Direct Redemption be increased or reduced (as compared to Common Units held by PubCo as of the date hereof) as a result of Tax Distributions made (or not made) in respect of such Units prior to their transfer to PubCo in connection with the applicable Redemption or Direct Redemption).

Section 5.04 Allocations.

(a) Net Income and Net Loss. Except as otherwise provided in this Agreement, and after giving effect to the special allocations set forth in Section 5.04(b), Section 5.04(c) and Section 5.04(d), Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 5.03(b) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 5.03(b), to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

(b) Special Allocations. The following special allocations shall be made in the following order:

(i) Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article V, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the immediately preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.04(b)(i) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article V, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.04(b)(ii) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as promptly as possible; provided, that an allocation pursuant to this Section 5.04(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Section 5.04(b)(iii) were not in the Agreement.

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in accordance with their relative Percentage Interests.

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(j)(1).

(vi) Section 754 Adjustments. (A) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases the basis of such asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income and Net Loss; and (B) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to such Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(c) Curative Allocations. The allocations set forth in Section 5.04(b)(i) through Section 5.04(b)(iv) and Section 5.04(d) (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 5.04(c). Therefore, notwithstanding any other provision of this Article V (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 5.04.

(d) Loss Limitation. Net Loss (or individual items of loss or deduction) allocated pursuant to Section 5.04 hereof shall not exceed the maximum amount of Net Loss (or individual items of loss or deduction) that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Net Loss (or individual items of loss or deduction) pursuant to Section 5.04 hereof, the limitation set forth in this Section 5.04(d) shall be applied on a Member by Member basis and Net Loss (or individual items of loss or deduction) not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d). Any reallocation of Net Loss pursuant to this Section 5.04(d) shall be subject to chargeback pursuant to the curative allocation provision of Section 5.04(c).

Section 5.05 Other Allocation Rules.

(a) Interim Allocations Due to Percentage Adjustment. If the Members' interests in the Company change pursuant to the terms of the Agreement during any Fiscal Year, the amount of Net Income and Net Loss (or items thereof) to be allocated to the Members for such entire Fiscal Year shall be allocated to the portion of such Fiscal Year which precedes the date of such Transfer or change (and if there shall have been a prior Transfer or change in such Fiscal Year, which commences on the date of such prior Transfer or change) and to the portion of such Fiscal Year which occurs on and after the date of such Transfer or change (and if there shall be a subsequent Transfer or change in such Fiscal Year, which precedes the date of such subsequent Transfer or change), and the amounts of the items so allocated to each such portion shall be credited or charged to the Members in accordance with Section 5.04 as in effect during each such portion of the Fiscal Year in question. Such allocation shall be in accordance with Section 706 of the Code and the Treasury Regulations thereunder and made without regard to the date, amount or receipt of any distributions that may have been made with respect to the transferred interest to the extent consistent with Section 706 of the Code and the Treasury Regulations thereunder, and shall be made using any method permitted by Section 706 of the Code and such regulations as determined by the Managing Member. As of the date of such Transfer, the Transferee Member shall succeed to the Capital Account of the Transferor Member with respect to the transferred Units.

(b) Tax Allocations: Code Section 704(c). In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company and with respect to reverse Code Section 704(c) allocations described in Treasury Regulations Section 1.704-3(a)(6) shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Carrying Value or its Carrying Value determined pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (computed in accordance with the definition of Carrying Value) using (unless otherwise determined by the Managing Member) the "traditional method"; provided, that with respect to the "forward" layer for any such Property contributed by any Pre-IPO Member, no method other than the "traditional method" described in Treasury Regulations Section 1.704-3(b) shall be used without the prior written consent of such Pre-IPO Member. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.05(b), Section 704(c) of the Code (and the principles thereof), and Treasury Regulations Section 1.704-1(b)(4)(i) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Loss, other items, or distributions pursuant to any provision of this Agreement.

Section 5.06 Tax Withholding; Withholding Advances.

(a) Tax Withholding.

(i) If requested by the Managing Member, each Member shall, if able to do so, deliver to the Managing Member: (A) an affidavit in form satisfactory to the Company that the applicable Member (or its partners, as the case may be) is not subject to withholding under the provisions of any federal, state, local, foreign or other Law; (B) any certificate that the Company may reasonably request with respect to any such Laws; and/or (C) any other form or instrument reasonably requested by the Company relating to any Member's status under such Law. In the event that a Member fails or is unable to deliver to the Company an affidavit described in subclause (A) of this clause (i), for the avoidance of doubt, the Company may withhold amounts from such Member in accordance with Section 5.06(b).

(ii) After receipt of a written request of any Member, the Company shall provide such information to such Member and take such other action as may be reasonably requested and necessary to assist such Member in making any necessary filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding imposed by any taxing authority with respect to amounts distributable or items of income allocable to such Member hereunder, in each case, to the extent not adverse to the Company or any Member. In addition, the Company shall, at the request of any Member, make or cause to be made (or cause the Company to make) any such filings, applications or elections; provided, that any such requesting Member shall cooperate with the Company, with respect to any such filing, application or election to the extent reasonably determined by the Company and that any filing fees, taxes or other out-of-pocket expenses reasonably incurred and related thereto shall be paid and borne by such requesting Member or, if there is more than one requesting Member, by such requesting Members in accordance with their Relative Percentage Interests.

(b) Withholding Advances. Subject to and without limitation of Section 5.06(c), to the extent PubCo or the Company is required by Law to withhold or to make tax payments on behalf of or with respect to any Member (e.g., in connection with the delivery of consideration in connection with a Redemption, backup withholding, Section 1445 of the Code, Section 1446 of the Code or any “imputed underpayment” within the meaning of the Code or, in each case, similar provisions of state, local or other tax Law) (“Withholding Advances”), PubCo or the Company, as the case may be, may withhold such amounts and make such tax payments as so required. The Managing Member shall reasonably determine the portion of any “imputed underpayment” within the meaning of the Code that is attributable to each Member (including a former Member and such former Member’s assignee(s) or transferee(s)).

(c) Repayment of Withholding Advances. All Withholding Advances made on behalf of a Member, plus interest thereon at a rate equal to the Prime Rate as of the date of such Withholding Advances plus 2.0% per annum, shall (i) be paid on demand by the Member on whose behalf such Withholding Advances were made (it being understood that no such payment shall increase such Member’s Capital Account), or (ii) with the consent of the Managing Member be repaid by reducing the amount of the current or next succeeding distribution or distributions that would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member. Whenever repayment of a Withholding Advance by a Member is made as described in clause (ii) of this Section 5.06(c), for all other purposes of this Agreement such Member shall be treated as having received all distributions (whether before or upon any Dissolution Event) unreduced by the amount of such Withholding Advance and interest thereon.

(d) Withholding Advances — Reimbursement of Liabilities. Each Member hereby agrees to reimburse the Company for any liability with respect to Withholding Advances (including interest thereon) required or made on behalf of or with respect to such Member (including penalties imposed with respect thereto). The obligations of a Member with respect to the repayment and reimbursement of Withholding Advances will survive the termination, liquidation, winding up and dissolution of the Company and will survive the partial or complete transfer or redemption of a Member’s interests in the Company.

Section 5.07 Tax Proceedings.

(a) In representing the Company before any taxing authorities and courts in tax matters affecting the Company and the Members in their capacity as such that the Managing Member determines are reasonably expected to be material to such Members, the Company Representative shall, to the extent practicable and permitted under the circumstances, keep the Members promptly informed with respect to any such administrative and judicial proceedings. For the avoidance of doubt, nothing in this Section 5.07 shall prevent the Company (or any of its Subsidiaries) from taking actions explicitly provided to be taken by the Company pursuant to this Agreement (including for this purpose making an election pursuant to Section 754 of the Code (or analogous provisions of state or local Law)).

(b) Without limiting the foregoing, the Company Representative shall give prompt written notice to the Sponsor Members of the commencement of any material audit or proceeding of the Company or any of its Subsidiaries with respect to U.S. income taxes, to the extent that such income taxes would “pass through” to the Sponsor Members for the applicable U.S. income tax purposes and are reasonably expected to have a disproportionate and material adverse impact on the Sponsor Members (a “Specified Audit”). The Company Representative shall (i) keep the Sponsor Members reasonably informed of the material developments and status of any such Specified Audit, (ii) permit each Sponsor Member (or its designee) to participate (including using separate counsel), in each case at the Sponsor Members’ sole cost and expense, in any such Specified Audit, and (iii) promptly notify each Sponsor Members of receipt of a notice of a final partnership adjustment (or equivalent under applicable Laws) or a final decision of a court or IRS Appeals panel (or equivalent body under applicable Laws) with respect to such Specified Audit. The Company Representative or the Company shall promptly provide the Sponsor Members with copies of all material correspondence between the Company Representative or the Company (as applicable) and any Governmental Authority in connection with such Specified Audit and shall give the Sponsor Members a reasonable opportunity to review and comment on any material correspondence, submission (including settlement or compromise offers) or filing in connection with any such Specified Audit, which the Company Representative shall consider in good faith. The Company Representative shall obtain the prior written consent of each Sponsor Member (which consent shall not be unreasonably withheld, conditioned or delayed) before making an election under Section 6226(a) of the Code (or any analogous provision of U.S. state or local tax Law) with respect to any period ending on or before the Restatement Date.

ARTICLE VI.

CERTAIN TAX MATTERS

Section 6.01 Company Representative.

(a) The Managing Member is specially authorized and appointed to act as the Company Representative and in any similar capacity under state or local Law; provided, that the Managing Member may appoint and replace the Company Representative. The Company Representative may also designate a “designated individual” in accordance with Treasury Regulations Section 301.6223-1(b)(3)(i). The Company and the Members (including any Member designated as the Company Representative prior to the date hereof) shall cooperate fully with each other and shall use reasonable best efforts to cause the Managing Member (or any Person subsequently designated) to become the Company Representative with respect to any taxable period of the Company with respect to which the statute of limitations has not yet expired, including (as applicable) by filing certifications pursuant to Treasury Regulations Section 301.6231(a)(7)-1(d).

(b) The Company Representative may retain, at the Company’s expense, such outside counsel, accountants and other professional consultants as it may reasonably deem necessary in the course of fulfilling its obligations as the Company Representative. Subject to the other terms of this Agreement, the Company Representative is authorized to take such actions and execute and file all statements and forms on behalf of the Company that are approved by the Managing Member and are permitted or required by the applicable provisions of the Partnership Tax Audit Rules. Each Member agrees to reasonably cooperate with the Company Representative and to use commercially reasonable efforts to do or refrain from doing any or all things requested by the Company Representative (including paying any and all resulting taxes, additions to tax, penalties and interest in a timely fashion) in connection with any examination of the Company’s affairs by any federal, state, or local tax authorities, including resulting administrative and judicial proceedings.

Section 6.02 Tax Elections. Except as otherwise provided in this Agreement, the Managing Member and the Company Representative shall be entitled to cause the Company to make (or not make) any tax elections under applicable law; provided, that the Company shall make and maintain in effect an election under Section 754 of the Code for the taxable year that includes the Restatement Date and for subsequent years.

ARTICLE VII.

MANAGEMENT OF THE COMPANY

Section 7.01 Management by the Managing Member. Except as otherwise specifically set forth in this Agreement, the Managing Member shall be deemed to be a “manager” for purposes of the Delaware Act. Except as expressly provided in this Agreement or the Delaware Act, the day-to-day business and affairs of the Company and its Subsidiaries shall be managed, operated and controlled exclusively by the Managing Member in accordance with the terms of this Agreement, and no other Members shall have management authority or rights over the Company or its Subsidiaries. The Managing Member is, to the extent of its rights and powers set forth in this Agreement, an agent of the Company for the purpose of the Company’s and its Subsidiaries’ business, and the actions of the Managing Member taken in accordance with such rights and powers, shall bind the Company (and no other Members shall have such right). Except as expressly provided in this Agreement, the Managing Member shall have all necessary powers to carry out the purposes, business, and objectives of the Company and its Subsidiaries. The Managing Member may delegate to Members, employees, officers or agents of the Company or any Subsidiary in its discretion the authority to sign agreements and other documents on behalf of the Company or any Subsidiary. The Managing Member shall have the exclusive power and authority, on behalf of the Company and its Subsidiaries to take such actions not inconsistent with this Agreement as the Managing Member deems necessary or appropriate to carry on the business and purposes of the Company and its Subsidiaries.

Section 7.02 Withdrawal of the Managing Member. PubCo may withdraw as the Managing Member and appoint as its successor at any time upon written notice to the Company (i) any wholly-owned Subsidiary of PubCo, (ii) any Person into which PubCo is merged or consolidated or (iii) any transferee of all or substantially all of the assets of PubCo, which withdrawal and replacement shall be effective upon the delivery of such notice. No appointment of a Person as Managing Member shall be effective unless PubCo and the new Managing Member provide all other Members with contractual rights, directly enforceable by such other Members against the new Managing Member, to cause the new Managing Member to comply with all the Managing Member's obligations under this Agreement.

Section 7.03 Decisions by the Members.

(a) Other than the Managing Member, the Members shall take no part in the management of the Company's business, shall transact no business for the Company and shall have no power to act for or to bind the Company; provided, however, that the Company may engage any Member or principal, partner, member, shareholder or interest holder thereof as an employee, independent contractor or consultant to the Company, in which event the duties and liabilities of such Person with respect to the Company as an employee, independent contractor or consultant, as applicable, shall be governed by the terms of such engagement with the Company.

(b) Except as otherwise expressly provided herein in the Stockholders Agreement, no Member shall have the power or authority to vote, approve or consent to any matter or action taken by the Company (or by PubCo, as Managing Member).

Section 7.04 Fiduciary Duties.

(a) This Agreement is not intended to, and does not, create or impose any duty (including any fiduciary duty) on any of the Members (including without limitation, the Managing Member) hereto or on their respective Affiliates. Further, notwithstanding any other provision of this Agreement or any duty otherwise existing at law or in equity, the parties hereto agree that no Member or Managing Member shall, to the fullest extent permitted by law, have duties (including fiduciary duties) to any other Member or to the Company, and in doing so, recognize, acknowledge and agree that their duties and obligations to one another and to the Company are only as expressly set forth in this Agreement; provided, however, that each Member shall have the duty to act in accordance with the implied contractual covenant of good faith and fair dealing.

(b) To the extent that, at law or in equity, any Member (including without limitation, the Managing Member) has duties (including fiduciary duties) and liabilities relating thereto to the Company, to another Member or to another Person who is a party to or is otherwise bound by this Agreement, the Members (including without limitation, the Managing Member) acting under this Agreement will not be liable to the Company, to any such other Member or to any such other Person who is a party to or is otherwise bound by this Agreement, for their good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities relating thereto of any Member (including without limitation, the Managing Member) otherwise existing at law or in equity, are agreed by the Members to replace to that extent such other duties and liabilities of the Members relating thereto (including without limitation, the Managing Member).

(c) The Managing Member may consult with legal counsel, accountants and financial or other advisors selected by it, and any act or omission taken by the Managing Member on behalf of the Company or in furtherance of the interests of the Company in good faith in reliance upon and in accordance with the advice of such Person as to matters the Managing Member reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion or advice, and the Managing Member will be fully protected in so acting or omitting to act so long as such counsel or accountants or financial or other advisors were selected with reasonable care.

(d) Notwithstanding any other provision of this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement the Managing Member is permitted or required to make a decision (i) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, such Managing Member shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable Law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company or the Members, or (ii) in its "good faith" or under another expressed standard, such Managing Member shall act under such express standard and shall not be subject to any other or different standards.

Section 7.05 Officers.

(a) Appointment of Officers. The Managing Member may appoint individuals as officers ("Officers") of the Company, which may include such officers as the Managing Member determines are necessary or appropriate. No Officer need be a Member. An individual may be appointed to more than one office.

(b) Authority of Officers. The Officers shall have the duties, rights, powers and authority as may be prescribed by the Managing Member from time to time.

(c) Removal, Resignation and Filling of Vacancy of Officers. Unless otherwise set forth in the employment agreement of the applicable Officer, the Managing Member may remove any Officer, for any reason or for no reason, at any time. Any Officer may resign at any time by giving written notice to the Company, and such resignation shall take effect at the date of the receipt of that notice or any later time specified in that notice; provided, that, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any such resignation shall be without prejudice to the rights, if any, of the Company or such Officer under this Agreement. A vacancy in any office because of death, resignation, removal or otherwise shall be filled by the Managing Member.

ARTICLE VIII.

TRANSFERS OF INTERESTS

Section 8.01 Restrictions on Transfers.

(a) Except as expressly permitted by Section 8.02, and subject to Section 8.01(b), Section 8.01(c) and Section 8.01(d) and/or any other agreement between such Member and the Company, PubCo or any of their respective controlled Affiliates, without the prior written approval of the Managing Member, no Member shall directly or indirectly Transfer all or any part of its Units or any right or economic interest pertaining thereto, including the right to vote or consent on any matter or to receive or have any economic interest in distributions or advances from the Company pursuant thereto. Any such Transfer which is not in compliance with the provisions of this Agreement shall be deemed a Transfer by such Member of Units in violation of this Agreement (and a breach of this Agreement by such Member) and shall be null and void *ab initio*.

(b) Except as otherwise expressly provided herein, it shall be a condition precedent to any Transfer otherwise permitted or approved pursuant to this Article VIII that:

- (i) the Transferor shall have provided to the Company prior notice of such Transfer;
- (ii) the Transferee shall agree in writing to be bound by this Agreement by signing and delivering to the Company a joinder substantially in a form acceptable to the Company;
- (iii) the Transfer shall comply with all applicable Laws;
- (iv) to the knowledge of the Transferee and Transferor after reasonable inquiry of the Company, the Transfer shall not impose material liability or material reporting obligations on the Company or any Member thereof in any jurisdiction, whether domestic or foreign, or result in the Company or any Member thereof becoming subject to the jurisdiction of any Governmental Authority anywhere, other than the Governmental Authorities in which the Company is then subject to such liability, reporting obligation or jurisdiction; and
- (v) such Transfer shall comply with Article IX (to the extent Article IX governs such Transfer of Units).

(c) Notwithstanding any other provision of this Agreement to the contrary, no Member shall Transfer all or any part of its Units or any right or economic interest pertaining thereto if such Transfer, in the reasonable discretion of the Managing Member, would cause the Company to (i) be classified as a “publicly traded partnership” as that term is defined in Section 7704 of the Code and Regulations promulgated thereunder or (ii) fail to qualify for the safe harbor contained in Treasury Regulations Section 1.7704-1(h) or for other safe harbor treatment under Section 7704 of the Code on which the Company intends to rely (as determined by the Managing Member).

(d) Any Transfer of Units pursuant to this Agreement, including this Article VIII, shall be subject to the provisions of Section 3.01 and Section 3.02.

Section 8.02 Certain Permitted Transfers. Subject to compliance with Sections 8.01(b) through (d), following the Restatement Date (unless such time restriction is waived by the Managing Member in its sole discretion with respect to any proposed Transfer(s)), the following Transfers shall be permitted:

(a) any Transfer pursuant to the terms of Article IX;

(b) any Transfer contemplated by Section 9.06 in connection with a PubCo Approved Change of Control or PubCo Approved Recap Transaction;

(c) in the case of the AES Member or the Siemens Member, any Transfer of all (but not less than all) of its respective Units to any Person other than a Restricted Person; and

(d) any Transfer to an Affiliate of the applicable Member.

Section 8.03 Registration of Transfers. When any Units are validly Transferred in accordance with the terms of this Agreement, the Company shall cause such Transfer to be registered on the books of the Company.

Section 8.04 Restricted Units Legend. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. To the extent such Units have been certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ISSUED ON _____, 2021, AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF FLUENCE ENERGY, LLC, AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME, AND FLUENCE ENERGY, LLC RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH CONDITIONS HAVE BEEN FULFILLED WITH RESPECT TO ANY TRANSFER. A COPY OF SUCH CONDITIONS SHALL BE FURNISHED BY FLUENCE ENERGY, LLC TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE.”

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any units which cease to be Units in accordance with the definition thereof.

ARTICLE IX.

REDEMPTION AND EXCHANGE RIGHTS

Section 9.01 Redemption Right of a Member.

(a) Each Member (other than PubCo) shall be entitled to cause the Company to redeem (a "Redemption") its Common Units (excluding any Common Units that are subject to vesting conditions or subject to Transfer limitations pursuant to this Agreement) in whole or in part (the "Redemption Right") at any time and from time to time. A Member desiring to exercise its Redemption Right (a "Redeeming Member") shall exercise such right by giving written notice (the "Redemption Notice") to the Company, with a copy to PubCo. The Redemption Notice shall specify the number of Common Units (the "Redeemed Units") that the Redeeming Member intends to have the Company redeem and a date, not less than two (2) Business Days nor more than ten (10) Business Days after delivery of such Redemption Notice (unless and to the extent that the Managing Member in its sole discretion agrees in writing to waive such time periods), on which exercise of the Redemption Right shall be completed (the "Redemption Date"); provided, that the Redemption Notice may specify that the Redemption is to be contingent (including as to the timing) upon the consummation of a purchase by another Person (whether in a tender or exchange offer, an underwritten offering or otherwise) of the Share Settlement into which the Redeemed Units are exchangeable, or contingent (including as to timing) upon the closing of an announced merger, consolidation or other transaction or event in which the Share Settlement would be exchanged or converted or become exchangeable for or convertible into cash or other securities or property; provided, further that the Redeeming Member may withdraw or amend a Redemption Notice, in whole or in part, prior to the effectiveness of the Redemption, at any time prior to 5:00 p.m. New York City time, on the Business Day immediately preceding the Redemption Date (or any such later time as may be required by Law) by delivery of a written notice of withdrawal to the Company (with a copy to PubCo), specifying (1) the number of withdrawn Units, (2) if any, the number of Units as to which the Redemption Notice remains in effect and (3) if the Redeeming Member so determines, a new Redemption Date or any other new or revised information permitted in the Redemption Notice. Following receipt of the Redemption Notice, and in any event at least one (1) Business Days prior to the Redemption Date, PubCo shall deliver to the Redeeming Member a notice, specifying whether it elects (which shall be determined solely by the independent directors of PubCo (within the meaning of the rules of the Nasdaq Stock Market) who are disinterested) to settle the Redemption with a Share Settlement or a Cash Settlement (an "Election Notice"). If the Election Notice specifies a Cash Settlement, then on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date):

(i) PubCo shall contribute the proceeds of the Cash Settlement to the Company in exchange for a number of Common Units equal to the number of Redeemed Units (and for the avoidance of doubt, PubCo shall be permitted to elect a Cash Settlement only if such Cash Settlement is fully paid with cash proceeds from the issuance and sale by PubCo of a number of shares of Class A Common Stock equal to the number of Redeemed Units to be redeemed with such Cash Settlement, which amount is contributed to the Company by PubCo substantially contemporaneously with the payment of such Cash Settlement); provided, that notwithstanding anything to the contrary in this Agreement, (x) PubCo shall be obligated to contribute to the Company only an amount in respect of such Cash Settlement equal to the net proceeds (after deduction of any underwriters' discounts or commissions and brokers' fees or commissions) from such issuance and sale by PubCo of such shares of Class A Common Stock and (y) PubCo's Capital Account shall be increased by an amount that includes any such underwriters' discounts or commissions and brokers' fees or commissions relating to such issuance and sale of shares of Class A Common Stock by PubCo;

(ii) the Redeeming Member shall Transfer and surrender, free and clear of all liens and encumbrances (x) the Redeemed Units to the Company, and (y) an equal number of shares of Class B Common Stock to PubCo;

(iii) the Company shall (x) cancel the Redeemed Units, (y) pay to the Redeeming Member the applicable Cash Settlement, and (z) if the Units are certificated, issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 9.01(a) and the Redeemed Units; and

(iv) PubCo shall cancel and retire for no consideration the shares of Class B Common Stock that were Transferred to PubCo pursuant to Section 9.01(a)(ii)(y) above.

(b) If the Election Notice specifies a Share Settlement, a Redeeming Member shall be entitled to revoke its Redemption Notice or delay the consummation of a Redemption if any of the following conditions exists:

(i) any registration statement pursuant to which the resale of the Class A Common Stock to be registered for such Redeeming Member at or immediately following the consummation of the Redemption shall have ceased to be effective pursuant to any action or inaction by the SEC or no such resale registration statement has yet become effective;

(ii) PubCo shall have failed to cause any related prospectus to be supplemented by any required prospectus supplement necessary to effect such Redemption;

(iii) PubCo shall have exercised its right to defer, delay or suspend the filing or effectiveness of a registration statement and such deferral, delay or suspension shall affect the ability of such Redeeming Member to have its Class A Common Stock registered at or immediately following the consummation of the Redemption;

(iv) PubCo shall have disclosed in good faith to such Redeeming Member any material non-public information concerning PubCo, the receipt of which results in such Redeeming Member being prohibited or restricted from selling Class A Common Stock at or immediately following the Redemption without disclosure of such information (and PubCo does not permit such disclosure);

(v) any stop order relating to the registration statement pursuant to which the Class A Common Stock was to be registered by such Redeeming Member at or immediately following the Redemption shall have been issued by the SEC;

(vi) there shall have occurred a material disruption in the securities markets generally or in the market or markets in which the Class A Common Stock is then traded;

(vii) there shall be in effect an injunction, a restraining order or a decree of any nature of any Governmental Authority that restrains or prohibits the Redemption; or

(viii) PubCo shall have failed to comply in all material respects with its obligations under the Registration Rights Agreement, and such failure shall have affected the ability of such Redeeming Member to consummate the resale of Class A Common Stock to be received upon such Redemption pursuant to an effective registration statement; or

(ix) the Redemption Date would occur three (3) Business Days or less prior to, or during, a Black-Out Period.

(c) If the Election Notice specifies a Share Settlement, unless the Redeeming Member has revoked the applicable Redemption as provided in Section 9.01(b), PubCo shall settle such Redemption on the Redemption Date by Transferring the Share Settlement directly to the Redeeming Member in exchange for the Redeemed Units (a “Direct Redemption”). In connection with a Direct Redemption, on the Redemption Date (to be effective immediately prior to the close of business on the Redemption Date), (1) the Redeeming Member shall Transfer and surrender, free and clear of all liens and encumbrances the Redeemed Units and an equal number of shares of Class B Common Stock to PubCo; (2) PubCo shall Transfer to the Redeeming Member (or other Person(s) whose name or names in which the Share Settlement is to be issued) the Share Settlement; (3) PubCo shall cancel and retire for no consideration such shares of Class B Common Stock and (4) the Company shall register PubCo as the owner of the Redeemed Units and, if the Redeemed Units are certificated, shall issue to the Redeeming Member a certificate for a number of Common Units equal to the difference (if any) between the number of Common Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (1) of this Section 9.01(c) and the Redeemed Units. In furtherance of the foregoing, each of the Company, and the Redeeming Member shall take all actions reasonably requested by PubCo to effect the transactions contemplated by this Section 9.01(c), including executing and delivering any document reasonably requested by PubCo in connection therewith.

(d) The number of shares of Class A Common Stock applicable to any Share Settlement or Cash Settlement shall not be adjusted on account of dividends previously paid with respect to Class A Common Stock or cash or cash equivalents held by PubCo or on account of Tax Distributions previously paid by the Company in respect of the Redeemed Units; provided, however, that if a Redeeming Member causes the Company to redeem Redeemed Units and the Redemption Date occurs subsequent to the record date for any distribution with respect to the Redeemed Units but prior to payment of such distribution, the Redeeming Member shall be entitled to receive such distribution with respect to the Redeemed Units on the date that it is made notwithstanding that the Redeeming Member Transferred and surrendered the Redeemed Units to the Company prior to such date; provided, further, however, that a Redeeming Member shall be entitled to receive any and all Tax Distributions that such Redeeming Member otherwise would have received in respect of income allocated to such Member for the portion of any Fiscal Year irrespective of whether such Tax Distribution(s) are declared or made after the Redemption Date.

(e) In the case of a Share Settlement, in the event a reclassification or other similar transaction occurs following delivery of a Redemption Notice, but prior to the Redemption Date, as a result of which shares of Class A Common Stock are converted into another security, then a Redeeming Member shall be entitled to receive the amount of such other security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

Section 9.02 Reservation of Shares of Class A Common Stock; Listing; Certificate of PubCo, etc.

(a) At all times PubCo shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Share Settlement in a Redemption such number of shares of Class A Common Stock as shall be issuable upon any such Redemption; provided, that nothing contained herein shall be construed to preclude PubCo from satisfying its obligations in respect of any such Redemption by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of PubCo). PubCo shall deliver Class A Common Stock that has been registered under the Securities Act with respect to any Redemption in which a Share Settlement is made, to the extent a registration statement is effective and available for such shares. PubCo shall use its commercially reasonable efforts to list the Class A Common Stock required to be delivered upon any such Redemption prior to such delivery upon each national securities exchange upon which the outstanding shares of Class A Common Stock are listed at the time of such Redemption (it being understood that any such shares may be subject to transfer restrictions under applicable securities Laws). PubCo covenants that all Class A Common Stock issued upon a Redemption in which a Share Settlement is made will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article IX shall be interpreted and applied in a manner consistent with any corresponding provisions of PubCo's certificate of incorporation (if any).

(b) Subject to the terms of the Registration Rights Agreement, PubCo covenants and agrees to deliver shares of the Share Settlement, if requested, pursuant to an effective registration statement under the Securities Act with respect to any Redemption to the extent that a registration statement is effective and available for such shares. In the event that any Redemption in accordance with this Agreement is to be effected at a time when any required registration has not become effective or otherwise is unavailable, upon the request and with the reasonable cooperation of the Redeeming Member requesting such Redemption, PubCo and the Company shall use reasonable best efforts to promptly facilitate such Redemption pursuant to an available exemption from such registration requirements.

(c) PubCo agrees that it has taken all or will take such steps as may be required to cause to qualify for exemption under Rule 16b-3(d) or (e), as applicable, under the Exchange Act, and to be exempt for purposes of Section 16(b) under the Exchange Act, any acquisitions from, or dispositions to, PubCo of equity securities of PubCo (including derivative securities with respect thereto) and any securities that may be deemed to be equity securities or derivative securities of PubCo for such purposes that result from the transactions contemplated by this Agreement, by each officer or director of PubCo. The authorizing resolutions shall be approved by the PubCo Board.

Section 9.03 Effect of Exercise of Redemption. This Agreement shall continue notwithstanding the consummation of a Redemption and all other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Company). No Redemption shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 9.04 Tax Treatment. Unless otherwise required by Law, the parties hereto acknowledge and agree that any Redemption (whether effected with a Cash Settlement or a Share Settlement) shall be treated as a direct exchange between PubCo and the Redeeming Member for U.S. federal and applicable state and local income tax purposes.

Section 9.05 Other Redemption Matters.

(a) Each Redemption shall be deemed to be effective immediately prior to the close of business on the Redemption Date, and, in the case of a Share Settlement, the Redeeming Member (or other Person(s) whose name or names in which the Share Settlement is to be issued) shall be deemed to be a holder of the Equity Securities issued in such Share Settlement, from and after that time, until such Equity Securities have been disposed of. As promptly as practicable on or after the Redemption Date, PubCo shall deliver or cause to be delivered to the Redeeming Member (or other Person(s) whose name or names in which the Share Settlement is to be issued) the number of the Share Settlement deliverable upon such Redemption, registered in the name of such Redeeming Member (or other Person(s) whose name or names in which the Share Settlement is to be issued). To the extent the Share Settlement is settled through the facilities of The Depository Trust Company, PubCo will, upon the written instruction of a Redeeming Member, deliver or cause to be delivered the shares of the Share Settlement deliverable to such Redeeming Member (or other Person(s) whose name or names in which the Share Settlement is to be issued), through the facilities of The Depository Trust Company, to the account of the participant of The Depository Trust Company designated by such Redeeming Member.

(b) The shares of Share Settlement issued upon a Redemption shall bear a legend in substantially the following form:

THE TRANSFER OF THESE SECURITIES HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTION, AND MAY NOT BE SOLD OR TRANSFERRED OTHER THAN IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED (OR OTHER APPLICABLE LAW), OR AN EXEMPTION THEREFROM.

(c) If (i) any shares of the Share Settlement may be sold pursuant to a registration statement that has been declared effective by the Securities and Exchange Commission, (ii) all of the applicable conditions of Rule 144 are met, or (iii) the legend (or a portion thereof) otherwise ceases to be applicable, PubCo, upon the written request of the Redeeming Member thereof shall promptly provide such Redeeming Member or its respective transferees, without any expense to such Persons (other than applicable transfer taxes and similar governmental charges, if any) with new certificates (or evidence of book-entry share) for securities of like tenor not bearing the provisions of the legend with respect to which the restriction has terminated. In connection therewith, such Redeeming Member shall provide PubCo with such information in its possession as PubCo may reasonably request in connection with the removal of any such legend.

(d) PubCo shall bear all of its own expenses in connection with the consummation of any Redemption, whether or not any such Redemption is ultimately consummated, including any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, any Redemption; provided, however, that if any of the Share Settlement is to be delivered in a name other than that of the Redeeming Member that requested the Redemption (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such Redeeming Member), then such Redeeming Member and/or the Person in whose name such shares are to be delivered shall pay to PubCo the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Redemption or shall establish to the reasonable satisfaction of PubCo that such tax has been paid or is not payable. The Redeeming Member shall bear all of its own expenses in connection with the consummation of any Redemption (including, for the avoidance of doubt, expenses incurred by such Redeeming Member in connection with any Redemption that are invoiced to the Company).

Section 9.06 PubCo Change of Control; PubCo Approved Recap Transaction.

(a) In connection with a PubCo Approved Change of Control, PubCo shall have the right, in its sole discretion, to require each Member (other than the AES Member or the Siemens Member, in each case, to the extent the Percentage Interest of such Member at the time in question is at least fifteen percent (15%)) to effect a Redemption of all or a portion of such Member's and all other Members' Units together with an equal number of shares of Class B Common Stock, pursuant to which such Units and such shares of Class B Common Stock will be exchanged for shares of Class A Common Stock (or economically equivalent cash and securities of a successor entity that would be received by holders of shares of Class A Common Stock), *mutatis mutandis*, in accordance with the Redemption provisions of this Article IX (applied for this purpose as if PubCo had delivered an Election Notice that specified a Share Settlement with respect to such exchanges) and otherwise in accordance with this Section 9.06. Any such exchange pursuant to this Section 9.06(a) shall be effective immediately prior to the consummation of the PubCo Approved Change of Control (and, for the avoidance of doubt, shall not be effective if such PubCo Approved Change of Control is not consummated) (the date of such exchange, the "Change of Control Exchange Date"). From and after the Change of Control Exchange Date, (i) the Units and any shares of Class B Common Stock subject to such exchange shall be deemed to be transferred to PubCo on the Change of Control Exchange Date and (ii) each such Member shall cease to have any rights with respect to the Units and any shares of Class B Common Stock subject to such exchange (other than the right to receive shares of Class A Common Stock (or economically equivalent cash or equity securities in a successor entity) pursuant to such exchange, and without limiting any rights in respect of the Tax Receivable Agreement). PubCo shall provide written notice of an expected PubCo Approved Change of Control to all Members within the earlier of (x) five (5) Business Days following the execution of an agreement with respect to such PubCo Approved Change of Control and (y) ten (10) Business Days before the proposed date upon which the contemplated PubCo Approved Change of Control is to be effected, including in such notice such information as may reasonably describe the PubCo Approved Change of Control transaction, subject to Law, including the date of execution of such agreement or such proposed effective date, as applicable, the amount and types of consideration to be paid for shares of Class A Common Stock in the PubCo Approved Change of Control, any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with such PubCo Approved Change of Control (which election shall be available to each Member on the same terms as holders of shares of Class A Common Stock). Following delivery of such notice and on or prior to the Change of Control Exchange Date, the participating Members shall take all actions reasonably requested by PubCo to effect such exchange, including taking any action and delivering any document required pursuant to this Section 9.06 to effect such exchange. In the case of any PubCo Approved Change of Control that was initially proposed by PubCo, PubCo shall use reasonable best efforts to enable and permit the Members to participate in such transaction to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock, and to enable such Members to participate in such transaction without being required to exchange Units or shares of Class B Common Stock in connection therewith.

(b) In the event that a tender offer, share exchange offer, issuer bid, take-over bid, recapitalization or similar transaction with respect to all or any portion of shares of PubCo's issued and outstanding Class A Common Stock is proposed by PubCo or PubCo's stockholders and approved by the PubCo Board, or is otherwise consented to or approved by the PubCo board of directors (a "PubCo Approved Recap Transaction"), PubCo shall provide written notice of the PubCo Approved Recap Transaction to all Members within the earlier of (i) five (5) Business Days following the execution of an agreement (if applicable) with respect to, or the commencement of (if applicable), such PubCo Approved Recap Transaction and (ii) ten (10) Business Days before the proposed date upon which the PubCo Approved Recap Transaction is to be effected, including in such notice such information as may reasonably describe the PubCo Approved Recap Transaction, subject to Law, including the date of execution of such agreement (if applicable) or of such commencement (if applicable), the material terms of such PubCo Approved Recap Transaction, including the amount and types of consideration to be received by holders of shares of Class A Common Stock in the PubCo Approved Recap Transaction, any election with respect to types of consideration that a holder of shares of Class A Common Stock, as applicable, shall be entitled to make in connection with such PubCo Approved Recap Transaction, and the number of Units (and the corresponding shares of Class B Common Stock) held by such Member that is applicable to such PubCo Approved Recap Transaction. The Members (other than PubCo) shall be permitted to participate in such offer by delivering a written notice of participation that is effective immediately prior to the consummation of such offer (and that is contingent upon consummation of such offer), and shall include such information necessary for consummation of such offer as requested by PubCo. In the case of any PubCo Approved Recap Transaction that was initially proposed by PubCo, PubCo shall use its reasonable best efforts to enable and permit the Members to participate in such transaction to the same extent or on an economically equivalent basis as the holders of shares of Class A Common Stock, and to enable such Members to participate in such transaction without being required to exchange Units or shares of Class B Common Stock in connection therewith.

ARTICLE X.

LIMITATION ON LIABILITY, EXCULPATION
AND INDEMNIFICATION

Section 10.01 Limitation on Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company; provided, that the foregoing shall not alter a Member's obligation to return funds wrongfully distributed to it.

Section 10.02 Exculpation and Indemnification.

(a) Subject to the duties of the Managing Member and the Officers set forth in Section 7.04 and any employment agreement and/or restrictive covenants agreement with the Company as in effect from time to time (collectively, the "Specified Covenants"), neither the Managing Member nor any other Covered Person shall be liable, including under any legal or equitable theory of fiduciary duty or other theory of liability, to the Company or to any other Covered Person for any losses, claims, damages or liabilities incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company. There shall be, and each Covered Person shall be entitled to, a presumption that such Covered Person acted in good faith.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such Person's professional or expert competence.

(c) (i) The Company shall indemnify, defend and hold harmless each Covered Person against any losses, claims, damages, liabilities, expenses (including all reasonable fees and expenses of counsel), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, in which such Covered Person may be involved or become subject to, in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document, unless such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount is as a result of a Covered Person not acting in good faith on behalf of the Company or arose as a result of the willful commission by such Covered Person of any act that is dishonest and materially injurious to the Company or (ii) results from its contractual obligations under any Transaction Document to be performed in a capacity other than as a Covered Person or results from a breach by such Covered Person of a Specified Covenant. If any Covered Person becomes involved in any capacity in any action, suit, proceeding or investigation in connection with any matter arising out of or in connection with the Company's business or affairs, or this Agreement or any related document (other than any Transaction Document), other than (x) by reason of any act or omission performed or omitted by such Covered Person that was not in good faith on behalf of the Company or constituted a willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company, or (y) as a result of any breach by such Covered Person of a Specified Covenant, the Company shall reimburse such Covered Person for its reasonable legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; provided, that such Covered Person shall promptly repay to the Company the amount of any such reimbursed expenses paid to it if it shall be finally judicially determined that such Covered Person was not entitled to indemnification by, or contribution from, the Company in connection with such action, suit, proceeding or investigation. If for any reason (other than the bad faith of a Covered Person or the willful commission by such Covered Person of an act that is dishonest and materially injurious to the Company) the foregoing indemnification is unavailable to such Covered Person, or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by such Covered Person as a result of such loss, claim, damage, liability, expense, judgment, fine, settlement or other amount in such proportion as is appropriate to reflect any relevant equitable considerations. There shall be, and each Covered Person shall be entitled to, a rebuttable presumption that such Covered Person acted in good faith.

(i) The obligations of the Company under this Section 10.02(c) shall be satisfied solely out of and to the extent of the Company's assets, and no Covered Person shall have any personal liability on account thereof.

(ii) Given that certain Jointly Indemnifiable Claims may arise by reason of the service of a Covered Person to the Company and/or as a director, trustee, officer, partner, member, manager, employee, consultant, fiduciary or agent of other corporations, limited liability companies, partnerships, joint ventures, trusts, employee benefit plans or other enterprises controlled by the Company (collectively, the "Controlled Entities"), or by reason of any action alleged to have been taken or omitted in any such capacity, the Company acknowledges and agrees that the Company shall, and to the extent applicable shall cause the Controlled Entities to, be fully and primarily responsible for the payment to the Covered Person in respect of indemnification or advancement of all out-of-pocket costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements) in each case, actually and reasonably incurred by or on behalf of a Covered Person in connection with either the investigation, defense or appeal of a claim, demand, action, suit or proceeding or establishing or enforcing a right to indemnification under this Agreement or otherwise incurred in connection with a claim that is indemnifiable hereunder (collectively, "Expenses") in connection with any such Jointly Indemnifiable Claim, pursuant to and in accordance with (as applicable) the terms of (A) the Delaware Act, (B) this Agreement, (C) any other agreement between the Company or any Controlled Entity and the Covered Person pursuant to which the Covered Person is indemnified, (D) the Laws of the jurisdiction of incorporation or organization of any Controlled Entity and/or (E) the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership, certificate of qualification or other organizational or governing documents of any Controlled Entity ((A) through (E) collectively, the "Indemnification Sources"), irrespective of any right of recovery the Covered Person may have from the Indemnitee-Related Entities. Under no circumstance shall the Company or any Controlled Entity be entitled to any right of subrogation or contribution by the Indemnitee-Related Entities and no right of advancement or recovery the Covered Person may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the Covered Person or the obligations of the Company or any Controlled Entity under the Indemnification Sources. In the event that any of the Indemnitee-Related Entities shall make any payment to the Covered Person in respect of indemnification or advancement of Expenses with respect to any Jointly Indemnifiable Claim, (x) the Company shall, and to the extent applicable shall cause the Controlled Entities to, reimburse the Indemnitee-Related Entity making such payment to the extent of such payment promptly upon written demand from such Indemnitee-Related Entity, (y) to the extent not previously and fully reimbursed by the Company and/or any Controlled Entity pursuant to clause (x), the Indemnitee-Related Entity making such payment shall be subrogated to the extent of the outstanding balance of such payment to all of the rights of recovery of the Covered Person against the Company and/or any Controlled Entity, as applicable, and (z) the Covered Person shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnitee-Related Entities effectively to bring suit to enforce such rights. The Company and the Covered Person agree that each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Section 10.02(c), entitled to enforce this Section 10.02(c) as though each such Indemnitee-Related Entity were a party to this Agreement. The Company shall cause each of the Controlled Entities to perform the terms and obligations of this Section 10.02(c) as though each such Controlled Entity was the "Company" under this Agreement. For purposes of this Section 10.02(c), the following terms shall have the following meanings:

(A) The term "Indemnitee-Related Entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company, any Controlled Entity or the insurer under and pursuant to an insurance policy of the Company or any Controlled Entity) from whom a Covered Person may be entitled to indemnification or advancement of Expenses with respect to which, in whole or in part, the Company or any Controlled Entity may also have an indemnification or advancement obligation.

(B) The term “Jointly Indemnifiable Claims” shall be broadly construed and shall include, without limitation, any claim, demand, action, suit or proceeding for which the Covered Person shall be entitled to indemnification or advancement of Expenses from both (i) the Company and/or any Controlled Entity pursuant to the Indemnification Sources, on the one hand, and (ii) any Indemnitee-Related Entity pursuant to any other agreement between any Indemnitee-Related Entity and the Covered Person pursuant to which the Covered Person is indemnified, the Laws of the jurisdiction of incorporation or organization of any Indemnitee-Related Entity and/or the certificate of incorporation, certificate of organization, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of any Indemnitee-Related Entity, on the other hand.

ARTICLE XI.

DISSOLUTION AND TERMINATION

Section 11.01 Dissolution.

(a) The Company shall not be dissolved by the admission of Additional Members or Substitute Members pursuant to Section 3.02.

(b) No Member shall (i) resign from the Company prior to the dissolution and winding up of the Company except in connection with a Transfer of Units pursuant to and in accordance with the terms of this Agreement or (ii) take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Law, hereby waives any rights to take any such actions under Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Delaware Act.

(c) The Company shall be dissolved and its business wound up only upon the earliest to occur of any one of the following events (each a "Dissolution Event");

(i) the expiration of forty-five (45) days after the sale or other disposition of all or substantially all the assets of the Company;

(ii) the decision of the Managing Member, together with any written approval of the AES Member and the Siemens Member required pursuant to the Stockholders Agreement, to dissolve the Company; or

(iii) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act, in contravention of this Agreement.

Except as otherwise set forth in this Article XI, the Company is intended to have perpetual existence. An Event of Withdrawal shall not in and of itself cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement. The Members hereby agree that the Company shall not dissolve prior to the occurrence of a Dissolution Event and that no Member shall seek a dissolution of the Company, under Section 18-802 of the Delaware Act or otherwise, other than based on the matters set forth in subsections (i), (ii) and (iii) above. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Dissolution Event, the Members hereby agree to continue the business of the Company without a Liquidation.

(d) The death, retirement, resignation, expulsion, bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member of the Company shall not in and of itself cause dissolution of the Company.

Section 11.02 Winding Up of the Company.

(a) The Managing Member shall promptly notify the other Members of any Dissolution Event. Upon dissolution, the Company's business shall be liquidated in an orderly manner. The Managing Member shall appoint a liquidating trustee to wind up the affairs of the Company pursuant to this Agreement. In performing its duties, the liquidating trustee is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Company in accordance with the Delaware Act and in any reasonable manner that the liquidating trustee shall determine to be in the best interest of the Members.

(b) The proceeds of the liquidation of the Company shall be distributed in the following order and priority:

(i) first, to the creditors (including any Members or their respective Affiliates that are creditors) of the Company in satisfaction of all of the Company's liabilities (whether by payment or by making reasonable provision for payment thereof, including the setting up of any reserves which are, in the judgment of the liquidating trustee, reasonably necessary therefor); and

(ii) second, to the Members in the same manner as distributions under Section 5.03(b).

(a) Distribution of Property. In the event it becomes necessary in connection with the Liquidation to make a distribution of Property in-kind, subject to the priority set forth in Section 11.02(b), the liquidating trustee shall have the right to compel each Member, treating each such Member in a substantially similar manner, to accept a distribution of any Property in-kind (with such Property, as a percentage of the total liquidating distributions to such Member), corresponding as nearly as possible to the distributions such Member would receive under Section 11.02(b) with such distribution being based upon the amount of cash that would be distributed to such Members if such Property were sold for an amount of cash equal to the fair market value of such Property, as determined by the liquidating trustee in good faith.

Section 11.03 Termination. The Company shall terminate when all of the assets of the Company, after payment of or reasonable provision for the payment of all debts and liabilities of the Company, shall have been distributed to the Members in the manner provided for in this Article XI, and the Certificate shall have been cancelled in the manner required by the Delaware Act.

Section 11.04 Survival. Termination, dissolution or Liquidation of the Company for any reason shall not release any party from any liability which at the time of such termination, dissolution or Liquidation already had accrued to any other party or which thereafter may accrue in respect to any act or omission prior to such termination, dissolution or Liquidation.

ARTICLE XII.

MISCELLANEOUS

Section 12.01 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such cost or expense.

Section 12.02 Further Assurances. Each Member agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be required by Law or as, in the reasonable judgment of the Managing Member, may be necessary or advisable to carry out the intent and purposes of this Agreement.

Section 12.03 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail (“e-mail”) transmission, so long as a receipt of such e-mail is requested and received) and shall be given to such party at the address, facsimile number or e-mail address specified for such party on the Member Schedule hereto or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

Section 12.04 Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(b) Except as provided in Article VIII, no Member may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Managing Member.

Section 12.05 Jurisdiction.

(a) The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 12.03 shall be deemed effective service of process on such party.

(b) EACH OF THE COMPANY AND THE MEMBERS HEREBY IRREVOCABLY DESIGNATES CORPORATION SERVICE COMPANY (IN SUCH CAPACITY, THE "PROCESS AGENT"), WITH AN OFFICE AT 251 LITTLE FALLS DRIVE, WILMINGTON, DELAWARE 19808, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; PROVIDED THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 12.03 OF THIS AGREEMENT. EACH PARTY SHALL TAKE ALL SUCH ACTION AS MAY BE NECESSARY TO CONTINUE SAID APPOINTMENT IN FULL FORCE AND EFFECT OR TO APPOINT ANOTHER AGENT SO THAT SUCH PARTY SHALL AT ALL TIMES HAVE AN AGENT FOR SERVICE OF PROCESS FOR THE ABOVE PURPOSES IN WILMINGTON, DELAWARE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INTENDED TO BE IRREVOCABLE UNDER THE LAWS OF THE STATE OF DELAWARE AND OF THE UNITED STATES OF AMERICA.

Section 12.06 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.07 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

Section 12.08 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. Nothing in this Agreement shall create any third-party beneficiary rights in favor of any Person or other party, except to the extent provided herein with respect to Indemnitor-Related Entities, each of whom are intended third-party beneficiaries of those provisions that specifically relate to them with the right to enforce such provisions as if they were a party hereto.

Section 12.09 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 12.10 Amendment.

(a) This Agreement can be amended at any time and from time to time by the written consent of the Managing Member; provided, however, that any proposed amendment that adversely modifies in any material respect the Common Units (or the rights, preferences or privileges of the Common Units) then held by any Members in any materially disproportionate manner to those then held by any other Members will require the prior written consent of a majority in interest of such disproportionately affected Member or Members; provided further, that notwithstanding the foregoing, no amendment, including any amendment effected by way of merger, consolidation or transfer of all or substantially all the assets of the Company, may adversely affect the rights in any material respect of (i) the AES Member without the consent of the AES Member or (ii) the Siemens Member without the consent of the Siemens Member. For the avoidance of doubt, the Managing Member, acting alone, may amend this Agreement, including the Schedule of Members, to reflect the admission of new Members or Transfers of Units, each as provided by and in accordance with, the terms of this Agreement.

(b) No waiver of any provision or default under, nor consent to any exception to, the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

Section 12.11 Confidentiality.

(a) Each of the Members (other than PubCo) agrees to hold the Company's Confidential Information in confidence and may not disclose or use such information except as otherwise authorized separately in writing by the Managing Member. "Confidential Information" as used herein includes all non-public information concerning the Company or its Subsidiaries including, but not limited to, ideas, financial product structuring, business strategies, innovations and materials, all aspects of the Company's business plan, proposed operation and products, corporate structure, financial and organizational information, analyses, proposed partners, software code and system and product designs, employees and their identities, equity ownership, the methods and means by which the Company plans to conduct its business, all trade secrets, trademarks, tradenames and all intellectual property associated with the Company's business. With respect to each Member to which these provisions apply, Confidential Information does not include information or material that: (a) is rightfully in the possession of such Member at the time of disclosure by the Company; (b) before or after it has been disclosed to such Member by the Company, becomes part of public knowledge, not as a result of any action or inaction of such Member in violation of this Agreement; (c) is approved for release by written authorization of the Chief Executive Officer, Chief Financial Officer or General Counsel of the Company or of PubCo, or any other Officer designated by the Managing Member; (d) is disclosed to such Member or their representatives by a third party not, to the knowledge of such Member, in violation of any obligation of confidentiality owed to the Company with respect to such information; or (e) is or becomes independently developed by such Member or their respective representatives without use of or reference to the Confidential Information.

(b) Solely to the extent it is reasonably necessary or appropriate to fulfill its obligations or to exercise its rights under this Agreement, each of the Members may disclose Confidential Information to its Subsidiaries, Affiliates, partners, directors, officers, employees, counsel, advisers, consultants, outside contractors and other agents, on the condition that such Persons keep the Confidential Information confidential to the same extent as such Member is required to keep the Confidential Information confidential; *provided*, that such Member shall remain liable with respect to any breach of this Section 12.11 by any such Subsidiaries, Affiliates, partners, directors, officers, employees, counsel, advisers, consultants, outside contractors and other agents (as if such Persons were party to this Agreement for purposes of this Section 12.11).

(c) Notwithstanding Section 12.11(a) or Section 12.11(b), each of the Members may disclose Confidential Information (i) to the extent that such Member is required by Law (by oral questions, interrogatories, request for information or documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, (ii) for purposes of reporting to its stockholders and direct and indirect equity holders (each of whom are bound by customary confidentiality obligations) the performance of the Company and its Subsidiaries and for purposes of including applicable information in its financial statements to the extent required by applicable Law or applicable accounting standards; or (iii) to any *bona fide* prospective purchaser of the equity or assets of a Member, or the Common Units held by such Member (*provided*, in each case, that such Member determines in good faith that such prospective purchaser would be a Permitted Transferee), or a prospective merger partner of such Member (*provided*, that such Persons will be informed by such Member of the confidential nature of such information and shall agree in writing to keep such information confidential in accordance with the contents of this Agreement). Notwithstanding any of the foregoing, nothing in this Section 12.11 will restrict in any manner the ability of PubCo to comply with its disclosure obligations under Law, and the extent to which any Confidential Information is necessary or desirable to disclose.

Section 12.12 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to the conflicts of law rules of such State that would result in the application of the Laws of any other State.

Section 12.13 No Presumption. With regard to each and every term and condition of this Agreement, the parties hereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties hereto desire or are required to interpret or construe any such term or condition, no consideration will be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement.

Section 12.14 Attorney-In-Fact. Each Member (other than any Member that is entitled to appoint a director to the PubCo Board) hereby appoints the Company as such Member's attorney-in-fact (with full power of substitution) and hereby authorizes the Company to execute and deliver in such Member's name and on its behalf any amendment of this Agreement or other document relating hereto in furtherance of such Member's rights and obligations pursuant to this Agreement. Each such Member hereby acknowledges and agrees that such proxy is coupled with an interest and shall not terminate upon any bankruptcy, dissolution, liquidation, death or incapacity of such Member.

Section 12.15 Immunity Waiver. Each Member acknowledges that it is a commercial entity and is a separate entity distinct from its ultimate shareholders and/or the executive organs of the government of any state and is capable of suing and being sued. The entry by each Member into this Agreement constitutes, and the exercise by each Member of its respective rights and performance of its respective obligations hereunder will constitute, private and commercial acts performed for private and commercial purposes that shall not be deemed as being entered into in the exercise of any public function.

Section 12.16 Specific Performance. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that, in the event of any such failure, an aggrieved Member or other party or third-party beneficiary specified in Section 12.08 will be irreparably damaged and will not have an adequate remedy at Law. Any such Person shall, therefore, be entitled (in addition to any other remedy to which such party may be entitled at Law or in equity) to injunctive relief, including specific performance, to enforce such obligations, without the posting of any bond and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the Company or Members shall raise the defense that there is an adequate remedy at Law.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amended and Restated Limited Liability Company Agreement to be duly executed as of the day and year first written above.

FLUENCE ENERGY, LLC

By: /s/ Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

FLUENCE ENERGY, INC.

By: /s/ Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

AES GRID STABILITY, LLC

By: /s/ J. Chris Shelton
Name: J. Chris Shelton
Title: President

SIEMENS INDUSTRY, INC.

By: /s/ Ruth Gratzke
Name: Ruth Gratzke
Title: Chief Executive Officer

By: /s/ Marsha Smith
Name: Marsha Smith
Title: Chief Financial Officer

[Signature Page to the Third Amended and Restated
Limited Liability Company Agreement of Fluence Energy, LLC]

Schedule A

SCHEDULE OF MEMBERS

NAME AND ADDRESS OF MEMBER	NUMBER OF ORIGINAL UNITS	NUMBER OF COMMON UNITS
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	3,960,000 Class A Units	58,586,695 Common Units
Siemens Industry, Inc. 4800 North Point Parkway Alpharetta, GA 30005 Attention: Craig Langley Email: langley.craig@siemens.com	3,960,000 Class A Units	58,586,695 Common Units
Fluence Energy, Inc. 4601 N. Fairfax Drive, Suite 600 Arlington, VA 22203 Attention: Manuel Perez Dubuc Email: manuel.perez@fluenceenergy.com	-	49,493,275 Common Units

TAX RECEIVABLE AGREEMENT

by and among

FLUENCE ENERGY, INC.,

FLUENCE ENERGY, LLC,

the several TRA PARTIES (as defined herein),

and

OTHER PERSONS FROM TIME TO TIME PARTY HERETO

Dated as of October 27, 2021

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TAX RECEIVABLE AGREEMENT

This TAX RECEIVABLE AGREEMENT (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated October 27, 2021, is hereby entered into by and among Fluence Energy, Inc., a Delaware corporation (the “Corporation”) (and, along with any other member of any U.S. federal income tax consolidated group including the Corporation, the “Corporate Group”), Fluence Energy, LLC, a Delaware limited liability company (the “LLC”), and each of the TRA Parties from time to time party hereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in Section 1.01.

RECITALS

WHEREAS, the TRA Parties hold (or prior to an Exchange will hold) equity interests in the LLC (the “Units”);

WHEREAS, after the date hereof, pursuant to, and subject to the provisions of, the LLC Agreement and any other applicable documentation, each TRA Party has the right from time to time to require the LLC to redeem (a “Redemption”) all or a portion of such TRA Party’s Units, which Redemption may be effected, at the Corporation’s election, for cash or Class A Common Stock (to be paid by the LLC), or by the Corporation effecting a direct exchange (a “Direct Exchange”) for such Units, and as a result of such sales, Redemptions or Direct Exchanges the Corporation or the Corporate Group may be entitled to utilize (or otherwise be entitled to the benefits arising out of) the Covered Tax Assets;

WHEREAS, the income, gain, loss, expense, deduction and other Tax items of the Corporation or the Corporate Group may be affected by the Covered Tax Assets;

WHEREAS, the parties to this Agreement desire to make certain arrangements with respect to the effects of the Covered Tax Assets;

NOW, THEREFORE, in connection with the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the terms set forth in this Article I shall have the following meanings (such meanings to be equally applicable to both (i) the singular and plural and (ii) the active and passive forms of the terms defined).

“Actual Tax Liability” means, with respect to any Taxable Year, the actual liability for U.S. federal, state and local income Taxes of (i) the Corporation or the Corporate Group, as applicable, and (ii) without duplication, the LLC, but in the case of this clause (ii) only with respect to U.S. federal, state and local income Taxes imposed on the LLC and allocable to the Corporation or the Corporate Group, in each case using the same methods, elections, conventions, and practices used on the relevant Tax Return; provided, that the actual liability for Taxes described in clauses (i) and (ii) shall be calculated (a) using the Assumed State and Local Tax Rate, solely for purposes of calculating the state and local Actual Tax Liability and (b) assuming, solely for purposes of calculating the liability for U.S. federal income Taxes, that state and local income and franchise Taxes are not deductible by the Corporation or the Corporate Group for U.S. federal income Tax purposes.

“Advance Payment” is defined in Section 3.1(b) of this Agreement.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“Agreed Rate” means a per annum rate of LIBOR plus 100 basis points.

“Agreement” is defined in the preamble.

“Amended Schedule” is defined in Section 2.3(b) of this Agreement.

“Assumed State and Local Tax Rate” means six percent (6%) (which amount, for the avoidance of doubt, was selected by taking into account and is intended to reflect the deductibility by the Corporation for federal income tax purposes of state and local income taxes under current law), *provided* that the Corporation may adjust the Assumed State and Local Tax Rate from time to time (a) in the event of a change in Law, (b) in the event of a change in material fact or (c) if the Corporation otherwise determines in good faith from time to time that such adjustment is necessary or advisable.

“Attributable” is defined in Section 3.1(b) of this Agreement.

“Attribute Schedule” is defined in Section 2.1 of this Agreement.

“Basis Adjustment” means the increase or decrease to the tax basis of, or the Corporation’s share of, the tax basis of the Reference Assets (i) under Section 734(b), 743(b) and 754 of the Code and, in each case, the comparable sections of U.S. state and local tax law (in situations where, following an Exchange, the LLC remains in existence as an entity for tax purposes) and (ii) under Sections 732 and 1012 of the Code and, in each case, the comparable sections of U.S. state and local tax law (in situations where, as a result of one or more Exchanges, the LLC becomes an entity that is disregarded as separate from its owner for tax purposes), in each case, as a result of any Exchange and any payments made under this Agreement. For purposes of determining the Basis Adjustments (and any payments made hereunder with respect to such Basis Adjustments) that are attributable to Reference Assets held by an entity in which the LLC owns a direct or indirect interest and where obtaining information necessary to determine the allocation of the Basis Adjustments is not practicable (as reasonably determined by the Corporation), the Corporation may make reasonable estimates and assumptions, including if determined by the Corporation assuming that such Basis Adjustments will be allocable to property that is depreciable or amortizable over a 15-year period. Notwithstanding any other provision of this Agreement, the amount of any Basis Adjustment resulting from an Exchange of one or more Units shall be determined without regard to any Pre-Exchange Transfer of such Units and as if any such Pre-Exchange Transfer had not occurred.

“Business Day” means any day excluding Saturday, Sunday and any day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in New York are closed.

“Change of Control” means the occurrence of any of the following events:

(a) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act (as defined in the LLC Agreement), but excluding any employee benefit plan of such person and its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of shares of Class A Common Stock, Class B Common Stock, preferred stock and/or any other class or classes of capital stock of the Corporation (if any) representing in the aggregate more than fifty percent (50%) of the voting power of all of the outstanding shares of capital stock of the Corporation entitled to vote;

(b) the stockholders of the Corporation approve a plan of complete liquidation or dissolution of the Corporation or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation’s assets (including a sale of all or substantially all of the assets of the Company);

(c) there is consummated a merger or consolidation of the Corporation with any other corporation or entity, and, immediately after the consummation of such merger or consolidation, the voting securities of the Corporation immediately prior to such merger or consolidation do not continue to represent, or are not converted into, more than fifty percent (50%) of the combined voting power of the then outstanding voting securities of the Person resulting from such merger or consolidation or, if the surviving company is a Subsidiary, the ultimate parent thereof; or

(d) the Corporation ceases to be the sole Managing Member (as defined in the LLC Agreement) of the LLC.

Notwithstanding the foregoing, a “Change of Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the record holders of the Class A Common Stock, Class B Common Stock, preferred stock and/or any other class or classes of capital stock of the Corporation immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in and voting control over, and own substantially all of the shares of, an entity which owns all or substantially all of the assets of the Corporation immediately following such transaction or series of transactions.

“Class A Common Stock” means Class A common stock, \$0.00001 par value per share, of the Corporation.

“Class B Common Stock” means Class B-1 common stock, \$0.00001 par value per share, of the Corporation, and Class B-2 common stock, \$0.00001 par value per share, of the Corporation.

“Code” means the U.S. Internal Revenue Code of 1986, as amended, or successor statute, as applicable.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or other agreement.

“Corporation” is defined in the preamble to this Agreement.

“Covered Tax Assets” means, with respect to a TRA Party, (i) Basis Adjustments and (ii) Imputed Interest. The determination of the Covered Tax Assets that are allocable to Units being exchanged by a TRA Party (and payments made hereunder with respect thereto) shall be determined in good faith by the Corporation in consultation with its tax return preparer, including by taking into account reasonable estimates and assumptions as determined by the Corporation. For the avoidance of doubt, Covered Tax Assets shall include any carryforwards or similar attributes that are attributable to the Tax items described in clauses (i) through (ii).

“Cumulative Net Realized Tax Benefit” for a Taxable Year means the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporation or the Corporate Group, as applicable, up to and including such Taxable Year, net of the cumulative amount of Realized Tax Detriments for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be based on the most recent Tax Benefit Schedules or Amended Schedules, if any, in existence at the time of such determination.

“Default Rate” means a per annum rate of LIBOR plus 500 basis points.

“Determination” shall have the meaning ascribed to such term in Section 1313(a) of the Code or similar provision of law, as applicable, or any other event (including the execution of IRS Form 870-AD) that finally and conclusively establishes the amount of any liability for tax and shall also include the acquiescence of the Corporation to the amount of any assessed liability for Tax.

“Direct Exchange” is defined in the recitals to this agreement.

“Dispute” is defined in Section 7.8(a) of this Agreement.

“Early Termination Agreed Rate” means LIBOR plus 100 basis points.

“Early Termination Date” means the date of an Early Termination Notice for purposes of determining the Early Termination Payment.

“Early Termination Effective Date” is defined in Section 4.2 of this Agreement.

“Early Termination Notice” is defined in Section 4.2 of this Agreement.

“Early Termination Payment” is defined in Section 4.3(b) of this Agreement.

“Early Termination Rate” means the lesser of (i) 6.50% per annum, compounded annually, and (ii) the Early Termination Agreed Rate.

“Early Termination Schedule” is defined in Section 4.2 of this Agreement.

“Exchange” means any Direct Exchange or Redemption.

“Expert” is defined in Section 7.9 of this Agreement.

“Governing Body” means the board of directors of the Corporation.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the liability for U.S. federal, state and local income Taxes of (i) the Corporation or the Corporate Group, as applicable, and (ii) without duplication, the LLC, but in the case of this clause (ii) only with respect to U.S. federal, state and local income Taxes imposed on the LLC and allocable to the Corporation or the Corporate Group, in each case using the same methods, elections, conventions, and practices used on the relevant Tax Return; provided, that the actual liability for Taxes described in clauses (i) and (ii) shall be calculated (a) calculated without taking into account the Covered Tax Assets (including, for the avoidance of doubt, any carryforward or carryback of any tax item attributable to the Covered Tax Assets), (b) using the Assumed State and Local Tax Rate, solely for purposes of calculating the state and local Hypothetical Tax Liability, and (c) assuming, solely for purposes of calculating the liability for U.S. federal income Taxes, that state and local income and franchise Taxes are not deductible by the Corporation or the Corporate Group for U.S. federal income Tax purposes.

“Imputed Interest” in respect of a TRA Party shall mean any interest imputed under the provisions of the Code with respect to the Corporation’s payment obligations in respect of such TRA Party under this Agreement.

“Interest Amount” is defined in Section 3.1(b) of this Agreement.

“IPO” means the initial public offering of shares of Class A Common Stock by the Corporation.

“IPO Date” means the closing date of the IPO.

“IRS” means the U.S. Internal Revenue Service.

“Joinder” means a joinder to this Agreement, in form and substance substantially similar to Annex A to this Agreement.

“Joinder Requirement” is defined in Section 7.6(b) of this Agreement.

“LIBOR” means during any period, the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market), or the rate which is quoted by another source selected by the Corporation as an authorized information vendor for the purpose of displaying rates at which U.S. dollar deposits are offered by leading banks in the London interbank deposit market (an “Alternate Source”), at approximately 11:00 a.m., London time, two (2) Business Days prior to the first day of such period as the London interbank offered rate for U.S. dollars having a borrowing date and a maturity comparable to such period (or if there shall at any time, for any reason, no longer exist a Bloomberg Page BBAM1 (or any substitute page) or any LIBOR Alternate Source, a comparable replacement rate determined by the Corporation at such time, which determination shall be conclusive absent manifest error; provided, that at no time shall LIBOR be less than 0%.

“LLC” is defined in the recitals to this Agreement.

“LLC Agreement” means that certain Third Amended and Restated Limited Liability Company Agreement of the LLC, dated as of the date hereof, as such agreement may be further amended, restated, supplemented and/or otherwise modified from time to time.

“Market Value” means the Common Unit Redemption Price (as defined in the LLC Agreement), determined as of an Early Termination Date (treating such Early Termination Date as a Redemption Date (as defined in the LLC Agreement) for such purpose).

“Net Tax Benefit” is defined in Section 3.1(b) of this Agreement.

“Objection Notice” is defined in Section 2.3(a) of this Agreement.

“Person” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.

“Pre-Exchange Transfer” means any transfer of one or more Units (including upon the death of a Member) (i) that occurs after the IPO but prior to a Redemption or Direct Exchange of such Units and (ii) to which Section 743(b) of the Code applies.

“Realized Tax Benefit” means, for a Taxable Year, the excess, if any, of the Hypothetical Tax Liability over the Actual Tax Liability. If all or a portion of the actual liability for such Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit until there has been a Determination.

“Realized Tax Detriment” means, for a Taxable Year, the excess, if any, of the Actual Tax Liability over the Hypothetical Tax Liability. If all or a portion of the actual liability for such Taxes for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Detriment unless and until there has been a Determination.

“Reconciliation Dispute” is defined in Section 7.9 of this Agreement.

“Reconciliation Procedures” is defined in Section 2.3(a) of this Agreement.

“Redemption” has the meaning in the recitals to this Agreement.

“Reference Asset” means any tangible or intangible asset of the LLC or any of its successors or assigns, and any asset held by any entity in which the LLC owns a direct or indirect equity interest and that is treated as a partnership or disregarded entity for U.S. federal income Tax purposes (but only to the extent such entity is held either directly or only through other entities treated as partnerships or disregarded entities) for purposes of the applicable Tax, as of the relevant date. A Reference Asset also includes any asset that is “substituted basis property” under Section 7701(a)(42) of the Code with respect to a Reference Asset.

“Schedule” means any of the following: (i) an Attribute Schedule, (ii) a Tax Benefit Schedule, or (iii) the Early Termination Schedule, and, in each case, any amendments thereto.

“Senior Obligations” is defined in Section 5.1 of this Agreement.

“Stockholders Agreement” means the Stockholders Agreement, dated as of the date hereof, by and among the Corporation and the other persons party thereto or that may become parties thereto from time to time, as the same may be amended, restated, supplemented and/or otherwise modified, from time to time.

“Subsidiary” means, with respect to any Person and as of the date of any determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise controls, more than 50% of the voting power or other similar interests, or the sole general partner interest, or managing member or similar interest, of such Person.

“Tax Benefit Payment” is defined in Section 3.1(b) of this Agreement.

“Tax Benefit Schedule” is defined in Section 2.2(a) of this Agreement.

“Tax Return” means any return, declaration, report or similar statement filed or required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxable Year” means a taxable year of the Corporation or the Corporate Group under the Code or comparable sections of U.S. state or local tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than 12 months for which a Tax Return is made), ending on or after the closing date of the IPO.

“Taxes” means any and all United States federal, state or local taxes, assessments or other charges that are based on or measured with respect to net income or profits (including alternative minimum taxes).

“Taxing Authority” means any national, federal, state, county, municipal, or local government, or any subdivision, agency, commission or authority thereof, or any quasi-governmental body, or any other authority of any kind, exercising regulatory or other authority in relation to tax matters.

“TRA Parties” means the Persons listed on Annex B.

“Treasury Regulations” means the final, temporary, and (to the extent they can be relied upon) proposed regulations under the Code, as promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“U.S.” means the United States of America.

“Units” is defined in the recitals to this Agreement.

“Valuation Assumptions” means, as of an Early Termination Date, the assumptions that:

(1) in each Taxable Year ending on or after such Early Termination Date, the Corporation or the Corporate Group, as applicable, will have taxable income sufficient to fully use the Covered Tax Assets (other than any such Covered Tax Assets that constitute or have resulted in net operating losses, excess interest deduction, or credit carryforwards or carryovers (determined as of the Early Termination Date), which shall be governed by paragraph 4 below) during such Taxable Year or future Taxable Years in which such deductions or other attributes would become available;

(2) the U.S. federal income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date, except to the extent any change to such tax rates for such Taxable Year has already been enacted into law;

(3) all taxable income of the Corporation or the Corporate Group, as applicable, will be subject to the maximum applicable tax rate for U.S. federal income tax purposes throughout the relevant period, and the tax rate for U.S. state and local income taxes shall be the Assumed State and Local Tax Rate as in effect for the Taxable Year of the Early Termination Date;

(4) any net operating loss, excess interest deduction, or credit carryovers or carrybacks (or similar items with respect to carryovers or carrybacks) generated by any Covered Tax Asset and available as of the Early Termination Date will be used by the Corporation ratably over a period beginning on the Early Termination Date and ending on the earlier of (i) 15 years following the Early Termination Date, or (ii) the scheduled expiration date, if any, under applicable Tax law of such net operating losses, excess interest deductions, or credit carryovers or carrybacks (or similar items with respect to carryovers or carrybacks);

(5) any non-amortizable assets (other than equity interests in Subsidiaries that are treated as corporations for U.S. federal income tax purposes) will be disposed of in a fully taxable transaction on the fifteenth anniversary of the IPO Date (or, if later, on the Early Termination Date) ; provided, that in the event of a Change of Control, (i) such non-amortizable assets shall be disposed of at the time of the sale of the relevant asset (if earlier than such fifteenth anniversary); and (ii) such non-amortizable assets shall be considered to have been disposed of on the date of the Change of Control, if such Change of Control occurs more than 15 years after the applicable Exchange or IPO Date, as applicable;

(6) if, on the Early Termination Date, any TRA Party has Units that have not been Exchanged, then such Units shall be deemed to be Exchanged for the Market Value that would be received by such TRA Party if such Units had been Exchanged on the Early Termination Date, and such TRA Party shall be entitled to receive the amount of cash such TRA Party would have been entitled to pursuant to Section 4.3(a) had such Units actually been Exchanged on the Early Termination Date; and

(7) any payment obligations pursuant to this Agreement will be satisfied on the date that any Tax Return to which such payment obligation relates is required to be filed excluding any extensions.

Section 1.2 Rules of Construction. Unless otherwise specified herein:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) For purposes of interpretation of this Agreement:

(i) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision thereof.

(ii) References in this Agreement to a Schedule, Article, Section, clause or sub-clause refer to the appropriate Schedule to, or Article, Section, clause or subclause in, this Agreement.

(iii) References in this Agreement to dollars or “\$” refer to the lawful currency of the United States of America.

(iv) The term “including” is by way of example and not limitation.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(c) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(d) Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

(e) Unless otherwise expressly provided herein, (a) references to organization documents (including the LLC Agreement), agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted hereby; and (b) references to any law (including the Code and the Treasury Regulations) shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law.

ARTICLE II.
DETERMINATION OF REALIZED TAX BENEFIT

Section 2.1 Attribute Schedule. Following the IPO Date, within one hundred twenty (120) calendar days after the filing of Form 1120 (or any successor form) of the Corporation or the Corporate Group for a given Taxable Year, the Corporation shall deliver to the TRA Parties a schedule (the "Attribute Schedule") that shows, in reasonable detail, the Covered Tax Assets that are available for use by the Corporation or the Corporate Group with respect to such Taxable Year with respect to each TRA Party (including the Basis Adjustments with respect to the Reference Assets resulting from any Exchanges and the periods over which such Basis Adjustments are amortizable or depreciable). The Attribute Schedule shall also list any limitations on the ability of the Corporation or the Corporate Group to utilize any Covered Tax Assets under applicable laws (including as a result of the operation of Section 197(f)(9) of the Code, Section 382 of the Code or Section 383 of the Code).

Section 2.2 Tax Benefit Schedule.

(a) Tax Benefit Schedule. Within one hundred twenty (120) calendar days after the filing of the Form 1120 (or any successor form) of the Corporation or the Corporate Group for any Taxable Year, the Corporation shall provide to the TRA Parties a schedule showing, in reasonable detail, the calculation of the Tax Benefit Payment in respect of each TRA Party for such Taxable Year and the calculation of the Realized Tax Benefit and Realized Tax Detriment and the components thereof for such Taxable Year (a "Tax Benefit Schedule"). Each Tax Benefit Schedule will become final as provided in Section 2.3(a) and may be amended as provided in Section 2.3(b) (subject to the procedures set forth in Section 2.3(b)).

(b) Applicable Principles. For purposes of calculating the Realized Tax Benefit or Realized Tax Detriment for any period, carryovers or carrybacks of any Tax item attributable to the Covered Tax Assets shall be considered to be subject to the rules of the Code and the Treasury Regulations, as applicable, governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any Tax item includes a portion that is attributable to a Covered Tax Asset and another portion that is not, such respective portions shall be considered to be used in accordance with the "with and without" methodology. For the avoidance of doubt, the Corporation shall be entitled to make reasonable simplifying assumptions in making determinations contemplated by this Agreement, including reasonable assumptions regarding basis recovery periods (and the parties hereby agree that, among other things, the Corporation's determination of the Realized Tax Benefit and Realized Tax Detriment with respect to U.S. state and local taxes might not take into account jurisdiction-specific U.S. state and local adjustments to the U.S. federal taxable income base or to the U.S. federal rules regarding the utilization of tax attribute carryovers).

Section 2.3 Procedures, Amendments.

(a) Procedure. Every time the Corporation delivers to the TRA Parties a Schedule under this Agreement, including any Amended Schedule delivered pursuant to Section 2.3(b), and any Early Termination Schedule or amended Early Termination Schedule, the Corporation shall also (x) deliver to the TRA Parties schedules, valuation reports, if any, and work papers, as determined by the Corporation or reasonably requested by the TRA Parties, providing reasonable detail regarding the preparation of the Schedule, and (y) allow the TRA Parties reasonable access at no cost to the appropriate representatives of the Corporation, as determined by the Corporation or requested by the TRA Parties in connection with the review of such Schedule. Without limiting the application of the preceding sentence, each time the Corporation delivers to the TRA Parties a Tax Benefit Schedule, in addition to the Tax Benefit Schedule duly completed, the Corporation shall deliver to the TRA Parties a reasonably detailed calculation of the applicable Hypothetical Tax Liability and a reasonably detailed calculation of the applicable Actual Tax Liability, as well as any other work papers as determined by the Corporation or reasonably requested by the TRA Parties, provided that the Corporation shall not be required to provide any information that it reasonably believes is unnecessary for purposes of determining the items in the applicable Schedule or amendment thereto. An applicable Schedule or amendment thereto shall become final and binding on all parties sixty (60) calendar days after the first date on which the TRA Parties have received the applicable Schedule or amendment thereto unless (i) a TRA Party provides the Corporation with notice of a material objection to such Schedule ("Objection Notice") made in good faith or (ii) each TRA Party provides a written waiver of such right of any Objection Notice within the period described in clause (i) above, in which case such Schedule or amendment thereto becomes binding on the date the last such waiver is received by the Corporation. If the Corporation and the TRA Parties, for any reason, are unable to successfully resolve the issues raised in an Objection Notice within thirty (30) calendar days after receipt by the Corporation of an Objection Notice, then the Corporation and the TRA Parties shall employ the reconciliation procedures described in Section 7.9 of this Agreement (the "Reconciliation Procedures").

(b) Amended Schedule. The applicable Attribute Schedule or Tax Benefit Schedule for any Taxable Year may be amended from time to time by the Corporation (i) in connection with a Determination affecting such Schedule, (ii) to correct inaccuracies in the Schedule identified after the date the Schedule was provided to the TRA Parties, (iii) to comply with the Expert's determination under the Reconciliation Procedures, (iv) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to a carryback or carryforward of a loss or other tax item to such Taxable Year, (v) to reflect a change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to an amended Tax Return filed for such Taxable Year or (vi) as otherwise determined in good faith by the Corporation to be reasonably necessary or appropriate (any such Schedule, an "Amended Schedule"). The Attribute Schedule shall be appropriately amended by the Corporation and the TRA Parties to the extent that, as a result of a Determination, the Corporation is required to calculate its Tax liability in a manner inconsistent with the Attribute Schedule. The Corporation shall provide an Amended Schedule to the TRA Parties within one hundred twenty (120) calendar days of the occurrence of an event referenced in clauses (i) through (vi) of the first sentence of this Section 2.3(b).

ARTICLE III.
TAX BENEFIT PAYMENTS

Section 3.1 Timing and Amount of Tax Benefit Payments.

(a) Within five (5) Business Days after a Tax Benefit Schedule delivered to the TRA Parties becomes final in accordance with Section 2.3(a), the Corporation shall pay or cause to be paid to each TRA Party for such Taxable Year an amount equal to the excess, if any, of (i) the Tax Benefit Payment in respect of such TRA Party for such Taxable Year determined pursuant to Section 3.1(b) over (ii) the aggregate amount of Advance Payments previously made to such TRA Party in respect of such Taxable Year; provided that, if the Corporation makes Advance Payments, it shall make Advance Payments to all parties eligible to receive payments under this Tax Receivable Agreement with respect to a particular Taxable Year in proportion to their respective amount of anticipated payments under this Tax Receivable Agreement in respect of such Taxable Year, as determined by the Corporation. Each such Tax Benefit Payment or such Advance Payment shall be made by wire transfer of immediately available funds to the bank account previously designated by such TRA Party to the Corporation or as otherwise agreed by the Corporation and such TRA Party.

(b) A "Tax Benefit Payment" in respect of a TRA Party means an amount, not less than zero, equal to the sum of the portion of the Net Tax Benefit that is Attributable to such TRA Party and the Interest Amount with respect thereto. A Net Tax Benefit is "Attributable" to a TRA Party to the extent that is derived from a Covered Tax Asset this is allocable to Units that were Exchanged by such TRA Party, as determined by the Corporation in accordance with the definition of "Covered Tax Assets." The "Net Tax Benefit" for a Taxable Year shall be an amount equal to the excess, if any, of (i) 85% of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over (ii) the sum of the total amount of payments previously made under Section 3.1(a) (excluding payments attributable to Interest Amounts) and the Advance Payments previously made under Section 3.1(b) of this Agreement; provided, for the avoidance of doubt, that (1) a TRA Party shall not be required to return any portion of any previously made Tax Benefit Payment or Advance Payment it receives under this Agreement; (2) no amounts due to a TRA Party under this Agreement shall be escrowed and (3) no TRA Party shall be required to make a payment to the Corporation on account of a Realized Tax Detriment. The "Interest Amount" in respect of the TRA Party shall equal the interest on the amount of the unpaid Net Tax Benefit Attributable to such TRA Party for a Taxable Year, which interest shall accrue on any unpaid Net Tax Benefit from and after the date on which the calculation of such Tax Benefit Payment for such Taxable Year becomes final pursuant to Section 2.3(a), calculated at the Agreed Rate, until the date such unpaid amounts are paid. For the avoidance of doubt, for Tax purposes, the Interest Amount shall not be treated as interest but instead shall be treated as additional consideration in the Exchange unless otherwise required by law. "Advance Payments" in respect of a TRA Party for a Taxable Year means the payments, if any, made by the Corporation to such TRA Party as an advance of such TRA Party's anticipated Tax Benefit Payment for such Taxable Year. The Corporation shall be entitled at its option to make Advance Payments. Notwithstanding the foregoing, for each Taxable Year ending on or after the date of a Change of Control, all Tax Benefit Payments shall be calculated by utilizing Valuation Assumptions (1) and (5), substituting in (1) "the date of a Change of Control" for the term "Early Termination Date." Notwithstanding anything to the contrary in this Agreement, after any lump-sum payment under Article IV of this Agreement in respect of present or future Covered Tax Assets, such Covered Tax Assets shall no longer be considered Covered Tax Assets for purposes of determining Tax Benefit Payments or the Net Tax Benefit.

Section 3.2 No Duplicative Payments. It is intended that the provisions of this Agreement will not result in duplicative payment of any amount (including interest) required under this Agreement. The provisions of this Agreement shall be construed consistent with such intent.

Section 3.3 Pro Rata Payments.

(a) Notwithstanding anything in Section 3.1 to the contrary, to the extent that the aggregate amount of the tax benefit to the Corporation or the Corporate Group from the reduction in Tax Liability as a result of the Covered Tax Assets is limited in a particular Taxable Year because the Corporation or the Corporate Group does not have sufficient taxable income to fully utilize available deductions and other attributes, the Net Tax Benefit giving rise to Tax Benefit Payments shall be allocated among the TRA Parties in proportion to the respective amounts of Tax Benefit Payments that would have been paid under this Agreement if the Corporation or the Corporate Group, as applicable, had sufficient taxable income so that there were no such limitation; provided, that, for the avoidance of doubt, for purposes of allocating among the TRA Parties the aggregate Tax Benefit Payments payable under this Agreement with respect to any Taxable Year, the operation of this Section 3.3(a) with respect to any prior Taxable Years shall be taken into account. Consistent with the foregoing, the Attribute Schedule for a given Taxable Year shall reflect the operation of this Section 3.3(a) in respect of previous Taxable Years, with the Covered Tax Assets described in such Attribute Schedule that are attributable to a TRA Party being adjusted to reflect payments received in respect of such Covered Tax Assets (the intention of the parties being to avoid duplicative payments and maintain records sufficient to allow the Corporation to allocate Tax Benefit Payments consistent with the terms of this Section 3.3(a)).

(b) After taking into account Section 3.3(a), if for any reason the Corporation does not fully satisfy its payment obligations to make Tax Benefit Payments due under this Agreement in respect of a particular Taxable Year (for example, as a result of having insufficient cash to make the Tax Benefit Payments due hereunder), then the Corporation and the TRA Parties agree that (i) the Corporation shall make payments due hereunder to the TRA Parties in respect of a Taxable Year in the same proportion as such payments would have been made if the relevant payment had been made in full by the Corporation, and (ii) no Tax Benefit Payment shall be made in respect of any Taxable Year until all Tax Benefit Payments in respect of prior Taxable Years have been paid.

(c) To the extent the Corporation makes a payment to a TRA Party in respect of a particular Taxable Year under Section 3.1(a) of this Agreement (taking into account Section 3.3(a) and (b)) in an amount in excess of the amount of such payment that should have been made to the TRA Party in respect of such Taxable Year, then (i) the TRA Party shall not receive further payments under Section 3.1(a) until the TRA Party has foregone an amount of payments equal to such excess and (ii) the Corporation shall pay the amount of the TRA Party's foregone payments to other TRA Parties (to the extent applicable) in a manner such that each of the other TRA Parties, to the extent possible, shall have received aggregate payments under Section 3.1(a) and (b) in the amount it would have received if there had been no excess payment to the TRA Party.

**ARTICLE IV.
TERMINATION**

Section 4.1 Early Termination of Agreement; Breach of Agreement.

(a) With the prior written approval of each of a majority of the “independent directors” (within the meaning of Rule 10A-3 promulgated under the Exchange Act and the Nasdaq rules) of the Governing Body, the Corporation may terminate this Agreement with respect to all amounts payable to the TRA Parties at any time by paying to each TRA Party the Early Termination Payment in respect of the TRA Party; provided, however, that (i) this Agreement shall only terminate pursuant to this Section 4.1(a) upon the receipt in full of the Early Termination Payment by the TRA Parties; (ii) the Corporation shall deliver an Early Termination Notice only if it is able to make all required Early Termination Payments under this Agreement and (iii) the Corporation may withdraw any notice to execute its termination rights under this Section 4.1(a) prior to the time at which any Early Termination Payment has been paid.

(b) In the event that the Corporation breaches any of its material obligations under this Agreement, whether as a result of a failure to make any payment when due, a failure to honor any other material obligation required hereunder or by operation of law as a result of the rejection of this Agreement in a case commenced under the Bankruptcy Code or otherwise, and the Corporation fails to cure such breach within thirty (30) Business Days of a TRA Party notifying the Corporation in writing of such breach, then, at the election of the TRA Parties, subject to the following proviso, all obligations hereunder shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of such breach; provided, that (i) each TRA Party’s election shall apply only in respect of such TRA Party and (ii) at least five (5) Business Days prior to making any such election, the applicable TRA Party shall provide written notice to the other TRA Parties in order to permit each other TRA Party, if it wishes, to make its election simultaneously. Procedures similar to the procedures of Section 4.2 shall apply, *mutatis mutandis*, with respect to the determination of the amounts payable by the Corporation pursuant to this Section 4.1(b). Notwithstanding the foregoing, in the event that the Corporation breaches any of its material obligations under this Agreement, in lieu of electing to receive the amounts referred to in this Section 4.1(b) pursuant to the provisions hereof, the TRA Parties may seek specific performance of the terms of this Agreement. Notwithstanding anything in this Agreement to the contrary, it shall not be a breach of this Agreement if the Corporation fails to make any Tax Benefit Payment when due; provided, that (x) the interest provisions of Section 5.2 shall apply to such late payment, and (y) solely with respect to a Tax Benefit Payment, if the Corporation does not have sufficient cash to make such payment as a result of limitations imposed by existing credit agreements or other indebtedness to which the LLC is a party, Section 5.2 shall apply, but the Default Rate shall be replaced by the Agreed Rate; *provided* that it shall be a breach of a material obligation under this Agreement if the Corporation makes any distribution of cash or other property with respect to any equity interest in the Corporation while any Tax Benefit Payment is due and payable under this Agreement but unpaid (excluding, for the avoidance of doubt, (i) issuances of Class A Common Stock or Class B Common Stock, (ii) issuances of rights to purchase Class A Common Stock or Class B Common Stock pursuant to a shareholders’ rights or similar plan and (iii) any compensation, withholdings or other payments under the Corporation’s or its subsidiaries’ equity incentive plans and awards thereunder as in effect from time to time).

(c) In connection with a Change of Control, at the election of the TRA Parties, all obligations hereunder with respect to the TRA Parties shall be terminated. The Corporation hereby agrees to provide twenty (20) calendar days prior written notice to each TRA Party of a Change of Control. Within ten (10) calendar days of receipt of such notice, each TRA Party shall provide written notice as to whether it will terminate this Agreement. If a TRA Party elects to terminate the Agreement, then all obligations under this Agreement with respect to the applicable TRA Party shall be accelerated and such obligations shall be calculated as if an Early Termination Notice had been delivered on the date of the Change of Control. Procedures similar to the procedures of Section 4.2 shall apply, *mutatis mutandis*, with respect to the determination of the amounts payable by the Corporation.

Section 4.2 Early Termination Notice. If the Corporation chooses to exercise its right of early termination under Section 4.1(a) above, the Corporation shall deliver to the TRA Parties notice of such intention to exercise such right ("Early Termination Notice"). In addition, if the Corporation chooses to exercise its right of early termination under Section 4.1(a) above, the obligations under this Agreement are accelerated under Section 4.1(b) above or a TRA Party exercises their right to terminate this Agreement under Section 4.1(c) above, the Corporation shall deliver to the TRA Parties a schedule (the "Early Termination Schedule") showing in reasonable detail the calculation of the Early Termination Payment due to each TRA Party. Such Early Termination Schedule shall become final and binding on all parties consistent with the procedures described in Section 2.3(a). The date on which the Early Termination Schedule becomes final shall be the "Early Termination Effective Date."

Section 4.3 Payment upon Early Termination.

(a) Within three (3) calendar days after an Early Termination Effective Date, the Corporation shall pay to each of the TRA Parties an amount equal to the Early Termination Payment in respect of such TRA Party. Such payment shall be made by wire transfer of immediately available funds to a bank account or accounts designated by the TRA Party or as otherwise agreed by the Corporation and such TRA Party.

(b) "Early Termination Payment" in respect of a TRA Party shall equal, without duplication, (i) the present value, discounted at the Early Termination Rate, as of the date of the Early Termination Notice, of all Tax Benefit Payments in respect of such TRA Party that would be required to be paid by the Corporation beginning from the date of the Early Termination Notice and applying the Valuation Assumptions, plus (ii) any Tax Benefit Payment determined by the Corporation to be due and payable with respect to such TRA Party that is unpaid as of the date of the Early Termination Notice, plus (iii) any other Tax Benefit Payment due and payable with respect to such TRA Party for a Taxable Year ending prior to the date of the Early Termination Notice, plus (iv) interest accruing on the amounts described in clauses (i) through (iii) (which shall include interest accruing on the amount described in clause (i) from the date of the Early Termination Notice).

(c) Upon the payment of the Early Termination Payment by the Corporation to a TRA Party, the Corporation shall not have any further payment obligations under this Agreement in respect of such TRA Party.

**ARTICLE V.
SUBORDINATION AND LATE PAYMENTS**

Section 5.1 Subordination. Notwithstanding any other provision of this Agreement to the contrary, any Tax Benefit Payment or Early Termination Payment required to be made by the Corporation under this Agreement shall rank subordinate and junior in right of payment to any principal, interest, or other amounts due and payable in respect of any obligations owed in respect of secured or unsecured indebtedness for borrowed money of the Corporation and its Subsidiaries (“Senior Obligations”) and shall rank *pari passu* in right of payment with all current or future unsecured obligations of the Corporation that are not Senior Obligations. To the extent that any payment under this Agreement is not permitted to be made at the time payment is due as a result of this Section 5.1 and the terms of the agreements governing Senior Obligations, such payment obligation nevertheless shall accrue for the benefit of the applicable TRA Parties and the Corporation shall make such payments at the first opportunity that such payments are permitted to be made in accordance with the terms of the Senior Obligations. Except as otherwise determined by the Governing Body with the approval of the TRA Parties, (i) payments under any other tax receivable agreement (or similar agreement) entered into by the Corporation, the LLC or their Subsidiaries after the date hereof shall be subordinate to all payments owed pursuant to this Agreement, and no such payments shall be made (x) for so long as the Corporation has any unpaid obligation pursuant to this Agreement and (y) with respect to any particular taxable period governed by such tax receivable agreement until payments with respect to such taxable period under this Agreement have been determined and (if any) paid and (ii) the Actual Tax Liability and Hypothetical Tax Liability under this Agreement shall be calculated by assuming that any tax attributes that are subject to a tax receivable agreement (or similar agreement) described in the preceding clause (i) (for the avoidance of doubt, other than this Agreement) did not exist.

Section 5.2 Late Payments by the Corporation. The amount of all or any portion of any Tax Benefit Payment, Early Termination Payment or other payment under this Agreement not made to the TRA Parties when due under the terms of this Agreement shall be payable together with any interest thereon, computed at the Default Rate and commencing from the date on which such Tax Benefit Payment, Early Termination Payment or other payment was due and payable.

**ARTICLE VI.
TAX MATTERS; CONSISTENCY; COOPERATION**

Section 6.1 Participation in the Corporation’s and the LLC’s Tax Matters. Except as otherwise provided herein, the Corporation shall have full responsibility for, and sole discretion over, all tax matters concerning the Corporation and the LLC and its Subsidiaries, including without limitation the preparation, filing or amending of any Tax Return and defending, contesting or settling any issue pertaining to taxes; provided, however, that the Corporation shall notify the TRA Parties of, and keep them reasonably informed with respect to, the portion of any audit of the Corporation, the LLC or any of their Subsidiaries the outcome of which is reasonably expected to adversely affect the rights and obligations of the TRA Parties under this Agreement in a material respect, and shall provide to the TRA Parties reasonable opportunity to provide information and other input to the Corporation, the LLC and their Subsidiaries concerning the conduct of any such portion of such audit, which information and other input the Corporation, the LLC and their Subsidiaries, as applicable, shall consider in good faith.

Section 6.2 Consistency. The Corporation, the LLC and the TRA Parties agree to report and cause to be reported for all purposes, including federal, state and local Tax purposes, all Tax-related items (including, without limitation, the Basis Adjustments and each Tax Benefit Payment) in a manner consistent with that specified in any Schedule finalized consistent with the terms of this Agreement, unless otherwise required by Law.

Section 6.3 Cooperation. Each of the Corporation, the LLC and the TRA Parties shall (a) furnish to the other parties in a timely manner such information, documents and other materials as the other party may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, completing any financial statement audit, preparing any Tax Return or defending any audit, examination or controversy with any Taxing Authority, (b) make itself available to the other party and its representatives to provide explanations of documents and material and such other information as the other party or its representatives may reasonably request in connection with any of the matters described in clause (a) above, and (c) reasonably cooperate in connection with any such matter, and the Corporation shall reimburse each TRA Party for any reasonable third-party costs and expenses incurred pursuant to this Section at the request of the Corporation or the LLC.

**ARTICLE VII.
MISCELLANEOUS**

Section 7.1 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by courier service, by fax, by electronic mail (delivery receipt requested) or by certified or registered mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be as specified in a notice given in accordance with this Section 7.1). All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to the Corporation or the LLC, to:

c/o Fluence Energy, Inc.
4601 Fairfax Drive, Suite 600
Arlington, VA 22203
Attention: Francis A. Fuselier
Email: frank.fuselier@fluenceenergy.com

with a copy (which shall not constitute notice to the Corporation or the LLC) to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Senet S. Bischoff
Matthew C. Dewitz
Facsimile No.: (212) 751-4864
E-mail: senet.bischoff@lw.com
matthew.dewitz@lw.com

If to AES Grid Stability, LLC:

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 (which shall not constitute notice to AES Grid Stability, LLC) 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

If to Siemens Industry, Inc.:

Siemens Industry, Inc.
4800 North Point Parkway
Alpharetta, GA 30005, USA
Attention: Craig Langley
Email: Langley.craig@siemens.com

Any Party may change its address, fax number or e-mail address by giving each of the other Parties written notice thereof in the manner set forth above.

Section 7.2 Counterparts; Electronic Signature. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Delivery of an executed signature page to this Agreement by facsimile transmission or electronic delivery (i.e. by email of a PDF signature page) shall be as effective as delivery of a manually signed counterpart of this Agreement and shall constitute and original for all purposes. The parties hereto hereby agree that this Agreement may be executed by way of electronic signatures and that the electronic signature has the same binding effect as a physical signature. For the avoidance of doubt, the parties hereto further agree that this Agreement, or any part thereof, shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.

Section 7.3 Entire Agreement; No Third Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware, without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 7.6 Assignments; Amendments; Successors; No Waiver.

(a) Assignment. No TRA Party may assign, sell, pledge, or otherwise alienate or transfer any interest in this Agreement, including the right to receive any Tax Benefit Payments under this Agreement, to any Person without (i) the prior written consent of the Governing Body (or any Person(s) to whom the Governing Body has delegated such authority) (such consent not to be unreasonably withheld) and (ii) such Person executing and delivering a Joinder agreeing to succeed to all or the applicable portion of such TRA Party's interest in this Agreement and to become a Party for all purposes of this Agreement (the "Joinder Requirement"). For the avoidance of doubt, if a TRA Party transfers Units in accordance with the terms of the LLC Agreement but does not assign to the transferee of such Units its rights under this Agreement with respect to such transferred Units, such TRA Party shall continue to be entitled to receive the Tax Benefit Payments arising in respect of such Units (and any such transferred Units shall be separately identified, so as to facilitate the determination of Tax Benefit Payments hereunder). The Corporation may not assign any of its rights or obligations under this Agreement to any Person (other than any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation) without the prior written consent of each of TRA Parties (and any purported assignment without such consent shall be null and void).

(b) Amendments. No provision of this Agreement may be amended unless such amendment is approved in writing by each of (i) the Governing Body (or any Person(s) to whom the Governing Body has delegated such authority); and (ii) the TRA Parties who collectively would be entitled to receive at least a majority of any Early Termination Payments that would be hypothetically payable to all TRA Parties (assuming all equity interests in the LLC that have redemption rights under the LLC Agreement are redeemed and exchanged for shares of Class A Common Stock at such time and using the Valuation Assumptions).

(c) Successors. Except as provided in Section 7.6(a), all of the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

(d) Waiver. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, duty, agreement, or condition.

Section 7.7 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 7.8 Resolution of Disputes.

(a) Except for Reconciliation Disputes subject to Section 7.9, any and all disputes which cannot be settled amicably, including any ancillary claims of any party, arising out of, relating to or in connection with this Agreement (each a "Dispute") shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Administered Arbitration (the "Rules") by three arbitrators, of which the Corporation shall appoint one arbitrator and the TRA Parties shall jointly appoint two arbitrators in accordance with the "screened" appointment procedure provided in Rule 5.4. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. The place of the arbitration shall be New York, New York.

(b) Notwithstanding the provisions of paragraph (a), any party may bring an action or special proceeding in any court of competent jurisdiction for the purpose of compelling another party to arbitrate, seeking temporary or preliminary relief in aid of an arbitration hereunder, and/or enforcing an arbitration award and, for the purposes of this paragraph (b), each party (i) expressly consents to the application of paragraph (c) of this Section 7.8 to any such action or proceeding, and (ii) agrees that proof shall not be required that monetary damages for breach of the provisions of this Agreement would be difficult to calculate and that remedies at law would be inadequate. For the avoidance of doubt, this Section 7.8 shall not apply to Reconciliation Disputes to be settled in accordance with the procedures set forth in Section 7.9.

(c) Each party irrevocably consents to service of process by means of notice in the manner provided for in Section 7.1. Nothing in this Agreement shall affect the right of any party to serve process in any other manner permitted by law.

(d) WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY 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 OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

(e) In the event the parties are unable to agree whether a dispute between them is a Reconciliation Dispute subject to the dispute resolution procedure set forth in Section 7.9 or a Dispute subject to the dispute resolution procedure set forth in this Section 7.8, such disagreement shall be decided and resolved in accordance with the procedure set forth in this Section 7.8.

Section 7.9 Reconciliation. In the event that the Corporation and one or more TRA Parties are unable to resolve a disagreement with respect to a Schedule (a "Reconciliation Dispute"), the Reconciliation Dispute shall be submitted for determination to a nationally recognized expert (the "Expert") in the particular area of disagreement mutually acceptable to such parties. The Expert shall be a partner or principal in a nationally recognized accounting firm, and unless the Corporation and such TRA Parties agree otherwise, the Expert shall not, and the firm that employs the Expert shall not, have any material relationship with the Corporation or such TRA Parties or other actual or potential conflict of interest. If the Corporation and such TRA Parties are unable to agree on an Expert within fifteen (15) calendar days of receipt by the respondent(s) of written notice of a Reconciliation Dispute, the selection of an Expert shall be treated as a Dispute subject to Section 7.8 and an arbitration panel shall pick an Expert from a nationally recognized accounting firm that does not have any material relationship with the Corporation or such TRA Parties or other actual or potential conflict of interest. The Expert shall resolve any matter relating to a Schedule or an amendment thereto as soon as reasonably practicable and in any event within thirty (30) calendar days after the matter has been submitted to the Expert for resolution. Notwithstanding the preceding sentence, if the matter is not resolved before any payment that is the subject of a disagreement would be due (in the absence of such disagreement) or any Tax Return reflecting the subject of a disagreement is due, the undisputed amount shall be paid on the date prescribed by this Agreement and such Tax Return may be filed as prepared by the Corporation, subject to adjustment or amendment upon resolution. The costs and expenses relating to the engagement of such Expert or amending any Tax Return shall be borne by the Corporation except as provided in the next sentence. The Corporation and the TRA Parties shall each bear their own costs and expenses of such proceeding, unless (i) the Expert entirely adopts the position of the TRA Parties, in which case the Corporation shall reimburse the TRA Parties for any reasonable and documented out-of-pocket costs and expenses in such proceeding, or (ii) the Expert entirely adopts the Corporation's position, in which case whichever of the TRA Parties (or all of them) that disputed the position shall reimburse the Corporation for any reasonable and documented out-of-pocket costs and expenses in such proceeding. The Expert shall finally determine any Reconciliation Dispute and the determinations of the Expert pursuant to this Section 7.9 shall be binding on the Corporation and the TRA Parties and may be entered and enforced in any court having competent jurisdiction.

Section 7.10 Withholding. The Corporation and its affiliates and representatives shall be entitled to deduct and withhold from any payment that is payable to any TRA Party pursuant to this Agreement such amounts as are required to be deducted or withheld with respect to the making of such payment in accordance with the Code or any provision of U.S. state, local or foreign tax law (including for this purpose any withholding required by the Corporation or its affiliates that may be required in connection with a Redemption or a Direct Exchange). To the extent that amounts are so deducted or withheld and paid over to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid by the Corporation to the relevant TRA Party. Each TRA Party shall promptly provide the Corporation with any applicable tax forms and certifications reasonably requested by the Corporation in connection with determining whether any such deductions and withholdings are required under the Code or any provision of U.S. state, local or foreign tax law, including under Sections 1441, 1442, 1445 or 1446 of the Code. The Corporation will consider in good faith any applicable certificates, forms or documentation provided by a TRA Party that in such TRA Party's reasonable determination reduce or eliminate any such withholding.

Section 7.11 Consolidated Group; Transfers of Corporate Assets.

(a) The parties acknowledge that the Corporation is not currently a member of a Corporate Group, but may become a member of a Corporate Group in the future, and that in such event, the provisions of this Agreement shall be applied with respect to such Corporate Group (and any other affiliated or consolidated Tax group of which the Corporation becomes a part), and that Tax Benefit Payments, Early Termination Payments, and other applicable items hereunder shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) If the Corporation, its successors in interest or any member of a group described in Section 7.11(a) transfers one or more assets to a corporation (or a Person classified as a corporation for U.S. income tax purposes) with which the Corporation does not file a consolidated Tax Return for U.S. federal income Tax purposes (or if any entity that holds Reference Assets transfers any Reference Asset to a corporation (or a Person classified as a corporation for U.S. federal income tax purposes) with which the Corporation does not file a consolidated Tax Return for U.S. federal income Tax purposes), such entity, for purposes of calculating the amount of any Tax Benefit Payment or Early Termination Payment due hereunder, shall, unless otherwise agreed by the Corporation and each TRA Party, be treated as having disposed of such asset (or Reference Asset) in a fully taxable transaction on the date of such transfer. The consideration deemed to be received by such entity shall be equal to the fair market value of the transferred asset. For purposes of this Section 7.11 a transfer of a partnership interest shall be treated as a transfer of the transferring partner's share of each of the assets and liabilities of that partnership. Notwithstanding anything to the contrary set forth herein, if the Corporation, its successor in interest or any member of a group described in Section 7.11(a), transfers its assets pursuant to a transaction that qualifies as a "reorganization" (within the meaning of Section 368(a) of the Code) in which such entity does not survive or pursuant to any other transaction to which Section 381(a) of the Code applies (other than any such reorganization or any such other transaction, in each case, pursuant to which such entity transfers assets to a corporation with which the Corporation, its successor in interest or any member of the group described in Section 7.11(a) (other than any such member being transferred in such reorganization or other transaction) does not file a consolidated Tax Return for U.S. federal income Tax purposes), the transfer will not cause such entity to be treated as having transferred any assets to a corporation (or a Person classified as a corporation for U.S. federal income tax purposes) pursuant to this Section 7.11(b) so long as the relevant successor is bound by the provisions of this Agreement.

Section 7.12 Confidentiality. Each TRA Party and its assignees acknowledges and agrees that the information of the Corporation and its Affiliates provided pursuant to this Agreement is confidential and, except in the course of performing any duties as necessary for the Corporation and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, such Person shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters, acquired pursuant to this Agreement, of the Corporation and its Affiliates and successors, learned by any TRA Party heretofore or hereafter. This Section 7.12 shall not apply to (i) any information that has been made publicly available by the Corporation, becomes public knowledge (except as a result of an act of any TRA Party in violation of this Agreement) or is generally known to the business community, (ii) the disclosure of information to the extent necessary for a TRA Party to prosecute or defend claims arising under or relating to this Agreement, (iii) the disclosure of information to the extent necessary for a TRA Party to prepare and file its Tax Returns, to respond to any inquiries regarding the same from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any Taxing Authority with respect to such Tax Returns, and (iv) the disclosure of information necessary to effect an assignment, sale, pledge, alienation or transfer of any interest in this Agreement pursuant to Section 7.6(a). If a TRA Party or an assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 7.12, the Corporation shall have the right and remedy to have the provisions of this Section 7.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporation or any of its Subsidiaries and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 7.13 Change in Law. Notwithstanding anything herein to the contrary, if, as a result of or, in connection with an actual or proposed change in Tax law, a TRA Party reasonably believes that the existence of this Agreement could have material adverse tax consequences to such TRA Party or any direct or indirect owner of such TRA Party, then at the written election of such TRA Party in its sole discretion (in an instrument signed by such TRA Party and delivered to the Corporation) and to the extent specified therein by such TRA Party, this Agreement shall cease to have further effect and shall not apply to an Exchange with respect to such TRA Party occurring after a date specified by such TRA Party, or may be amended by the Corporation in a manner reasonably acceptable to such TRA Party, *provided* that such amendment shall not result in an increase in any payments owed by the Corporation under this Agreement at any time as compared to the amounts and times of payments that would have been due in the absence of such amendment and provided, further, that such amendment shall not have any adverse effect on any other TRA Party.

Section 7.14 Interest Rate Limitation. Notwithstanding anything to the contrary contained herein, the interest paid or agreed to be paid hereunder with respect to amounts due to any TRA Party hereunder shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If any TRA Party shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the Tax Benefit Payment, Advance Payment or Early Termination Payment, as applicable (but in each case exclusive of any component thereof comprising interest) or, if it exceeds such unpaid non-interest amount, refunded to the Corporation. In determining whether the interest contracted for, charged, or received by any TRA Party exceeds the Maximum Rate, such TRA Party may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the payment obligations owed by the Corporation to such TRA Party hereunder. Notwithstanding the foregoing, it is the intention of the Parties to conform strictly to any applicable usury laws.

Section 7.15 Independent Nature of Rights and Obligations. The rights and obligations of each TRA Party hereunder are several and not joint with the rights and obligations of any other Person. A TRA Party shall not be responsible in any way for the performance of the obligations of any other Person hereunder, nor shall a TRA Party have the right to enforce the rights or obligations of any other Person hereunder (other than the Corporation). Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any TRA Party pursuant hereto or thereto, shall be deemed to constitute the TRA Parties acting as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the TRA Parties are in any way acting in concert or as a group with respect to such rights or obligations or the transactions contemplated hereby, and the Corporation acknowledges that the TRA Parties are not acting in concert or as a group and will not assert any such claim with respect to such rights or obligations or the transactions contemplated hereby.

Section 7.16 LLC Agreement. This Agreement shall be treated as part of the LLC Agreement as described in Section 761(c) of the Code and Sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

Section 7.17 Tax Characterization and Elections. The parties intend that (A) each Direct Exchange shall give rise to Basis Adjustments, (B) each Redemption using cash contributed to the LLC by the Corporation shall be treated as a direct purchase of Units from the applicable TRA Parties pursuant to Section 707(a)(2)(B) of the Code that shall give rise to Basis Adjustments and (C) payments pursuant to this Agreement with respect to an Exchange (except with respect to amounts that constitute Imputed Interest) shall be treated as consideration in respect of such Exchange that give rise to additional Basis Adjustments. The Corporation will ensure that, on and after the date hereof and continuing through the term of this Agreement, the LLC and each of its direct and indirect subsidiaries that they control and that is treated as a partnership for U.S. federal income tax purposes will have in effect an election under Section 754 of the Code.

Section 7.18 Payment Amounts. The Corporation and the TRA Parties agree that, as of the date of this Agreement and as of the date of any future Exchange that may be subject to this Agreement, the aggregate value of the Tax Benefit Payments cannot be reasonably ascertained for U.S. federal income tax purposes. Notwithstanding any provision of this Agreement to the contrary, any TRA Holder may elect with respect to any Exchange to limit the aggregate Tax Benefit Payments made to such TRA Holder in respect of that Exchange to a specified dollar amount, a specified percentage of the amount realized by the TRA Holder with respect to the Exchange, or a specified portion of the Basis Adjustment with respect to the Adjusted Assets as a result of the Exchange. The TRA Holder shall exercise its rights under the preceding sentence by including a notice of its desire to impose such a limit and the specified limitation and such other details as may be reasonably necessary (including whether such limitation includes the Additional Amounts in respect of any such Exchange) in the Exchange Notice delivered in accordance with the Exchange Agreement. For the avoidance of doubt, this Section 7.18 shall not limit any amounts payable in connection with an Early Termination Payment.

[Signature Page Follows This Page]

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed on their behalf this Agreement as of the date first written above.

CORPORATION:

FLUENCE ENERGY, INC.

By: /s/ Manuel Perez Dubuc

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

THE LLC:

FLUENCE ENERGY LLC

By: /s/ Manuel Perez Dubuc

Name: Manuel Perez Dubuc

Title: Chief Executive Officer

AES GRID STABILITY, LLC

By: /s/ J. Chris Shelton

Name: J. Chris Shelton

Title: President

SIEMENS INDUSTRY, INC.

By: /s/ Ruth Gratzke
Name: Ruth Gratzke
Title: Chief Executive Officer

By: /s/ Marsha Smith
Name: Marsha Smith
Title: Chief Financial Officer

Annex A

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of _____ (this "Joinder"), is delivered pursuant to that certain Tax Receivable Agreement, dated as of [_____] (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Tax Receivable Agreement") by and among Fluence Energy, Inc., a Delaware corporation (the "Corporation"), Fluence Energy, LLC, a Delaware limited liability company ("the LLC"), and the other persons time to time party thereto. Capitalized terms used but not otherwise defined herein have the respective meanings set forth in the Tax Receivable Agreement.

1. Joinder to the Tax Receivable Agreement. Upon the execution of this Joinder by the undersigned and delivery hereof to the Corporation, the undersigned hereby is and hereafter will be a TRA Party under the Tax Receivable Agreement and a Party thereto, with all the rights, privileges and responsibilities of a TRA Party thereunder. The undersigned hereby agrees that it shall comply with and be fully bound by the terms of the Tax Receivable Agreement as if it had been a signatory thereto as of the date thereof.
2. Incorporation by Reference. All terms and conditions of the Tax Receivable Agreement are hereby incorporated by reference in this Joinder as if set forth herein in full.
3. Address. All notices under the Tax Receivable Agreement to the undersigned shall be direct to:

[Name]
[Address]
[City, State, Zip Code]
Attn:
Facsimile:
E-mail:

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Joinder as of the day and year first above written.

[NAME OF NEW PARTY]

By: _____
Name:
Title:

Acknowledged and agreed
as of the date first set forth above:

FLUENCE ENERGY, INC.

By: _____
Name:
Title:

Annex B

TRA Parties

1. AES Grid Stability, LLC
 2. Siemens Industry, Inc.
-

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “*Agreement*”) is made as of November 1, 2021 by and among Fluence Energy, Inc., a Delaware corporation (the “*Corporation*”), and each Person identified on the Schedule of Holders attached hereto as of the date hereof (such Persons, collectively, the “*Original Equity Owners*”).

RECITALS

WHEREAS, the Corporation is contemplating an offer and sale of its shares of Class A common stock, par value \$0.00001 per share (the “*Class A Common Stock*” and, such shares, the “*Shares*”), to the public in an underwritten initial public offering (the “*IPO*”);

WHEREAS, the Corporation desires to use a portion of the net proceeds from the IPO to purchase LLC Interests (as defined below) of Fluence Energy, LLC, a Delaware limited liability company (the “*Company*”), and the Company desires to issue its LLC Interests to the Corporation in exchange for such portion of the net proceeds from the IPO;

WHEREAS, immediately prior to or simultaneous with the purchase by the Corporation of the LLC Interests, the Corporation, the Company and the Original Equity Owners will enter into that certain Third Amended and Restated Limited Liability Company Agreement of the Company (such agreement, as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “*LLC Agreement*”);

WHEREAS, in connection with the closing of the IPO, (i) the Corporation will become the sole managing member of the Company, (ii) under the LLC Agreement, the equity interests in the Company held by the Original Equity Owners prior to such time will be converted into common units (the “*LLC Interests*”) of the Company, (iii) each Person identified on the Schedule of Holders attached hereto as a “Former LLC Equity Owner” (such Persons, collectively, the “*Former LLC Equity Owners*”) will, through merger or otherwise, exchange their direct and indirect interests in the LLC Interests for shares of Class A Common Stock, (iv) each Person identified on the Schedule of Holders attached hereto as a “Continuing Equity Owner” (such Persons, collectively, the “*Continuing Equity Owners*”) will become non-managing members of the Company, but otherwise continue to hold LLC Interests in the Company and will receive newly issued shares of Class B-1 common stock of the Corporation, and (v) in consideration of the Corporation acquiring the LLC Interests and becoming the managing member of the Company and for other good consideration, the Company has provided the Continuing Equity Owners with a redemption right pursuant to which the Continuing Equity Owners can have their LLC interests redeemed for, at the Corporation’s option, shares of Class A Common Stock or cash with the proceeds of a new issuance of Class A Common Stock on the terms set forth in the LLC Agreement; and

WHEREAS, in connection with the IPO and the transactions described above, the Corporation has agreed to grant to the Holders (as defined below) certain rights with respect to the registration of the Registrable Securities (as defined below) on the terms and conditions set forth herein.

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

Section 1. Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1:

“Adverse Disclosure” means public disclosure of material, non-public information, which disclosure, in the good faith judgment of the Chief Executive Officer or the Chief Financial Officer of the Corporation, after consultation with external counsel to the Corporation, (i) would be required to be made in any Registration Statement or prospectus filed with the SEC by the Corporation so that such Registration Statement or prospectus would not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in light of the circumstances under which they were made) not misleading and would not be required to be made at such time but for the filing of such Registration Statement, prospectus or preliminary prospectus; and (ii) the Corporation has a bona fide business purpose for not disclosing such information publicly.

“Affiliate” of any Person means any other Person controlled by, controlling or under common control with such Person; *provided* that the Corporation and its Subsidiaries shall not be deemed to be Affiliates of any Holder. As used in this definition, “control” (including, with its correlative meanings, “controlling,” “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

“Agreement” has the meaning set forth in the recitals.

“Business Day” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close. With respect to any circumstances where actions are required by Qatar Holding LLC or any Affiliate of Qatar Holding LLC under this Agreement, **“Business Day”** shall not include Friday, Saturday, Sunday or any other day on which commercial banks in New York, New York or Doha, Qatar are authorized or required by law to close.

“Capital Stock” means (i) with respect to any Person that is a corporation, any and all shares, interests or equivalents in capital stock of such corporation (whether voting or nonvoting and whether common or preferred), (ii) with respect to any Person that is not a corporation, individual or governmental entity, any and all partnership, membership, limited liability company or other equity interests of such Person that confer on the holder thereof the right to receive a share of the profits and losses of, or the distribution of assets of the issuing Person, and (iii) any and all warrants, rights (including conversion and exchange rights) and options to purchase any security described in the clause (i) or (ii) above.

“Class A Common Stock” has the meaning set forth in the recitals.

“Class B Common Stock” means the Corporation’s Class B-1 and/or B-2 common stock, par value \$0.00001 per share.

“**Company**” has the meaning set forth in the recitals.

“**Continuing Equity Owners**” has the meaning set forth in the recitals, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“**Corporation**” has the meaning set forth in the recitals.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“**FINRA**” means the Financial Industry Regulatory Authority.

“**Former LLC Equity Owners**” has the meaning set forth in the recitals, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“**Form S-3**” means such form under the Securities Act as in effect on the date hereof or any successor form under the Securities Act that permits significant incorporation by reference of the Corporation’s subsequent public filings under the Exchange Act

“**Free Writing Prospectus**” means a free-writing prospectus, as defined in Rule 405.

“**Holder**” means any Person that is a party to this Agreement from time to time, as set forth on the signature pages hereto (or pursuant to a Joinder hereto), so long as such Person continues to hold Registrable Securities.

“**Initiating Holder**” has the meaning set forth in subsection 2(b).

“**IPO**” has the meaning set forth in the recitals.

“**Joinder**” has the meaning set forth in Section 15.

“**LLC Agreement**” has the meaning set forth in the recitals.

“**LLC Interests**” has the meaning set forth in the recitals.

“**MNPI**” means material non-public information within the meaning of Regulation FD promulgated under the Exchange Act.

“**Opt-Out Request**” has the meaning set forth in Section 16(b).

“**Original Equity Owners**” has the meaning set forth in the recitals, and shall be deemed to include their respective Affiliates, immediate family members, heirs, successors and assigns who may succeed to such Person as a Holder hereunder.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

“**Policies**” has the meaning set forth in Section 16.

“**Public Offering**” means any sale or distribution to the public of Capital Stock of the Corporation pursuant to an offering registered under the Securities Act, whether by the Corporation, by Holders and/or by any other holders of the Corporation’s Capital Stock.

“**register**,” “**registered**,” and “**registration**” refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

“**Registrable Securities**” means (i) any Class A Common Stock (A) issued by the Corporation in connection with the IPO in exchange for the LLC Interests of the Former LLC Equity Owners, (B) issued by the Corporation in a Share Settlement in connection with (x) the redemption by the Company of LLC Interests owned by any Continuing Equity Owners or (y) at the election of the Corporation, in a direct exchange for LLC Interests owned by any Continuing Equity Owners, in each case in accordance with the terms of the LLC Agreement, (ii) any Capital Stock of the Corporation or of any Subsidiary of the Corporation issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization, and (iii) any other Shares owned, directly or indirectly, by Holders from time to time. As to any particular Registrable Securities owned by any Person, such securities shall cease to be Registrable Securities on the date such securities (a) have been sold or distributed pursuant to a Public Offering, (b) have been sold in compliance with Rule 144 following the consummation of the IPO so that all transfer restrictions, and restrictive legends with respect thereto, if any, are removed upon the consummation of such sale, (c) have been repurchased by the Corporation or a Subsidiary of the Corporation, or (d) have been sold or transferred sold by a person in a transaction in which his or her rights under this Agreements are not assigned. For purposes of this Agreement, a Person shall be deemed to be a Holder, and the Registrable Securities shall be deemed to be in existence, whenever such Person has the right to acquire, directly or indirectly, such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected, and such Person shall be entitled to exercise the rights of a holder of Registrable Securities hereunder; *provided* a holder of Registrable Securities may only request that Registrable Securities in the form of Capital Stock of the Corporation that is registered or to be registered as a class under Section 12 of the Exchange Act be registered pursuant to this Agreement. For the avoidance of doubt, while LLC Interests and shares of Class B Common Stock may constitute Registrable Securities, under no circumstances shall the Corporation be obligated to register LLC Interests or shares of Class B Common Stock, and only Shares issuable upon redemption, exchange or conversion of LLC Interests will be registered.

“**Registrable Securities then outstanding**” shall be determined by the number of shares of Class A Common Stock then outstanding (assuming the exchange of all membership interests of the Company (other than membership interests held by the Corporation) for a corresponding number of shares of Class A Common Stock in accordance with the LLC Agreement), and including all shares of Class A Common Stock issuable upon such exchange, which are Registrable Securities.

“**Rule 144**,” “**Rule 158**,” “**Rule 405**” and “**Rule 415**” mean, in each case, such rule promulgated under the Securities Act (or any successor provision) by the Securities and Exchange Commission, as the same shall be amended from time to time, or any successor rule then in force.

“**SEC**” means the Securities and Exchange Commission

“**Schedule of Holders**” means the schedule attached to this Agreement entitled “Schedule of Holders,” which shall reflect each Holder from time to time party to this Agreement.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“**Share Settlement**” means “Share Settlement” as defined in the LLC Agreement.

“**Shares**” has the meaning set forth in the recitals.

“**Shelf Registration**” has the meaning set forth in Section 2(a).

“**Shelf Registration Statement**” means a registration statement of the Corporation filed with the SEC on Form S-3 (or any other appropriate form under the Securities Act) for an offering to be made on a continuous basis pursuant to Rule 415 (or any successor provision) under the Securities Act covering all or any portion of the Registrable Securities, as applicable. To the extent that the Corporation is a WKSI, a “Shelf Registration Statement” shall be deemed to refer to an “automatic shelf registration statement,” as such term is defined in Rule 405 (or any successor or similar rule) of the Securities Act.

“**Subsidiary**” means, with respect to the Corporation, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of Capital Stock of such Person entitled (without regard to the occurrence of any contingency) to vote in the election of directors is at the time owned or controlled, directly or indirectly, by the Corporation, or (ii) if a limited liability company, partnership, association or other business entity, either (x) a majority of the Capital Stock of such Person entitled (without regard to the occurrence of any contingency) to vote in the election of managers, general partners or other oversight board vested with the authority to direct management of such Person is at the time owned or controlled, directly or indirectly, by the Corporation or (y) the Corporation or one of its Subsidiaries is the sole manager or general partner of such Person.

“**Suspension Event**” has the meaning set forth in Section 2(c).

“**Violation**” has the meaning set forth in Section 10(a).

“**WKSI**” means a “well-known seasoned issuer” as defined under Rule 405.

Section 2. Request for Registration.

(a) Subject to the terms and conditions of this Agreement, if the Corporation shall receive at any time following one hundred eighty (180) days after the effective date of the registration of the IPO, a written request from the Holders of at least ten percent (10%) of the Registrable Securities then outstanding that the Corporation file a registration statement under the Securities Act covering the registration of at least ten percent (10%) of the Registrable Securities then outstanding, then the Corporation shall, within 10 days of the receipt thereof, give written notice of such request to all Holders and shall, subject to the limitations of subsection 2(b), use its reasonable best efforts to effect, as soon as practicable following the receipt of, and in any event within sixty (60) days of the receipt of, such request, such registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) as would permit or facilitate the sale and distribution of all Registrable Securities which the Holders request to be registered within 20 days of the mailing of such notice by the Corporation; provided, however, that the Corporation shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2 in any particular jurisdiction in which the Corporation would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance, unless the Corporation is already subject to service in such jurisdiction and except as may be required by the Securities Act.

(b) If the Holders initiating the registration request under subsection 2(a) (each, an “**Initiating Holder**”) intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Corporation as a part of their request made pursuant to this Section 2 and the Corporation shall include such information in the written notice referred to in subsection 2(a). The underwriter will be selected by the Corporation and shall be reasonably acceptable to a majority in interest of the Initiating Holders. In such event, the right of any Holder to include his Registrable Securities in such registration shall be conditioned upon such Holder’s participation in such underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Corporation as provided in subsection 5(f)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting. Notwithstanding any other provision of this Section 2, if the underwriter advises the Corporation in writing that marketing factors require a limitation of the number of equity interests to be underwritten, then the Corporation shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of Registrable Securities that may be included in the underwriting shall be allocated among all participating Holders thereof, including the Initiating Holders, in proportion (as nearly as practicable) to the amount of Registrable Securities of the Corporation owned by each participating Holder; provided, however, that the number of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting.

(c) Notwithstanding the foregoing, if the Corporation shall furnish to the Initiating Holders a certificate signed by the Chief Executive Officer of the Corporation stating that in the good faith judgment of the Board of Directors of the Corporation, it would be materially detrimental to the Corporation and its Members for such registration statement contemplated by subsection 2(a) to be filed and it is therefore essential to defer the filing of such registration statement, because such action would require the Corporation to make an Adverse Disclosure (such event, a “**Suspension Event**”), upon giving prompt written notice to the Members, the Corporation shall have the right to defer such filing for a period of time determined in good faith by the Board to be necessary for such purpose and in no event longer than ninety (90) days after receipt of the request of the Initiating Holders, as applicable, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly; provided, however, that the Corporation may not utilize this right more than once in any twelve-month period. In the event that the Corporation exercises its right under the preceding sentence, the Corporation shall promptly give the Holders written notice thereof and shall use its reasonable best efforts to cause such registration statement to become effective or to amend or supplement such registration statement on a post-effective basis or to take such action as is necessary to permit resumed use of such registration statement or filing thereof as soon as reasonably practicable following the conclusion of the applicable Suspension Event and its effect. The Corporation shall promptly give the Holders written notice of the conclusion of any Suspension Event and its effect.

(d) In addition, the Corporation shall not be obligated to effect, or to take any action to effect, any registration pursuant to this Section 2:

(i) After the Corporation has effected three (3) registrations on behalf of the Initiating Holders pursuant to this Section 2 and such registrations have been declared or ordered effective; *provided, however*, that a registration pursuant to this Section 2 shall only count for the purposes of this clause (i) if at least seventy five percent (75%) of the Registrable Securities which Holders request to be sold are sold in such requested registration;

(ii) Prior to 180 days after the effective date of the IPO registration statement; or

(iii) If the Initiating Holders propose to dispose of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 4.

Section 3. Corporation Registration. If (but without any obligation to do so) the Corporation proposes to register (including for this purpose a registration effected by the Corporation for persons other than the Holders) any of its equity interests under the Securities Act in connection with the public offering of such securities solely for cash (other than (i) a registration statement on Form S-4 or any successor form thereto, (ii) a registration in which the only equity interests being registered are equity interests issuable upon conversion of debt securities which are also being registered, (iii) a registration on Form S-8 or (iv) a registration related to a dividend reinvestment plan (each, a “**Special Registration Statement**”)), the Corporation shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within 20 days after mailing of such notice by the Corporation, the Corporation shall, subject to the provisions of Section 8, cause to be registered under the Securities Act all of the Registrable Securities that each such Holder has requested to be registered. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Corporation, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Corporation with respect to offerings of its securities, all upon the terms and conditions set forth herein.

Section 4. Shelf Registration.

(a) After the IPO, at any time when the Corporation qualifies to use a Form S-3, the Holders of at least ten percent (10%) of the Registrable Securities then outstanding of the Corporation may make a written request (a “**Shelf Notice**”) to the Corporation to file with the SEC a Shelf Registration Statement, which Shelf Notice shall specify the aggregate amount of Registrable Securities of such Holder to be registered therein and the intended methods of distribution thereof (any such requested Shelf Registration Statement, a “**Shelf Registration**”). Following the delivery of a Shelf Notice, the Corporation (i) shall file promptly (and, in any event, within thirty (30) days following delivery of such Shelf Notice) with the SEC such Shelf Registration Statement (which shall be an automatic Shelf Registration Statement if the Corporation qualifies at such time to file such a Shelf Registration Statement) relating to the offer and sale of all Registrable Securities by the applicable Holder from time to time in accordance with the methods of distribution elected by such Holder and set forth in the Shelf Registration Statement and (ii) shall use its reasonable best efforts to cause such Shelf Registration Statement promptly to become effective under the Securities Act. Registrations effected pursuant to subsection 4(a) shall not be counted as demands for registration or registrations effected pursuant to Sections 2 or 3, respectively.

(b) The Corporation shall not be obligated to effect any such registration pursuant to subsection 4(a): (i) if Form S-3 is not available for such offering by the Holders; (ii) if the Corporation shall furnish to the Holders a certificate signed by the Chief Executive Officer of the Corporation stating that in the good faith judgment of the Board of Directors of the Corporation, it would be materially detrimental to the Corporation and its Members for such Shelf Registration to be effected at such time, or to delay or suspend the effectiveness thereof, because of an applicable Suspension Event, in which event the Corporation shall have the right to defer the filing of such Shelf Registration statement for a period of time determined in good faith by the Board to be necessary for such purpose and in no event longer than 90 days after receipt of the request of the Holder or Holders under subsection 4(a); provided, however, that the Corporation shall not utilize this right more than once in any 12-month period; (iii) in any particular jurisdiction in which the Corporation would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance, unless the Corporation is already subject to service in such jurisdiction and except as may be required by the Securities Act; (iv) during the applicable lock-up period ending after the effective date of a registration statement subject to Section 3 (v) if the Corporation has, within the twelve-month period preceding the date of such request, already effected two (2) registrations on Form S-3 for the Holders, or (vi) if the aggregate price to the public (net of any underwriters’ discounts or commissions) is less than \$5,000,000. In the event that the Corporation exercises its suspension right under this subsection 4(b), the Corporation shall promptly give the Holders written notice thereof and shall use its reasonable best efforts to cause such registration statement to become effective or to amend or supplement such registration statement on a post-effective basis or to take such action as is necessary to permit resumed use of such registration statement or filing thereof as soon as reasonably practicable following the conclusion of the applicable Suspension Event and its effect. The Corporation shall promptly give the Holders written notice of the conclusion of any Suspension Event and its effect.

(c) The Corporation shall use its reasonable best efforts to keep a Shelf Registration Statement continuously effective under the Securities Act in order to permit a prospectus forming a part thereof to be usable in connection with any Shelf Take-Down until the earliest of (i) the date as of which all Registrable Securities held by the selling Holder have been sold pursuant to the Shelf Registration Statement or another registration statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder) or otherwise cease to be Registrable Securities; (ii) the termination of this Agreement; and (iii) such shorter period as the applicable Holder shall agree in writing (such period of effectiveness, the “**Shelf Period**”) and to re-file such Shelf Registration Statement upon its expiration. The Corporation shall not be deemed to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Corporation voluntarily takes any action (or omits to take any action), without the consent of the applicable Holder, that would result in such Holder not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action (or omission) is (x) reasonably necessary for the Corporation to avoid being required to make an Adverse Disclosure or (y) required by applicable law, rule or regulation.

(d) Promptly upon delivery of any Shelf Notice pursuant to subsection 4(a) (but in no event more than five (5) Business Days after delivery of the Shelf Notice), the Corporation shall deliver a written notice of such Shelf Notice to all Members other than the selling Holder that delivered the Shelf Notice, and the Corporation shall include in such Shelf Registration all such Registrable Securities of such Holders which the Corporation has received written requests for inclusion therein within five (5) Business Days after such written notice is delivered to such Holders (each such Holder delivering such a request, together with such selling Holder, a “**Shelf Holder**”).

(e) Shelf Take-Downs.

(i) Subject to subsection 4(b), an offering or sale of Registrable Securities pursuant to a Shelf Registration Statement (each, a “**Shelf Take-Down**”) may be initiated at any time by any selling Holder.

(ii) If such selling Holder elects by written request to the Corporation, a Shelf Take-Down shall be in the form of an underwritten offering (such written request, an “**Underwritten Shelf Take-Down Notice**”) and the Corporation shall amend or supplement the Shelf Registration Statement for such purpose as soon as practicable. The Corporation shall have the right to select the managing underwriter or underwriters to administer such offering; provided that such managing underwriter or underwriters shall be reasonably acceptable to such Selling Holder.

(iii) Promptly upon delivery of such Underwritten Shelf Take-Down Notice (but in no event more than two (2) Business Days thereafter), the Corporation shall promptly deliver a written notice (a “**Underwritten Shelf Take-Down Corporation Notice**”) of such Shelf Take-Down to all Shelf Holders (other than the selling Holder that delivered the Underwritten Shelf Take-Down Notice), and the Corporation shall include in such Shelf Take-Down all such Registrable Securities of such Shelf Holders that are Registered on such Shelf Registration Statement for which the Corporation has received written requests, which requests must specify the aggregate amount of such Registrable Securities of such Holders to be offered and sold pursuant to such Shelf Take-Down, for inclusion therein within two (2) Business Days after the date that such Underwritten Shelf Take-Down Notice has been delivered.

(iv) If the managing underwriter or underwriters of any proposed underwritten offering of Registrable Securities included in a Shelf Take-Down informs the Members or the Corporation in writing that, in its or their opinion, the number of securities requested to be included in such Shelf Take-Down exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the securities to be included in such Shelf Take-Down shall be allocated (i) first, *pro rata* among the Shelf Holders that have requested to participate in such Shelf Take-Down based on the relative number of Registrable Securities then held by each such Shelf Holder; provided that any securities thereby allocated to a Shelf Holder that exceed such Shelf Holder’s request shall be reallocated among the remaining requesting Shelf Holders in like manner; (ii) second, and only if all the Registrable Securities referred to in clause (i) have been included in such Shelf Take-Down, to the Corporation up to the number of securities that the Corporation proposes to include in such Shelf Take-Down that, in the opinion of the managing underwriter or underwriters, can be sold without having such adverse effect; and (iii) third, and only if all of the securities referred to in clause (ii) have been included in such Shelf Take-Down, to those Persons holding any other securities eligible for inclusion in such Shelf Take-Down, up to the number of securities that in the opinion of the managing underwriter or underwriters, can be sold without having such adverse effect. For purposes of this subsection 4(e)(iv) concerning apportionment, for any Shelf Holder that is a partnership, limited liability Corporation, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Shelf Holder shall be deemed to be a single “selling Shelf Holder,” and any *pro rata* reduction with respect to such selling Shelf Holder shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such “selling Shelf Holder,” as defined in this sentence.

Section 5. Obligations of the Corporation. Whenever required under this Agreement to effect the registration of any Registrable Securities, the Corporation shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective and keep such registration statement effective for (i) up to 120 days or until the distribution described in such registration statement is completed, if earlier or (ii) in the case of any registration under Section 4, until all the Registrable Securities are sold; *provided, however*, that, the Corporation shall provide each participating Holder and its counsel reasonable opportunity to participate in the preparation of such registration statement.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for (i) up to 120 days or until the distribution described in such registration statement is completed, if earlier, or (ii) in the case of any registration under Section 4, until all the Registrable Securities are sold and, in connection with any registration on Form S-3 pursuant to Section 4, timely file all reports required under the Exchange Act in order to maintain the right to continue to use such Form and to maintain such registration in effect; provided, however, that, the Corporation shall provide each Holder and its counsel reasonable opportunity to participate in the preparation of such amendments, supplements and prospectus.

(c) Before filing any Free Writing Prospectus relating to an offer of Registrable Securities or any amendments or supplements thereto, furnish to the underwriters, if any, and the Holders, if any, copies of such documents, which documents shall be subject to the review of such underwriters and any Holders and their respective counsel.

(d) Furnish to the Holders, without charge, such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(e) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that the Corporation shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Corporation is already subject to service in such jurisdiction and except as may be required by the Securities Act.

(f) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(g) Promptly make available for inspection by the Holder, any managing underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the Holders, all information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct customary due diligence in connection therewith.

(B) Promptly notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the existence of any fact of which the Corporation is aware or the happening of any event which has resulted in (A) the registration statement, as then in effect, containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statements therein not misleading or (B) containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statements therein, in the light of the circumstances under which they were made, not misleading.

(i) Promptly notify each selling Holder covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act, (A) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or the initiation or threat of any proceedings for that purpose, or any request by the SEC for any amendment or supplement to, or additional information in connection with, any registration statement, prospectus or prospectus supplement related to any of them, (B) of any delisting or pending delisting of equity securities of the Corporation by any national securities exchange or market on which such equity securities are then listed or quoted or (C) of the receipt by the Corporation of any notification with respect to the suspension of the qualification of any Registrable Securities under the securities or blue sky laws of any jurisdiction or the initiation of any proceeding for such purpose.

(j) Use its reasonable best efforts to prevent the issuance of any order suspending the effectiveness of registration statement covering any Registrable Securities, and, if any order suspending the effectiveness of any such registration statement is issued, shall promptly use its reasonable best efforts to obtain the withdrawal of such order.

(k) In the event of any event or occurrence giving rise to an obligation of the Corporation to send to the selling Members any notice pursuant to subsection 5(j), promptly, and in no event later than twenty (20) days after the date of such event or occurrence, prepare and file with the SEC, and furnish to the selling Members a reasonable number of copies of, a supplement or post-effective amendment to such registration statement or related prospectus or any document incorporated therein by reference or file any other required document, and shall use its reasonable best efforts to have such supplement or amendment declared effective, if required, as soon as possible after filing, so that (i) such registration statement shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (ii) as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) Promptly notify each selling Holder, promptly after the Corporation receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed.

(a) After such registration statement becomes effective, promptly notify each selling Holder of any request by the SEC that the Corporation amend or supplement such registration statement or prospectus.

(b) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by the Corporation are then listed.

(o) Provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration.

(p) Furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to Agreement, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Agreement, if such securities are being sold through underwriters, (i) an opinion, dated such date, of the counsel representing the Corporation for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, including without limitation any letter or opinion as to the absence of material misstatements or omissions in the registration statement or prospectus, addressed to the underwriters and (ii) a letter dated such date (and another letter dated the date the underwriting agreement is signed), from the independent certified public accountants of the Corporation, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters.

(q) [RESERVED];

(r) Cooperate with each seller of Registrable Securities and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA.

(s) Have appropriate officers of the Corporation prepare and make presentations at a reasonable number of “road shows” and before analysts and rating agencies, as the case may be, and other information meetings reasonably organized by the underwriters and otherwise use its reasonable best efforts to cooperate as reasonably requested by the Holders and the underwriters in the offering, marketing or selling of the Registrable Securities.

Section 6. Furnish Information. The Corporation may require that any selling Holder shall furnish to the Corporation such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of such Holder's Registrable Securities. The Corporation shall have no obligation with respect to any registration requested pursuant to Section 2 or Section 4 if, as a result of the application of the preceding sentence, the number of equity interests, or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of equity interests or the anticipated aggregate offering price required to originally trigger the Corporation's obligation to initiate such registration as specified in subsection 4(a).

Section 7. Expenses of Registration.

(a) **Demand Registration**. All expenses (other than underwriting discounts and commissions) incurred in connection with a registration requested under Section 2 (which right may be assigned as provided in Section 1), filings or qualifications pursuant to Section 2, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Corporation, and the reasonable fees and disbursements of one counsel for the selling Holders selected by Holders of a majority of the Registrable Securities to be registered, shall be borne by the Corporation; *provided, however*, that the Corporation shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 2 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration); *provided further, however*, that if at the time of such withdrawal, the selling Holders have (i) learned of a material adverse change in the condition, business, or prospects of the Corporation from that known to the selling Holders at the time of their request or have been advised by the underwriter that the registration should be withdrawn (either a "**Withdrawal Event**") and (ii) have withdrawn the request with reasonable promptness following the occurrence of such Withdrawal Event, then the selling Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 2. If the Holders are required to pay any expenses, such expenses shall be borne by the holders of the securities (including Registrable Securities) requesting such registration in proportion to the number of securities for which registration was requested. If the Corporation is required to pay the expenses due to a Withdrawal Event, then the Holders shall not forfeit their rights to a demand registration.

(b) **Corporation Registration**. All expenses (other than underwriting discounts and commissions) incurred in connection with registrations, filings or qualifications of Registrable Securities pursuant to Section 3 for each Holder (which right may be assigned as provided in Section 15), including (without limitation) all registration, filing, and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Corporation and the reasonable fees and disbursements of one counsel for the selling Holder or Holders selected by Holders of a majority of the Registrable Securities to be registered shall be borne by the Corporation.

(c) **Shelf Registration.** All expenses (other than underwriting discounts and commissions) incurred in connection with registrations, filings or qualifications of Registrable Securities pursuant to Section 4 for each Holder (which right may be assigned as provided in Section 15), including (without limitation) all registration, filing, and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Corporation and the reasonable fees and disbursements of one counsel for the selling Holder or Holders selected by Holders of a majority of the Registrable Securities to be included in a registration or Shelf Takedown pursuant to Section 4 shall be borne by the Corporation.

Section 8. Underwriting Requirements.

(i) In connection with any offering involving an underwriting of equity interests of the Corporation described in Section 3, the Corporation shall not be required under Section 3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Corporation and the underwriters selected by it (or by other persons entitled to select the underwriters), and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Corporation. If the total amount of securities, including Registrable Securities, requested by Members to be included in such offering exceeds the amount of securities sold other than by the Corporation that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Corporation shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling Holders *pro rata* among them based on the relative number of Registrable Securities then held by each such participating Holder or in such other proportions as shall mutually be agreed to by such selling Holders) but in no event shall (i) the amount of securities of the selling Holders included in the offering be reduced below twenty-five percent (25%) of the total amount of securities included in such offering or (ii) any securities held by a person who is not a Holder of Registrable Securities be included if any securities held by any selling Holder are excluded. For purposes of the preceding parenthetical concerning apportionment, for any selling Holder which is a holder of Registrable Securities and which is a partnership or corporation, the partners, retired partners and equity owners of such holder shall be deemed to be a single "selling Holder," and any pro-rata reduction with respect to such "selling Holder" shall be based upon the aggregate amount of equity interests carrying registration rights owned by all entities and individuals included in such "selling Holder," as defined in this sentence.

Section 9. Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Agreement.

Section 10. Indemnification and Contribution.

(a) The Corporation will indemnify and hold harmless each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, and each partner, director, officer, member, manager, employee and agent of any of the foregoing, against any losses, claims, damages, or liabilities (or actions in respect thereof) to which they may become subject under the Securities Act, the Exchange Act or other federal, state or common law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, alleged statements, omissions, alleged omissions or violations or alleged violations (collectively a “**Violation**”): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, or in any Free Writing Prospectus that the Corporation has filed, or is required to file, under Rule 433(d) under the Securities Act, or any amendment or supplement thereof (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading (in the case of any prospectus or amendment or supplement thereto, in light of the circumstances under which they are made), or (iii) any violation or alleged violation by the Corporation of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law; and the Corporation will pay to each such Holder, underwriter or controlling person and each other person entitled to indemnification pursuant to this subsection 10(a), as incurred, any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 10(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of the Corporation (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Corporation be liable to any Holder, underwriter or controlling person for any such loss, claim, damage, liability, or action to the extent that it arises out of or is based upon a Violation which occurs as a result of, in reliance upon and in conformity with written information furnished expressly for use in such registration statement by any such Holder, underwriter or controlling person.

(b) To the fullest extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Corporation, each of its directors, each of its officers who has signed the registration statement, each Person, if any, who controls the Corporation within the meaning of the Securities Act, any underwriter, any other Holder selling securities in such registration statement, and any controlling Person of any such other Holder against any losses, claims, damages, or liabilities to which any of the foregoing persons may become subject, under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages, or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, that occurs as a result of, in reliance upon and in conformity with written information furnished by or on behalf of such Holder expressly for use in such registration statement; and each such Holder will pay, as incurred, any legal or other expenses reasonably incurred by any person intended to be indemnified pursuant to this subsection 10(b), in connection with investigating or defending any such loss, claim, damage, liability, or action; provided, however, that the indemnity agreement contained in this subsection 10(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that in no event shall the aggregate amounts payable by any Holder by way of indemnity under this subsection 10(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 10 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 10, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in such action, and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties which may be represented without conflict by one (1) counsel) shall have the right to retain one (1) separate counsel, with the reasonable fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, but only if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 10, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 10. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement that (x) does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release, in form and substance reasonably satisfactory to the indemnified party, from all liability in respect to such claim or litigation, (y) includes a statement about or an admission of fault, culpability or a failure to act by or on behalf of the indemnified party or (z) involves the imposition of equitable remedies or the imposition of any obligations on the indemnified party or adversely affects the indemnified party other than as a result of financial obligations for which such indemnified party would be entitled to indemnification hereunder.

(d) If the indemnification provided for in this Section 10 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and of the indemnified party, on the other, in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations; provided, that in no event shall, (x) any contribution by a Holder under this subsection 10(d) exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder and (y) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control; provided, however, that to the extent the underwriting agreement does not address a matter addressed by this Agreement, the failure to address such matter shall not be deemed a conflict between the provisions of this Agreement and the underwriting agreement.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Corporation and Holders under this Section 10 shall survive the completion of any offering of Registrable Securities in a registration statement under this Agreement, and otherwise shall survive the termination of this Agreement.

Section 11. Reports Under the Exchange Act. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Corporation to the public without registration or pursuant to a registration on Form S-3, the Corporation shall, following the consummation of the IPO:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144, at all times after the effective date of the registration statement filed by the Corporation for the IPO;

(b) take such action, including the voluntary registration of its equity interests under Section 12 of the Exchange Act, as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first registration statement filed by the Corporation for the offering of its securities to the general public is declared effective;

(c) file with the SEC in a timely manner all reports and other documents required of the Corporation under the Securities Act and the Exchange Act; and

(d) furnish to any Holder upon request, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Corporation that it has complied with the reporting requirements of SEC Rule 144, the Securities Act and the Exchange Act (at any time after ninety (90) days after the effective date of the registration statement filed by the Corporation for the IPO), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Corporation and such other reports and documents so filed by the Corporation, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC which permits the selling of any such securities without registration or pursuant to such form (at any time after the Corporation has become subject to the reporting requirements under the Exchange Act) or pursuant to Form S-3 (at any time after the Corporation so qualifies to use such form).

Section 12. Limitations on Subsequent Registration Rights. The Corporation shall not, without the prior written consent of the Holders of a majority of the outstanding Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Corporation which would (a) allow such holder or prospective holder to include such securities in any registration filed under Section 2 or Section 3, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of his securities will not reduce the amount of the Registrable Securities of the Holders which is included, (b) allow such holder or prospective holder to make a demand registration which could result in such registration statement being declared effective within 120 days of the effective date of any registration effected pursuant to Section 2 or (c) otherwise conflict with the rights of Holders under this Agreement; *provided, however*, except as set forth in clause (c) above, this Section 12 shall not limit the rights of the Corporation with respect to Special Registration Statements.

Section 13. Lock-Up Agreements.

(a) In connection with the IPO, each Holder (each a “**Lock-Up Party**”) has entered into a customary lock-up agreement with J.P. Morgan Securities LLC and Morgan Stanley & Co. LLC, as representatives (the “**Representatives**”) of the several underwriters, pursuant to which each Lock-Up Party has agreed to certain restrictions relating to the shares of Capital Stock and certain other securities held by them (collectively, the “**Lock-Up Restrictions**”). The Corporation may impose stop-transfer instructions with respect to the shares of Capital Stock and other securities subject to the Lock-Up Restrictions.

(b) In connection with (i) any offering involving an underwriting of equity interests of the Corporation described in Section 3 or (ii) any other underwritten offering in which Holders have an opportunity to participate under this Agreement and upon request of the underwriters managing such offering, each Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Corporation, however or whenever acquired (other than those included in the registration) or engage in any swap or derivative transactions involving the Corporation's securities (the "**Lock-Up Restrictions**"), in each case as provided in an agreement with such managing underwriters, without the prior written consent of such managing underwriters, for such period of time as may be requested by such managing underwriters (commencing as of the effective date of such registration or pricing date of such offering as the case may be and ending no later than 90 days thereafter or the lesser of such period and any shorter period agreed to by the managing underwriters) and to execute an agreement reflecting the foregoing as may be requested by the managing underwriters at the time of such offering; provided that (i) no Holder will be required to agree to any Lock-Up Restrictions which do not apply to each other Holder and (ii) any waiver of a Lock-Up Restriction by the underwriter for the benefit of one Holder shall apply to all other Holders.

(c) The obligations described in subsection 13(b) shall apply only if all officers and directors of the Corporation, and all holders of Registrable Securities holding at least five percent (5%) of the Corporation's voting securities, enter into similar agreements, and shall not apply to a registration relating solely to participants in the Corporation's equity plans or a transaction covered by Rule 145 under the Securities Act.

(d) In order to enforce the foregoing covenants, the Corporation may impose stop-transfer instructions with respect to the securities of each Holder (and the securities of every other person subject to the restrictions in subsection 13(a) and subsection 13(b)).

Section 14. Subsidiary Public Offering. If, after an initial public offering of the Capital Stock of one of its Subsidiaries (including the Company), the Corporation distributes securities of such Subsidiary to its equityholders, then the rights and obligations of the Corporation pursuant to this Agreement shall apply, mutatis mutandis, to such Subsidiary, and the Corporation shall cause such Subsidiary to comply with such Subsidiary's obligations under this Agreement.

Section 15. Transfer of Registrable Securities. Notwithstanding anything to the contrary contained herein, except in the case of (i) a transfer to the Corporation, (ii) a transfer by any Original Equity Owner to any of its Affiliates or to their respective equityholders, (iii) a Public Offering, (iv) a sale pursuant to Rule 144 after the completion of the IPO or (v) a transfer in connection with a sale of the Corporation, prior to transferring any Registrable Securities to any Person (including, without limitation, by operation of law), the transferring Holder shall cause the prospective transferee to execute and deliver to the Corporation a joinder agreement in the form attached as Exhibit A hereto (a "**Joinder**") agreeing to be bound by the terms of this Agreement whereupon such transferee shall be a "Holder" for purposes of this Agreement. The Corporation agrees to countersign any Joinder executed by Affiliate of an Original Equity Owner to whom Registrable Securities have been transferred. Any transfer or attempted transfer of any Registrable Securities in violation of any provision of this Agreement shall be void, and the Corporation shall not record such transfer on its books or treat any purported transferee of such Registrable Securities as the owner thereof for any purpose.

Section 16. MNPI Provisions.

(a) Each Holder acknowledges that the provisions of this Agreement that require communications by the Corporation or other Holders to such Holder may result in such Holder and its directors, officers, employees, agents, attorneys, affiliates and financial and other advisors acquiring MNPI (which may include, solely by way of illustration, the fact that an offering of the Corporation's securities is pending or the number of Corporation securities or the identity of the selling Holders).

(b) Each Holder shall have the right, at any time and from time to time (including after receiving information regarding any potential Public Offering), to elect to not receive any notice that the Corporation or any other Holders otherwise are required to deliver pursuant to this Agreement by delivering to the Corporation a written statement signed by such Holder that it does not want to receive any notices hereunder (an "**Opt-Out Request**"); in which case and notwithstanding anything to the contrary in this Agreement the Corporation and other Holders shall not be required to, and shall not, deliver any notice or other information required to be provided to Holders hereunder to the extent that the Corporation or such other Holders reasonably expect would result in a Holder acquiring MNPI. An Opt-Out Request may state a date on which it expires or, if no such date is specified, shall remain in effect indefinitely. A Holder who previously has given the Corporation an Opt-Out Request may revoke such request at any time, and there shall be no limit on the ability of a Holder to issue and revoke subsequent Opt-Out Requests; *provided* that each Holder shall use commercially reasonable efforts to minimize the administrative burden on the Corporation arising in connection with any such Opt-Out Requests.

(c) Each Holder agrees that it will maintain the confidentiality of such MNPI and, to the extent such Holder is not a natural person, such confidential treatment shall be in accordance with procedures adopted by it in good faith to protect confidential information of third parties delivered to such Holder ("**Policies**"); *provided* that a holder may deliver or disclose MNPI to (i) its directors, officers, employees, agents, attorneys, affiliates and financial and other advisors, but solely to the extent such disclosure reasonably relates to its evaluation of exercise of its rights under this Agreement and the sale of any Registrable Securities in connection with the subject of the notice, (ii) any federal or state regulatory authority having jurisdiction over such Holder, (iii) any Person if necessary to effect compliance with any law, rule, regulation or order applicable to such Holder, (iv) in response to any subpoena or other legal process, or (v) in connection with any litigation to which such Holder is a party; provided further, that in the case of clause (i), the recipients of such MNPI are subject to the Policies or agree to hold confidential the MNPI in a manner substantially consistent with the terms of this Section 16 and that in the case of clauses (ii) through (v), such disclosure is required by law and such Holder shall promptly notify the Corporation of such disclosure to the extent such Holder is legally permitted to give such notice.

Section 17. General Provisions.

(a) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended, modified, terminated or waived only with the prior written consent of the Corporation and each affected Holder. The failure or delay of any Person to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of such Person thereafter to enforce each and every provision of this Agreement in accordance with its terms. A waiver or consent to or of any breach or default by any Person in the performance by that Person of his, her or its obligations under this Agreement shall not be deemed to be a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person under this Agreement.

(b) Remedies. The parties to this Agreement shall be entitled to enforce their rights under this Agreement specifically (without posting a bond or other security), to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that a breach of this Agreement would cause irreparable harm and money damages would not be an adequate remedy for any such breach and that, in addition to any other rights and remedies existing hereunder, any party shall be entitled to specific performance and/or other injunctive relief from any court of law or equity of competent jurisdiction (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited, invalid, illegal or unenforceable in any respect under any applicable law or regulation in any jurisdiction, such prohibition, invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction or in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such prohibited, invalid, illegal or unenforceable provision had never been contained herein.

(d) Entire Agreement. Except as otherwise provided herein, this Agreement contains the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

(e) Successors and Assigns. This Agreement shall bind and inure to the benefit and be enforceable by the Corporation and its successors and assigns and the Holders and their respective successors and assigns (whether so expressed or not). In addition, whether or not any express assignment has been made, the provisions of this Agreement which are for the benefit Holders are also for the benefit of, and enforceable by, any subsequent or successor Holder.

(f) Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when delivered personally to the recipient, (ii) when sent by confirmed electronic mail f sent during normal business hours of the recipient but, if not, then on the next Business Day, (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid) or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications shall be sent to the Corporation at the address specified below and to any Original Equity Owner or to any other party subject to this Agreement at such address as indicated on the Schedule of Holders, or at such address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any party may change such party's address for receipt of notice by providing prior written notice of the change to the sending party as provided herein. The Corporation's address is:

Fluence Energy, Inc.
4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
Attn: General Counsel
Email: frank.fuselier@fluenceenergy.com

With a copy to:

Fluence Energy, Inc.
4601 Fairfax Drive, Suite 600
Arlington, Virginia 22203
Attn: Chief Financial Officer

Email: dennis.fehr@fluenceenergy.com

With a copy to (which shall not serve as notice):

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10020
Attn: Senet S. Bischoff, Esq.
Facsimile: (212) 751-4864

or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party.

(g) Business Days. If any time period for giving notice or taking action hereunder expires on a day that is not a Business Day, the time period shall automatically be extended to the immediately following Business Day.

(h) Governing Law. The corporate law of the State of Delaware shall govern all issues and questions concerning the relative rights of the Corporation and its stockholders. All other issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(i) MUTUAL WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

(j) CONSENT TO JURISDICTION AND SERVICE OF PROCESS. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE CITY AND COUNTY OF NEW YORK BOROUGH OF MANHATTAN, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH PARTY'S RESPECTIVE ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(k) No Recourse. Notwithstanding anything to the contrary in this Agreement, the Corporation and each Holder agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement, shall be had against any current or future director, officer, employee, general or limited partner or member of any Holder or of any Affiliate or assignee thereof, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Holder or any current or future member of any Holder or any current or future director, officer, employee, partner or member of any Holder or of any Affiliate or assignee thereof, as such for any obligation of any Holder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

(l) Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The use of the word "including" in this Agreement shall be by way of example rather than by limitation.

(m) No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

(n) Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same agreement.

(o) Electronic Delivery. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent executed and delivered by means of a photographic, photostatic, or similar reproduction of such signed writing using electronic mail shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of electronic mail as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(p) Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Holder shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

(q) No Inconsistent Agreements. The Corporation shall not hereafter enter into any agreement with respect to its securities which is inconsistent with or violates the rights granted to the Holders in this Agreement.

(r) Termination. Qatar Holding LLC shall have the option to terminate, at their sole discretion and solely with respect to Qatar Holding LLC and any of its Affiliates or assignees who have delivered (or have the right to deliver) a Joinder or who otherwise have rights or obligations under this Agreement, this Agreement and their rights and obligations hereunder (other than rights and obligations under Sections 10, 16 and 17 of this Agreement) if at any time (A) the Board no longer has a QIA Director and (B) the QIA Related Parties beneficially own, directly or indirectly, in the aggregate less than ten percent (10%) of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares). Defined terms included in this subsection (r), other than "Affiliates", "Agreement" and "Joinder" shall have the meanings set forth in the Stockholders Agreement of Fluence Energy, Inc. dated as of October 27, 2021.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

FLUENCE ENERGY, INC.

By: /s/ Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

By: /s/ Dennis Fehr
Name: Dennis Fehr
Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

AES Grid Stability, LLC

By: /s/ Chris Shelton

Name: Chris Shelton

Title: President

[Signature Page to Registration Rights Agreement]

SIEMENS INDUSTRY, INC.

By: /s/ Ruth Gratzke
Name: Ruth Gratzke
Title: Chief Executive Officer

By: /s/ Marsha Smith
Name: Marsha Smith
Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

QATAR HOLDING LLC

By: /s/ Mansoor Bin Ebrahim Al Mahmoud

Name: Mansoor Bin Ebrahim Al Mahmoud

Title: Chairman and Chief Executive Officer

[Signature Page to Registration Rights Agreement]

SCHEDULE OF HOLDERS

Holder	Continuing Equity Owner/ Former LLC Equity Owner
AES Grid Stability, LLC	Continuing Equity Owner
Siemens Industry, Inc.	Continuing Equity Owner
Qatar Holding LLC	Former LLC Equity Owner

REGISTRATION RIGHTS AGREEMENT JOINDER

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement dated as of October [●], 2021 (as the same may hereafter be amended, the “**Registration Rights Agreement**”), among Fluence Energy, Inc., a Delaware corporation (the “**Corporation**”), and the other person named as parties therein.

By executing and delivering this Joinder to the Corporation, and upon acceptance hereof by the Corporation upon the execution of a counterpart hereof, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Registration Rights Agreement as a Holder of Registrable Securities in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement, and the undersigned’s shares of Class A Common Stock shall be included as Registrable Securities under the Registration Rights Agreement to the extent provided therein. The Corporation is directed to add the address below the undersigned’s signature on this Joinder to the Schedule of Holders attached to the Registration Rights Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the day of _____, 20__.

Signature of Stockholder

Print Name of Stockholder

Its:

Address:

Agreed and Accepted as of _____, 20__

Fluence Energy, Inc.

By: _____

Name:

Its:

**STOCKHOLDERS AGREEMENT OF
FLUENCE ENERGY, INC.**

This STOCKHOLDERS AGREEMENT (as the same may be amended from time to time in accordance with its terms, the "Agreement") is entered into as of October 27, 2021, by and among (i) Fluence Energy, Inc., a Delaware corporation (the "Corporation"); (ii) AES Grid Stability, LLC ("AES"), a limited liability company duly organized and validly existing under the laws of Delaware; (iii) Siemens Industry, Inc. ("Siemens"), a corporation duly organized and validly existing under the laws of Delaware, (iv) Qatar Holding LLC, a Qatar Financial Centre entity ("QIA"), and (v) any other Person who becomes a party hereto pursuant to Section 11 (each a "Stockholder" and, collectively, the "Stockholders"). Certain terms used in this Agreement are defined in Section 7.

RECITALS

WHEREAS, each of Fluence Energy, Inc., AES and Siemens owns, directly or indirectly, outstanding membership interests in Fluence Energy, LLC, a Delaware limited liability company ("Fluence LLC"), which membership interests constitute and are defined as "Common Units" pursuant to the Third Amended and Restated Limited Liability Company Agreement of Fluence LLC, dated as of October 27, 2021, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time (the "LLC Agreement" and such membership interests, the "Common Units");

WHEREAS, the Corporation is contemplating an offering and sale of the shares of Class A common stock, par value \$0.00001 per share, of the Corporation (the "Class A Common Stock") in an underwritten initial public offering (the "IPO") and using a portion of the net proceeds received from the IPO to purchase Common Units;

WHEREAS, pursuant to that certain Common Unit Subscription Agreement by and between the Corporation and Fluence LLC, dated as of October 27, 2021 (the "Common Unit Subscription Agreement"), the Corporation will hold Common Units;

WHEREAS, upon consummation of the transactions contemplated by the Common Unit Subscription Agreement, it is contemplated that the Corporation will be admitted as a member, and appointed as the sole managing member, of Fluence LLC;

WHEREAS, in connection with, and prior to, the issuance of Class A Common Stock of the Corporation to the underwriters in its initial public offering, it is anticipated that (a) AES, Siemens and the Corporation will enter into a series of related transactions pursuant to which AES and Siemens will become holders of the Corporation's Class B-1 Common Stock, par value \$0.00001 per share (together with any Class B-2 Common Stock, the "Class B Stock") and (b) QIA shall, through the recapitalization of Fluence LLC contemplated by the LLC Agreement and certain related transactions, become a holder of shares of Class A Common Stock;

WHEREAS, immediately following the issuance of Class A Common Stock of the Corporation to the underwriters in its initial public offering, AES (together with its Permitted Transferees, in such capacity, the "AES Related Parties") will be the record holder of shares of Class B Stock;

WHEREAS, immediately following the issuance of Class A Common Stock of the Corporation to the underwriters in its initial public offering, Siemens (and together with its Permitted Transferees, in such capacity, the "Siemens Related Parties") will be the record holders of shares of Class B Stock;

WHEREAS, immediately following the issuance of Class A Common Stock of the Corporation to the underwriters in its initial public offering, QIA (and together with its Permitted Transferees, in such capacity, the “QIA Related Parties”) will be the record holders of shares of Class A Common Stock; and

WHEREAS, in order to induce AES and Siemens (x) to approve the sale and issuance of Common Units by Fluence LLC to the Corporation and the appointment of the Corporation as the sole managing member of Fluence LLC in connection with the IPO and (y) to take certain other actions as shall be necessary to effectuate the transactions contemplated by the IPO, the parties hereto desire to set forth their agreement with respect to the matters set forth herein in connection with their respective investments in the Corporation.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Corporation, AES, Siemens and QIA agree as follows:

AGREEMENT

Section 1. Election of the Board of Directors.

(a) Subject to this Section 1(a), the AES Related Parties shall be entitled to designate for nomination by the Board up to three (3) Directors from time to time (any Director designated by the AES Related Parties, a “AES Director”). The right of the AES Related Parties to designate for nomination the AES Directors as set forth in this Section 1(a) shall be subject to the following: (i) if at any time the AES Related Parties Beneficially Own, directly or indirectly, in the aggregate twenty percent (20%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the AES Related Parties shall be entitled to designate for nomination three (3) AES Directors, (ii) if at any time the AES Related Parties Beneficially Own, directly or indirectly, in the aggregate less than twenty percent (20%) but at least ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the AES Related Parties shall only be entitled to designate for nomination two (2) AES Directors, and (iii) if at any time the AES Related Parties Beneficially Own, directly or indirectly, in the aggregate less than ten percent (10%) but at least five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the AES Related Parties shall only be entitled to designate for nomination one (1) AES Director. The AES Related Parties shall not be entitled to designate for nomination any AES Directors in accordance with this Section 1(a) if at any time the AES Related Parties Beneficially Own, directly or indirectly, in the aggregate less than five percent (5%) of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares).

(b) Subject to this Section 1(b), the Siemens Related Parties shall be entitled to designate for nomination by the Board up to three (3) Directors from time to time (any Director designated by the Siemens Related Parties, a “Siemens Director”). The right of the Siemens Related Parties to designate for nomination the Siemens Directors as set forth in this Section 1(b) shall be subject to the following: (i) if at any time the Siemens Related Parties Beneficially Own, directly or indirectly, in the aggregate twenty percent (20%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the Siemens Related Parties shall be entitled to designate for nomination three (3) Siemens Directors, (ii) if at any time the Siemens Related Parties Beneficially Own, directly or indirectly, in the aggregate less than twenty percent (20%) but at least ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the Siemens Related Parties shall only be entitled to designate for nomination two (2) Siemens Directors and (iii) if at any time the Siemens Related Parties Beneficially Own, directly or indirectly, in the aggregate less than ten percent (10%) but at least five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), the Siemens Related Parties shall only be entitled to designate for nomination one (1) Siemens Director. The Siemens Related Parties shall not be entitled to designate for nomination any Siemens Directors in accordance with this Section 1(b) if at any time the Siemens Related Parties Beneficially Own, directly or indirectly, in the aggregate less than five percent (5%) of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares).

(c) Subject to this Section 1(c), the QIA Related Parties shall be entitled to designate for nomination by the Board one (1) Director from time to time (any Director designated by the QIA Related Parties, a “QIA Director”) if at any time the QIA Related Parties Beneficially Own, directly or indirectly, in the aggregate five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares). The QIA Related Parties shall not be entitled to designate for nomination a QIA Director in accordance with this Section 1(c) if at any time the QIA Related Parties Beneficially Own, directly or indirectly, in the aggregate less than five percent (5%) of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares).

(d) Subject to Section 1(a), Section 1(b) and Section 1(c), as of the date hereof, each of AES, Siemens and QIA hereby agree to vote, or cause to be voted, all outstanding shares of Class A Common Stock and Class B Stock, as applicable, held by the AES Related Parties, Siemens Related Parties and QIA Related Parties as of the date hereof, at any annual or special meeting of stockholders of the Corporation at which Directors of the Corporation are to be elected or removed, or to take all Necessary Action to cause the election or removal of the AES Directors, Siemens Directors and QIA Director as a Director, as provided herein and to implement and enforce the provisions set forth in Section 3.

(e) So long as the Corporation qualifies as a “controlled company” for purposes of Stock Exchange rules, the Corporation may elect to be a “controlled company” for purposes of Stock Exchange rules, and will disclose in its annual meeting proxy statement that it is a “controlled company” and the basis for that determination. If the Corporation ceases to qualify as a “controlled company” for purposes of Stock Exchange rules, each Stockholder and the Corporation will take whatever Necessary Action may be reasonably necessary in relation to such party, if any, to cause the Corporation to comply with Stock Exchange rules as then in effect within the timeframe for compliance available under such rules.

Section 2. Vacancies and Replacements.

(a) If the number of Directors that the AES Related Parties, Siemens Related Parties or the QIA Related Parties have the right to designate for nomination to the Board is decreased pursuant to Section 1(a), Section 1(b) or Section 1(c) (each such occurrence, a “Decrease in Designation Rights”), then:

(i) unless a majority of Directors (with the affected party’s Board designees abstaining) agree in writing that a Director or Directors shall not resign as a result of a Decrease in Designation Rights, each of the AES Related Parties, Siemens Related Parties or the QIA Related Parties, as applicable, shall use its reasonable best efforts to cause each of (x) the appropriate number of AES Directors that the AES Related Parties cease to have the right to designate for nomination to serve as a AES Director, (y) the appropriate number of Siemens Directors that the Siemens Related Parties cease to have the right to designate for nomination to serve as a Siemens Director or (y) the QIA Director that the QIA Related Parties cease to have the right to designate for nomination to serve as the QIA Director, respectively, to offer to tender his, her or their resignation(s), and each of such AES Directors, Siemens Directors or QIA Director so tendering a resignation, as applicable, shall resign within thirty (30) days from the date that the AES Related Parties, Siemens Related Parties and/or the QIA Related Parties, as applicable, incurs a Decrease in Designation Rights. In the event any such AES Director, Siemens Director or QIA Director, as applicable, does not resign as a Director by such time as is required by the foregoing, the AES Related Parties, Siemens Related Parties and the QIA Related Parties, as holders of Class A Common Stock and Class B Stock, the Corporation and the Board, to the fullest extent permitted by law and, with respect to the Board, subject to its fiduciary duties, shall thereafter take all Necessary Action, including voting in accordance with Section 1(d), to cause the removal of such individual as a Director; and

(ii) the vacancy or vacancies created by such resignation(s) and/or removal(s) shall be filled with one or more Directors, as applicable, designated by the Board upon the recommendation of the Nominating and Corporate Governance Committee (with the affected party’s Board designees abstaining), so long as it is established; *provided*, that the Board, upon the recommendation of the Nominating and Corporate Governance Committee (with the affected party’s Board designees abstaining), may decline to fill such vacancy or vacancies and elect instead to reduce the total number of Directors constituting the full Board correspondingly; *provided* in no event shall the total number of Directors constituting the full Board be fewer than nine (9).

(b) Each of the AES Related Parties, Siemens Related Parties and the QIA Related Parties shall have the sole right to request that one or more of their respective designated Directors, as applicable, tender their resignations as Directors of the Board (each, a “Removal Right”), in each case, with or without cause at any time, by sending a written notice to such Director and the Corporation’s Secretary stating the name of the Director or Directors whose resignation from the Board is requested (the “Removal Notice”). If the Director subject to such Removal Notice does not resign within thirty (30) days from receipt thereof by such Director, the AES Related Parties, Siemens Related Parties and the QIA Related Parties, as holders of Class A Common Stock and Class B Stock, the Corporation and the Board, to the fullest extent permitted by law and, with respect to the Board, subject to its fiduciary duties to the Corporation’s stockholders, shall thereafter take all Necessary Action, including voting in accordance with Section 1(d) to cause the removal of such Director from the Board (and such Director shall only be removed by the parties to this Agreement in such manner as provided herein).

(c) Except with respect to a Decrease in Designation Rights subject to Section 2(a), each of the AES Related Parties, Siemens Related Parties and the QIA Related Parties, as applicable, shall have the exclusive right to designate for nomination a replacement Director for nomination or election by the Board to fill vacancies created as a result of not designating their respective Directors initially or by death, disability, retirement, resignation, removal (with or without cause) of their respective Directors, or otherwise by designating a successor for nomination or election by the Board to fill the vacancy of their respective Directors created thereby on the terms and subject to the conditions of Section 1 whereupon the Corporation and the Board, to the fullest extent permitted by law and, with respect to the Board, subject to its fiduciary duties, shall take all Necessary Action to cause such designee to be elected or appointed by the Board to fill such vacancy.

Section 3. Initial Directors and Corporate Governance.

(a) Initial Directors. The initial AES Directors pursuant to Section 1(a) shall initially be Julian Nebreda, Lisa Krueger and John Shelton. The initial Siemens Directors pursuant to Section 1(b) shall initially be Axel Meier, Barbara Humpton and Emma Falck. The initial QIA Director pursuant to Section 1(c) shall initially be Simon James Smith. Herman Bulls shall serve as the initial Chairperson of the Board (as defined in the Bylaws) for the initial term, in accordance with this Agreement and the Bylaws, after which the Chairperson of the Board shall be determined in accordance with this Agreement and the Bylaws.

(b) Nominating Committee. For so long as the AES Related Parties have the ability pursuant to Section 1(a) to designate for nomination at least one (1) Director, the AES Related Parties shall have, to the fullest extent permitted by applicable law, subject to the Stock Exchange rules and in compliance with other applicable laws, rules and regulations, and subject to the requirements of the charter for the Nominating and Corporate Governance Committee, the right, but not the obligation, to designate one (1) member of the Nominating and Corporate Governance Committee. For so long as the Siemens Related Parties have the ability pursuant to Section 1(b) to designate for nomination at least one (1) Director, the Siemens Related Parties shall have, to the fullest extent permitted by applicable law, subject to the Stock Exchange rules and in compliance with other applicable laws, rules and regulations, and subject to the requirements of the charter for the Nominating and Corporate Governance Committee, the right, but not the obligation, to designate one (1) member of the Nominating and Corporate Governance Committee.

(c) Chief Executive Officer. Immediately following the consummation of the IPO, the Chief Executive Officer of the Corporation shall be Manuel Perez Dubuc.

(d) Other Rights of AES Directors, Siemens Directors and QIA Directors.

(i) Each AES Director, Siemens Director and QIA Director serving on the Board shall be entitled to the same rights and privileges applicable to all other members of the Board generally or to which all such members of the Board are entitled. In furtherance of the foregoing, the Corporation shall indemnify, exculpate, and reimburse fees and expenses of each AES Director, Siemens Director and QIA Director (including by entering into an indemnification agreement in a form substantially similar to the Corporation's form director indemnification agreement) and provide each AES Director, Siemens Director and QIA Director with director and officer insurance to the same extent it indemnifies, exculpates, reimburses and provides insurance for the other members of the Board pursuant to the certificate of incorporation or bylaws of the Corporation, applicable law or otherwise.

(ii) The AES Directors and Siemens Directors shall, each respectively, have the right to review and to approve the Corporation's annual business plan and annual capital expenditure and operating budget (collectively, the "Budget") prior to the implementation by the Corporation of the Budget. In the event that the Board of Directors fails to approve a Budget for any Fiscal Year prior to the first day of such Fiscal Year, (i) any items of the proposed Budget that have been approved will become operative, and (ii) the approved Budget for the immediately preceding Fiscal Year shall continue in effect after giving effect to any dispositions or other material changes to the business, subject to a fifteen percent (15%) year-over-year increase with respect to overhead and fixed costs.

Section 4. Rights of the AES, Siemens and QIA Stockholders.

(a) In addition to any voting requirements contained in the organizational documents of the Corporation or any of its Subsidiaries, the Corporation shall not take, and shall cause Fluence LLC and its Subsidiaries not to take, any of the following actions (whether by merger, consolidation or otherwise) without the prior written approval of (i) the AES Related Parties as long as they Beneficially Own, directly or indirectly, in the aggregate ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares) and (ii) the Siemens Related Parties for as long as they Beneficially Own, directly or indirectly, in the aggregate ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares):

(i) any buyback, purchase, repurchase, redemption or other acquisition by the Corporation or Fluence LLC of any of the securities of the Corporation, Fluence LLC or any of their respective Subsidiaries, other than repurchases made pursuant to any incentive plan adopted by the Board and stockholders of the Corporation, or in connection with any redemption or exchange of Common Units as set forth in the LLC Agreement, or other than in connection with buybacks, purchases, repurchases, redemptions or other acquisitions by the Corporation or Fluence LLC of any of the securities of the Corporation, Fluence LLC or any of their respective Subsidiaries that are available to all equity holders of such entity *pro rata* to their then-existing equity holdings in such entity;

(ii) the creation of a new class or series of capital stock or equity securities of the Corporation, Fluence LLC or any of their respective Subsidiaries; *provided* that this clause shall not prohibit Fluence LLC from causing any of its direct or indirect wholly-owned Subsidiaries from revising the capitalization of such direct or indirect wholly-owned Subsidiaries in the ordinary course of business and that such new class or series of equity securities is held by Fluence LLC or its wholly-owned Subsidiaries; or

(iii) any issuance of additional shares of Class A Common Stock, Class B Stock, or other equity securities of the Corporation, Fluence LLC or any of their respective Subsidiaries after the date hereof, other than (1) any issuance of additional shares of Class A Common Stock or other equity securities of the Corporation or its Subsidiaries (i) under any stock option or other equity compensation plan of the Corporation or any of its Subsidiaries approved by the Board or the compensation committee of the Board or (ii) in connection with any redemption of Common Units as set forth in the LLC Agreement; or (2) any issuance of equity securities by the direct or indirect wholly-owned Subsidiaries of Fluence LLC to Fluence LLC or to other wholly-owned Subsidiaries of Fluence LLC.

Notwithstanding anything in the organizational documents of the Corporation to the contrary, each of (i) the Siemens Related Parties for as long as the Siemens Related Parties Beneficially Own, directly or indirectly, in the aggregate ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares) and (ii) the AES Related Parties for as long as the AES Related Parties Beneficially Own, directly or indirectly, in the aggregate ten percent (10%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares), shall have the right to call a special meeting of stockholders of the Corporation for any purpose.

(b) In addition to any voting requirements contained in the organizational documents of the Corporation or any of its Subsidiaries, the Corporation shall not take, and shall cause Fluence LLC and its Subsidiaries not to take, any of the following actions (whether by merger, consolidation or otherwise) without the prior written approval of (i) the AES Related Parties as long as they Beneficially Own, directly or indirectly, in the aggregate five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares) and (ii) the Siemens Related Parties for as long as they Beneficially Own, directly or indirectly, in the aggregate of five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares):

(i) the appointment of the Company Representative under (and as defined in) the LLC Agreement, the making of any tax election outside the ordinary course of business, or any change or revocation of any material tax election, or any election to classify Fluence LLC or any Subsidiary thereof as a corporation for federal income tax purposes; or

(ii) the (x) resignation, replacement or removal of the Corporation as the sole manager of Fluence LLC or (y) appointment of any additional Person as a manager of Fluence LLC.

(c) In addition to any voting requirements contained in the organizational documents of the Corporation or any of its Subsidiaries, the Corporation shall not take, and shall cause Fluence LLC and its Subsidiaries not to take, any of the following actions (whether by merger, consolidation or otherwise) without the prior written approval of (i) the AES Related Parties as long as they Beneficially Own, directly or indirectly, in the aggregate five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares), (ii) the Siemens Related Parties for as long as they Beneficially Own, directly or indirectly, in the aggregate of five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares) and (iii) the QIA Related Parties for as long as they Beneficially Own, directly or indirectly, in the aggregate five percent (5%) or more of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares):

(i) any increase or decrease of the size of the Board;

(ii) the reorganization, recapitalization, voluntary bankruptcy, liquidation, dissolution or winding-up of the Corporation, Fluence LLC or any of their respective Subsidiaries; or

(iii) any amendment or modification of this Agreement or the organizational documents of the Corporation, Fluence LLC or any Subsidiary that would adversely modify the rights, preferences or privileges of any of AES, Siemens or QIA in a materially disproportionate manner to the non-affected stockholders among AES, Siemens or QIA.

(d) Tag-Along Rights. If during the three (3) year period commencing on the date of this Agreement:

(i) either the AES Related Parties or the Siemens Related Parties (each in such capacity, an “Initiating Stockholder”) (x) desires to Transfer (as defined in the LLC Agreement) to any Person (other than their respective Affiliates or to the Corporation) (a “Third Party”) one hundred percent (100%) of its shares of Class A Common Stock, if any, and Common Units (in the case of Common Units, together with the applicable shares of Class B Stock) and (y) such shares of Class A Common Stock and Common Units being sold to such Third Party (the “Subject Securities”) represent less than twenty percent (20%) of the aggregate issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), then (A) the Initiating Stockholder may sell such Subject Securities to the Third Party, (B) the Initiating Stockholder is not permitted to assign or transfer any of its rights under this Agreement to such Third Party and (C) the QIA Related Parties shall not have any right to participate in such sale to such Third Party pursuant to this Section 4(d)(i);

(ii) either Initiating Stockholder desires to Transfer (as defined in the LLC Agreement) to a Third Party, one hundred percent (100%) of its Subject Securities and such Subject Securities represent twenty percent (20%) or more of the aggregate issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), then the Initiating Stockholder may, in its sole discretion, (1) elect to (x) Transfer its Subject Securities and (y) transfer or assign its rights under this Agreement to such Third Party, provided that in connection with such Transfer, such Initiating Stockholders shall provide the QIA Related Parties with the right to participate in the sale of such Subject Securities and sell one hundred percent (100%) of their shares of Class A Common Stock pursuant to Sections 4(d)(v), (vi) and (vii) (the rights of the QIA Related Parties to participate in any Transfer of Subject Securities under this Section 4(d) shall be referred to as the “Tag Along Rights”) or (2) Transfer the Subject Securities to the Third Party without transferring or assigning its rights under this Agreement, in which case the QIA Related Parties will not have any Tag Along Rights. In respect of clause (1) herein, the applicable Initiating Stockholder shall use its reasonable best efforts to cause the Third Party purchaser to acquire the applicable shares of Class A Common Stock of the QIA Related Parties pursuant to the terms of this Section 4(d); provided that, if such Third Party elects not to acquire such shares of Class A Common Stock of the QIA Related Parties, (A) the applicable Initiating Stockholder shall not be permitted to transfer or assign its rights under this Agreement to such Third Party and (B) the QIA Related Parties will not have any Tag Along Rights;

(iii) both Initiating Stockholders desire collectively to Transfer (as defined in the LLC Agreement) to a Third Party a number of their Subject Securities representing (x) less than one hundred percent (100%) of such Initiating Stockholder’s Subject Securities and (y) thirty percent (30%) or greater of the aggregate issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), then (1) the Initiating Stockholders shall not be permitted to assign their rights under this Agreement to the Third Party, and (2) the QIA Related Parties shall have the Tag Along Rights with respect to a sale of a pro rata portion of their Class A Common in the sale of such Subject Securities pursuant to the terms of this Section 4(d);

(iv) both Initiating Stockholders desire collectively to Transfer (as defined in the LLC Agreement) to a Third Party one hundred percent (100%) of their Subject Securities and such Subject Securities represent thirty percent (30%) or greater of the aggregate issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares), then the Initiating Stockholders (x) may Transfer their collective Subject Securities to the Third Party and (y) may assign their respective rights under this Agreement to such Third Party and (z) shall provide the QIA Related Parties with the Tag Along Rights and the ability to participate in the sale of such Subject Securities and sell one hundred percent (100%) of their shares of Class A Common Stock pursuant to the terms of this Section 4(d);

(v) Prior to any proposed sale of the Subject Securities by the Initiating Stockholders to a Third Party to which Tag Along Rights apply as set forth in Section 4(d)(ii) through Section 4(d)(iv), the applicable Initiating Stockholder shall provide the QIA Related Parties with a written notice (the “Tag Along Notice”), which shall include (i) the identity of the prospective purchaser (the “Prospective Purchaser”), (ii) the number of the Subject Securities proposed to be sold by the Initiating Stockholders, (iii) the per share consideration and the material terms and conditions upon which the proposed sale is to be made, and (iv) the number of the Subject Securities held by the applicable Initiating Stockholders to be included in such Tag Along Transfer, expressed as a percentage of their aggregate holdings (the “Tag Percentage”);

(vi) Following receipt of a Tag Along Notice hereunder, the QIA Related Parties, in their sole discretion, will have ten (10) business days to exercise, by delivery of written notice to the Initiating Stockholders (the “Tag Election”), the right to sell to the Prospective Purchaser a number of shares of Class A Common Stock up to the product of the total number of Class A Common Stock held by the QIA Related Parties multiplied by the Tag Percentage set forth in the Tag Along Notice (for clarity, in such a joint sale by the AES Related Parties and the Siemens Related Parties where the number of the Subject Securities being included in such sale by one party is different from that of the other party, the QIA Related Parties may use the greater of the two individual Tag Percentages in calculating the number of its *pro rata* portion of the applicable Subject Securities) (any of the QIA Related Parties exercising such right, a “Tagging Stockholder” and any such shares of Class A Common Stock designated for sale by a Tagging Stockholder, collectively, the “Tag Along Securities”). For purposes of this Section 4(d), Subject Securities will be counted as follows: (A) each share of Class A Common Stock will be counted as one (1) Subject Security and (B) each share of Class B Common Stock and Common Unit together will be counted as one (1) Subject Security. Any such exercise of the Tag Along Rights by a Tagging Stockholder shall be irrevocable. If the QIA Related Parties have not delivered a Tag Election within such ten (10) business day period, the Initiating Stockholders shall have the right to freely Transfer to the Prospective Purchaser all, but not less than all, of the Subject Securities proposed to be sold as set forth in the Tag Along Notice for a period not to exceed one hundred and eighty (180) days following the end of such ten (10) day period, subject to extension to allow pending applicable governmental consents and approvals; provided, that such Transfer is otherwise on the same or substantially similar or less preferable (to the Initiating Stockholders) terms and conditions as those set forth in the Tag Along Notice. If, at the end of such one hundred and eighty (180) day period (as extended to permit pending governmental consents and approvals), the Initiating Stockholders have not completed the Tag Along Transfer in accordance with the terms and conditions of the Tag Along Notice, all the restrictions on a Transfer contained in this Section 4(d) with respect to the Subject Securities owned by the Initiating Stockholders shall again be in effect; and

(vii) The Tag Along Securities will be included in the relevant Transfer on the same terms and subject to the same conditions set forth in the Tag Along Notice and applicable to the Subject Securities that the Initiating Stockholders are selling (except that governmental consents and approvals shall be obtained by each Tagging Stockholder as required under applicable law, even if different from those required from the Initiating Stockholders in connection with the Tag Along Transfer). Each Tagging Stockholder agrees that it will take such actions and execute such other agreements as the Initiating Stockholders may reasonably request in connection with the consummation of the Tag Along Transfer and the transactions contemplated thereby, including any purchase agreement, proxies, custody agreements, powers of attorney, written consents in lieu of meetings or waiver of appraisal rights.

(e) Drag-Along Rights.

(i) Notwithstanding the provisions of Section 4(d) above, in the event that AES and Siemens collectively Transfer (as defined in the LLC Agreement) to a Third Party one hundred percent (100%) of their respective Subject Securities (a “Drag-Along Transaction”) and (A) as a result of such Drag-Along Transaction, such Third Party acquires at least sixty percent (60%) (in the aggregate) of the issued and outstanding shares of Class A Common Stock (including for these purposes the Underlying Class A Shares) and (B) the purchase price set forth in the bona fide offer from the Third Party purchaser represents at least a thirty percent (30%) increase on the 30-day average trading price for the shares of Class A Common Stock (a “Drag Offer”), then AES and Siemens may, at their option, require the QIA Related Parties to sell one hundred percent (100%) of their shares of Class A Common Stock to the third party by giving written notice (the “Drag Notice”) to the QIA Related Parties not less than thirty (30) days prior to the date stated in the Drag Offer for consummation of the sale contemplated by the Drag Offer (the “Approved Sale”). The Drag Notice shall contain written notice of the exercise of AES and Siemens’ rights pursuant to this Section 4(e), and shall set forth the consideration to be paid by the third party and the other material terms and conditions of the Drag Offer.

(ii) The purchase of shares of Class A Common Stock from the QIA Related Parties pursuant to this Section 4(e) shall be on substantially the same terms and conditions and for the same type of consideration payable to AES and Siemens.

(iii) If AES and Siemens exercise their rights pursuant to this Section 4(e), the QIA Related Parties shall sell, exchange or otherwise dispose to such Third Party one hundred percent (100%) of their shares of Class A Common Stock.

(iv) In connection with the consummation of any Approved Sale, QIA acknowledges and agrees that it shall:

- a. consent to and raise no objections against any such Approved Sale; and
- b. not exercise any rights of appraisal, dissenters’ rights or similar rights, all of which are hereby waived.

Section 5. Covenants of the Corporation.

(a) The Corporation agrees to take all Necessary Action to (i) cause the Board to be comprised of at least nine (9) Directors or such other number of Directors as the Board may determine, subject to the terms of this Agreement, the Charter or the Bylaws of the Corporation; (ii) cause the individuals designated for nomination in accordance with Section 1 to be included in the slate of nominees to be elected to the Board at the next annual or special meeting of stockholders of the Corporation at which Directors are to be elected, in accordance with the Bylaws, Charter and General Corporation Law of the State of Delaware and at each annual meeting of stockholders of the Corporation thereafter at which such Director’s term expires; (iii) cause the individuals designated for nomination in accordance with Section 2(c) to fill the applicable vacancies on the Board, in accordance with the Bylaws, Charter, Securities Laws, General Corporation Law of the State of Delaware and the New York Stock Exchange rules and (iv) to adhere to, implement and enforce the provisions set forth in Section 4.

(b) The AES Related Parties, the Siemens Related Parties and the QIA Related Parties shall comply with the requirements of the Charter and Bylaws when designating and nominating individuals as Directors, in each case, to the extent such requirements are applicable to Directors generally. Notwithstanding anything to the contrary set forth herein, in the event that the Board determines, within sixty (60) days after compliance with the first sentence of this Section 5(b), in good faith, after consultation with outside legal counsel, that its nomination, appointment or election of a particular Director designated for nomination in accordance with Section 1 or Section 2, as applicable, would constitute a breach of its fiduciary duties or does not otherwise comply with any requirements of the Charter or Bylaws, then the Board shall inform the AES Related Parties, Siemens Related Parties and/or the QIA Related Parties, as applicable, of such determination in writing and explain in reasonable detail the basis for such determination and shall, to the fullest extent permitted by law, nominate, appoint or elect another individual designated for nomination, election or appointment to the Board by the AES Related Parties, Siemens Related Parties and/or the QIA Related Parties, as applicable (subject in each case to this Section 5(b)). The Board and the Corporation shall, to the fullest extent permitted by law, take all Necessary Action required by this Section 5 with respect to the election of such substitute designees to the Board.

(c) In addition to any voting requirements contained in this Agreement or the organizational documents of the Corporation or any of its Subsidiaries, the Corporation shall not, directly or indirectly, enter into or conduct business or operations or hold or acquire assets in its own name or otherwise other than through Fluence LLC and its Subsidiaries without the prior written approval of (i) AES for as long as the AES Related Parties Beneficially Own, directly or indirectly any of the issued and outstanding Common Units and (ii) Siemens for as long as the Siemens Related Parties Beneficially Own, directly or indirectly any of the issued and outstanding Common Units; provided, however, that nothing in this clause (c) shall be deemed to prohibit the Corporation from, and no consent of AES, Siemens or any other Person shall be required for the Corporation to engage in, (i) holding or using cash received by the Corporation as a result of the Corporation's investment in Fluence LLC or (ii) re-investing cash into Fluence LLC (whether by way of intercompany loan, investment or otherwise).

(d) Upon the request of either the AES Related Parties or the Siemens Related Parties that wish to (x) pledge, hypothecate or grant security interests in any or all of the shares of Common Stock held by it including to banks or financial institutions as collateral or security for loans, advances or extensions of credit or (y) transfer all (but not less than all) of the shares of Common Stock and/or Common Units held by it, including to a third party transferee, in a transfer not prohibited by the LLC Agreement, each of the Corporation and Fluence LLC agrees to cooperate with the AES Related Parties or the Siemens Related Parties, as the case may be, in taking any action reasonably necessary to consummate any such pledge, hypothecation, grant or transfer, including without limitation, delivery of letter agreements to lenders in form and substance reasonably satisfactory to such lenders (which may include agreements by the Corporation and Fluence LLC in respect of the exercise of remedies by such lenders), instructing the transfer agent to transfer any such shares of Common Stock subject to the pledge, hypothecation or grant into the facilities of The Depository Trust Company without restricted legends and cooperating in diligence or other matters as may reasonably be requested by either AES Related Parties or the Siemens Related Parties in connection therewith.

(e) In the event that the Corporation effects the separation of any portion of its business into one or more entities (each, a “NewCo”), whether existing or newly formed, including without limitation by way of spin-off, split-off, carve-out, demerger, recapitalization, reorganization or similar transaction, and any Stockholder will receive equity interests in any such NewCo as part of such separation, the Corporation shall cause any such NewCo to enter into a Stockholders agreement with the Stockholders that provides AES, Siemens and QIA with rights vis-à-vis such NewCo that are substantially identical to those set forth in this Agreement.

Section 6. Termination.

This Agreement shall terminate upon the earliest to occur of any one of the following events:

(a) each of (i) the AES Related Parties, (ii) the Siemens Related Parties and (iii) the QIA Related Parties ceasing to own any shares of Class A Common Stock (including for these purposes any Underlying Class A Shares) or Class B Stock;

(b) each of (i) the AES Related Parties, (ii) the Siemens Related Parties and (iii) the QIA Related Parties ceasing to have any Director designation rights under Section 1; and

(c) the unanimous written consent of the parties hereto; provided, however, that notwithstanding any of the foregoing in this Section 6, the QIA Related Parties shall have the option to terminate, at their sole discretion and solely with respect to such QIA Related Parties, this Agreement and their rights and obligations hereunder if at any time (i)(A) the Board no longer has a QIA Director and (B) the QIA Related Parties beneficially own, directly or indirectly, in the aggregate less than five percent (5%) of all issued and outstanding shares of Class A Common Stock (including for this purpose the Underlying Class A Shares) or (ii) following a Transfer to a Third Party by the AES Related Parties or the Siemens Related Parties of its shares of Class A Common Stock and/or Common Units (in the case of Common Units, together with the applicable shares of Class B Stock) and the associated right to designate for nomination one or more Directors, the QIA Related Parties determine that they would not be able to vote (or cause to be voted) for any director candidate nominated by such Third Party.

For the avoidance of doubt, the rights and obligations (i) of the AES Related Parties under this Agreement shall terminate upon the AES Related Parties ceasing to own any shares of Class A Common Stock (including for these purposes the Underlying Class A Shares), or Class B Stock, (ii) of the Siemens Related Parties under this Agreement shall terminate upon the Siemens Related Parties ceasing to own any shares of Class A Common Stock (including for these purposes any Underlying Class A Shares) or Class B Stock, or (iii) of the QIA Related Parties under this Agreement shall terminate upon the QIA Related Parties ceasing to own any shares of Class A Common Stock. Notwithstanding the foregoing, nothing in this Agreement shall modify, limit or otherwise affect, in any way, any and all rights to indemnification, exculpation and/or contribution owed by any of the parties hereto, to the extent arising out of or relating to events occurring prior to the date of termination of this Agreement or the date the rights and obligations of such party under this Agreement terminates in accordance with this Section 6.

Section 7. Definitions.

As used in this Agreement, any term that it is not defined herein, shall have the following meanings:

“Affiliate” has the meaning ascribed thereto in Rule 12b-2 promulgated under the Exchange Act, as in effect on the date hereof

“Beneficially Own” has the meaning set forth in Rule 13d-3 promulgated under the Exchange Act; provided that for purposes of this Agreement, a Stockholder shall not be deemed to Beneficially Own any shares of Class A Common Stock (including any Underlying Class A Shares) in which such Stockholder does not have a direct or indirect pecuniary interest.

“Board” means the board of directors of the Corporation.

“Bylaws” means the amended and restated bylaws of the Corporation, dated as of the date hereof, as the same may be further amended, restated, amended and restated or otherwise modified from time to time.

“Combined Voting Power” means the combined voting power of all classes and series of Voting Securities, according to each class’ or series’ respective votes per share, voting together as a single class.

“Charter” means the amended and restated certificate of incorporation of the Corporation, effective as of the date hereof, as the same may be further amended, restated, amended and restated or otherwise modified from time to time.

“Director” means a member of the Board.

“Necessary Action” means, with respect to a specified result, all commercially reasonable actions required to cause such result that are within the power of a specified Person, including (i) voting or providing a written consent or proxy with respect to the equity securities owned by the Person obligated to undertake the necessary action, (ii) voting in favor of the adoption of stockholders’ resolutions and amendments to the organizational documents of the Corporation, (iii) executing agreements and instruments, and (iv) making, or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result.

“Nominating and Corporate Governance Committee” means the nominating and corporate governance committee of the Board or any committee of the Board authorized to perform the function of recommending to the Board the nominees for election as Directors or nominating the nominees for election as Directors.

“Permitted Transferees” has the meaning set forth in the Charter or, in relation to a Stockholder’s Common Units in Fluence LLC, in the LLC Agreement.

“Person” means any individual, corporation, limited liability company, partnership, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity or organization, including a government or any subdivision or agency thereof.

“Pro Rata Percentage” means the percentage obtained by dividing (i) the aggregate number of Subject Securities being sold pursuant to Section 4(d), by (ii) the aggregate number of Subject Securities owned by the AES Related Parties and Siemens Related Parties immediately preceding the transactions contemplated by Section 4(d).

“Related Parties” means, collectively, the AES Related Parties, the Siemens Related Parties and the QIA Related Parties.

“Securities Laws” means the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

“Stock Exchange” means the Nasdaq Global Market or such other securities exchange or interdealer quotation system on which shares of Class A Common Stock are then listed or quoted.

“Subsidiary” means with respect to any Person, any corporation, limited liability company, partnership, association, trust or other form of legal entity, of which (a) such first Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms voting power to elect a majority of the board of directors or others performing similar functions, or (b) such first Person is a general partner or managing member (excluding partnerships in which such Person or any Subsidiary thereof does not have a majority of the voting interests in such partnership).

“Underlying Class A Shares” means all shares of Class A Common Stock issuable upon redemption of Common Units, assuming all such Common Units are redeemed for Class A Common Stock on a one-for-one basis (excluding, for clarity, Common Units held directly or indirectly by the Corporation).

“Voting Securities” means, at any time, outstanding shares of any class of Common Stock of the Corporation, which are then entitled to vote generally in the election of directors.

Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the word “including” shall mean “including, without limitation”; (vi) each defined term has its defined meaning throughout this Agreement, whether the definition of such term appears before or after such term is used; and (vii) the word “or” shall be disjunctive but not exclusive. References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto. References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations (including rules of any Stock Exchange) shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

Section 8. Information.

(a) The Corporation shall, and shall cause its Subsidiaries to, keep proper books, records and accounts, in which full and correct entries shall be made of all financial transactions and the assets and business of the Corporation and each of its Subsidiaries in accordance with generally accepted accounting principles. The Corporation shall, and shall cause its Subsidiaries to, (i) permit the Stockholders and their respective designated representatives (or other designees), at reasonable times and upon reasonable prior notice to the Corporation, to review the books and records of the Corporation or any of such Subsidiaries and to discuss the affairs, finances and condition of the Corporation or any of such Subsidiaries with the officers of the Corporation or any such Subsidiary and (ii) unless and until a Stockholder notifies the Corporation in writing that it no longer desires to receive information under this clause (ii), provide such Stockholder all information of a type, at such times and in such manner as is consistent with the Corporation's past practice or that is otherwise reasonably requested by such Stockholder from time to time (all such information so furnished pursuant to this Section 8(a), the "Information"). Subject to Section 8(c) any Stockholder (and any party receiving Information from a Stockholder) who shall receive Information shall maintain the confidentiality of such Information. Notwithstanding the foregoing, that the Corporation shall not be required to disclose any privileged Information of the Corporation so long as the Corporation has used commercially reasonable efforts to enter into an arrangement pursuant to which it may provide such information to the Stockholders without the loss of any such privilege.

(b) The Corporation shall deliver or cause to be delivered to the Stockholders, at their request:

(i) to the extent otherwise prepared by the Corporation, operating and capital expenditure budgets and periodic information packages relating to the operations and cash flows of the Corporation and its Subsidiaries; and

(ii) to the extent otherwise prepared by the Corporation, such other reports and information as may be reasonably requested by the Stockholders; provided, however, that the Corporation shall not be required to disclose any privileged information of the Corporation so long as the Corporation has used commercially reasonable efforts to enter into an arrangement pursuant to which it may provide such information to the Stockholders without the loss of any such privilege.

(c) Each Stockholder agrees that it will, and will direct its designated representatives to, keep confidential and not disclose any Confidential Information; *provided, however*, that such Stockholder and its designated representatives may disclose Confidential Information to the other Stockholders, to their respective Related Parties and to (a) its Affiliates and its Affiliates' attorneys, accountants, consultants, insurers, financing sources and other advisors in connection with such Stockholder's investment in the Corporation, (b) any Person, including a prospective purchaser of Common Stock, as long as such Person has agreed, in writing, to maintain the confidentiality of such Confidential Information, (c) any of such Stockholder's or its respective Affiliates' partners, members, stockholders, directors, officers, employees or agents in the ordinary course of business (the Persons referenced in clauses (a), (b) and (c), a Stockholder's "designated representatives") or (d) as the Corporation may otherwise consent in writing; *provided, further, however*, that each Stockholder agrees to be responsible for any breaches of this Section 8(c) by such Stockholder's designated representatives.

(d) Each party hereto acknowledges and agrees that the Related Parties may share any information concerning the Corporation and its Subsidiaries received by them from or on behalf of the Corporation or its designated representatives with each Stockholder and its designated representatives (subject to such Stockholder's obligation to maintain the confidentiality of Confidential Information in accordance with Section 8(c)).

Section 9. Choice of Law and Venue; Waiver of Right to Jury Trial.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE. EACH OF THE PARTIES HERETO ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF ANY BREACH OF THIS AGREEMENT, THE NON-BREACHING PARTY WOULD BE IRREPARABLY HARMED AND COULD NOT BE MADE WHOLE BY MONETARY DAMAGES, AND THAT, IN ADDITION TO ANY OTHER REMEDY TO WHICH THEY MAY BE ENTITLED AT LAW OR IN EQUITY, THE PARTIES SHALL BE ENTITLED TO SUCH EQUITABLE OR INJUNCTIVE RELIEF AS MAY BE APPROPRIATE. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT OF ANY JUDGMENT OF A DELAWARE FEDERAL OR STATE COURT, OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE SUCH A JUDGMENT, IN ANY OTHER APPROPRIATE JURISDICTION.

(b) IN THE EVENT ANY PARTY TO THIS AGREEMENT COMMENCES ANY LITIGATION, PROCEEDING OR OTHER LEGAL ACTION IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, THE PARTIES TO THIS AGREEMENT HEREBY (1) AGREE UNDER ALL CIRCUMSTANCES ABSOLUTELY AND IRREVOCABLY TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE, OR IF (AND ONLY IF) SUCH COURT FINDS IT LACKS SUBJECT MATTER JURISDICTION, THE SUPERIOR COURT OF THE STATE OF DELAWARE (COMPLEX COMMERCIAL DIVISION), OR IF UNDER APPLICABLE LAW, SUBJECT MATTER JURISDICTION OVER THE MATTER THAT IS THE SUBJECT OF THE ACTION OR PROCEEDING IS VESTED EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND APPELLATE COURTS FROM ANY THEREOF, WITH RESPECT TO ALL ACTIONS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY; (2) AGREE THAT IN THE EVENT OF ANY SUCH LITIGATION, PROCEEDING OR ACTION, SUCH PARTIES WILL CONSENT AND SUBMIT TO THE PERSONAL JURISDICTION OF ANY SUCH COURT DESCRIBED IN CLAUSE (1) OF THIS SECTION 9(B), AND TO SERVICE OF PROCESS UPON THEM IN ACCORDANCE WITH THE RULES AND STATUTES GOVERNING SERVICE OF PROCESS; (3) AGREE TO WAIVE TO THE FULL EXTENT PERMITTED BY LAW ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH LITIGATION, PROCEEDING OR ACTION IN ANY SUCH COURT OR THAT ANY SUCH LITIGATION, PROCEEDING OR ACTION WAS BROUGHT IN ANY INCONVENIENT FORUM; (4) AGREE TO WAIVE ANY RIGHTS TO A JURY TRIAL TO RESOLVE ANY DISPUTES OR CLAIMS RELATING TO THIS AGREEMENT; (5) AGREE TO SERVICE OF PROCESS IN ANY LEGAL PROCEEDING BY MAILING OF COPIES THEREOF TO SUCH PARTY AT ITS ADDRESS SET FORTH HEREIN FOR COMMUNICATIONS TO SUCH PARTY; (6) AGREE THAT ANY SERVICE MADE AS PROVIDED HEREIN SHALL BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (7) AGREE THAT NOTHING HEREIN SHALL AFFECT THE RIGHTS OF ANY PARTY TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 10. Notices.

Any notice, request, claim, demand, document and other communication hereunder to any party shall be effective upon receipt (or refusal of receipt) and shall be in writing and delivered personally or sent by facsimile, or by electronic mail, or first class mail, or by Federal Express or other similar courier or other similar means of communication, as follows:

- (a) If to AES Grid Stability, LLC, addressed as follows:

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 (which copy shall not constitute notice) 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

- (b) If to Siemens Industry, Inc., addressed as follows:

Siemens Industry, Inc.
4800 North Point Parkway
Alpharetta, GA 30005, USA
Attention: Craig Langley
Email: Langley.craig@siemens.com

(c) If to Qatar Holding LLC, addressed as follows:

Qatar Holding LLC
Ooredoo Tower (Building 14)
Al Dafna Street (Street 801)
Al Dafna (Zone 61)
Doha, Qatar
Email: notices.legal@qia.qa; notices_industrials@qia.qa

with a copy (which copy shall not constitute notice) to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attn: Paul Shim; Kimberly Spoerri
Facsimile: 212.225.3999
Email: pshim@cgsh.com; kspoerri@cgsh.com

(d) If to the Corporation, addressed as follows:

Fluence Energy, Inc.
c/o Manuel Perez Dubuc, Chief Executive Officer
4601 N. Fairfax Drive, Suite 600
Arlington, VA 22203
Email: manuel.perez@fluenceenergy.com

with a copy (which copy shall not constitute notice) to:

Dennis Fehr, CFO
Email: dennis.fehr@fluenceenergy.com

and

Francis Fuselier, General Counsel and Secretary
Email: frank.fuselier@fluenceenergy.com

or, in each case, to such other address or email address as such party may designate in writing to each party by written notice given in the manner specified herein. All such communications shall be deemed to have been given, delivered or made when so delivered by hand or sent by facsimile (with confirmed transmission), on the next business day if sent by overnight courier service (with confirmed delivery) or when received if sent by first class mail, or in the case of notice by electronic mail, when the relevant email enters the recipient's server.

Section 11. Assignment.

Except as otherwise provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement may not be assigned (by operation of law or otherwise) without the express prior written consent of the other parties hereto, and any attempted assignment, without such consents, will be null and void; *provided, however*, that each of AES, Siemens and QIA is permitted to assign this Agreement to their respective Permitted Transferees, so long as such Permitted Transferee agrees to become a party to this Agreement; and *provided further*, that each of AES, Siemens and QIA is permitted, without the consent of the Corporation or any other Person, to assign its rights and obligations under this Agreement to a transferee of all (but not less than all) of its respective Common Stock and/or Common Units, as applicable, in a transfer not prohibited by the LLC Agreement, so long as such transferee, if not already a party to this Agreement, agrees to become party to, and be bound by all of the provisions of this Agreement as a “Stockholder” and an “AES Related Party,” “Siemens Related Party” or “QIA Related Party,” as applicable, whereupon such transferee shall be deemed a “Stockholder” and an “AES Related Party,” “Siemens Related Party” or “QIA Related Party,” as applicable, hereunder. This Agreement will inure to the benefit of and be binding on the parties hereto and their respective successors and permitted assigns.

Section 12. Amendment and Modification; Waiver of Compliance.

This Agreement may not be amended, modified, altered or supplemented except by means of a written instrument executed on behalf of each of the parties hereto. For clarity, each Stockholder may without the consent of any other Person waive or terminate its respective rights to designate directors for nomination to the Board at any time by written notice to the Corporation. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 13. Waiver.

No failure on the part of either party hereto to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either party hereto in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver thereof; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

Section 14. Severability.

If any provision of this Agreement, or the application of such provision to any Person or circumstance or in any jurisdiction, shall be held to be invalid or unenforceable to any extent, (i) the remainder of this Agreement shall not be affected thereby, and each other provision hereof shall be valid and enforceable to the fullest extent permitted by law, (ii) as to such Person or circumstance or in such jurisdiction such provision shall be reformed to be valid and enforceable to the fullest extent permitted by law and (iii) the application of such provision to other Persons or circumstances or in other jurisdictions shall not be affected thereby.

Section 15. Counterparts.

This Agreement may be executed in any number of counterparts and signatures may be delivered by facsimile, each of which may be executed by less than all parties, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

Section 16. Further Assurances.

At any time or from time to time after the date hereof, the parties hereto agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as any other party may reasonably request in order to evidence or effectuate the provisions of this Agreement and to otherwise carry out the intent of the parties hereunder.

Section 17. Titles and Subtitles.

The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

Section 18. No Third Party Beneficiaries.

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns and successors, and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 19. Recapitalizations; Exchanges, Etc. The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of capital stock of the Corporation or any successor or assign of the Corporation (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution of such shares of capital stock, by reason of a stock dividend, stock split, stock issuance, reverse stock split, combination, recapitalization, reclassification, merger, consolidation or otherwise.

Section 20. Representations and Warranties.

(a) Each of AES, Siemens, QIA and each Person who becomes a party to this Agreement after the date hereof, severally and not jointly and solely with respect to itself, represents and warrants to the Corporation as of the time such party becomes a party to this Agreement that (a) if applicable, it is duly authorized to execute, deliver and perform this Agreement; (b) this Agreement has been duly executed by such party and is a valid and binding agreement of such party, enforceable against such party in accordance with its terms; and (c) the execution, delivery and performance by such party of this Agreement does not violate or conflict with or result in a breach of or constitute (or with notice or lapse of time or both constitute) a default under any agreement to which such party is a party or, if applicable, the organizational documents of such party.

(b) The Corporation represents and warrants to each other party hereto that (a) the Corporation is duly authorized to execute, deliver and perform this Agreement; (b) this Agreement has been duly authorized, executed and delivered by the Corporation and is a valid and binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms; and (c) the execution, delivery and performance by the Corporation of this Agreement does not violate or conflict with or result in a breach by the Corporation of or constitute (or with notice or lapse of time or both constitute) a default by the Corporation under the Charter or Bylaws, any existing applicable law, rule, regulation, judgment, order, or decree of any governmental authority exercising any statutory or regulatory authority of any of the foregoing, domestic or foreign, having jurisdiction over the Corporation or any of its Subsidiaries or any of their respective properties or assets, or any agreement or instrument to which the Corporation or any of its Subsidiaries is a party or by which the Corporation or any of its Subsidiaries or any of their respective properties or assets may be bound.

Section 21. Interpretative Provisions.

This Agreement shall be deemed to be collectively prepared by the parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any provision hereof.

Section 22. No Recourse.

This Agreement may only be enforced against, and any claims or cause of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, the transactions contemplated hereby or the subject matter hereof may only be made against the parties hereto and no past, present or future Affiliate, director, officer, employee, incorporator, member, manager, partner, stockholder, agent, attorney or representative of any party hereto or any past, present or future Affiliate, director, officer, employee, incorporator, member, manager, partner, stockholder, agent, attorney or representative of any of the foregoing (each, a "Non-Recourse Party") shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby. Without limiting the rights of any party against the other parties hereto, in no event shall any party or any of its Affiliates seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Non-Recourse Party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

FLUENCE ENERGY, INC.

By: /s/ Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

FLUENCE ENERGY, LLC

By: Fluence Energy, Inc., as managing member

By: /s/ Manuel Perez Dubuc
Name: Manuel Perez Dubuc
Title: Chief Executive Officer

AES GRID STABILITY, LLC.

By: /s/ Chris Shelton
Name: Chris Shelton
Title: Authorized Person

SIEMENS INDUSTRY, INC.

By: /s/ Ruth Gratzke
Name: Ruth Gratzke
Title: Chief Executive Officer

By: /s/ Marsha Smith
Name: Marsha Smith
Title: Chief Financial Officer

QATAR HOLDING LLC

By:
its

By: /s/ Mansoor Bin Ebrahim Al Mahmoud
Name: Mansoor Bin Ebrahim Al Mahmoud
Title: Chairman and Chief Executive Officer

[Signature Page to Stockholders Agreement]
