

REFINITIV

## DELTA REPORT

### 10-Q

FLUENCE ENERGY, INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - DECEMBER 31, 2023

The following comparison report has been automatically generated

**TOTAL DELTAS** 8642

█ **CHANGES** 234

█ **DELETIONS** 1183

█ **ADDITIONS** 7225

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

**FORM 10-Q**

**(Mark One)**

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

For the quarterly period ended **December 31, 2023** **March 31, 2024**

OR

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

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

**Fluence Energy, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**87-1304612**

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

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

(Address of Principal Executive Offices)

**22203**

(Zip Code)

**(833) 358-3623**

Registrant's telephone number, including area code

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

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

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

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

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

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

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

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

As of **February 6, 2024** of **May 6, 2024**, the registrant had **127,133,762** **127,896,832** shares of Class A common stock outstanding and 51,499,195 shares of Class B-1 common stock outstanding.

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### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION**

This Quarterly Report on Form 10-Q for the **three months** period ended **December 31, 2023** **March 31, 2024** (this "Report") contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). **Statements** All statements other than statements of historical facts contained in this Report are forward-looking statements. In particular, **statements** regarding our future results of operations and financial position, financial and operational performance, growth and business strategy, future revenue recognition and estimated revenues, future capital expenditures and debt service obligations, projected costs, prospects, plans, and objectives of management for future operations, including, among others, statements regarding expected growth and demand for our energy storage **products** **solutions**, **services**, and **services**, **digital application offerings**, relationships with new and existing **customers** and **suppliers**, introduction of new **products**, **energy storage** **solutions**, **services**, and **digital application** offerings and adoption of such offerings by customers, **expectations** **regarding** **material weakness remediation**, presumptions relating to the Company's tax receivable agreement, **expectations** **regarding** **backlog**, **pipeline**, and **potential** **contracted backlog**, and **anticipated** **impact** **and** **benefits** from the Inflation Reduction Act of 2022 or any other proposed legislation, on us and our customers, contained in this Report are forward-looking statements. In some cases, you may identify forward-looking statements by terms such as "may," "will," "should," "expects," "plans," "anticipates," "could," "seeks," "intends," "targets," "projects," "contemplates," "grows," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. Accordingly, we caution you that any such forward-looking statements are not guarantees of future performance and are subject to risks, assumptions, and uncertainties that are difficult to predict. Although we believe that the expectations reflected in these forward-looking statements are reasonable as of the date made, actual results may prove to be materially different from the results expressed or implied by the forward-looking statements.

These forward-looking statements are subject to a number of important factors that could cause actual results to differ materially from those in the forward-looking statements, including **our limited operating and revenue history as an independent entity and the nascent clean energy industry**; **our history of net losses, we anticipate increasing expenses in the future, and our ability to maintain prolonged profitability**; **delays, disruptions, and quality control problems in our manufacturing operations**; **difficulties in establishing mass manufacturing capacity and estimating potential cost savings and efficiencies from anticipated improvements to our manufacturing capabilities**; **dependence on our existing suppliers and supply chain competition**; **supplier concentration and capacity**; **interruption of flow and/or availability of components and materials from international vendors**; **significant changes in the cost of raw materials and product components**; **vendor non-compliance with ethical business practices and applicable laws and regulations**; **loss of significant customers or their inability to perform under their contracts**; **competition for our offerings and our ability to attract and retain customers**; **ability to effectively manage our recent and future growth and expansion of our business and operations**; **ability to maintain and enhance our reputation and brand recognition**; **success of our relationships with third parties**; **ability to attract and retain highly qualified personnel**; **risk related to the construction, utility interconnection, commissioning and installation of our energy storage products**; **cost overruns, and delays**; **risks related to defects, errors, vulnerabilities and/or bugs in our products and technology**; **compromises, interruptions, or shutdowns of our systems**; **lengthy sales and installation cycle for our products and services and ability to timely close sales**; **amounts included in our pipeline and contracted backlog may not result in actual revenue or translate into profits**; **events and incidents relating to storage, delivery, installation, operation, maintenance and shutdowns of our products**; **risks relating to whether renewable energy technologies are suitable for widespread adoption or if sufficient demand for our hardware and software-enabled services does not develop or takes longer to develop than we anticipate**; **estimates on size of our total addressable market**; **barriers arising from electric utility industry policies and regulations**; **cost of electricity available from alternative**

sources; risk relating to interest rates or a reduction in the availability of tax equity or project debt capital in the global financial markets and corresponding effects on customers' ability to finance energy storage systems and demand for our products; potential changes in tax laws or regulations, including relating to incentives under the IRA; reduction, elimination, or expiration of government incentives or regulations regarding renewable energy; decline in public acceptance of renewable energy, or delay, prevent, or increase in the cost of customer projects; restrictions set forth in our ABL Credit Agreement or other debt agreements we may enter into; uncertain future capital needs and potential need to raise additional funds in the future; ability to obtain, maintain and enforce proper protection for our intellectual property, including our technology; risks related to us being a "controlled company" within the meaning of the NASDAQ rules; our relationship with our founders; and the factors described under the headings Part I, Item 1A. "Risk Factors" and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended September 30, 2023, filed with the Securities and Exchange Commission (the "SEC") on November 29, 2023 (the "2023 Annual Report"), and Part II, Item 1A. "Risk Factors" and Item 2. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Report. If one or more events related to these or other risks or uncertainties

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

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### Part I - Financial Information

#### Item 1. Financial Statements

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

	Unaudited	
	December	September
	31, 2023	30, 2023
	December	September
	31, 2023	30, 2023
	December	September
	31, 2023	30, 2023
	March 31, 2024	September
	March 31, 2024	30, 2023
	March 31, 2024	September
	March 31, 2024	30, 2023
<b>Assets</b>		
Current assets:		
Current assets:		
Current assets:		
Cash and cash equivalents		
Cash and cash equivalents		
Cash and cash equivalents		
Restricted cash		
Trade receivables, net		
Trade receivables, net		
Trade receivables, net		
Unbilled receivables		
Receivables from related parties		

Advances to suppliers
Inventory, net
Current portion of notes receivable - pledged as collateral
Other current assets
Total current assets
Non-current assets:
Property and equipment, net
Property and equipment, net
Property and equipment, net
Intangible assets, net
Goodwill
Deferred income tax asset
Note receivable - pledged as collateral
Other non-current assets
Total non-current assets
Total assets
<b>Liabilities and Stockholders' Equity</b>
Current liabilities:
Current liabilities:
Current liabilities:
Accounts payable
Accounts payable
Accounts payable
Deferred revenue
Deferred revenue and payables with related parties
Current portion of borrowings against note receivable - pledged as collateral
Personnel related liabilities
Accruals and provisions
Payables and deferred revenue with related parties
Taxes payable
Other current liabilities
Total current liabilities
Non-current liabilities:
Deferred income tax liability
Deferred income tax liability
Deferred income tax liability
Borrowings against note receivable - pledged as collateral
Other non-current liabilities
Total non-current liabilities
Total liabilities
Stockholders' Equity:
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of December 31, 2023 and September 30, 2023
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of December 31, 2023 and September 30, 2023
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of December 31, 2023 and September 30, 2023
Class A common stock, \$0.00001 par value per share, 1,200,000,000 shares authorized; 127,657,916 shares issued and 126,967,942 shares outstanding as of December 31, 2023; 119,593,409 shares issued and 118,903,435 shares outstanding as of September 30, 2023, respectively
Class B-1 common stock, \$0.00001 par value per share, 200,000,000 shares authorized; 51,499,195 shares issued and outstanding as of December 31, 2023; 58,586,695 shares issued and outstanding as of September 30, 2023, respectively
Class B-2 common stock, \$0.00001 par value per share, 200,000,000 shares authorized; 0 shares issued and outstanding as of December 31, 2023 and September 30, 2023
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of March 31, 2024 and September 30, 2023
Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of March 31, 2024 and September 30, 2023

Preferred stock, \$0.00001 per share, 10,000,000 shares authorized; no shares issued and outstanding as of March 31, 2024 and September 30, 2023
Class A common stock, \$0.00001 par value per share, 1,200,000,000 shares authorized; 128,081,961 shares issued and 127,387,538 shares outstanding as of March 31, 2024; 119,593,409 shares issued and 118,903,435 shares outstanding as of September 30, 2023, respectively
Class B-1 common stock, \$0.00001 par value per share, 200,000,000 shares authorized; 51,499,195 shares issued and outstanding as of March 31, 2024; 58,586,695 shares issued and outstanding as of September 30, 2023, respectively
Class B-2 common stock, \$0.00001 par value per share, 200,000,000 shares authorized; 0 shares issued and outstanding as of March 31, 2024 and September 30, 2023
Treasury stock, at cost
Additional paid-in capital
Accumulated other comprehensive income
Accumulated deficit
Total stockholders' equity attributable to Fluence Energy, Inc.
Non-Controlling interests
Total stockholders' equity
Total liabilities and stockholders' equity

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

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

	Three Months Ended December 31,	Three Months Ended December 31,	Three Months Ended December 31,	2023
	2023	2023	2023	2023
Revenue				
Revenue				
	Three Months Ended March 31,	Six Months Ended March 31,		
	2024	2023	2024	2023
Revenue				
Revenue from related parties				
Revenue from related parties				
Revenue from related parties				
Total revenue				
Total revenue				
Total revenue				
Cost of goods and services				
Cost of goods and services				
Cost of goods and services				
Gross profit				

Gross profit
Gross profit
Operating expenses:
Operating expenses:
Operating expenses:
Research and development
Research and development
Research and development
Sales and marketing
Sales and marketing
Sales and marketing
General and administrative
General and administrative
General and administrative
Depreciation and amortization
Depreciation and amortization
Depreciation and amortization
Interest income, net
Interest income, net
Interest income, net
Other income, net
Other income, net
Other income, net
Other income, net
Loss before income taxes
Loss before income taxes
Other expense (income), net
Loss before income taxes
Income tax benefit
Income tax benefit
Income tax benefit
Net loss
Net loss
Net loss
Net loss attributable to non-controlling interest
Net loss attributable to non-controlling interest
Net loss attributable to non-controlling interest
Net loss attributable to Fluence Energy, Inc.
Net loss attributable to Fluence Energy, Inc.
Net loss attributable to Fluence Energy, Inc.
Weighted average number of Class A common shares outstanding
Weighted average number of Class A common shares outstanding
Weighted average number of Class A common shares outstanding
Basic and diluted
Basic and diluted
Basic and diluted
Loss per share of Class A common stock
Loss per share of Class A common stock
Loss per share of Class A common stock
Basic and diluted
Basic and diluted
Basic and diluted

Foreign currency translation gain (loss), net of income tax expense of \$0.3 million in 2023 and 2022, respectively

Foreign currency translation (loss) gain, net of income tax expense (benefit) of \$(0.2) million in the three months ended March 31, 2024, \$0.1 million in the six months ended March 31, 2024, and \$0.1 million in the three months ended March 31, 2023, and \$0.4 million six months ended March 31, 2023

Foreign currency translation (loss) gain, net of income tax expense (benefit) of \$(0.2) million in the three months ended March 31, 2024, \$0.1 million in the six months ended March 31, 2024, and \$0.1 million in the three months ended March 31, 2023, and \$0.4 million six months ended March 31, 2023

Foreign currency translation (loss) gain, net of income tax expense (benefit) of \$(0.2) million in the three months ended March 31, 2024, \$0.1 million in the six months ended March 31, 2024, and \$0.1 million in the three months ended March 31, 2023, and \$0.4 million six months ended March 31, 2023

Foreign currency translation gain (loss), net of income tax expense of \$0.3 million in 2023 and 2022, respectively

Foreign currency translation gain (loss), net of income tax expense of \$0.3 million in 2023 and 2022, respectively

Total other comprehensive income (loss)

Total other comprehensive income (loss)

Total other comprehensive income (loss)

Total comprehensive loss

Total comprehensive loss

Total other comprehensive (loss) income

Total other comprehensive (loss) income

Total other comprehensive (loss) income

Total comprehensive loss

Comprehensive loss attributable to non-controlling interest

Comprehensive loss attributable to non-controlling interest

Comprehensive loss attributable to non-controlling interest

Total comprehensive loss attributable to Fluence Energy, Inc.

Total comprehensive loss attributable to Fluence Energy, Inc.

Total comprehensive loss attributable to Fluence Energy, Inc.

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

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

	Class A Common Stock		Class A Common Stock		Class B-1 Common Stock		Additional Paid-In Capital		Accumulated Other Comprehensive Income			Treasury Stock		Non- Controlling stockholders' equity		Total		Class A Common Stock		Class Common		
	Shares	Shares	Amount	Shares	Amount	Shares	Capital	Deficit	Income	Amount	Interest	Amount	Stock	Interest	equity	Amount	Accumulated Other Comprehensive Income	Amount	Shares	Amount		
	Balance at September 30, 2023 Net loss																					
Balance at September 30, 2023 Net loss																						
Balance at December 31, 2023 Net Loss																						
Stock-based compensation expense																						

Effect of AES  
redemption of  
Class B-1  
common stock  
for Class A  
common stock

Class A  
common stock  
withheld related  
to settlement of  
employee taxes  
for stock-based  
compensation  
awards

Effect of  
remeasurement  
of non-  
controlling  
interest due to  
other share  
transactions

Proceeds from  
exercise of  
stock options

Foreign  
currency  
translation  
gain, net of  
income tax  
expense of  
\$0.3 million

**Balance at  
December 31,  
2023**

Foreign  
currency  
translation  
gain, net of  
income tax  
benefit of \$0.2  
million

**Balance at  
March 31,  
2024**

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	Class A Common Stock	Class A Common Stock	Class B-1 Common Stock	Additional Paid-In Capital	Accumulated Comprehensive Income	Treasury Stock	Non- Controlling Stockholders'	Total	Class A Common Stock	Class Common	
	Shares	Shares	Amount	Shares	Amount	Shares	Amount	Interest	equity	Shares	Amount
<b>Balance at September 30, 2022</b>											
<b>Balance at September 30, 2023</b>											
Net Loss											
Stock-based compensation expense											

Repurchase of  
Common Stock  
placed into  
Treasury

Effect of AES  
redemption of  
Class B-1  
common stock  
for Class A  
common stock

Class A  
common stock  
withheld related  
to settlement of  
employee taxes  
for stock-based  
compensation  
awards

Effect of  
remeasurement  
of non-  
controlling  
interest due to  
other share  
transactions

Proceeds from  
exercise of  
stock options

Foreign  
currency  
translation loss,  
net of income  
tax expense of  
\$0.3 million

**Balance at  
December 31,  
2022**

Foreign  
currency  
translation loss,  
net of income  
tax expense of  
\$0.1 million

**Balance at  
March 31,  
2024**

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	Class A Common Stock				Class B-1 Common Stock		Additional Paid-In Capital		Accumulated Other Comprehensive Income (Loss)			Treasury Stock		Non- Controlling interest		Total stockholders' equity
	Shares	Amount	Shares	Amount	Capital	Accumulated Deficit	Income (Loss)	Shares	Amount	Shares	Amount	Interest	Shares	Amount	Interest	
<b>Balance at December 31, 2022</b>	116,072,991	1	58,586,695	—	554,924	(129,186)	410	572,251	(5,301)	178,169	599,017					
Net Loss	—	—	—	—	—	(24,855)	—	—	—	—	(12,542)	(37,397)				
Stock-based compensation expense	127,576	—	—	—	7,286	—	—	—	—	—	—	7,286				

Effect of remeasurement of non-controlling interest due to other share transactions	—	—	—	—	454	—	—	—	—	(454)	—
Proceeds from exercise of stock options	285,893	—	—	—	558	—	—	—	—	—	558
Foreign currency translation loss, net of income tax expense of \$0.1 million	—	—	—	—	—	—	(975)	—	—	(494)	(1,469)
<b>Balance at March 31, 2023</b>	<b>116,486,460 \$</b>	<b>1</b>	<b>58,586,695</b>	<b>— \$</b>	<b>563,222 \$</b>	<b>(154,041) \$</b>	<b>(565)</b>	<b>572,251 \$</b>	<b>(5,301) \$</b>	<b>164,679 \$</b>	<b>567,995</b>

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	Class A		Class B-1		Additional Paid-In Capital	Accumulated Comprehensive Income (Loss)	Accumulated Treasury Stock		Non- Controlling interest	Total stockholders' equity	
	Common Stock	Common Stock	Common Stock	Common Stock			Shares	Amount			
	Shares	Amount	Shares	Amount	Accumulated Deficit	Income (Loss)	Shares	Amount			
<b>Balance at September 30, 2022</b>	<b>114,873,121</b>	<b>1</b>	<b>58,586,695</b>	<b>—</b>	<b>542,602</b>	<b>(104,544)</b>	<b>2,784</b>	<b>550,904</b>	<b>(5,013)</b>	<b>193,378</b>	<b>629,208</b>
Net Loss	—	—	—	—	—	(49,497)	—	—	—	(25,093)	(74,590)
Stock-based compensation expense	308,260	—	—	—	15,763	—	—	—	—	—	15,763
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards	(21,347)	—	—	—	—	—	—	21,347	(288)	—	(288)
Effect of remeasurement of non-controlling interest due to other share transactions	—	—	—	—	1,901	—	—	—	—	(1,901)	—
Proceeds from exercise of stock options	1,326,426	—	—	—	2,956	—	—	—	—	—	2,956
Foreign currency translation loss, net of income tax expense of \$0.4 million	—	—	—	—	—	(3,349)	—	—	(1,705)	(5,054)	
<b>Balance at March 31, 2023</b>	<b>116,486,460 \$</b>	<b>1</b>	<b>58,586,695</b>	<b>— \$</b>	<b>563,222 \$</b>	<b>(154,041) \$</b>	<b>(565)</b>	<b>572,251 \$</b>	<b>(5,301) \$</b>	<b>164,679 \$</b>	<b>567,995</b>

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

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

	Three Months Ended December 31,	
	2023	
	2022	
<b>Operating activities</b>	<b>Six Months Ended March 31,</b>	<b>2024</b>
Net loss	2023	2023
Net loss	2024	2023
Net loss	2024	2023
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization		
Depreciation and amortization		
Depreciation and amortization		
Amortization of debt issuance costs		

Inventory (benefit) provision
Inventory provision (benefit)
Stock-based compensation expense
Deferred income taxes
Provision on loss contracts, net
Changes in operating assets and liabilities:
Trade receivables
Trade receivables
Trade receivables
Changes in operating assets and liabilities:
Changes in operating assets and liabilities:
Trade receivables, net
Trade receivables, net
Trade receivables, net
Unbilled receivables
Receivables from related parties
Advances to suppliers
Inventory
Other current assets
Other non-current assets
Accounts payable
Payables and deferred revenue with related parties
Deferred revenue and payables with related parties
Deferred revenue
Current accruals and provisions
Taxes payable
Other current liabilities
Other non-current liabilities
<b>Net cash provided by (used in) operating activities</b>
<b>Net cash provided by (used in) operating activities</b>
<b>Net cash provided by (used in) operating activities</b>
<b>Investing activities</b>
Proceeds from maturities of short-term investments
Proceeds from maturities of short-term investments
Proceeds from maturities of short-term investments
Payments for purchase of investment in joint venture
Capital expenditures on software
Purchase of property and equipment
Purchase of property and equipment
Purchase of property and equipment
<b>Net cash used in investing activities</b>
<b>Net cash (used in) provided by investing activities</b>
<b>Financing activities</b>
Repurchase of Class A common stock placed into treasury
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards
Repurchase of Class A common stock placed into treasury
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards
Repurchase of Class A common stock placed into treasury
Class A common stock withheld related to settlement of employee taxes for stock-based compensation awards
Payment of debt issuance costs
Payment of debt issuance costs
Payment of debt issuance costs

Debt Issuance Costs
Debt Issuance Costs
Debt Issuance Costs
Payments for acquisitions
Payments for acquisitions
Payments for acquisitions
Proceeds from exercise of stock options
Proceeds from borrowing against note receivable - pledged as collateral
Proceeds from borrowing against note receivable - pledged as collateral
Proceeds from borrowing against note receivable - pledged as collateral
<b>Net cash (used in) provided by financing activities</b>
<b>Net cash (used in) provided by financing activities</b>
<b>Net cash (used in) provided by financing activities</b>
Effect of exchange rate changes on cash and cash equivalents
Net increase (decrease) in cash, cash equivalents, and restricted cash
Cash, cash equivalents, and restricted cash as of the beginning of the period
Cash, cash equivalents, and restricted cash as of the end of the period
<b>Supplemental Cash Flows Information</b>
Interest paid
Interest paid
Interest paid
Cash paid for income taxes

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

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### **FLUENCE ENERGY, INC.** **NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)**

#### **1. Organization and Operations**

Fluence Energy, Inc., a Delaware corporation (the "Company"), was formed on June 21, 2021. We conduct our business operations through Fluence Energy, LLC, and its direct and indirect subsidiaries. Fluence Energy, LLC was formed on June 30, 2017 as a joint venture between Siemens Industry, Inc. ("Siemens Industry"), an indirect subsidiary of Siemens AG ("Siemens"), and AES Grid Stability, LLC ("AES Grid Stability"), an indirect subsidiary of ~~the~~ **The AES Corporation** ("AES"), and commenced operations on January 1, 2018. We refer to Siemens Industry and AES Grid Stability as the "Founders" in this Quarterly Report on Form 10-Q for the period ended **March 31, 2024** (this "Report").

Upon the completion of our initial public offering ("IPO") on November 1, 2021, Fluence Energy, Inc. became a holding company whose sole material assets are the limited liability company interests (the "LLC Interests") in Fluence Energy, LLC. All of our business is conducted through Fluence Energy, LLC, together with its subsidiaries, and the financial results of Fluence Energy, LLC are consolidated in our financial statements. Fluence Energy, LLC is taxed as a partnership for federal income tax purposes and, as a result, its members, including Fluence Energy, Inc., pay income taxes with respect to their allocable shares of its net taxable income. As of **December 31, 2023** **March 31, 2024**, Fluence Energy, LLC had subsidiaries operating in Germany, Australia, Philippines, Chile, the Netherlands, the United States, India, Singapore, United Kingdom, Canada, Taiwan, Ireland, and Switzerland. Except where the context clearly indicates otherwise, "Fluence," "we," "us," "our" or the "Company" refers to Fluence Energy, Inc. and all of its direct and indirect subsidiaries, including Fluence Energy, LLC. When used in a historical context that is prior to the completion of the IPO, "we," "us," "our" or "the Company" refers to Fluence Energy, LLC and its subsidiaries.

The Company's fiscal year begins on October 1 and ends on September 30. References to "fiscal year **2022** **2023**" and "fiscal year **2023** **2024**" refer to the twelve months ended **September 30, 2022** **September 30, 2023** and **September 30, 2023** **September 30, 2024**, respectively.

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

#### **Siemens Industry Redemption**

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

The Company elected to settle the Siemens Redemption through the issuance of 58,586,695 shares of the Company's Class A common stock. The Siemens Redemption settled on July 7, 2022.

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

#### **Secondary Offering and AES Redemption**

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

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

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

#### **2. Summary of Significant Accounting Policies and Estimates**

##### **Principles of Accounting and Consolidation**

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

##### **Non-Controlling Interest**

As the sole managing member of Fluence Energy, LLC, Fluence Energy, Inc. operates and controls all the business and affairs of Fluence Energy, LLC and, through Fluence Energy, LLC and its direct and indirect subsidiaries, conducts the Company's business. Fluence Energy, LLC is a variable interest entity, of which Fluence Energy, Inc. beneficially owns a 71.14% 71.21% interest as of December 31, 2023 March 31, 2024. For accounting purposes, Fluence Energy, Inc. is considered the primary beneficiary and therefore consolidates the results of Fluence Energy, LLC and its direct and indirect subsidiaries. The table below summarizes the ownership structure at the end of each respective period:

		December 31, 2023	September 30, 2023		
		March 31, 2024	September 30, 2023		
Controlling Interest Ownership	Controlling Interest Ownership	71.14 %	66.99 %	Controlling Interest Ownership	71.21 % 66.99 %
Non-Controlling Interest Ownership (AES)	Non-Controlling Interest Ownership (AES)	28.86 %	33.01 % (AES)	Non-Controlling Interest Ownership	28.79 % 33.01 %

##### **Unaudited Interim Financial Information**

The accompanying condensed consolidated financial statements as of December 31, 2023 March 31, 2024, and for the three and six months ended December 31, 2023 March 31, 2024 and 2022 2023 are unaudited. These financial statements should be read in conjunction with the Company's audited financial statements included in our 2023 Annual Report, Report on Form 10-K for the year ended September 30, 2023 filed with the SEC on November 29, 2023 (the "2023 Annual Report"). In our opinion, such unaudited financial statements reflect all adjustments, including normal recurring items, that are necessary for the fair statement of the Company's financial position as of December 31, 2023 March 31, 2024, the results of its operations for the three and six months ended December 31, 2023 March 31, 2024 and 2022, 2023, and its cash flows for the three six months ended December 31, 2023 March 31, 2024 and 2022, 2023. The financial data and other information disclosed in these notes related to the three and six months ended December 31, 2023 March 31, 2024 and 2022, 2023 are also unaudited. The results for the three and six months ended December 31, 2023 March 31, 2024 and 2022, 2023 are not necessarily indicative of results for the full year ending September 30, 2024 and 2023, any other interim periods, or any future year or period. The balance sheet as of September 30, 2023 included herein was derived from the audited financial statements as of that date. Certain disclosures have been condensed or omitted in the interim financial statements.

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

##### **Use of Estimates**

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

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

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

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

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

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

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

<i>in thousands</i>	December 31, 2023	September 30, 2023	March 31, 2024	September 30, 2023
<i>in thousands</i>				
Cash and cash equivalents				
Restricted cash				
Restricted cash included in "Other non-current assets"				
Total cash, cash equivalents and restricted cash				
Restricted cash at the end of each respective period consisted of the following:				
<i>in thousands</i>				
<i>in thousands</i>				
Collateral for credit card program				
Collateral for outstanding bank guarantees				
Collateral for surety program				
Term deposits				
Collateral for surety program included in "Other non-current assets"				
Total restricted cash				

### **Revenue and Cost Recognition**

The Company's revenue recognition policy included herein is based on the application of Accounting Standards Codification - Revenue from Contracts with Customers (ASC 606). As of **December 31, 2023** **March 31, 2024**, the Company's revenue was generated primarily from the sale of energy storage products and solutions, providing operational services, and the sale of digital applications and solutions.

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

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

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

Our contracts generally provide our customers the right to liquidated damages against Fluence in the event specified milestones are not met on time, or equipment is not delivered according to contract specifications. Liquidated damages are accounted for as variable consideration, and the contract price is reduced by the expected penalty or LD amount when recognizing revenue. Variable consideration is included in the transaction price only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty is resolved. Estimating variable consideration requires certain estimates and assumptions, including whether and by how much a project will be delayed and/or will not meet performance contractual specifications. The existence and measurement of liquidated damages may also be impacted by our ~~judgements~~judgments about the probability of favorable outcomes of customer disputes involving whether certain events qualify as force majeure or the reason for the events that caused project delays. Variable consideration for liquidated damages is estimated using the expected value of the consideration to be received.

Fluence may incur additional costs to execute on the performance of a contract. When this happens, we typically attempt to recover the revenue associated with these costs via a change order with the customer. When this fact pattern occurs, it can create a timing difference between when we have incurred the cost versus when we record the revenue as costs are recognized immediately when incurred and the revenue from the change order is recognized as an increase to contract price when it is legally enforceable, which is usually upon signing a respective change order or equivalent document confirming the claim acceptance by customer. Revenue is recorded net of any taxes assessed on and collected from customers, which are remitted to the governmental authorities.

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

**Revenue from Services:** The Company also enters into long-term service agreements with customers to provide operational services related to battery-based energy storage products and solutions. The services include maintenance, monitoring, and other minor services. The Company accounts for the services as a single performance obligation as the services are substantially the same and have the same pattern of transfer to customers. We typically recognize revenue overtime using a straight-line recognition method for these types of services. The Company believes using a time-based method to measure progress is appropriate as the performance obligations are satisfied evenly over ~~time based on the fact that customers receive the services evenly~~time. Revenue is recognized by dividing the total transaction price over the service period.

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

**Revenue from Digital Applications and Solutions:** The Company provides access to proprietary cloud-based Software-as-a-Service ("SaaS" SaaS) offerings through the Fluence IQ platform. The Fluence IQ platform ~~several~~ market facing applications. These applications currently ~~includes~~include Fluence Mosaic and Fluence Nispera. Fluence Mosaic is an intelligent bidding software for utility-scale storage and renewable assets, ~~enabling~~ helping to enable customers to optimize asset trading in wholesale electricity markets. Fluence Mosaic is currently available in the NEM (Australia), CAISO (California), and ERCOT (Texas) markets. Fluence Nispera is ~~our~~ asset performance management (APM) software which we acquired in 2022. Fluence Nispera ~~that~~ helps customers monitor, analyze, forecast, and optimize the performance ~~and value~~ of their renewable energy assets. Its ~~flagship~~ offering Fluence Nispera is an AI-driven utility-scale asset performance management platform that supports portfolios of energy storage, solar, and wind assets. Customers do not receive legal title or ownership of the applications as a result of these arrangements. The use of the Fluence IQ platform ~~Digital software applications~~ is separately

identifiable from other promises that the Company offers to its customers (i.e., it is not highly interrelated or integrated with other solutions). customers. As such, we determined that the Fluence IQ platform is Digital applications are accounted for as a separate performance obligation obligations when combined with other Fluence products, solutions, and services. We consider access to the platform and related support services in a customer contract to be a series of distinct services which comprise a single performance obligation because they are substantially the same and have the same pattern of transfer. We recognize revenue over time using a straight-line recognition method.

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

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

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

#### **Inventory, Net**

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

#### **Software Development Costs**

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

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

During the three six months ended December 31, 2023 March 31, 2024 and December 31, 2022 March 31, 2023, the Company capitalized \$0.9 million \$4.0 million and \$0 million \$0.0 million, respectively, of internal-use software.

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

During the three six months ended December 31, 2023 March 31, 2024 and December 31, 2022 March 31, 2023, the Company capitalized \$1.5 \$13.0 million and \$0 million \$0.0 million, respectively, of development costs related to hosting arrangements.

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

During the three six months ended December 31, 2023 March 31, 2024 and December 31, 2022 March 31, 2023, the Company capitalized \$0.2 million \$1.0 million and \$0 million \$0.0 million, respectively, of external-use software to be sold.

#### **Fair Value Measurements**

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

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

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

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

The Company's cash equivalents include term deposits with original maturity of less than 90 days and are recorded at amortized cost. Fair value of cash equivalents approximates the carrying amount. The carrying amounts of trade receivables, accounts payable and short-term debt obligations such as current portion of borrowings against note receivable - pledged as collateral, approximate fair values due to their short maturities.

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### **Loss per Share**

As of **December 31, 2023** **March 31, 2024**, the Company's amended and restated certificate of incorporation authorizes three classes of common stock: Class A, Class B-1, and Class B-2. Loss per share is calculated and reported under the "two-class" method. The "two-class" method is an earnings allocation method under which loss per share is calculated for each class of common stock considering both distributions declared or accumulated and participation rights in undistributed losses as if all such loss had been distributed during the period.

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

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

	Three Months Ended December 31,	
	2023	2022
Class B-1 common stock	51,499,195	58,586,695
Outstanding pre-IPO options ("2020 Unit Option Plan")	4,846,089	7,835,243
Outstanding phantom units	256,935	513,865
Outstanding restricted stock units ("RSUs")	2,351,121	2,011,690
Outstanding performance share units ("PSUs")	329,055	—
Outstanding non-qualified stock options ("NQSOs")	132,524	—
Outstanding restricted stock ("Nispera")	354,134	531,202

	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Class B-1 common stock	51,499,195	58,586,695	51,499,195	58,586,695
Outstanding pre-IPO options issued pursuant to the 2020 Unit Option Plan	4,607,929	7,377,287	4,607,929	7,377,287
Outstanding pre-IPO phantom units	256,935	513,865	256,935	513,865
Outstanding restricted stock units ("RSUs")	2,111,603	2,041,431	2,111,603	2,041,431
Outstanding performance share units ("PSUs")	381,226	—	381,226	—
Outstanding non-qualified stock options ("NQSOs")	165,521	—	165,521	—
Outstanding restricted stock ("Nispera equity")	354,134	531,202	354,134	531,202

Basic and diluted net loss per share of Class A common stock for the three **and six** months ended **December 31, 2023** **March 31, 2024** and **2022** **2023**, respectively, have been computed as follows:

	Three Months Ended December 31,	Three Months Ended December 31,	Three Months Ended December 31,
	<i>In thousands, except share and per share amounts</i>		
<i>In thousands, except share and per share amounts</i>			
Net loss	<i>In thousands, except share and per share amounts</i>	2024	2023
Net loss			
Net loss			
Less: Net loss attributable to the non-controlling interest			
Less: Net loss attributable to the non-controlling interest			
Less: Net loss attributable to the non-controlling interest			
Net loss attributable to Fluence Energy, Inc.			
Net loss attributable to Fluence Energy, Inc.			
Net loss attributable to Fluence Energy, Inc.			
Weighted average number of Class A common stock - basic and diluted			
Weighted average number of Class A common stock - basic and diluted			
Weighted average number of Class A common stock - basic and diluted			
Loss per share of Class A common stock - basic and diluted			
Loss per share of Class A common stock - basic and diluted			
Loss per share of Class A common stock - basic and diluted			

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#### **Recent Accounting Standards Adopted**

The following table presents accounting standards adopted during the **three** **six** months ended **December 31, 2023** **March 31, 2024**.

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

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#### Recent Accounting Standards Not Yet Adopted

The following table presents accounting standards not yet adopted:

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

#### Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation. Interest income of \$1.5 million and \$4.7 million for the three and six months ended December 31, 2022 and March 31, 2023, respectively, was reclassified from other income, expense (income), net to interest income, net on the condensed consolidated statement of operations and comprehensive loss. The reclassification had no net impact on loss before income taxes or net loss for any period presented. Provision on loss contracts, net of \$2.0 million for the six months ended March 31, 2023, was reclassified to current accruals and provisions on the condensed consolidated statement of cash flows. The reclassification had no impact on cash provided by (used in) operations for the period presented.

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### 3. Revenue from Contracts with Customers

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

In thousands	In thousands	Three Months Ended March 31,		Six Months Ended March 31,	
		2024	2023	2024	2023
In thousands					
Revenue from energy storage products and solutions	2023				
Revenue from energy storage products and solutions	2023				

Revenue from energy storage products and solutions
Revenue from services
Revenue from services
Revenue from digital applications and solutions
Revenue from digital applications and solutions
Revenue from digital applications and solutions
Total
Total
Total

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

In thousands	In thousands	Three Months Ended March 31,		Six Months Ended March 31,	
		2024	2023	2024	2023
In thousands					
Americas (North, Central and South America)					
Americas (North, Central and South America)					
Americas (North, Central and South America)					
APAC (Asia Pacific)					
APAC (Asia Pacific)					
APAC (Asia Pacific)					
EMEA (Europe, Middle-East and Africa)					
EMEA (Europe, Middle-East and Africa)					
EMEA (Europe, Middle-East and Africa)					
EMEA (Europe, Middle-East, and Africa)					
Total					
Total					
Total					

#### Customer Concentration

For the **three** six months ended December 31, 2023, the Company's top four customers, in the aggregate, accounted for approximately 86% of total revenue.

For the **three** months ended December 31, 2022 **March 31, 2024**, the Company's top two customers, in the aggregate, accounted for approximately **51%** **72%** of total revenue.

For the **six** months ended March 31, 2023, the Company's top three customers, in the aggregate, accounted for approximately 58% of total revenue.

#### Deferred Revenue

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

In thousands	December 31,	
	2023	2022
Deferred revenue, beginning of period	\$ 273,164	\$ 273,073
Additions	215,742	287,840
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(106,074)	(91,815)
Deferred revenue, end of period	\$ 382,832	\$ 469,098
In thousands	Three Months Ended March	
	31,	31,
In thousands	2024	2023
	2023	2024

2023	
Deferred revenue from related parties, beginning of period	
Deferred revenue from related parties, beginning of period	
Deferred revenue from related parties, beginning of period	
Additions	
Additions	
Deferred revenue, beginning of period	
Additions	
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	
Deferred revenue from related parties, end of period	
Deferred revenue from related parties, end of period	
Deferred revenue from related parties, end of period	
Deferred revenue, end of period	

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In thousands	Three Months Ended March 31,		Six Months Ended March 31,	
	2024	2023	2024	2023
Deferred revenue from related parties, beginning of period	\$ 258,232	\$ 350,895	\$ 110,274	\$ 300,697
Additions	21,156	51,860	29,602	140,390
Revenue recognized related to amounts that were included in beginning balance of deferred revenue	(232,694)	(215,798)	(93,182)	(254,130)
Deferred revenue from related parties, end of period	\$ 46,694	\$ 186,957	\$ 46,694	\$ 186,957

#### **Remaining Performance Obligations**

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

As of **December 31, 2023** **March 31, 2024**, the Company had \$3.7 billion of remaining performance obligations related to contractual commitments, of which, we expect to recognize in revenue approximately 60% in the next 12 months, with the remainder recognized in revenue in periods thereafter.

#### **Variable Consideration**

As of **December 31, 2023** **March 31, 2024** and September 30, 2023, transaction prices have been reduced to reflect variable consideration of \$89.3 \$81.8 million and \$84.1 million, respectively. Variable consideration primarily relates to the Company's customers' rights to liquidated damages in the event a specified milestone has not been met or equipment is not delivered to contract specifications. Variable consideration is estimated using the expected-value method which computes a weighted average amount based on a range of potential outcomes. In contracts in which a significant reversal may occur, we constrain the amount of revenue recognized based on our estimations using the expected-value method.

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#### **4. Inventory, Net**

Inventory consisted of the following:

In thousands	December 31, 2023			September 30, 2023			March 31, 2024			September 30, 2023		
	In thousands	Cost	Provision	Net	In thousands	Cost	In thousands	Provision	Net	Cost	Provision	Net
Cubes, batteries, and other equipment												
Spare parts												

Total
-------

## 5. Other Current Assets

Other current assets consisted of the following amounts:

In thousands	In thousands	December 31, 2023	September 30, 2023	In thousands	March 31, 2024	September 30, 2023
Taxes recoverable						
Advance payments						
Prepaid expenses						
Prepaid insurance						
Derivative assets (a)						
Other						
Total						

(a) Derivative assets primarily represent forward contracts which are used predominantly to mitigate foreign exchange rate exposure on costs incurred on customer projects. Gains and losses on forward contracts are recorded to cost of goods and services.

## 6. Intangible Assets, Net

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

In thousands	In thousands	December 31, 2023			September 30, 2023			March 31, 2024			September 30, 2023		
		Accumulated Cost	Amortization	Net	Accumulated Cost	Amortization	In thousands	Accumulated Cost	Amortization	Net	Accumulated Cost	Amortization	Net
Patents and licenses													
Developed technology													
Customer relationship													
Trade names/Trademarks													
Capitalized internal-use software													
Capitalized software to be sold													
Total													
Total													
Total													

Intangible assets are amortized over their estimated useful lives on a straight-line basis. Total amortization expense for the three months ended December 31, 2023 March 31, 2024 and 2022 2023 was \$1.9 million \$1.7 million and \$1.5 million \$1.4 million, respectively. The amortization expense for the three months ended December 31, 2023 March 31, 2024 included \$0.4 million \$0.6 million for capitalized software. No capitalized software amortization expense was recorded for the three months ended December 31, 2022 March 31, 2023. Total amortization expense for the six months ended March 31, 2024 and 2023 was \$3.9 million and \$2.9 million, respectively. The amortization expense for the six months ended March 31, 2024 included \$1.0 million for capitalized software. No capitalized software amortization expense was recorded for the six months ended March 31, 2023.

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## 7. Goodwill

No impairment was recognized for the three six months ended December 31, 2023 March 31, 2024 or 2022 2023. The following table presents the goodwill activity for the three six months ended December 31, 2023 March 31, 2024 and 2022 2023:

In thousands	In thousands	December 31,		March 31,			
		2023	In thousands	2022	In thousands	2024	2023
Goodwill, Beginning of the period							
Foreign currency adjustment							
Goodwill, End of the period							
Goodwill, End of the period							
Goodwill, End of the period							

## 8. Leases

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

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

	<i>In</i> <i>thousands</i>	<b>Balance Sheet</b> <b>Caption</b>	<b>December 31,</b> <b>2023</b>	<b>September 30,</b> <b>2023</b>	<i>In</i> <i>thousands</i>	<b>Balance Sheet</b> <b>Caption</b>	<b>March 31,</b> <b>2024</b>	<b>September 30,</b> <b>2023</b>
<b>Assets:</b>								
Right of use asset - operating leases								
Right of use asset - operating leases								
Right of use asset - operating leases								
<b>Liabilities:</b>								
<b>Liabilities:</b>								
<b>Liabilities:</b>								
Current portion of operating lease liabilities								
Current portion of operating lease liabilities								
Current portion of operating lease liabilities								
Operating lease liabilities, net of current portion								
	<b>\$</b>							

## 9. Current Accruals and Provisions

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

<i>In</i> <i>thousands</i>	<i>In</i> <i>thousands</i>	<b>December 31, 2023</b>	<b>September 30, 2023</b>	<i>In</i> <i>thousands</i>	<b>March 31, 2024</b>	<b>September 30, 2023</b>
Accruals						
Provisions for expected project losses						
Current portion of warranty accrual						
Total						

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## 10. Debt

### **Revolving Credit Facility**

On November 1, 2021, the Company entered into a credit agreement for a revolving credit facility (the "Revolver"), by and among Fluence Energy, LLC, as the borrower, Fluence Energy, Inc., as a parent guarantor, the subsidiary guarantors party thereto, the lenders party thereto and JP Morgan Chase Bank, N.A., as administrative agent and collateral agent (the "Credit" (as amended, the "Revolving Credit Agreement"). The Revolver was secured by a (i) first priority pledge of the equity securities of Fluence Energy, LLC and its subsidiaries and (ii) first priority security interests in, and mortgages on, substantially all tangible and intangible personal property and material fee-owned real property of Fluence Energy, LLC, the parent guarantor and each subsidiary guarantor party thereto, in each case, subject to customary exceptions and limitations. The initial aggregate amount of commitments was \$190.0 million from the lenders party thereto including JP Morgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc., Bank of America, N.A., Barclays Bank PLC, and five other banks. On June 30, 2022, the Company increased the revolving commitment available under the Revolver by \$10.0 million to an aggregate of \$200.0 million with the addition of UBS AG, Stamford Branch as an additional lender under the Revolver. On May 19, 2023, the Credit Agreement was amended to replace Adjusted LIBOR with Adjusted Term SOFR as the applicable benchmark interest rate with respect to certain classes of loans. The Revolver was originally scheduled to mature on November 1, 2025. The Revolving Credit Agreement was terminated effective November 22, 2023, in conjunction with the entry into the new ABL Credit Agreement (as further described below).

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

The Revolving Credit Agreement contained covenants that, among other things, restricted our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; make dividends, distributions, or other restricted payments; and engage in affiliate transactions. Under the terms of the Revolving Credit Agreement, Fluence Energy, LLC and its subsidiaries were limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions, including among others (i) the ability to make investments of up to the greater of (a) \$10,500,000 and (b) 1.5% of the consolidated assets of Fluence Energy, Inc. and its subsidiaries, and (ii) the ability to issue dividends and make other restricted payments (a) if after giving pro forma effect to such dividend or other restricted payment the Total Liquidity (as defined in the Revolving Credit Agreement) of Fluence Energy, Inc. and its subsidiaries party to the Revolving Credit Agreement was at least \$600,000,000, or (b) such dividend or other restricted payment was made to reimburse Fluence Energy, Inc. for certain tax distributions under the LLC Agreement and certain payments under the Company's Tax Receivable Agreement and certain operational expenses incurred in connection with the ownership and management of Fluence Energy, LLC. In addition, we were required to maintain (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reached \$150.0 million for the most recent four consecutive fiscal quarters and we made an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. Such covenants were tested on a quarterly basis.

### Asset-Based Lending Facility

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

As of March 31, 2024, with Citibank N.A., the ABL Lenders, and Barclays, adding Citibank N.A. as a lender party to the ABL Facility (the "ABL Joinder"). Borrowing availability under the ABL Facility is determined by a borrowing base calculation that is based on specified percentages of U.S. eligible inventory, net orderly liquidation value of most recent inventory appraisal, and U.S. eligible in-transit inventory, less the aggregate amount of any reserves. Pursuant to the terms of Amendment No. 2, borrowing base calculation under the ABL Facility was expanded to also include borrowing base qualified cash, which is defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) of the borrowers that is held in a specific borrowing base qualified cash account as of the applicable date of determination and (b) \$100.0 million. After the deposit of any funds into the borrowing base qualified cash account, such funds are required to remain in the borrowing base qualified cash account subject to the satisfaction of certain conditions. The Company is obligated to provide a borrowing base certificate to lenders twenty days following the end of each calendar month, except during a reporting trigger period where it will provide such certificates on a weekly basis.

The

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Pursuant to Amendment No. 1, the ABL Credit Agreement was amended to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that no event of default was outstanding under the ABL Credit Agreement and there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then in the event of a full cash dominion period, Barclays was not required to initiate daily cash sweeps of the Company's controlled accounts. During the full cash dominion period existing between March 29, 2024 and May 8, 2024, Barclays did not initiate any daily cash sweeps of the Company's controlled accounts. After giving effect to Amendment No. 2, unless a Covenant Relief Period (as defined below) has occurred and is continuing, the ABL Credit Agreement provides for a full cash dominion period (a) if an event of default is occurring or (b) beginning on the date on which Excess Availability (as defined below) is less than the greater of (i) 12.5% of the Line Cap and (ii) if the borrowing base then in effect is (A) less than \$200.0 million, \$25.0 million and (B) greater than or equal to \$200.0 million, \$200.0 million, \$50.0 million. Upon entering into Amendment No. 2, the Company is no longer in a full cash dominion period as a Covenant Relief Period is currently in effect. Excess Availability is defined under the ABL Facility as an amount equal to (a) the lesser of (i) the total commitments of all ABL Lenders and (ii) the borrowing base, minus (b) total revolving extensions of credit then outstanding. Line Cap is defined under the ABL Facility as the lesser of the total commitments of the ABL Lenders and the borrowing base. Excess Availability Covenant Relief Period is defined under the ABL Facility as an amount equal to a period during which (a) no default or event of default has occurred and continuing and (b) either of the following shall exist: (i) the total commitments aggregate revolving credit exposure of all lenders the ABL Lenders is not greater than \$0 or (ii) each of (A) the amount of aggregate borrowings under the ABL Facility is not greater than \$0; (ii) the non-cash collateralized LC exposure (as defined under the ABL Credit Agreement) is not greater than \$15.0 million, and (ii) the borrowing base minus (b) total revolving extensions exceeds the sum of all lenders' letter of credit exposure.

In addition, Amendment No. 1 amended the ABL Credit Agreement to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then outstanding the amount of required Excess Availability was zero. After giving effect to Amendment No. 2, the Company agreed that it will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) (A) if the borrowing base then in effect is less than \$200.0 million, \$50.0 million and (B) if the borrowing base then in effect is greater than or equal to \$200.0 million, \$64.0 million. In addition, unless a Covenant Relief Period is then in effect, the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability at any time to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect.

The ABL Credit Agreement sets forth that (i) loans comprising each ABR Borrowing (as defined in the ABL Credit Agreement) shall bear interest at the Alternate Base Rate (as defined in the ABL Credit Agreement) plus an additional margin ranging from 1.00% to 1.50%, depending on the Average Excess Availability (as defined in the ABL Credit Agreement) during the applicable determination period, (ii) loans comprising each Canadian Prime Loan Borrowing (as defined in the ABL Credit Agreement) shall bear interest at

the Canadian Prime Rate (as defined in the ABL Credit Agreement) plus an additional margin ranging from 1.00% to 1.50%, depending on the Average Excess Availability during the applicable determination period, and (iii) the loans comprising each Term Benchmark Borrowing (as defined in the ABL Credit Agreement) shall bear interest at the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA (each as defined in the ABL Credit Agreement), as applicable, plus an additional margin ranging from 2.00% to 2.50%, depending on the Average Excess Availability during the applicable determination period, in each instance subject to customary benchmark replacement provisions. Fluence Energy, LLC is required to pay to the ABL Lenders a commitment fee on the average daily unused portion of the commitments through maturity, which shall accrue at the rate of (a) until the last day of the first full calendar quarter following the closing of the ABL Facility, 0.450% per annum, and (b) thereafter, 0.450% per annum if average revolving loan utilization is less than or equal to 50% and 0.375% per annum if average revolving loan utilization is greater than 50%. The ABL Facility also provides for a letter of credit sublimit in the amount of \$200.0 million, if certain conditions are met. Each letter of credit issuance will be conditioned upon, among other conditions, the payment of certain customary issuance and administration fees, as well as payment of a fronting fee to each issuer thereof and payment of a letter of credit participation fee payable to the ABL Lenders.

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The ABL Credit Agreement contains customary covenants for this type of financing, including, but not limited to, covenants that restrict our ability to incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The ABL Credit Agreement limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Under the terms of the ABL Credit Agreement, Fluence Energy, LLC and its subsidiaries are currently limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions. In addition, if certain payment conditions under the ABL Credit Agreement are satisfied, including the satisfaction of a minimum excess availability requirement, then additional specified transactions may be made by the Company and its subsidiaries. The Company agreed that it will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) \$64.0 million, and the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect. Such covenants will be tested on a quarterly basis and upon certain restricted payments, the incurrence of indebtedness, certain dispositions, and other specified transactions. As of December 31, 2023 March 31, 2024, giving effect to the terms of Amendment No. 1, we were in compliance with all such applicable covenants or maintained availability above such covenant triggers. As of the date of this Report, giving effect to the terms of Amendment No. 2, we are in a Covenant Relief Period and to the extent applicable and required during a Covenant Relief Period, we are in compliance with any such applicable covenants or maintained availability above such applicable covenant triggers.

As of December 31, 2023, each of March 31, 2024 and the date of this Report, we had no borrowings under the ABL Facility and \$0 of no letters of credit outstanding. Based on the borrowing base certificate in effect on each of March 31, 2024 and availability the date of this Report, we had \$0.9 million of borrowing capacity and no borrowing capacity under the facility ABL Facility, respectively, in each case giving effect to the applicable terms of \$75.2 million. the ABL Credit Agreement then in effect.

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

In December 2022, the Company transferred \$24.3 million in customer receivables to Standard Chartered Bank ("SCB") in the Philippines for proceeds of \$21.1 million. The receivables all related to our largest customer in that country. The underlying receivables transferred were previously aggregated into a long term note, with interest, and has a maturity date of September 30, 2024. In April 2023, the Company aggregated into an additional long term note and transferred an additional \$30.9 million in receivables with the same customer to SCB for proceeds of \$27.0 million, upon substantially similar terms as the December 2022 transfer and has a maturity date of December 27, 2024. These transactions are treated as secured borrowings as the Company did not transfer the entire note receivables due from the customer to SCB. The Company continues to receive quarterly interest income from the customer, while SCB is responsible for collecting payments on the principal balances which represent the initial receivable balances from the customer. The Company has no other continuing involvement or exposure related to the underlying receivables. For the three six months ended December 31, 2023 March 31, 2024, the Company recorded net interest income of \$0.1 \$0.2 million, which represents the aggregate of \$1.2 \$2.3 million in interest income and \$1.1 \$2.1 million in interest expense recorded in "Interest income, net."

Refer to "Note 13 - Related-Party Transactions" for details regarding borrowings from related parties.

### **11. Income Taxes**

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

Income tax benefit was \$1.2 \$1.7 million and \$0.6 \$0.1 million for the three months ended December 31, 2023 March 31, 2024 and 2022, 2023, respectively. The effective tax rate for the three months ended December 31, 2023 March 31, 2024 and 2022, 2023 was 4.6% 11.5% and 1.6% 0.3%, respectively. For the three months ended December 31, 2023 March 31, 2024, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to valuation allowances. For the three months ended December 31, 2022 March 31, 2023, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to flow-through losses attributable to the Founders, valuation allowances, and foreign exchange gains.

Income tax benefit was \$2.9 million and \$0.7 million for the six months ended March 31, 2024 and 2023, respectively. The effective tax rate for the six months ended March 31, 2024 and 2023 was 7.0% and 1.0%, respectively. For the six months ended March 31, 2024, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to valuation allowances. For the six months ended March 31, 2023, the Company's effective tax rate differs from the U.S. statutory tax rate of 21% primarily due to flow-through losses attributable to the Founders, valuation allowances, and foreign exchange gains.

As of each of December 31, 2023 March 31, 2024 and September 30, 2023, the Company does not believe it has any significant uncertain tax positions and therefore, has not recorded any unrecognized tax benefits.

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The Company evaluates the realizability of its deferred tax assets on a quarterly basis and establishes valuation allowances when it is more-likely-than-not that all or a portion of a deferred tax asset may not be realized. As of December 31, 2023 March 31, 2024 and September 30, 2023, the Company had recorded a full valuation allowance against deferred tax assets on Fluence Energy, Inc. primarily related to its investment in Fluence Energy, LLC, as well as on certain foreign subsidiaries based on the weight of available evidence, including cumulative losses. In the event that the valuation allowance related to tax benefits associated with the Company's Tax Receivable Agreement, dated as of November 1, 2021, by and among Fluence Energy, Inc., Fluence Energy, LLC and the Founders (the "Tax Receivable Agreement") is released in a future period, a Tax Receivable Agreement liability will be recorded based on the amounts probable and reasonably estimable in accordance with ASC 450.

## 12. Commitments and Contingencies

### **Guarantees, Commitments, Letter of Credits, and Surety Bonds**

As of December 31, 2023 March 31, 2024, the Company had outstanding bank guarantees, parent guarantees, company guarantees, letters of credit, and surety bonds issued as performance security arrangements for associated with a number of our customer projects. In addition, we have a limited number of parent company guarantees issued as payment security to certain vendors. These contractual commitments are all accounted for off-balance sheet. In the event that we fail to perform under a project backstopped by such credit support, the customer or vendor, respectively, may demand performance and/or payment, as applicable, pursuant to the terms of the project contract or vendor contract and applicable credit support instrument from the Company, surety, or bank, as the case may be. Our relationship with our sureties is such that we will indemnify the sureties for any damages and expenses they incur in connection with any of the bonds they issue on our behalf and we may be required to post collateral to support the bonds. With respect to letters of credit, in the event of non-performance under a contract, direct obligations to repay the banks may arise. The Company expects that its performance and payment obligations secured by these bank guarantees, parent company guarantees, letters of credit, and surety bonds will generally be completed in the ordinary course of business and in accordance with the applicable contractual terms.

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

The following table summarizes our contingent contractual obligations as of December 31, 2023 March 31, 2024. Amounts presented in the following table represent the Company's current undiscounted exposure to guarantees, commitments, letters of credit, and surety bonds and the range of maximum undiscounted potential exposure. The maximum exposure is not reduced by the amounts, if any, that could be recovered under the recourse or collateralization provisions in the guarantees, commitments, letters of credit, and surety bonds.

		Amount (in \$ millions)	Amount (in \$ millions)	Number of Agreements	Maximum Exposure Range for Each Agreement (in \$ millions)	Amount (in \$ millions)	Number of Agreements	Maximum Exposure Range for Each Agreement (in \$ millions)
Guarantees and commitments	Guarantees and commitments	\$1,613	\$0 - 445.8	Guarantees and commitments	\$1,954	53	\$0.1 - 445.8	
Letters of credit under the bilateral credit facility (a)	Letters of credit under the bilateral credit facility	125	32	0 - 29.5				
Letters of credit under bilateral credit facilities (a)	Letters of credit under bilateral credit facilities (a)	87	31	0 - 29.5				
Letters of credit under ABL Credit Agreement	Letters of credit under ABL Credit Agreement	—	—	0 - 0	Letters of credit under ABL Credit Agreement	—	0 - 0	
Surety bonds	Surety bonds	389	39	0 - 81.9	Surety bonds	648	53	0 - 81.9
<b>Total</b>								

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

### **Purchase Commitments**

The Company has commitments for minimum volumes or spend under master supply agreements with our vendors. The majority of the commitments are for purchases of battery modules under a master supply agreement. modules. Liquidated damages apply if the minimum purchase volumes or spend are not met. The Company currently expects to meet the minimum committed volumes of purchases.

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purchases and spend. The following table presents our future minimum purchase commitments by fiscal year, primarily for battery modules, and liquidated damages, if the minimum purchase volumes or spend are not met, as of December 31, 2023 March 31, 2024:

<i>in thousands</i>	<i>in thousands</i>	Purchase Commitments	Liquidated Damages	<i>in thousands</i>	Purchase Commitments	Liquidated Damages
2024						
2025						
2026						
2027						
2028 and thereafter						
Total						
Total						
Total						

During the three months ended December 31, 2021, the Company made a \$60.0 million advance payment payments as a capacity guarantee pursuant to a purchase agreement with one of our suppliers. As of December 31, 2023 March 31, 2024, the balance of \$12.8 million \$23.4 million is recorded within "Advances to suppliers" and \$42.0 million is recorded in advances to suppliers within "Other non-current assets" on the condensed consolidated balance sheets.

#### Negotiations with our Largest Battery Module Vendor

In December 2021, the Company entered negotiations with our largest battery module vendor to amend the battery supply agreement. As part of the discussions, the vendor sought to renegotiate the price the Company would pay for battery modules purchased in calendar year 2022 as well as those expected to be purchased during the remainder of calendar year 2022 and calendar year 2023. As part of these negotiations, the Company also discussed settlement of contractual claims by Fluence to the vendor. These negotiations continued throughout calendar year 2022. On December 15, 2022, the Company finalized an agreement with the vendor, amending the supply agreement and resolving Fluence's claims. The approximately \$19.5 million settlement for the Company's claims was recognized as a reduction of costs of goods and services for the three six months ended December 31, 2022 March 31, 2023.

#### Product Performance Guarantees

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

#### Warranties

The Company is party to both assurance and service-type warranties for various lengths of time. The Company recognizes revenue for service-type warranties using a straight-line approach.

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

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

As of December 31, 2023 March 31, 2024 and September 30, 2023, the Company accrued the below estimated warranty liabilities, which the table reflects three six months activity and twelve months activity, respectively:

<i>In thousands</i>	<i>December 31, 2023</i>	<i>September 30, 2023</i>
Warranty balance, beginning	\$ 26,909	1,625
Warranties issued and assumed in period	2,517	12,168
Change in estimates	—	8,288
Change in balance sheet presentation	—	10,307
Net changes in liability for warranty expirations, costs incurred, and foreign exchange impact	(887)	(5,479)
Warranty balance, ending	\$ 28,539	\$ 26,909
Less: Recoverable warranty costs from suppliers	10,959	10,307
Warranty balance, net of recoverable warranty costs from suppliers, at end of period	\$ 17,580	\$ 16,602

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In thousands	March 31, 2024	September 30, 2023
Warranty balance, beginning	\$ 26,909	1,625
Warranties issued and assumed in period	5,227	12,168
Change in estimates	—	8,288
Change in balance sheet presentation	—	10,307
Net changes in liability for warranty expirations, costs incurred, and foreign exchange impact	(1,799)	(5,479)
Warranty balance, ending	\$ 30,337	\$ 26,909
Less: Recoverable warranty costs from suppliers	11,678	10,307
Warranty balance, net of recoverable warranty costs from suppliers, at end of period	\$ 18,659	\$ 16,602

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

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

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

#### **Legal Contingencies**

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

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

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. At this time, Fluence cannot comment on or accept the customer's stated findings. The customer's stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer's stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the **incident but has not yet demanded a specific amount of compensation nor alleged a particular level of responsibility**. Fluence has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market's adoption of our products.

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#### **2022 Overheating Event at Customer Facility**

On April 18, 2022, a 10 MW energy storage facility in Chandler, Arizona owned by AES experienced an overheating event. Fluence served as the energy storage technology provider for the facility, which was completed in 2019, and Fluence previously provided maintenance services for the facility. There were no injuries. The facility has been taken offline as teams from Fluence, AES, and the battery manufacturer continue to investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products.

## 2023 Project-Related Litigation

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

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

Related parties are primarily represented by AES and Siemens, their respective subsidiaries, and other entities under common control, and other entities in which Siemens and AES have significant influence. As of December 31, 2023 March 31, 2024, AES Grid Stability holds 51,499,195 shares of Class B-1 common stock of Fluence Energy, Inc. and Siemens beneficially owns an aggregate of 51,499,195 of Class A common stock of Fluence Energy, Inc.

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

The Company signs back-to-back battery-based energy storage product and related service contracts with AES, Siemens, their respective subsidiaries, other entities under common control, and their subsidiaries other entities in which Siemens and AES have significant influence (collectively referred to as affiliates) in relation to execution of the affiliates' contracts with external customers and also signs direct contracts with affiliates.

The Company also signs consortium agreements to partner with affiliates to deliver battery-based energy storage products and related service contracts to external customers. When performing our obligations pursuant to such contracts, we may, from time to time, enter into related change orders or settlements with our related parties and their affiliates.

The Company also provides consulting services to AES whereby Fluence will advise and in some cases provide support to AES on procurement, logistics, design, safety, and commissioning of certain of their projects. Revenue from consulting services is classified as "Revenue from sale of energy storage products and solutions" in the Company's Disaggregation of revenue table in "Note 3 - Revenue from Contracts with Customers". Revenue from the consulting services is primarily recognized ratably over time based on a project specific period of performance in which we expect the performance obligation to be fulfilled. For the three months ended December 31, 2023 March 31, 2024, the Company recognized \$1.4 million \$3.9 million in revenue from consulting services with related parties AES.

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

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

### **Contract Performance Administrative and Service Agreements**

For the six months ended March 31, 2024, the Company has received a limited scope of consulting services from Siemens Advanta, a subsidiary of Siemens AG, and limited treasury services related to executing trades for derivative contracts from The AES Corporation.

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

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

### **Guarantees**

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

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

### **Balance Sheet Related Party Transactions**

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

<i>In thousands</i>	<i>In thousands</i>	<b>December 31, 2023</b>	<b>September 30, 2023</b>	<i>In thousands</i>	<b>March 31, 2024</b>	<b>September 30, 2023</b>
Accounts receivable						
Unbilled receivables						

Total receivables from related parties
Advances to Suppliers - short-term
Advances to suppliers
Total advances to suppliers with related parties
Accounts payable
Deferred revenue
Accrued liabilities
Total payables and deferred revenue with related parties
Total deferred revenue and payables with related parties

Unbilled receivables represent the excess of revenues recognized over billings to date on sales or service contracts with related parties. Deferred revenue represents the excess billings to date over the amount of revenue recognized to date on sales or service contracts with related parties. Receivables from related parties and payables and deferred revenue with related parties are unsecured and settlement of these balances occurs in cash. No provision has been made related to the receivables from related parties.

#### Income Statement Related Party Transactions

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

In thousands	In thousands	Three Months Ended December 31,		In thousands	Three Months Ended March 31, Six Months Ended March 31,	
		2023	2022		2024	2023
Revenue				In thousands		
Cost of goods and services						
Research and development expenses						
Sales and marketing expenses						
General and administrative expenses						
Other expense (income), net (a)						

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(a) Represents factoring income from a subsidiary of AES related to receivables sold under the Master Receivable Purchase Agreement ("MRPA"). The corresponding cost paid to the purchaser was \$1.5 million and is recorded in "Sales and marketing expense" and is not considered a related party transaction. Pursuant to the MRPA, Fluence Energy, LLC may sell certain receivables for any of our customers that choose to participate in the program. Refer to "Note 16 17 - Supply Chain Financing" Sale of Receivables" for more details of the related party guarantees associated with the supply chain financing program.

## 14. Stock-Based Compensation

### Option Plan

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

As of December 31, 2023 March 31, 2024, 4,846,089 4,607,929 stock options under the Option Plan remain outstanding with unrecognized stock compensation expense of \$0.1 million, less than \$0.1 million.

### Phantom Units

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

As of December 31, 2023 March 31, 2024, 256,935 phantom unit awards previously issued remained outstanding with unrecognized stock compensation expense of \$0.9 \$0.2 million.

### 2021 Stock-Based Compensation Plan

During fiscal year 2021, the Company established the 2021 Incentive Award Plan (the "2021 Incentive Plan") which reserved 9,500,000 shares of Class A common stock of Fluence Energy, Inc. for issuance to management, other employees, consultants, and board members of the Company. The 2021 Incentive Plan governs both equity-based and cash-based awards, including incentive stock options, non-qualified stock options, performance share units ("PSUs")<sup>1</sup>, and restricted stock units ("RSUs")<sup>2</sup>. Employee stock-based awards currently issued pursuant to the 2021 Incentive Plan that are expected to be settled by issuing shares of Class A common stock are recorded as equity awards. The 2021 Incentive Plan is accounted for as an equity plan. The Company accounts for forfeitures as they occur.

#### Restricted Stock Units

RSUs granted under the 2021 Incentive Plan vest ratably at one-third annually on the anniversary of the grant date over a three-year period pursuant to the terms of their applicable award agreements. The Company generally expenses the grant date fair value of the awards on a straight-line basis over each of the three separately vesting tranches within a given grant. There is no contractual term on the RSUs granted under the 2021 Incentive Plan. The Company estimated the fair value of the awards using the market value of our Class A common stock. The market value of our Class A common stock is calculated using the closing price of our Class A common stock on the date of grant. The following table summarizes activity under the 2021 Incentive Plan for the **three six** months ended **December 31, 2023** **March 31, 2024**:

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	Number of RSUs
Outstanding as of October 1, 2023	1,843,570
Granted	741,775 885,980
Vested	(169,800) (375,663)
Forfeited	(64,424) (242,284)
Outstanding as of <b>December 31, 2023</b> <b>March 31, 2024</b>	<b>2,351,121</b> <b>2,111,603</b>

As of **December 31, 2023** **March 31, 2024**, **2,351,121** restricted stock units **2,111,603** RSUs previously issued remained outstanding with unrecognized stock compensation expense of **\$28.8** **\$23.4** million.

#### Non-Qualified Stock Options

During the **three six** months **December 31, 2023** **ended March 31, 2024**, the Company granted **132,524** **165,521** non-qualified stock options to purchase Class A common stock under the 2021 Incentive Plan with an **weighted average** exercise price of **\$21.93** **\$22.31**. Non-qualified stock options under the 2021 Incentive Plan have a contractual term of ten years from the date of grant. The Company estimated the fair value of the awards using the Black-Scholes option-pricing model. The non-qualified stock options granted under the 2021 Incentive Plan vest ratably at one-third annually on the anniversary of the grant date over a three-year period pursuant to the terms of their applicable award agreements. The Company generally expenses the grant date fair value of the awards on a straight-line basis over each of the three separately vesting tranches within a given grant.

As of **December 31, 2023** **March 31, 2024**, **132,524** **165,521** non-qualified stock options previously issued pursuant to the 2021 Incentive Plan remained outstanding with unrecognized stock compensation expense of **\$2.4** **\$1.9** million.

#### Performance Share Units

During the **three six** months ended **December 31, 2023** **March 31, 2024**, the Company granted **329,055** performance share units **381,226** PSUs redeemable for Class A common stock under the 2021 Incentive Plan. The PSUs are considered fully vested when both the performance and service based requirements are met in accordance with the vesting requirements and will be settled in shares no more than 60 days after September 30, 2026. The performance criteria for all current PSUs is based on target revenue and adjusted EBITDA for the performance period set by the Compensation and Human Resources Committee of the Company's Board of Directors. The awards can be paid out in a range of 50% to 200%, with 0% paid out for below-threshold performance, based on the achievement of the performance criteria and upon continued service through the performance period. The Company estimated the fair value of the awards using the market value of our **Class A** common stock. The market value of our common stock is calculated using the closing price of our **Class A** common stock on the date of grant. The Company monitors the achievement of the performance criteria and expenses ratably the grant date fair value of the awards probable to vest over the requisite service period. If there are changes to the amount of probable awards to vest based on achievement of performance criteria, the related stock-based compensation expense may be significantly increased or reduced in the period that our estimate changes.

As of **December 31, 2023** **March 31, 2024**, **329,055** performance share units **381,226** PSUs previously issued remained outstanding with unrecognized stock compensation expense of **\$7.0** **\$7.1** million.

#### Other

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

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

Stock-based compensation expense was recorded as follows (in thousands): follows:

In thousands	Three Months Ended December 31,		Three Months Ended March 31,		Six Months Ended March 31,			
	In thousands	2023	2022	In thousands	2024	2023	2024	2023
Cost of goods and services				In thousands				
Research and development								
Sales and marketing								
General and administrative								
Total								

#### 15. Investment in Joint Venture

On August 5, 2022, Fluence Energy Singapore PTE. LTD., a subsidiary of Fluence Energy, LLC, and ReNew Power entered into an agreement to form a partnership in India for an initial investment of \$5.0 million, plus a line of credit of \$15.0 million each for a 50% interest in the partnership. The Company funded the investment and the joint venture commenced operations in the first quarter of fiscal year 2023. The investment is recorded in "Other non-current assets" on our condensed consolidated balance sheet. The investment is accounted for under the equity method with results being reported by Fluence one quarter in arrears. The joint venture is not considered a variable interest entity and we do not consolidate the joint venture as we do not hold a controlling financial interest. The Company recorded an insignificant equity method loss on the investment for the ~~three~~ six months ended December 31, 2023 March 31, 2024.

#### 16. Supply Chain Financing

The Company has provided certain of our suppliers with access to a supply chain financing program through a third-party financing institution ("SCF Bank"). This program allows the Company to seek extended payment terms up to 120 days with our suppliers and allows our suppliers to monetize their receivables prior to the payment due date, subject to a discount. The Company does not pledge any assets as collateral under the program. Once a supplier elects to participate in the program and reaches an agreement with SCF Bank, the supplier chooses which individual invoices to sell to the SCF Bank. The Company then pays SCF Bank on the invoice due date. The Company has no economic interest in a supplier's decision to sell an underlying receivable to SCF Bank. The agreements between our suppliers and SCF Bank are solely at their discretion and are negotiated directly between those two parties. Our suppliers' ability to continue using such agreements is primarily dependent upon the strength of our financial condition and guarantees issued by AES and Siemens. As of December 31, 2023 March 31, 2024, AES and Siemens Corporation, a subsidiary of Siemens, issued guarantees of \$50 million each, for a total of \$100 million, to SCF Bank on our behalf. The Company's outstanding obligations confirmed as valid under its supplier financing program for periods ended December 31, 2023 March 31, 2024, and September 30, 2023, are as follows:

In thousands	In thousands	December 31, 2023	September 30, 2023	In thousands	March 31, 2024	September 30, 2023
Obligations outstanding at the beginning of the period						
Invoices issued during the period						
Invoices paid during the period						
Obligations outstanding at the end of the period						

As of December 31, 2023 March 31, 2024, ~~three~~ four suppliers were actively participating in the supply chain financing program. All outstanding payments owed under the program are recorded within "Accounts payable" on the condensed consolidated balance sheets.

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

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

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

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

For the three months ended March 31, 2024, we sold receivables to CACIB under the MRPA for net proceeds of \$71.5 million. At the date of the true sale, the receivables were de-recognized in their entirety from the consolidated balance sheet. We charged a fee to our customer, primarily for providing extended payment terms, in relation to the sale of receivables. We recorded factoring income of \$1.5 million and related factoring discount of \$1.5 million during the period. The factoring income is recorded in "Other expense (income), net" and the factoring discount is recorded in "Sales and marketing expense" on the condensed consolidated statements of operations and comprehensive loss. Proceeds from the sold receivables are reflected in operating cash flows on the condensed consolidated statements of cash flows.

## 18. Subsequent Events

**None.** On April 8, 2024, the Company entered into Amendment No. 1 to the ABL Credit Agreement. Amendment No. 1 amended the ABL Credit Agreement to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that no event of default was outstanding under the ABL Credit Agreement and there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then in the event of a full cash dominion period, Barclays was not required to initiate daily cash sweeps of the Company's controlled accounts. In addition, Amendment No. 1 amended the ABL Credit Agreement to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then the amount of required Excess Availability was zero.

On May 8, 2024, the Company entered into Amendment No. 2 to the ABL Credit Agreement. Amendment No. 2 expands the borrowing base calculation under the ABL Credit Agreement to include borrowing base qualified cash, which is defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) of the borrowers that is held in a specific borrowing base qualified cash account and (b) \$100.0 million. After the deposit of any funds into the borrowing base qualified cash account, borrowers must satisfy certain release conditions prior to the transfer of funds out of the borrowing base qualified cash account. Amendment No. 2 also amended the ABL Credit Agreement to provide that if a Covenant Relief Period has occurred and is continuing, then there shall be no full cash dominion period under the ABL Credit Agreement.

Amendment No. 2 also amended the ABL Credit Agreement to provide that the Company will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at any time to be less than the greater of (i) (i) 20% of the Line Cap then in effect and (ii) (A) if the borrowing base then in effect is less than \$200.0 million, \$50.0 million and (B) if the borrowing base then in effect is greater than or equal to \$200.0 million, \$64.0 million, and unless a Covenant Relief Period is then in effect, the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect.

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

### Overview

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

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

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

### Segments

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

### Siemens Industry Redemption

On June 30, 2022, Siemens Industry, Inc. exercised its redemption right pursuant to the terms of the Third Amended and Restated Limited Liability Company Agreement of Fluence Energy, LLC (the "LLC Agreement") with respect to its entire holding of 58,586,695 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of Fluence Energy, Inc., par value \$0.00001 per share (the "Siemens Redemption").

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

**Subsequent to the Siemens Redemption, on September 29, 2022, Siemens AG effected an internal transfer of 18,848,631 shares of Class A common stock to Siemens Pension-Trust e.V., an affiliated entity and a permitted transferee under the terms of the Stockholders Agreement dated October 27, 2021, by and among Fluence Energy, LLC, Fluence Energy, Inc., and the Stockholders (as defined therein) (the "Stockholders Agreement").**

### Secondary Offering and AES Redemption

On December 8, 2023, AES Grid Stability, Siemens Pension Pension-Trust e.V. ("Siemens Pension Trust"), Qatar Holding LLC ("QHL" and together with AES Grid Stability and Siemens Pension Trust in such context, the "Selling Stockholders") sold an aggregate of 18,000,000 shares of Class A common stock in an underwritten public offering (the "Offering"). Fluence did not sell any of its shares of Class A common stock in the Offering and the Company did not receive any of the proceeds from the Offering. Pursuant to the terms of the Company's Registration Rights Agreement, dated as of November 1, 2021, by and among the Company and the Original Equity Owners (as defined therein), the

Company paid \$0.7 million in certain expenses of the Selling Stockholders related to the Offering, while the Selling Stockholders paid all applicable underwriting discounts and commissions.

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In conjunction with the Offering, AES Grid Stability exercised its redemption right pursuant to the terms of the LLC Agreement with respect to 7,087,500 LLC Interests held by AES Grid Stability, together with the corresponding cancellation of an equivalent number of shares of Class B-1 common stock of Fluence Energy, Inc., par value \$0.00001 per share (the "AES Redemption"). The Company elected to settle the AES Redemption through the issuance of 7,087,500

shares of the Company's Class A common stock. The AES Redemption settled on December 8, 2023, the closing date of the Offering. All of the 7,087,500 shares issued to AES Grid Stability in connection with the AES Redemption were sold in the Offering.

The AES Redemption increased the beneficial ownership interest of the Company in Fluence Energy, LLC to 71.12% as of December 8, 2023. The impact of the change in ownership interest did not result in a change in control. The AES Redemption has been accounted for as an equity transaction and the carrying amount of non-controlling interest has been adjusted. Refer to "Consolidated statements of changes in stockholders' equity" included herein.

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

In December 2021, we entered negotiations with our largest battery module vendor to amend our battery supply agreement. As part of the discussions, the vendor sought to renegotiate the price we were to pay for battery modules purchased in calendar year 2022, as well as those expected to be purchased during the remainder of calendar year 2022 and calendar year 2023. As part of these negotiations, we also discussed settlement of contractual claims by Fluence to the vendor. These negotiations continued throughout calendar year 2022. On December 15, 2022, we finalized an agreement with the vendor, amending the supply agreement and resolving our claims. The ~~approximately \$19.5 million settlement~~ approximately \$19.5 million settlement for our claims was recognized as a reduction of ~~costs~~ costs of goods and services for the ~~three~~ six months ended December 31, 2022 ~~March 31, 2023~~.

#### **2021 Cargo Loss Incident**

On April 28, 2021, the Company was notified of an emergency aboard a vessel carrying Fluence inventory. This incident (the "Cargo Loss Incident") resulted in damage to a portion of our cargo aboard the vessel. The Company has recorded \$13.0 million provision to its inventory as of September 30, 2021, based on the net realizable value of cargo that was destroyed. During fiscal year 2022, \$13.0 million of inventory was written off against the provision. In addition to the inventory losses, we incurred incremental expenses related to the incident, primarily consisting of inspection costs, project cost overruns due to logistical changes, legal fees, fees to dispose of the damaged cargo, and additional cost to replace the damaged cargo. We received an aggregate of \$10.0 million in insurance proceeds related to non-disputed claims, \$7.5 million of which was collected in October 2021 and the remaining \$2.5 million was collected in April 2022. As of December 31, 2023, we expect to continue to incur legal fees as plaintiff in the pending matter relating to this incident.

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

On September 4, 2021, a 300 MW energy storage facility owned by one of our customers experienced an overheating event. Fluence served as the energy storage technology provider and designed and installed portions of the facility, which was completed in fiscal year 2021. No injuries were reported from the incident. The facility was taken offline as teams from Fluence, our customer, and the battery designer/manufacturer investigated the incident. Our customer released initial findings in the second fiscal quarter of 2022 on what it contends is the root cause of the incident. The customer's stated findings, if ultimately confirmed and proven, could relate to certain scopes of work for which Fluence or its subcontractors could be responsible. The customer's stated findings, however, could also relate to certain scopes of work for which other parties were responsible and/or relate to other causes, including the design and installation of portions of the facility over which Fluence did not have responsibility or control. The customer has alleged that Fluence is liable for the ~~incident but has not yet demanded a specific amount of compensation nor alleged a particular level of responsibility~~ incident. At this time, Fluence cannot accept the customer's stated findings and has denied liability. No formal legal proceedings have been commenced, but it is reasonably possible that litigation may result from this matter if a resolution cannot be achieved. Any such dispute would also likely include claims by Fluence and counterclaims by the customer relating to disputed costs arising from the original design and construction of the facility. The customer announced in July of 2022 that a large portion of the facility was back online. We are currently not able to estimate the impact, that this incident may have on our financial results. To date, we do not believe that this incident has impacted the market's adoption of our products and solutions.

#### **2022 Overheating Event at Customer Facility**

On April 18, 2022, a 10 MW energy storage facility in Chandler, Arizona owned by AES experienced an overheating event. Fluence served as the energy storage technology provider for the facility, which was completed in 2019, and Fluence currently provides maintenance services for the facility. There were no injuries. The facility has been taken offline as teams from Fluence, AES, and the battery manufacturer investigate the incident. We are currently not able to estimate the impact, if any, that this incident may have on our reputation or financial results, or on market adoption of our products and solutions.

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

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

#### Investment in Joint Venture

On August 5, 2022, Fluence Energy Singapore PTE. LTD., a subsidiary

[Table of Fluence Energy, LLC, and ReNew Power entered into an agreement to form a partnership in India for an initial investment of \\$5.0 million, plus a line of credit of \\$15.0 million each for a 50% interest in the partnership. We funded the investment in the first quarter of fiscal year 2023. The joint venture commenced operations during the first fiscal quarter of fiscal year 2023 and began hiring staff. We recorded an insignificant equity method loss on the investment for the three months ended December 31, 2023.](#) [Contents](#)

#### Key Factors and Trends Affecting our Performance

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

##### Lithium-ion Battery Cost

Our revenue growth is directly tied to the continued adoption of energy storage products and solutions by our customers. The cost of lithium-ion energy storage hardware has declined significantly in the last decade and has resulted in a large addressable market today.

However, according to BloombergNEF's 2022 (issued December 2022) battery price survey, higher raw material costs pushed the average price of lithium-ion battery packs up in calendar year 2022. We have seen prices for lithium-ion battery packs decline during calendar year 2023 and in January of 2024. The 2022 price increase marked the first annual increase in price since at least 2018. The market for energy storage is continues to rapidly evolving, evolve and while we believe costs will continue to decline over the long term, there is no guarantee that they will decline or decline at the rates we expect. If costs do not continue to decline long term, this could adversely affect our ability to increase our revenue or grow our business. For example, we saw price increases in 2022. During calendar year 2023, prices returned to their historical trend of declining year-over-year and we continued to see declines through the first six months of fiscal year 2024.

##### Supply Chain

Although we do not rely on any single supplier for the majority of our key components, including our batteries and inverters, we do obtain certain key components from a limited number of suppliers. If one or more suppliers were unable to satisfy our requirements for particular key components, we could experience a disruption to our operations and delays in completing our projects as alternative suppliers are identified and qualified, and new supply arrangements are entered into. Moreover, if one of our suppliers is unable to satisfy our requirements and we turn to another supplier, such replacement supply arrangements may be on less advantageous terms for us and result in higher costs to the Company. In addition, a number of our suppliers are situated outside of the United States, which exposes us to changes in international trade regulations, taxes, tariffs, and/or quotas. As of the date of this Report, we believe that we have adequate access to our key components to meet the needs of our operations. See Part I, Item 1A. "Risk Factors" of the 2023 Annual Report for further discussion on supply chain risks for our business.

#### Increasing Deployment of Renewable Energy

Deployment of renewable energy resources has accelerated over the last decade, and solar and wind have become a low-cost energy source. BloombergNEF estimates that renewable energy is expected to represent 70% of all new global capacity installations over the next ten years, through 2030. Energy storage is critical to reducing the intermittency and volatility of renewable energy generation. However, there is no guarantee that the deployment of renewable energy will occur at the rate estimated by BloombergNEF or that such renewable energy will rely on lithium-ion battery technology for energy storage. Inflationary pressures, supply chain disruptions, geo-political conflicts, government regulations and incentives, and other factors could result in fluctuations in demand for and deployment of renewable energy resources, adversely affecting our revenue and ability to generate profits in the future. See Part I, Item 1A. "Risk Factors" of the 2023 Annual Report for further discussion on these risks.

##### Competition

The energy storage industry sector is highly competitive and continuously evolving. Our array of energy storage products, and solutions, services, and digital applications are highly specialized and specific designed to meet the unique demands of the clean energy industry. The unique expertise required to intricacy involved in the design and integration of these offerings as well as integrate these solutions for our customers can be very complex underscores their technical complexity. Nevertheless, new companies enter the market and technical, however, the number of additional companies offering similar offer comparable products and services is growing every year. In addition, we are continuously engaging in developing new annually. We remain committed to pioneering novel use cases and opening new exploring untapped market segments, many of which are often less contested, present lower levels of competition. We believe that competitive factors in the energy storage market include, but are not limited to:

- safety, reliability and quality;
- ability to obtain financing;
- our ability to issue performance guarantees, credit support, and product warranties;
- density and duration of our products and solutions;

- shortened delivery, installation, and commissioning time;
- stability in supply chain;
- performance of energy storage products and solutions, services and digital applications;

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- historical customer track record (as the market and industry continues to grow);
- experience in the battery energy storage system market (both of the Company and key members of leadership);
- technological expertise and innovation;
- comprehensive solutions and offerings from a single provider;
- brand recognition;
- certain government initiatives, legislation, regulations, and policies;
- ease of integration; and
- seamless hardware and software-enabled service offerings.

**Our competition** The competitive landscape for battery energy storage varies by geography, country, across different geographies, countries, grid service, services, and customer segment. There is a rising segments. As the global demand for energy storage products and solutions globally, and with that growing demand, we see increasing numbers continues to rise, so does the influx of new entrants and potential entrants in into the energy storage space. We sector. However, we believe that a key differentiator for Fluence we distinguish ourselves from competitors by our competitors is our ability to identify adeptness in identifying and addressing customer needs and deliver customer-centric with tailor-made products, services, and use cases that can compete in the market either as packages or standalone offerings. cases. We believe we compete favorably based on maintain a competitive edge through our performance and value-creation, including value creation, evidenced by attributes such as low total cost of ownership, long-term reliability, varied diverse service options, and convenient and efficient streamlined sales and delivery processes.

## **Seasonality**

Through fiscal year 2021, we experienced variability in the timing of our order intake, with higher volumes of orders coming the second half of our fiscal year. However, in fiscal years 2022 and 2023, order intake was relatively consistent across each quarter. In fiscal year 2024, we currently expect to see a higher amount of our order intake in the second half of the fiscal year. The variability in our order intake is in the most recent quarters has been primarily driven due to the ambiguity regarding the timing of the proposed domestic content guidelines being released by the US Department of the Treasury which did not occur until the third quarter of fiscal year 2023, which can and has impacted customers decisions, and timing of customer approvals which typically coincides with their own internal budgeting processes. The timing of our order intake can be difficult to predict, and could result in significant variation among fiscal quarters.

## **Government Regulation and Compliance**

Governments across the globe have announced and implemented various policies, regulation and legislation to support the transition from fossil fuels to low-carbon forms of energy and to support and accelerate adoption of clean and/or reliable distributed generation technologies. Although we generally are not regulated as a utility, federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. The operation of our business and our customers' use of our products and services are impacted by these various government actions. For example, in August 2022, the United States passed the Inflation Reduction Act of 2022 (the "IRA"), which consists of a number of renewable energy related provisions aimed directly at confronting the climate change crisis. Among other things, the IRA introduced including an investment tax credit (ITC) for standalone energy storage and it contains provisions with incentives for grid modernization equipment including domestic battery cell manufacturing, battery module manufacturing and its components, as well as various upstream applications.

Although we generally are not regulated as a utility, federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. These statutes and regulations, like the IRA, often relate to electricity pricing, transmission and distribution rates, net metering, incentives, taxation, competition with utilities and the interconnection of customer-owned electricity generation. We believe we are well positioned to capture incentives contained in the IRA and that its enactment is favorable to our business and future operations with our forthcoming battery module manufacturing as well as our contract manufacturing facility in Utah and our supply agreement for U.S. manufactured battery cells. However, as this legislation was recently adopted in August 2022 and applicable U.S. Department of Treasury and Internal Revenue Service proposed guidelines were not published in until the third quarter of fiscal year 2023, we have not yet seen the impact these IRA related IRA-related incentives may have on our business, operations and financial performance as we go forward and cannot guarantee we will realize all, or any, of the anticipated benefits of incentives under the IRA. IRA-related incentives. We are continuing to evaluate the overall impact and applicability of the IRA to our business and expected results of operations going forward.

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

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

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## **Total Revenue**

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

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

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

## **Cost of Goods and Services**

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

Our product costs are affected by the underlying cost of raw materials, including steel and aluminum supply costs, including inverters, casings, fuses, and cable; technological innovation; economies of scale resulting in lower supply costs; and improvements in production processes and automation. We do not currently hedge against changes in the price of raw materials as we do not purchase raw materials; instead, we buy the components of energy storage products from our suppliers and we rely on our suppliers to hedge the underlying raw materials. We generally expect the ratio of cost of

goods and services to revenue to decrease as sales volumes increase due to economies of scale, however, some of these costs, primarily personnel-related costs, are not directly affected by sales volume.

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

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

## **Operating Expenses**

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

## **Research and Development Expenses**

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

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

## **Sales and Marketing Expenses**

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

## **General and Administrative Expenses**

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

## **Depreciation and Amortization**

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

## **Interest Income, net**

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

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

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

## **Income Tax Benefit**

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

## **Net Loss**

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

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## **Key Operating Metrics**

The following tables present our key operating metrics as of December 31, 2023 March 31, 2024 and September 30, 2023, and order intake for the three months ended December 31, 2023 and 2022. The tables below present the metrics in either Gigawatts

(GW) or Gigawatt hours (GWh). Our key operating metrics focus on project milestones to measure our performance and designate each project as either "deployed", "assets under management", "contracted" "contracted backlog", or "pipeline".

	December 31, 2023	September 30, 2023	Change	Change %
	September 30, 2023	March 31, 2024	Change	Change %

Energy Storage Products and Solutions										
Deployed (GW)		Contracted Backlog (GW)		Pipeline (GW)		Pipeline (GWh)				
Deployed (GW)		Contracted Backlog (GW)		Pipeline (GW)		Pipeline (GWh)				
(amounts in GW)	(amounts in GW)	December 31, 2023	September 30, 2023	Change	%	(amounts in GW)	March 31, 2024	September 30, 2023	Change	
Service Contracts										
Assets under Management										
Assets under Management										
Assets under Management		3.3	2.8	0.5	18%	3.3	2.8	0.5	18%	
Contracted Backlog	Contracted Backlog	3.5	2.9	0.6	21%	Contracted Backlog	3.6	2.9	0.7	24%
Pipeline	Pipeline	14.7	13.7	1.0	7%	Pipeline	20.4	13.7	6.7	49%
(amounts in GW)	(amounts in GW)	December 31, 2023	September 30, 2023	Change	%	(amounts in GW)	March 31, 2024	September 30, 2023	Change	
Digital Contracts										
Assets under Management										
Assets under Management										
Assets under Management		17.0	15.5	1.5	10%	Contracted Backlog	17.2	15.5	1.7	11%
Contracted Backlog	Contracted Backlog	5.7	6.8	(1.1)	(16%)	Contracted Backlog	6.9	6.8	0.1	1%
Pipeline	Pipeline	31.7	24.4	7.3	30%	Pipeline	35.6	24.4	11.2	46%

The following table presents our order intake for the three and six months ended March 31, 2024 and 2023. The table is presented in Gigawatts (GW):

Order Intake (GW)									
2023		2024		Change		Change %		2024	
2023		2024		Change		Change %		2023	
Energy Storage Products and Solutions		Energy Storage Products and Solutions		2024	2023	Change	Change %	2024	2023
Energy Storage Products and Solutions		Energy Storage Products and Solutions		2024	2023	Change	Change %	2024	2023
Contracted		Contracted		0.9	0.6	0.3	50%	2.1	1.2
Service Contracts		Service Contracts		0.5	1.0	(0.5)	(50%)	1.6	1.1
Digital Contracts		Digital Contracts		0.5	1.0	(0.5)	(50%)	1.6	1.1
Contracted		Contracted		0.5	1.0	(0.5)	(50%)	1.6	1.1

Contracted	3.1	2.7	0.4	15%	3.5	—	—%
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#### Deployed

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

#### Assets Under Management

Assets under management for service contracts represents our long-term service contracts with customers associated with our completed energy storage system products and solutions. We start providing maintenance, monitoring, or other operational services after the storage product projects are completed. In some cases, services may be commenced for energy storage solutions prior to achievement of substantial completion. This is not limited to energy storage solutions

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delivered by Fluence. Assets under management for digital software represents contracts signed and active (post go live). Assets under management serves as an indicator of expected revenue from our customers and assists management in forecasting our expected financial performance.

#### Contracted Backlog

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

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

#### Contracted/Order Intake

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

#### Pipeline

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

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

#### Non-GAAP Financial Measures

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

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

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

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Free Cash Flow is calculated from the consolidated statements of cash flows and is defined as net cash provided by (used in) operating activities, less purchase of property and equipment made in the period. We expect our Free Cash Flow to fluctuate in future periods as we invest in our business to support our plans for growth. Limitations on the use of Free Cash Flow include (i) it should not be inferred that the entire Free Cash Flow amount is available for discretionary expenditures (for example, cash is still required to satisfy other working capital needs, including short-term investment policy, restricted cash, and intangible assets); (ii) Free Cash Flow has limitations as an analytical tool, and it should not be considered in isolation or as a substitute for analysis of other GAAP financial measures, such as net cash provided by operating activities; and (iii) this metric does not reflect our future contractual commitments.

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

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

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

(\$ in thousands)	Three Months Ended March 31,			Change	%	Change	%	Six Months Ended March 31,	
	(\$ in thousands)	(\$ in thousands)	(\$ in thousands)						
2023									
2023									
Net loss									
Net loss	\$ (12,876)	\$ (37,397)	\$ 24,521	66	66 %	\$ (38,432)	\$ (2,731)		
Add:									
Add:									
Add:									
Interest income, net (a)									
Interest income, net (a)									
Interest income, net (a)	(1,261)	(2,075)	(2,075)	814	814	(39)	(39)	(3,254)	(2,731)
Income tax benefit	Income tax benefit	(1,666)	(126)	(126)	(1,540)	(1,540)	1222	1222 %	(2,901)
Income tax benefit									
Income tax benefit									
Depreciation and amortization									
Depreciation and amortization									
Depreciation and amortization	Depreciation and amortization	3,088	2,669	2,669	419	419	16	16 %	5,971
Stock-based compensation (a) (b)	Stock-based compensation (a) (b)	6,636	7,263	7,263	(627)	(627)	(9)	(9) %	12,266
Stock-based compensation (a) (b)									
Stock-based compensation (a) (b)									
Other expenses (b)									
Other expenses (b)									
Other expenses (b)									
Other expenses (c)									
(d)	—	1,967	(1,967)	(100) %	1,984				

Adjusted EBITDA	Adjusted EBITDA	\$(6,079)	\$	\$(27,699)	\$	\$21,620	78	78	%	\$	\$(24,366)	\$
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#### Adjusted EBITDA

#### Adjusted EBITDA

(a) Includes interest income, net for the three and six months ended March 31, 2023 have been recast to conform with current period presentation as described in "Footnote 2 - Summary of Significant Accounting Policies and Estimates, Reclassifications."

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

(b) (c) Amount for the three months ended December 31, 2023 March 31, 2023 included \$2.0 million in severance costs and consulting fees related to the restructuring plan.

Amount for the six months ended March 31, 2024 includes approximately \$1.2 million of costs related to the termination of the Revolving Credit Agreement and \$0.8 million \$0.8 million in costs related to the secondary offering.

Offering. Amount for the three six months ended December 31, 2022 includes approximately \$1.5 million of March 31, 2023 included \$3.5 million in severance costs and consulting fees related to the restructuring plan including severance.

(d) Costs related to the COVID-19 pandemic, the cargo loss incident, external expenses related to the ongoing remediation of our material weakness, and legal fees related to the Cargo Loss Incident, 2021 and 2022 overheating events at customer facilities which the Company had historically excluded from Adjusted EBITDA, are no longer excluded. Adjusted EBITDA results for the three and six months ended December 31, 2022 March 31, 2023 have been recast for comparative purposes.

(\$ in thousands)	Three Months Ended December 31,				Change	Change %
	2023	2022				
Total revenue	\$ 363,956	\$ 310,460	\$	\$ 53,496		17 %
Cost of goods and services	327,570	298,420		29,150		10 %
Gross profit	36,386	12,040		24,346		202 %
Add:						
Stock-based compensation (a)	1,259	900		359		40 %
Amortization (b)	400	—		400		100 %
Other expenses(c)	—	189		(189)		(100)%
<b>Adjusted Gross Profit</b>	<b>\$ 38,045</b>	<b>\$ 13,129</b>	<b>\$</b>	<b>24,916</b>		<b>190 %</b>
<b>Adjusted Gross Profit Margin %</b>	<b>10.5 %</b>			<b>4.2%</b>		

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(\$ in thousands)	Three Months Ended March				Six Months Ended March 31,				
	31,	2024	2023	Change	Change %	2024	2023	Change	Change %
Total revenue	\$ 623,141	\$ 698,186	\$ (75,045)		(11)%	\$ 987,097	\$ 1,008,646	\$ (21,549)	(2)%
Cost of goods and services	558,961	667,373	(108,412)		(16)%	886,531	965,793	(79,262)	(8)%
Gross profit	64,180	30,813	33,367		108 %	100,566	42,853	57,713	135 %
Add:									
Stock-based compensation (a)	1,121	1,256	(135)		(11)%	2,380	2,156	224	10 %
Amortization (b)	606	—	606		100 %	1,006	—	1,006	100 %
Other expenses(c) (d)	—	139	(139)		(100)%	—	328	(328)	(100)%
<b>Adjusted Gross Profit</b>	<b>\$ 65,907</b>	<b>\$ 32,208</b>	<b>\$ 33,699</b>		<b>105 %</b>	<b>\$ 103,952</b>	<b>\$ 45,337</b>	<b>\$ 58,615</b>	<b>129 %</b>
<b>Adjusted Gross Profit Margin %</b>	<b>10.6 %</b>	<b>4.6%</b>				<b>10.5 %</b>		<b>4.5%</b>	

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

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

(c) Amount for the three months ended December 31, 2022 includes \$0.2 million of March 31, 2023 included \$0.1 million in severance costs related to the restructuring plan, including severance plan.

Amount for the six months ended March 31, 2023 included \$0.3 million in severance costs related the restructuring plan.

(d) Costs related to the COVID-19 pandemic, the cargo loss incident, and legal fees related to the Cargo Loss Incident, 2021 and 2022 overheating events at customer facilities, which the Company had historically excluded from Adjusted Gross Profit and Adjusted Gross Profit Margin, are no longer excluded. Adjusted Gross Profit and Adjusted Gross Profit Margin results for the three and six months ended December 31, 2022 March 31, 2023 have been recast for comparative purposes.

(\$ in thousands)	Six Months Ended March 31,				Change	Change %
	2024	2023				
Net cash provided by (used in) operating activities	\$ 90,248	\$ (163,411)	\$	\$ 253,659		155 %
Less: Purchase of property and equipment	(2,473)	(1,087)		(1,386)		(128)%

Free Cash Flow	\$ 87,775	\$ (164,498)	\$ 252,273	153 %
<b>Three Months Ended December 31,</b>				
(\$ in thousands)	2023	2022	Change	Change %
Net cash provided by (used in) operating activities	\$ 19,363	\$ (88,898)	\$ 108,261	122 %
Less: Purchase of property and equipment	(1,468)	(2,496)	1,028	41 %
<b>Free Cash Flow</b>	<b>\$ 17,895</b>	<b>\$ (91,394)</b>	<b>\$ 109,289</b>	<b>120 %</b>

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**Results of Operations**

**Comparison of the Three and Six Months Ended December 31, 2023 March 31, 2024 to the Three and Six Months Ended December 31, 2022 March 31, 2023**

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

(\$ in thousands)	(\$ in thousands)	Three Months Ended March 31,	Change	Change %	Six Months Ended March 31,	Change
(\$ in thousands)						
		2023			2023	
		2023			2023	
Total revenue						
Total revenue		\$ 623,141	\$ 698,186	\$ (75,045)	\$ 987,097	\$ 1,008,646
Costs of goods and services	Costs of goods and services	558,961	667,373	(108,412)	(16)%	886,531
Costs of goods and services						965,793
Gross profit	Gross profit	64,180	30,813	33,367	108 %	100,566
Gross profit						42,853
Gross profit						
Gross profit margin %						
Gross profit margin %						
Gross profit margin %						
Operating expenses:						
Operating expenses:						
Operating expenses:						
Research and development						
Research and development						
Research and development						

Research and development		17,427	22,551	(5,124)	(23)%	32,867	41,713	(8,846)
Sales and marketing	Sales and marketing	15,792	10,401	5,391	52%	26,498	19,193	
Sales and marketing								
Sales and marketing								
General and administrative								
General and administrative	General and administrative	44,067	31,778	12,289	39%	81,795	63,045	
Depreciation and amortization	Depreciation and amortization	2,482	2,669	(187)	(7)%	4,965	5,093	
Depreciation and amortization								
Depreciation and amortization								
Interest income, net	Interest income, net	(1,261)	(2,075)	814	(39)%	(3,254)	(2,731)	
Interest income, net								
Interest income, net								
Other income, net								
Other income, net								
Other income, net								
<u>Loss before income taxes</u>								
<u>Loss before income taxes</u>								
Other expense (income), net		215	3,012	(2,797)	(93)%	(972)	(8,130)	7,158
Loss before income taxes	Loss before income taxes	\$ (14,542)	\$ (37,523)	\$ 22,981	61 %	\$ (41,333)	\$ (75,330)	\$
Income tax benefit	Income tax benefit	(1,666)	(126)	(1,540)	1222%	(2,901)	(740)	
Income tax benefit								
Income tax benefit								
<b>Net loss</b>	<b>Net loss</b>	<b>\$ (12,876)</b>	<b>\$ (37,397)</b>	<b>\$ 24,521</b>	<b>66 %</b>	<b>\$ (38,432)</b>	<b>\$ (74,590)</b>	<b>\$</b>
<b>Net loss</b>								
<b>Net loss</b>								

**Total Revenue**

Total revenue decreased by \$53.5 million \$75.0 million, or 17% 11%, for the three months ended December 31, 2023 March 31, 2024, compared to the three months ended December 31, 2022 March 31, 2023. The increase decrease in total revenue for the three months ended March 31, 2024 was mainly attributable to the expansion of sales of a decrease in revenue from our battery-based energy storage products and solutions by \$51.1 million \$80.2 million, partially offset by an increase in services revenue of \$5.0 million. The expansion of sales of decrease in revenue from our battery-based energy storage products and solutions was primarily driven by (i) decreased volumes of Gen6 solutions sold delivered in the Americas current period due to timing, (ii) favorable impacts in the prior period due to price increase change orders issued during the prior period of \$12.8 million where the performance obligations were substantially satisfied in previous periods, and APAC regions offset (iii) decrease in revenue from consulting services provided to AES of \$7.4 million.

Total revenue decreased by (i) \$21.5 million, or 2%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The decrease in total revenue for the six months ended March 31, 2024 was mainly attributable to a decrease in volumes revenue related of Gen6 our battery-based energy storage products and solutions sold by \$29.5 million, partially offset by an increase in the EMEA region services revenue of \$7.3 million. The decrease in revenue from our battery-based energy storage products and (ii) non-recurring solutions was primarily driven by (i) favorable impacts in the prior period due to price increase change orders issued during the period of \$24.3 million where the performance obligations were substantially satisfied in previous periods. periods and (ii) decrease in revenue from consulting services provided to AES of \$5.9 million.

#### Costs of Goods and Services

Cost of goods and services increased decreased by \$29.2 million \$108.4 million, or 10% 16%, for the three months ended December 31, 2023 March 31, 2024, compared to the three months ended December 31, 2022 March 31, 2023. The increase decrease in cost of goods and services for the three months ended March 31, 2024 was mainly attributable to (i) the expansion decrease of volume of Gen6 solutions sold in Americas delivered due to timing, (ii) net improvement of gross margins on the portfolio of newer Gen6 solutions projects delivered during the current period, and APAC regions, offset by (iii) a decrease in volume warranty expense for the period of \$7.7 million, due mostly to a change in estimate that occurred in the prior period but did not reoccur this period.

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Cost of goods and services decreased by \$79.3 million, or 8%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The decrease in cost of goods and services for the six months ended March 31, 2024 was primarily attributable (i) net improvement of gross margins on portfolio of newer Gen6 solutions sold projects delivered during the current period and (ii) a decrease in EMEA region. The increase warranty expense for the period of \$7.5 million due mostly to a change in estimate that occurred in the prior period but did not reoccur in the current period. These decreases in costs of goods and services was less than the percentage increase in revenue due to an improvement in gross margins on newer Gen6 solutions projects were partially offset by non-recurring the favorable impact of a settlement of contractual claims with our largest battery module vendor of \$19.5 million recognized in December 2022.

#### Gross Profit and Gross Profit Margin

Gross profit increased by \$24.3 million \$33.4 million, or 202% 108%, for the three months ended December 31, 2023 March 31, 2024, compared to the three months ended December 31, 2022 March 31, 2023. The increase in gross profit for the three months ended March 31, 2024 was primarily due to (i) net improvement in gross margins on

the portfolio of newer Gen6 solutions projects in the current period and (ii) a decrease in warranty expense as described above in "Costs of goods and services." These increases in gross profit were partially offset by non-recurring (i) the favorable impacts in the prior period due to price increase change orders described above in "Total revenue" that did not reoccur in the current period and (ii) a decrease in gross profit from consulting services provided to AES of \$5.4 million when compared to the prior period.

Gross profit increased by \$57.7 million, or 135%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The increase in gross profit for the six months ended March 31, 2024 was primarily due to (i) net improvement of gross margins on the portfolio of newer Gen6 solutions projects in the current period and (ii) a decrease in warranty expense as described above in "Costs of goods and services." These increases in gross profit were partially offset by (i) favorable impacts in the prior period due to price increase change orders described above in "Total revenue", (ii) the favorable impact of a settlement of contractual claims with our largest battery module vendor described above in December 2022 for \$19.5 million "Costs of goods and (ii) \$10.1 million for price increase change orders issued during services" that did not reoccur this period, and (iii) a decrease in gross profit from consulting services provided to AES of \$4.2 million when compared to the period where the performance obligations were substantially satisfied in previous periods prior period.

#### Research and Development Expenses

Research and development expenses decreased by \$3.7 million \$5.1 million, or 19% 23%, for the three months ended December 31, 2023 March 31, 2024, compared to the three months ended December 31, 2022 March 31, 2023. The decrease in research and development expenses for the three months ended March 31, 2024 was primarily attributable to (i) a \$1.6 million \$3.6 million reduction in salaries and personnel-related costs, including stock-based compensation, expense, due to relocation of certain R&D activities to lower cost locations.

Research and (ii) a \$1.3 million development expenses decreased by \$8.8 million, or 21%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The decrease in third party services research and development expenses for the six months ended March 31, 2024 was primarily attributable to a \$6.8 million reduction in salaries and personnel-related costs, including stock-based compensation, due to relocation of certain R&D activities to lower cost locations.

#### Sales and Marketing Expenses

Sales and marketing expenses increased by **\$1.9 million** \$5.4 million, or **22% 52%**, for the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The increase in sales and marketing expenses for the three months ended March 31, 2024 was primarily attributable to (i) a **\$1.5 million** factoring discount on sale of accounts receivable recorded in the current period and (ii) a **\$1.4 million** increase in salaries and personnel-related expenses, including stock-based compensation, due to an increase in **IT** headcount.

Sales and marketing expenses increased by **\$7.3 million**, or 38%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The increase in sales and marketing expenses for the six months ended March 31, 2024 was primarily attributable to (i) a **\$2.7 million** increase in information technology cost allocations of **\$1.4 million** to support our growth, (ii) a **\$1.5 million** factoring discount on sale of accounts receivable recorded in the current period, and (iii) **spend on conferences, sponsorships** (iii) a **\$1.0 million** increase in salaries and other related advertising of **\$0.4 million** personnel-related expenses, including stock-based compensation, due to an increase in headcount.

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

General and administrative expenses increased by **\$6.5 million** \$12.3 million, or **21% 39%**, for the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The increase in general and administrative expense for the three months ended March 31, 2024 was primarily attributable to (i) an increase in salaries and personnel-related costs, including stock-based compensation, of **\$7.1 million** \$12.0 million due to higher headcount to support our growth and (ii) a **\$2.0 million** \$3.3 million increase

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in information technology licenses and consulting services related to implementation of new systems to support our growth. This increase was partially offset by a reduction in consulting services of \$2.6 million, which were mostly related to the restructuring plan from fiscal year 2023 that is substantially completed and other non-recurring consulting services.

General and administrative expenses increased by **\$18.8 million**, or 30%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The increase in general and administrative expenses for the six months ended March 31, 2024 was primarily attributable to (i) an increase in salaries and personnel-related expenses, including stock-based compensation, of **\$19.1 million** due to higher headcount and (ii) a **\$5.3 million** increase in information technology licenses and consulting services related to implementation of new systems to support our **growth** growth. This increase was partially offset by a reduction in consulting services of **\$2.6 million** \$2.3 million, which were mostly **indirectly** related to the restructuring plan from fiscal year 2023 that **was** is substantially completed, completed and other non-recurring consulting services.

#### **Depreciation and Amortization**

Depreciation and amortization **increased by \$0.1 million**, or 2%, for was relatively flat in the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The depreciation increase is primarily attributed

Depreciation and amortization was relatively flat in the six months ended March 31, 2024, compared to an increase in equipment capitalized. the six months ended March 31, 2023.

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

Interest income, net **increased decreased by \$1.3 million** \$0.8 million, or **204% 39%**, in the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The decrease was primarily attributable to an increase in interest expense of \$0.6 million on borrowing against a customer receivable.

Interest income, net increased by **\$0.5 million**, or 19%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The increase in interest income, net for the six months ended March 31, 2024 was primarily attributable to an increase in interest income of **\$1.6 million** \$1.3 million due to higher higher interest rates on cash deposits and investments, partially offset by additional interest expense of \$0.4 million related to writing off a portion of capitalized debt issuance costs related to termination of the Revolver.

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

Other income, expense, net decreased by **\$10.0 million** \$2.8 million, or **89% 93%**, for the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The decrease in other income, expense, net for the three months ended March 31, 2024 was primarily attributable to **\$9.2 million** (i) a **\$2.1 million** decrease in favorable unfavorable foreign currency exchange gains losses for monetary assets and liabilities period over period and (ii) the factoring income of **\$1.5 million** related to the MRPA (as defined below) and recorded in the current period, partially offset by gains that did not reoccur in the current period on changes in fair value of short-term investments of \$0.6 million.

Other (income), net decreased by **\$7.2 million**, or 88%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The decrease in other (income), net for the six months ended March 31, 2024 was primarily attributable to (i) a decrease in favorable foreign currency exchange adjustments for monetary assets and liabilities of **\$7.1 million** and (ii) gains that did not reoccur in the current period on changes in fair value of short-term investments of \$1.3 million, partially offset by the factoring income of **\$1.5 million** related to the MRPA recorded in the current period.

#### **Income Tax Benefit**

Income tax benefit increased by **\$0.6 million** \$1.5 million, or **101% 122%**, for the three months ended **December 31, 2023** March 31, 2024, compared to the three months ended **December 31, 2022** March 31, 2023. The increase in income tax benefit for the three months ended March 31, 2024 is primarily due attributable to a change in the mix of pre-tax

losses globally.

Income tax benefit increased by \$2.2 million, or 292%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The increase in income tax benefit for the six months ended March 31, 2024 was primarily attributable to a change in the mix of pre-tax losses globally in the three months ended December 31, 2023, and foreign exchange losses.

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#### **Net Loss**

Net loss decreased by \$11.6 million \$24.5 million, or 31% 66%, for the three months ended December 31, 2023 March 31, 2024, compared to the three months ended December 31, 2022 March 31, 2023. The decrease in net loss for the three months ended March 31, 2024 is primarily attributable to (i) an increase in "gross" "Gross profit", and (ii) a decrease in "research" "Research and development expenses" and (iii) increase in "interest income, net" as described above. This was partially offset by (i) decrease an increase in "other income, net" "General and administrative expenses" and (ii) an increase in "general" "Sales and administrative" marketing expenses" as described above.

Net loss decreased by \$36.2 million, or 48%, for the six months ended March 31, 2024, compared to the six months ended March 31, 2023. The decrease in net loss for the six months ended March 31, 2024 is primarily attributable to (i) an increase in "Gross profit" and (ii) a decrease in "Research and development expenses" as described above. This was partially offset by (i) an increase in "General and administrative expenses", (ii) an increase in "Sales and marketing expenses", and (iii) an decrease in "Other expense (income), net" each as described above.

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

Since inception and through December 31, 2023 March 31, 2024, our principal sources of liquidity were the proceeds from our IPO, our cash and cash equivalents, short-term borrowings, borrowings available under the Revolver, borrowings available under the ABL Credit Facility (as defined below), supply chain financing, capital contributions from AES Grid Stability and Siemens Industry, proceeds from the investment short term investments, and borrowings against note receivables, receivables and proceeds from sale of accounts receivable under the MRPA.

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

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

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

#### **Supply Chain Financing**

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We have provided certain of our suppliers with access to a supply chain financing program through a third-party financing institution (the "SCF Bank"). This program allows us to seek extended payment terms with our suppliers and allows our suppliers to monetize their receivables prior to the payment due date, subject to a discount. Once a supplier elects to participate in the program and reaches an agreement with the SCF Bank, the supplier elects which individual invoices to sell to the SCF Bank. We then pay the SCF Bank on the invoice due date. We have no economic interest in a supplier's decision to sell a receivable to the SCF Bank. The agreements between our suppliers and the SCF Bank are solely at their discretion and are negotiated directly between them. Our suppliers' ability to continue using such agreements is primarily dependent upon the strength of our financial condition and guarantees issued by AES and Siemens. Siemens Corporation, a subsidiary of Siemens, pursuant to the terms of the Credit Support and Reimbursement Agreement (as defined below). As of December 31, 2023 March 31, 2024, AES and Siemens Corporation, a subsidiary of Siemens, issued guarantees of \$50.0 million each, for a total of \$100.0 million, to SCF Bank on our behalf.

As of December 31, 2023 March 31, 2024, three four suppliers were actively participating in the supply chain financing program, and we had \$45.9 million \$51.7 million of payables outstanding subject to the program. All outstanding payments owed under the program are recorded within "Accounts payable" on the condensed consolidated balance sheets.

#### **Shelf Registration Statement**

On August 11, 2023, we filed an automatic shelf registration statement on Form S-3 with the SEC (the "Form S-3") which became effective upon filing and will remain effective through August 11, 2026. The Form S-3 allows us to offer and sell from time-to-time Class A common stock, preferred stock, depository shares, debt securities, warrants, purchase contracts or units comprised of any combination of these securities for our own account and allows certain selling stockholders to offer and sell 135,666,665 shares of Class A

common stock in one or more offerings. We would not receive any proceeds from any sale of our Class A common stock by such selling stockholders. On December 8, 2023, 18,000,000 shares of Class A common stock of the Company registered by the Form S-3 with the SEC were sold pursuant to a secondary offering conducted by certain selling stockholders. We received no proceeds in connection with this offering.

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

### **Revolving Credit Facility**

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

The Revolver was secured by (i) a first priority pledge of equity securities of Fluence Energy, LLC and its subsidiaries and (ii) first priority security interests in Revolver, refer to "Note 10 - Debt" to our unaudited condensed consolidated financial statements included elsewhere in and mortgages on, substantially all tangible and intangible personal property and material fee-owned real property of Fluence Energy, LLC, the parent guarantor and each subsidiary guarantor party thereto, in each case, subject to customary exceptions and limitations. On May 19, 2023, the Revolving Credit Agreement was amended to replace Adjusted LIBOR with Adjusted Term SOFR as the applicable benchmark interest rate with respect to certain classes of loans.

The Revolver bore interest at either (i) the Adjusted SOFR Rate (each as defined in the Revolving Credit Agreement) plus 3.0 % or (ii) the Alternate Base Rate (as defined in the Revolving Credit Agreement) plus 2.0% (subject to customary LIBOR replacement provisions and alternative benchmark rates including customary spread adjustments with respect to borrowings in foreign currency), at the option of Fluence Energy, LLC. Fluence Energy, LLC was required to pay to the lenders a commitment fee of 0.55 % per annum on the average daily unused portion of the revolving commitments through maturity, which was originally scheduled to be the four-year anniversary of the closing date of the Revolver. The Revolver also provided for up to \$200.0 million in letter of credit issuances, which required customary issuance and administration fees, as well as a fronting fee payable to each issuer thereof and a letter of credit participation fee of 2.75% per annum payable to the lenders.

The Revolving Credit Agreement contained covenants that, among other things, restricted our ability to incur additional indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; make dividends, distributions, or other restricted payments; and engage in affiliate transactions. The terms of the Revolving Credit Agreement limited our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, Fluence Energy, Inc.'s equity and other restricted payments. Under the terms of the Revolving Credit Agreement, Fluence Energy, LLC and its subsidiaries were limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions, including among others (i) the ability to make investments of up to the greater of (a) \$10,500,000 and (b) 1.5% of the consolidated assets of Fluence Energy, Inc. and its subsidiaries, and (ii) the ability to issue dividends and make other Restricted Payments (as defined in the Revolving Credit Agreement) (a) if after giving pro forma effect to such dividend or other Restricted Payment the Total Liquidity (as defined in the Revolving Credit Agreement) of Fluence Energy, Inc. and its subsidiaries party to the Revolving Credit Agreement was at least \$600,000,000, or (b) such dividend or other Restricted Payment was made to reimburse Fluence Energy, Inc. for certain tax distributions under the Fluence Energy LLC Agreement and certain payments under the Tax Receivable Agreement and certain operational expenses incurred in connection with the ownership and management of Fluence Energy, LLC. In addition, we were required to maintain (i) minimum liquidity and gross revenue requirements, in each case, until consolidated EBITDA reached \$150.0 million for the most recent four fiscal quarters and we made an election, and (ii) thereafter, a maximum total leverage ratio and a minimum interest coverage ratio. Such covenants were tested on a quarterly basis.

this Report.

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

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

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As of March 31, 2024, borrowing availability under the ABL Facility is was determined by a borrowing base calculation that is was based on specified percentages of U.S. eligible inventory, net orderly liquidation value of most recent inventory appraisal, and U.S. eligible in-transit inventory, less the aggregate amount of any reserves. Pursuant to the terms of Amendment No. 2, borrowing base calculation under the ABL Facility was expanded to also include borrowing base qualified cash, which is defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) of the borrowers that is held in a specific borrowing base qualified cash account as of the applicable date of determination and (b) \$100,000,000. After the deposit of any funds into the borrowing base qualified cash account, such funds are required to remain in the borrowing base qualified cash account subject to the satisfaction of certain conditions. The Company is obligated to provide a borrowing base certificate to lenders twenty days following the end of each calendar month, except during a reporting trigger period where it will provide such certificates on a weekly basis.

Pursuant to Amendment No. 1, The the ABL Credit Agreement was amended to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that no event of default was outstanding under the ABL Credit Agreement and there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then in the event of a full cash dominion period, Barclays was not required to initiate daily cash sweeps of the Company's controlled accounts. During the full cash dominion period existing between March 29, 2024 and May 8, 2024, Barclays did not initiate any daily cash sweeps of the Company's controlled accounts. After giving effect to Amendment No. 2, unless a Covenant Relief Period (as defined below) has occurred and is continuing, the ABL Credit Agreement provides for a full cash dominion period (a) if an event of default is occurring or (b) beginning on the date on which Excess Availability (as defined below) is less than the greater of (i) 12.5% of the Line Cap and (ii) if the borrowing base then in effect is (A) less than \$200.0 million, \$25.0 million \$200.0 million, \$25.0 million and (B) greater than or equal to \$200.0 million, \$50.0 million \$200.0 million, \$50.0 million. Upon entering into Amendment No. 2, the Company is no longer in a full cash dominion period as a Covenant Relief Period is currently in effect. Excess Availability is defined under the ABL Facility as an amount equal to (a) the lesser of (i) the total commitments of all ABL Lenders and (ii) the borrowing base, minus (b) total revolving extensions of credit then outstanding. Line Cap is defined under the ABL Facility as the lesser of the total commitments of the ABL Lenders and the borrowing base. Excess Availability Covenant Relief Period is defined under the ABL Facility as an amount equal to a period during which (a) no default or event of default has occurred and continuing and (b) either of the lesser of following shall exist: (i) the total commitments aggregate revolving credit exposure of all lenders the ABL Lenders is not greater than \$0 or (ii) each of (A) the amount of aggregate borrowings under the ABL Facility is not greater than \$0; (ii) the non-cash collateralized LC exposure (as defined under the ABL Credit Agreement) is not greater than \$15.0 million, and (ii) (C) the borrowing base minus (b) total revolving extensions exceeds the sum of all lenders' letter of credit exposure.

In addition, Amendment No. 1 amended the ABL Credit Agreement to provide that during the period from March 29, 2024 through and including May 10, 2024, to the extent that there was no aggregate revolving credit exposure by the ABL Lenders thereunder, then outstanding the amount of required Excess Availability was zero. After giving effect to Amendment No. 2, the Company agreed that it will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at anytime, any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) (A) if the borrowing base then in effect is less than \$200.0 million, \$50.0 million and (B) if the borrowing base then in effect is greater than or equal to \$200.0 million, \$64.0 million. In addition, unless a Covenant Relief Period is then in effect, the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability at any time to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect.

The ABL Credit Agreement sets forth that (i) loans comprising each ABR Borrowing (as defined in the ABL Credit Agreement) shall bear interest at the Alternate Base Rate (as defined in the ABL Credit Agreement) plus an additional margin ranging from 1.00% to 1.50%, depending on the Average Excess Availability (as defined in the ABL Credit Agreement) during the applicable determination period, (ii) loans comprising each Canadian Prime Loan Borrowing (as defined in the ABL Credit Agreement) shall bear interest at the Canadian Prime Rate (as defined in the ABL Credit Agreement) plus an additional margin ranging from 1.00% to 1.50%, depending on the Average Excess Availability during the applicable determination period, and (iii) the loans comprising each Term Benchmark Borrowing (as defined in the ABL Credit Agreement) shall bear interest at the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA (each as defined in the ABL Credit Agreement), as applicable, plus an additional margin ranging from 2.00% to 2.50%, depending on the Average Excess Availability during the applicable determination period, in each instance subject to customary benchmark replacement provisions including, but not limited to, alternative benchmark rates, customary spread adjustments with respect to borrowings in foreign currencies and benchmark replacement conforming changes. Fluence Energy, LLC is required to pay to the ABL Lenders a commitment fee on the average daily unused portion of the commitments through maturity, which shall accrue at the rate of (a) until the last day of the first full calendar quarter following the closing of the ABL Facility, 0.450% per annum, and (b) thereafter, 0.450% per annum if average revolving loan utilization is less than or equal to 50% and 0.375% per annum if average revolving loan utilization is greater than 50%. The ABL Facility also provides for a letter of credit sublimit in the amount of \$200.0 million, if certain conditions are met. Each letter of credit issuance will be conditioned upon, among other conditions, the payment of certain customary issuance and administration fees, as well as payment of a fronting fee to each issuer thereof and payment of a letter of credit participation fee payable to the ABL Lenders.

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The ABL Credit Agreement contains customary covenants for this type of financing, including, but not limited to, covenants that restrict our ability to incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; make investments or acquisitions; pay dividends, make distributions or other restricted payments; and engage in affiliate transactions. The ABL Credit Agreement limits our ability to make certain payments, including dividends and distributions on Fluence Energy, LLC's equity, the Company's equity and other restricted payments. Under the terms of the ABL Credit Agreement, Fluence Energy, LLC and its subsidiaries are currently limited in their ability to pay cash dividends to, lend to, or make other investments in Fluence Energy, Inc., subject to certain exceptions. In addition, if certain payment conditions under the ABL Credit Agreement are satisfied, including the satisfaction of a minimum excess availability requirement, then additional specified transactions may be made by the Company and its subsidiaries. The Company agreed that it will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) \$64.0 million, and the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect. Such covenants will be tested on a quarterly basis and upon certain restricted payments, the incurrence of indebtedness, certain dispositions and other Specified Transactions (as defined in the ABL Credit Agreement) specified transactions. As of December 31, 2023 March 31, 2024, giving effect to the terms of Amendment No. 1, we were in compliance with all such applicable covenants or maintained availability above such covenant triggers. As of the date of this Report, giving effect to the terms of Amendment No. 2, we are in a Covenant Relief Period and to the extent applicable and required during a Covenant Relief Period, we are in compliance with any such applicable covenants or maintained availability above such applicable covenant triggers.

As of December 31, 2023, each of March 31, 2024 and the date of this Report, we had no borrowings under the ABL Facility and \$0 of no letters of credit outstanding. Based on the borrowing base certificate in effect on each of March 31, 2024 and availability the date of this Report, we had \$0.9 million of borrowing capacity and no borrowing capacity under the facility ABL Facility, respectively, in each case giving effect to the applicable terms of \$75.2 million. the ABL Credit Agreement then in effect.

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

In December 2022, we transferred \$24.3 million in customer receivables to Standard Chartered Bank ("SCB") in the Philippines for proceeds of \$21.1 million. The receivables all related to our largest customer in that country. The underlying receivables transferred were previously aggregated into a long term note, with interest, and which has a maturity date of September 30, 2024. In April 2023, we aggregated and transferred an additional \$30.9 million in receivables into a second long term note with the same customer to SCB for proceeds of \$27.0 million, upon substantially similar terms as the December 2022 transfer and with a maturity date of December 27, 2024. These transactions are treated as secured borrowings as we did not transfer the entire note receivables due from the customer to SCB. We continue to receive quarterly interest income from the customer, while SCB is responsible for collecting payments on the principal balances which represent the initial receivable balances from the customer. We have no other continuing involvement or exposure related to the underlying receivables. For the three six months ended December 31, 2023 March 31, 2024, the Company recorded net interest income of \$0.1 \$0.2 million, which represents the aggregate of \$1.2 \$2.3 million in interest income and \$1.1 \$2.1 million in interest expense recorded in "Interest income, net."

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

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

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

For the three months ended March 31, 2024, we sold receivables to CACIB under the MRPA for net proceeds of \$71.5 million. At the date of the true sale, the receivables were de-recognized in their entirety from the consolidated balance sheet. We charged a fee to our customer, primarily for providing extended payment terms, in relation to the sale of receivables. We recorded factoring income of \$1.5 million and related factoring discount of \$1.5 million during the period. The factoring income is recorded in "Other expense (income), net" and the factoring discount is recorded in "Sales and

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marketing expense" on the condensed consolidated statements of operations and comprehensive loss. Proceeds from the sold receivables are reflected in operating cash flows on the condensed consolidated statements of cash flows.

#### **Credit Support and Reimbursement Agreement**

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

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

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

As of December 31, 2023 March 31, 2024, the Company had outstanding bank guarantees, parent guarantees, letters of credit, and surety bonds issued as performance security arrangements for a large number of customer projects. In addition, we have a limited number of parent company guarantees issued as payment security to certain vendors. The Company also has certain battery purchase obligations and spending requirements under a our master supply agreement with a supplier. suppliers. We are also party to both assurance and service-type warranties for various lengths of time. Refer to "Note 12 - Commitments and Contingencies" to our unaudited condensed financial statements included elsewhere in this Report for more information regarding our contingent obligations, including off-balance sheet arrangements, and legal contingencies.

#### Historical Cash Flows

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

(\$ in thousands)	Three Months Ended December 31,			Change	Change %
	2023	2022			
Net cash provided by (used in) operating activities	\$ 19,363	\$ (88,898)	\$ 108,261		121.8 %
Net cash used in investing activities	\$ (2,596)	\$ (6,331)	\$ 3,735		(59.0)%
Net cash provided by (used in) financing activities	\$ (6,359)	\$ 23,252	\$ (29,611)		(127.3)%

  

(\$ in thousands)	Six Months Ended March 31,			Change	Change %
	2024	2023			
Net cash provided by (used in) operating activities	\$ 90,248	\$ (163,411)	\$ 253,659		155.2 %
Net cash (used in) provided by investing activities	\$ (7,491)	\$ 35,503	\$ (42,994)		(121.1)%
Net cash (used in) provided by financing activities	\$ (6,631)	\$ 23,810	\$ (30,441)		(127.8)%

Net cash flows provided by operating activities of \$19.4 million were \$90.2 million for the three six months ended December 31, 2023 March 31, 2024, were compared to negative \$163.4 million for the six months ended March 31, 2023. The \$253.7 million increase in cash provided by operations period over period was primarily driven due to a decrease in net loss of \$36.2 million and improvement in cash provided by increases working capital balances of \$203.6 million. The details of cash provided by (used in) operations for each period are described below.

Net cash flows provided by operating activities of \$90.2 million for the six months ended March 31, 2024, was primarily due to decreases in working capital balances due to timing of purchases and payments. Specifically, (i) payables accounts payable increased by \$181.1 million due to the increase of \$96.4 million in inventory to support projects in the second half

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of the fiscal year, as well as the timing of payments to various vendors, and (ii) deferred revenue, net of deferred revenue and payables with related parties increased by \$57.1 million due to timing of \$148.4 million and (ii) accounts payable of \$255.3 million various customer project billings in accordance with contract milestone payment schedules, offset by an increase in inventory, impacting cash flow negatively by \$336.4 million and net loss advance payments made as capacity guarantees pursuant to purchase agreements with our suppliers of \$25.6 million. The increase in payables and deferred revenues with related parties and inventory is primarily driven by timing of payments received and \$42.0 million during the timing of execution of certain contracts, as we are expecting higher revenues in the last three fiscal quarters of 2024. period.

Net cash flows used in operating activities operations of \$88.9 million \$163.4 million for the three six months ended December 31, 2022 March 31, 2023, were was primarily due to (i) net loss of \$37.2 million \$74.6 million, (ii) purchases increase in balance of trade receivables of \$244.4 million due to timing of billings, and (iii) increase in balances of inventory of \$430.5 million, (iii) \$103.5 million to support projects in second half of the fiscal year, which increased our cash used in operations. These effects on cash used were partially offset by an increase increases in balances of (i) deferred revenue of \$187.4 million, net of deferred revenue and payables with related parties, primarily driven by timing of execution of various customer projects and billings in accordance with contract milestone payment schedules and (ii) accounts payable of \$200.7 million and an (iv) increase in third party deferred revenue of \$196.0 million. We had built up our inventory balance at the end of fiscal year 2022 and continued to do so for the first three months ended December 31, 2022, as a risk mitigation strategy to provide the Company with supply chain assurance. The inventory build up was partially funded by milestone payments from customers driving up our deferred revenue balance and \$93.4 million due to timing of payments to our vendors, which caused the increase in our accounts payable balances.

Net decreased cash flows used in investing activities were \$2.6 million for the three months ended December 31, 2023, which included \$1.5 million purchases of property and equipment, and capital expenditures on internal-use software and software to be sold of \$1.1 million. operations.

Net cash flows used in investing activities were \$6.4 million \$7.5 million for the three six months ended December 31, 2022 March 31, 2024, which included \$2.5 million were primarily due to capital expenditures on software of \$5.0 million and purchases of property and equipment and \$5.0 million of \$2.5 million.

Net cash flows provided by investing activities were \$35.5 million for the six months ended March 31, 2023, were primarily due to proceeds from the sale of short-term investments of \$41.6 million partially offset by investment in a joint venture offset by proceeds on short term investments of \$5.0 million and purchases of property and equipment of \$1.1 million.

Net cash flows used in financing activities were approximately \$6.4 million \$6.6 million for the three six months ended December 31, 2023 March 31, 2024. The net cash flows used in financing activities were primarily related to \$3.6 million \$4.3 million in payments related to debt issuances issuance costs for the ABL Facility and \$3.9 million in payments for a previously acquired company (Nispera), offset by \$1.1 million \$1.6 million of proceeds from the exercise of stock options. options during the period.

Net cash flows provided by financing activities were \$23.3 million approximately \$23.8 million for the three six months ended December 31, 2022 March 31, 2023. The net cash flows provided by financing activities were primarily driven by related to \$21.1 million of proceeds from secured borrowings against notes receivable and \$2.4 million \$3.0 million of

proceeds from the exercise of stock options **during the period**, offset by \$0.3 million related to **repurchase of Class A common stock placed in treasury**, **withheld related to settlement of employee taxes for stock-based compensation awards**.

#### **Tax Receivable Agreement**

In connection with the IPO, we entered into the Tax Receivable Agreement with Fluence Energy, LLC and Siemens Industry and AES Grid Stability (together, the "Founders"). Under the Tax Receivable Agreement, we are required to make cash payments to the Founders equal to 85% of the tax benefits, if any, that we actually realize, or in certain circumstances are deemed to realize, as a result of (1) the increases in our share of the tax basis of assets of Fluence Energy, LLC and its subsidiaries resulting from any redemptions or exchanges of LLC Interests from the Founders and certain distributions (or deemed distributions) by Fluence Energy, LLC; and (2) certain other tax benefits arising from payments under the Tax Receivable Agreement. The payment obligation under the Tax Receivable Agreement is an obligation of Fluence Energy, Inc. and not of Fluence Energy, LLC. We expect to use distributions from Fluence Energy, LLC to fund any payments that we will be required to make under the Tax Receivable Agreement. To the extent we are unable to make timely payments under the Tax Receivable Agreement for any reason, such payments generally will be deferred and will accrue interest until paid; provided, however, that nonpayment for a specified period may constitute a material breach of a material obligation under the Tax Receivable Agreement resulting in the acceleration of payments due under the Tax Receivable Agreement.

Fluence Energy, Inc. expects to benefit from the remaining 15% of cash tax benefits, if any, it realizes from such tax benefits. For purposes of the Tax Receivable Agreement, the cash tax benefits will be computed by comparing the actual income tax liability of Fluence Energy, Inc. to the amount of such taxes that Fluence Energy, Inc. would have been required to pay had there been no such tax basis adjustments of the assets of Fluence Energy, LLC or its subsidiaries as a result of redemptions or exchanges and had Fluence Energy, Inc. not entered into the Tax Receivable Agreement.

On June 30, 2022, Siemens Industry, Inc. exercised its redemption right pursuant to the terms of LLC Agreement with respect to its entire holding of 58,586,695 LLC Interests of Fluence Energy, LLC, together with the corresponding cancellation of an equivalent number of shares of **our** Class B-1 common stock of Fluence Energy, Inc., par value \$0.00001 **per share**.

**stock.**

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

#### [Table of Fluence Energy, Inc., par value \\$0.00001 per share, Contents](#)

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

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

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

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

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

During the **three** **six** months ended **December 31, 2023** **March 31, 2024**, there were no significant changes in application of our critical accounting policies or estimation procedures from those described under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Use of Estimates" in our 2023 Annual Report and the notes to the audited consolidated financial statements appearing elsewhere in the 2023 Annual Report.

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

There have been no material changes with respect to our exposure to market risk as disclosed in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" of our 2023 Annual Report.

#### Item 4. Controls and Procedures

##### Evaluation of Disclosure Controls and Procedures

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

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, carried out an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of **December 31, 2023** **March 31, 2024**, the end of the period covered by this Report. Based upon that evaluation, and **as a result because** of the material weaknesses **remediation measures** described below, management concluded that, as of **December 31, 2023** **March 31, 2024**, our disclosure controls and procedures were **not effective at the reasonable assurance level**.

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##### Material Weaknesses and Remediation Measures

As disclosed previously in the Company's 2023 Annual Report, a material weakness existed in the internal control related to the Company's estimate at completion ("EAC") process, which is used in the percentage of completion ("POC") accounting for our battery energy storage solutions. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

**As of December 31, 2023, a material weakness in the internal control related** **Management enhanced and implemented changes to the Company's estimate at completion** **(EAC)** **process, which is used in the Company's percentage of completion ("POC") accounting has not been remediated.**

**We assessed the material weakness as not remediated as the EAC controls did not consistently operate for a sufficient period of time. Management has enhanced the** **process** **processes** **and provided** **training to control owners during the first** **quarter** **six months** **of fiscal year 2024. However, additional time is required to ensure the successful** **implementation** **As result of the remediation** **these efforts over a sustained period of time before and our own testing, management can conclude that has concluded** **the material** **weakness has been remediated.**

**The actions that we are taking are subject to ongoing senior management review, as well as Audit Committee oversight. We are committed to maintaining a strong internal** **control environment and implementing measures designed to help ensure that control deficiencies contributing to the material weakness are remediated as soon as possible; we** **believe our efforts will enable us to successfully remediate our material weakness in fiscal year 2024 however, we cannot provide assurance as to when our further remediation** **measures will be complete. We will consider the material weakness remediated after the applicable controls operate for a sufficient period of time, and management has concluded,** **through testing, that the controls are operating effectively.** **March 31, 2024.**

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

Other than the changes to our internal control over financial reporting described in "Material Weaknesses and Remediation Measures" above, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended **December 31, 2023** **March 31, 2024** that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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#### Part II - Other Information

##### Item 1. Legal Proceedings

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

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

##### Item 1A. Risk Factors

There have been no material changes with respect to our risk factors previously disclosed in our 2023 Annual **Report**. You should carefully consider the risks described in Item 1A. "Risk Factors" of our 2023 Annual Report, and all of the other information included in this Report, before making an investment decision. Our

business, financial condition and results of operations could be materially and adversely affected by any of these risks or **uncertainties**.

***Our ABL Credit Agreement imposes certain restrictions that may affect our ability to operate our business and make payments on our indebtedness and may limit our ability to borrow under the ABL Facility.***

We are party to the ABL Credit Agreement with revolving commitments in an aggregate principal amount of \$400.0 million, as amended from time to time. The ABL Credit Agreement contains covenants that, among other things, restrict our ability to incur indebtedness; incur liens; sell, transfer, or dispose of property and assets; invest; pay dividends, make distributions or other restricted payments and engage in affiliate transactions. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Asset-Based Lending Facility" for further discussion of the ABL Facility. These restrictions may restrict our current and future operations, particularly our ability to respond to certain changes in our business or industry or take future actions, including raising additional debt or equity financing to operate during general economic or business downturns, to compete effectively or to take advantage of new business opportunities. As of each of March 31, 2024 and the date of this Report, we had no borrowings under the ABL Facility and no letters of credit outstanding.

Our ability to meet the restrictive covenants under the ABL Credit Agreement may be impacted by events beyond our control. Our ABL Credit Agreement and related security agreements provide that our breach or failure to satisfy certain covenants constitutes an event of default. Upon the occurrence of an event of default, our lenders could elect to declare all amounts outstanding, if any, under its debt agreements to be immediately due and payable. In addition, our lenders, to whom we granted a security interest in substantially all of our assets, would have the right to proceed against such assets we provided as collateral pursuant to the ABL Credit Agreement and related security agreement. If our borrowings under our ABL Facility was to be accelerated, we may not have sufficient cash on hand or be able to sell sufficient collateral to repay it or be able to borrow sufficient funds to refinance it, which would have an immediate adverse effect on our business and operating results.

Borrowing availability under the ABL Facility is subject to a borrowing base calculated in part on percentage of Net Orderly Liquidation Value (as defined in the ABL Credit Agreement) of our Eligible Inventory and Eligible In-Transit Inventory (both as defined under the ABL Credit Agreement), which, may be impacted by factors outside of our control, including demand for the Company's products, production levels, operating activities, competition with producers of similar products, U.S. legislation and regulation, and supply chain factors. For example, if our inventory in the United States is limited and lower than expected, then our borrowing base availability under the ABL has and may in the future decline and we have had, and may in the future have, no borrowing capacity under the ABL Facility. In addition, the agent under the ABL Credit Agreement is permitted to adjust what is included in Eligible Inventory and Eligible In-Transit Inventory definitions and impose reserves under the ABL Facility, in its discretion, which could materially adversely affect the borrowing base availability. As a result of the foregoing, we may not have full or any access to borrowings or letters of credit under the ABL Facility based on the actual borrowing base calculation with respect to any period. As of the date of this Report, based on the most current borrowing base certificate delivered to the ABL Lenders, we had no borrowing availability under the ABL Facility as a result of limited U.S. Eligible Inventory and Eligible In-Transit Inventory, due

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primarily to timing of our U.S. projects. Any limitation on our ability to borrow against the ABL Facility may have a material adverse impact on our liquidity and our ability to fund future operations.

Amendment No. 2 to the ABL Credit Agreement expands the borrowing base calculation under the ABL Facility to include borrowing base qualified cash, which would be held in a specific borrowing base qualified cash account with Barclays. In addition, the borrowers must satisfy certain release conditions prior to the transfer of funds out of the borrowing base qualified cash account, and there is no guarantee that the borrowers will be able to satisfy such conditions at any given time. To the extent the Company maintains such borrowing base qualified cash account, the cash deposited into such account will be restricted under the terms of the ABL Credit Agreement and not available to the Company for other business purposes. The ABL Credit Agreement also requires us to dedicate a portion of our cash flow from operations to interest payments, thereby reducing the availability of cash flow to fund working capital, capital expenditures and other general corporate purposes.

Further, to the extent that no Covenant Relief Period is in effect, the ABL Credit Agreement provides for a full cash dominion period if certain thresholds are not met under the ABL Credit Agreement. During a full cash dominion period, Barclays has ability to conduct daily sweeps of our controlled accounts, which may place constraints on our cash management system and could impede our access to liquidity.

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

There were no unregistered sales of our equity securities during the three months ended December 31, 2023, that were not otherwise disclosed in a Current Report on Form 8-K. None.

### **Item 3. Defaults Upon Senior Securities**

None.

### **Item 4. Mine Safety Disclosures**

Not applicable.

### **Item 5. Other Information**

#### **(a) Amendment No. 2 to ABL Credit Agreement**

On May 8, 2024, the Company entered into Amendment No. 2 to the ABL Credit Agreement. Amendment No. 2 expands the borrowing base calculation under the ABL Credit Agreement to include borrowing base qualified cash, which is defined as the lesser of (a) the aggregate amount of cash (other than restricted cash) of the borrowers that is held in a

specific borrowing base qualified cash account and (b) \$100,000,000. After the deposit of any funds into the borrowing base qualified cash account, borrowers must satisfy certain release conditions prior to the transfer of funds out of the borrowing base qualified cash account. Amendment No. 2 also amended the ABL Credit Agreement to provide that if a Covenant Relief Period has occurred and is continuing, then there shall be no full cash dominion period under the ABL Credit Agreement. Amendment No. 2 defined the Covenant Relief Period as a period during which (a) no default or event of default has occurred and continuing and (b) either of the following shall exist: (i) the aggregate revolving credit exposure of the ABL Lenders is not greater than \$0 or (ii) each of (A) the amount of aggregate borrowings under the ABL Facility is not greater than \$0; (ii) the non-cash collateralized LC exposure (as defined under the ABL Credit Agreement) is not greater than \$15.0 million; and (C) the borrowing base exceeds the sum of all lenders' letter of credit exposure.

Amendment No. 2 amended the ABL Credit Agreement to provide that the Company will not, and its subsidiaries will not, permit Total Liquidity (as defined in the ABL Credit Agreement) at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) (A) if the borrowing base then in effect is less than \$200.0 million, \$50.0 million and (B) if the borrowing base then in effect is greater than or equal to \$200.0 million, \$64.0 million. In addition, unless a Covenant Relief Period is then in effect, the Company agreed that it will not, and its subsidiaries will not, permit Excess Availability to be less than the greater of (i) \$15.0 million and (ii) 10% of the Line Cap then in effect.

The foregoing description of Amendment No. 2 is qualified in its entirety by reference to the full text of the Amendment No. 2, a copy of which is filed as Exhibit 10.3 hereto and is incorporated herein by reference.

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

During the three months ended **December 31, 2023** **March 31, 2024**, the following directors or "officers" (as defined in Rule 16a-1(f) under the Exchange Act) of the Company adopted, modified, or terminated "Rule 10b5-1 trading arrangements" and/or "non-Rule 10b5-1 trading arrangements" (each as defined in Item 408 of Regulation S-K).

*John Zahurancik, Senior Vice President and President, Americas*

On **December 15, 2023** **March 14, 2024**, Mr. Zahurancik adopted a modified his existing Rule 10b5-1 sales plan that (the "Amended Zahurancik Plan"), initially adopted on December 15, 2023. The Amended Zahurancik Plan is intended to satisfy the affirmative defense of Rule 10b5-1(c) (the "Zahurancik Plan"). The Amended Zahurancik Plan provides for the potential exercise of vested stock options and the associated sale of up to an aggregate of 25,000 shares of Class A common stock. The Zahurancik Plan terminates on the earlier of (i) **March 26, 2024** **June 20, 2024**, or (ii) such date the Amended Zahurancik Plan is otherwise terminated according to its terms.

*Peter Williams, Senior Vice President and Chief Supply Chain and Manufacturing Officer*

On December 7, 2023, Mr. Williams terminated a sell-to-cover instruction intended to satisfy the affirmative defense of Rule 10b5-1(c) (the "Williams Sell-to-Cover Instruction"), originally adopted on September 20, 2023 with respect to his tax obligations due in connection with the vesting of an aggregate of 25,765 restricted stock units, all of which remained unvested at the time of termination. During the three months ended December 30, 2023, Zahurancik sold no shares of Class A common stock were sold pursuant under his original Rule 10b5-1 sales plan prior to the Williams Sell-to-Cover Instruction, modification on March 14, 2024.

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#### Item 6. Exhibits

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

Incorporated by Reference					
Exhibit No.	Exhibit Description	Form	File No.	Exhibit No.	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	November 3, 2021
3.2	<a href="#">First Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	December 22, 2022
3.3	<a href="#">Amended and Restated Bylaws of Fluence Energy, Inc.</a>	8-K	001-40978	3.2	November 3, 2021
10.1*†	<a href="#">Master Assignment and Assumption and Issuing Bank Joinder dated as of December 15, 2023</a>				
10.2*†	<a href="#">Transition Services Agreement, executed January 19, 2024, by and between Fluence Energy, LLC and Krishna Vanka</a>				
10.3*†	<a href="#">Offer Letter, dated April 1, 2021, between Fluence Energy, LLC and Carol Couch</a>				
10.4*†	<a href="#">Transition Services Agreement dated July 5, 2023, by and between Fluence Energy, LLC and Carol Couch</a>				
10.5*†	<a href="#">Amendment of the Fluence Energy, LLC Phantom Equity Incentive Plan, dated October 17, 2021</a>				

10.6*	<a href="#">SPT Invest Management, Sarl Joinder, dated December 19, 2023, to the Registration Rights Agreement, dated November 1, 2021, by and among Fluence Energy, Inc. and the other parties named therein</a>
10.7*	<a href="#">SPT Invest Management, Sarl Joinder, dated December 19, 2023, to the Stockholders Agreement, dated October 27, 2021, by and among Fluence Energy, Inc. and the other parties named therein</a>
31.1*	<a href="#">Certification of the Company's Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Certification of the Company's Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1**	<a href="#">Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2**	<a href="#">Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.

Exhibit No.	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit No.	Filing Date
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	November 3, 2021
3.2	<a href="#">First Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Fluence Energy, Inc.</a>	8-K	001-40978	3.1	December 22, 2022
3.3	<a href="#">Amended and Restated Bylaws of Fluence Energy, Inc.</a>	8-K	001-40978	3.2	November 3, 2021
10.1*	<a href="#">Master Receivables Purchase Agreement by and among Fluence Energy, LLC and any other seller from time to time party thereto, as sellers and servicers, and Credit Agricole Corporate and Investment Bank, dated February 27, 2024.</a>				
10.2*	<a href="#">Amendment No. 1, dated April 8, 2024, to the Syndicated Facility Agreement, dated as of November 22, 2023, among Fluence Energy, LLC as the Parent Borrower, the other borrowers party thereto, Fluence Energy, Inc., as the Parent, the other guarantors party thereto, the lenders party thereto, and Barclays Bank PLC, as Administrative Agent.</a>				
10.3*	<a href="#">Amendment No. 2, dated May 8, 2024, to the Syndicated Facility Agreement, dated as of November 22, 2023, among Fluence Energy, LLC as the Parent Borrower, the other borrowers party thereto, Fluence Energy, Inc., as the Parent, the other guarantors party thereto, the lenders party thereto, and Barclays Bank PLC, as Administrative Agent.</a>				
31.1*	<a href="#">Certification of the Company's Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
31.2*	<a href="#">Certification of the Company's Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>				
32.1**	<a href="#">Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				
32.2**	<a href="#">Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>				

101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.

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		Incorporated by Reference
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.	
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.	
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.	
104	Cover Page Interactive Data File - The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.	

\* Indicates a management or compensatory plan or arrangement.

\* Filed herewith.

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

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**SIGNATURES**

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

Fluence Energy, Inc.

Date: **February 8, 2024** May 9, 2024

By: /s/ Julian Nebreda

Julian Nebreda  
*Chief Executive Officer and President (Principal Executive Officer)*

Date: **February 8, 2024** May 9, 2024

By: /s/ Ahmed Pasha

Ahmed Pasha  
*Chief Financial Officer and Senior Vice President (Principal Financial Officer)*

**53 63**

**Exhibit 10.1**

[Execution Version](#)

**MASTER ~~ASSIGNMENT~~ RECEIVABLES PURCHASE AGREEMENT**

among

FLUENCE ENERGY, LLC

as a Seller and a Servicer,

THE OTHER SELLERS AND ASSUMPTION  
SERVICERS FROM TIME TO TIME PARTY HERETO

and

CREDIT AGRICOLE CORPORATE AND ISSUING INVESTMENT BANK, JOINDER  
as Purchaser

Dated as of February 27, 2024

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Exhibit C	-	Representations and Warranties
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Exhibit E	-	Eligibility Criteria
Exhibit F	-	Servicer Termination Events
Exhibit G	-	Accounts
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Exhibit I	-	Form of Joinder Agreement

Annex I	-	Electronic Services Schedule
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MASTER RECEIVABLES PURCHASE AGREEMENT

This Master Assignment and Assumption and Issuing Bank Joinder MASTER RECEIVABLES PURCHASE AGREEMENT (this "Assignment and Assumption Agreement") is dated entered into as of the Effective Date set forth below and is entered into February 27, 2024, by and between each of the parties listed on Annex II among FLUENCE ENERGY, LLC, a Delaware limited liability company ("Fluence") and any other seller from time to time party hereto as an Assignor (each, an in such capacity, a "Assignor Seller" and collectively, the "Assignors Sellers"), and CITIBANK, N.A. as servicers (each, in such capacity, a "Servicer" and collectively, the "Servicers"), and CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK ("CACIB"), as purchaser (the "Assignee Purchaser"). Capitalized

## RECITALS

Each Seller desires to sell certain of its Receivables from time to time, and the Purchaser may be willing to purchase from each Seller such Receivables, in which case the terms set forth herein shall apply to such purchase. Each capitalized term used but not defined herein shall have the meaning set forth in, or by reference in, Exhibit A hereto, and the interpretive provisions set out in Exhibit A hereto shall be applied in the interpretation of this Agreement.

Accordingly, the parties hereto agree as follows:

### 1. Sale and Purchase.

(a) **Sales of Receivables.** From time to time during the term of this Agreement, one or more Sellers may submit to the Purchaser a request (a "Purchase Request") via the Technology Platform that the Purchaser purchase from such Seller or Sellers the Proposed Receivables described in such Purchase Request as well as the proposed Purchase Date thereof; provided, however, and notwithstanding anything herein to the contrary, if (i) the Technology Platform is not operational or is otherwise offline or (ii) the Purchaser has, in its discretion, instructed the Sellers that the Technology Platform is no longer available for use, then such Seller or Sellers may deliver a Purchase Request to the Purchaser in form and substance reasonably satisfactory to the Purchaser, and this Agreement shall be construed and interpreted accordingly, *mutatis mutandis*. If the Purchaser, in its sole and absolute discretion, accepts a Purchase Request, then the Purchaser shall purchase, and such Seller or Sellers shall sell, all of each applicable Seller's right, title and interest (but none of such Seller's underlying obligations to the applicable Account Debtor) with respect to such Proposed Receivables as of the applicable Purchase Date (all such Proposed Receivables, once sold and purchased, or purported to be sold and purchased, hereunder, collectively the "Purchased Receivables").

(b) **UNCOMMITTED ARRANGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EACH SELLER EXPRESSLY AGREES THAT THE PURCHASER WILL NOT BE OBLIGATED TO PURCHASE ANY RECEIVABLE FROM ANY SELLER, AND THE PURCHASER MAY REFUSE, FOR ANY REASON OR FOR NO REASON, TO PURCHASE ANY RECEIVABLE OFFERED FOR PURCHASE BY ANY SELLER REGARDLESS OF WHETHER THE VARIOUS CONDITIONS TO PURCHASE SET FORTH IN THIS AGREEMENT HAVE BEEN SATISFIED.**

(c) **Conditions to Effectiveness.** This Agreement shall become effective at such time as each of the conditions precedent set forth on Exhibit B to this Agreement has been satisfied to the satisfaction of the Purchaser.

(d) **Conditions Precedent to Each Purchase.** Without limiting the uncommitted nature of the Purchaser's obligations as discussed in Section 1(b), the Purchaser shall not purchase the Proposed Receivables described in any Purchase Request unless:

(i) the Purchaser has received a Purchase Request via the Technology Platform (or, if applicable, in physical form in form and substance reasonably satisfactory to the Purchaser) with respect to such Proposed Receivables at least three (3) Business Days (or such shorter period as is agreed to by the

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Purchaser in its sole discretion) prior to the applicable Purchase Date, together with any such additional supporting documentation that the Purchaser may have reasonably requested;

(ii) the Purchaser has accepted such Purchase Request and notified the applicable Sellers thereof;

(iii) each of the representations and warranties made by each Seller, Servicer and any Performance Guarantor in this Agreement and each of the other Transaction Documents is true and correct in all material respects as of such Purchase Date or, in the case of any representation or warranty that speaks as to a particular date or period, as of that particular date or period; and

(iv) immediately following the sale and purchase of the Proposed Receivables set forth in the related Purchase Request, (A) the Outstanding Amount of all Purchased Receivables will not exceed the Maximum Facility Amount, (B) the Outstanding Amount of all Inventory Purchased Receivables will not exceed \$50,000,000 and (C) the Outstanding Amount with respect to the Purchased Receivables payable by any Account Debtor will not exceed such Account Debtor's Purchase Sublimit.

Each Purchase Request submitted by any Seller shall constitute a representation and warranty that each of the conditions outlined in this Section 1(d) has been satisfied.

(e) **Purchase Price.** The purchase price for each Purchased Receivable purchased on any Purchase Date shall equal (i) the Net Invoice Amount of such Purchased Receivable, minus (ii) the Discount (such amount herein referred to as the "Purchase Price"). The Purchaser shall pay the Funding Percentage of the Purchase Price with respect to each Purchased Receivable to the applicable Seller on the relevant Purchase Date (such amount, the "Funded Amount") and the remainder shall constitute a Deferred Purchase Price applicable to such Purchased Receivable to be paid in accordance with terms of this Agreement. The Funded Amount shall be deposited into the Sellers' Account in immediately available funds denominated in Dollars. For the avoidance of doubt and not in limitation of any other provision of this Agreement, it is understood and agreed that (i) upon the payment of the Funded Amount, all of the applicable Seller's right, title and interest in and to the applicable Purchased Receivable shall automatically be sold and assigned to the Purchaser as absolute owner thereof without the need for any further action, and (ii) the Deferred Purchase Price is the property of the applicable Seller and

represents part of the Purchase Price to be paid in connection with the related Purchased Receivable, due and payable to such Seller in accordance with the terms of this Agreement (subject to any obligations to transfer Seller Dilutions to the Purchaser ).

(f) True Sale; No Recourse. Except as otherwise provided in this Agreement, each purchase of the Purchased Receivables is made without recourse to any Seller and no Seller shall have liability to the Purchaser for the failure of any Account Debtor to pay any Purchased Receivable when it is due and payable under the terms applicable thereto. The Purchaser and each Seller have structured the transactions contemplated by this Agreement as an absolute and irrevocable sale, and the Purchaser and each Seller agree to treat each such transaction as a "true sale" for all purposes, including, without limitation, in their respective books, records, computer files, tax returns, regulatory and governmental filings and shall reflect such sale in their respective financial statements. Each Seller will advise all Persons inquiring about the ownership of any Purchased Receivable that all Purchased Receivables have been sold to the Purchaser. In the event that, contrary to the mutual intent of the parties hereto, any purchase of Purchased Receivables is not characterized as a sale, each Seller shall, effective as of the date hereof, be deemed to have granted to the Purchaser (and each Seller hereby does grant to the Purchaser), in addition to and not in substitution for the rights and remedies described in Section 5(g) hereof, a first priority security interest in and to any and all present and future Purchased Receivables and the proceeds thereof to secure all obligations of such Seller arising in connection with this Agreement and each of the other Transaction Documents, whether now or hereafter existing, due or to become due, direct or indirect, absolute or contingent. This Agreement shall be deemed to be a security agreement under Applicable Law. The Purchaser may, at its discretion, file one or more UCC financing statements (or, if applicable, any foreign law equivalent thereof) evidencing the sale of the Purchased Receivables as well as the foregoing grant of security. With respect to such grant of a security interest, the Purchaser may at its option exercise from time to time any and all rights and remedies available to it hereunder,

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under the UCC or otherwise. Each Seller agrees that five (5) Business Days shall be reasonable prior notice to such Seller of the date of any public or private sale or other disposition of all or any of the Purchased Receivables.

(g) Seller Representative. Each Seller hereby appoints Fluence as its agent, attorney-in-fact and representative (in such capacity, the "Seller Representative"), and Fluence accepts such appointment, for the purpose of (i) making any Purchase Requests or other requests required under this Agreement, including, without limitation, the delivery of any Purchase Request to the Purchaser, (ii) the receipt of any notice of required repurchase pursuant to Section 5(b), (iii) the giving and receipt of any other notices to, or demand of, any Seller under this Agreement, (iv) the delivery of all documents, reports, financial statements and written materials required to be delivered by any Seller under this Agreement, (v) the receipt of all payments owing to a Seller hereunder, together with the subsequent allocation of such payment proceeds between the Sellers, (vi) taking any and all other actions required to be undertaken hereunder by the Seller Representative, and (vii) all other purposes incidental to any of the foregoing. Each Seller agrees that any action taken by the Seller Representative as the agent, attorney-in-fact and representative of such Seller shall be binding upon such Seller to the same extent as if directly taken by such Seller.

(h) Successor Term SOFR Index.

(i) If the Purchaser determines (which determination shall be final and conclusive, absent manifest error) that either (A) the applicable supervisor or administrator (if any) of Term SOFR or a Governmental Authority having jurisdiction over the Purchaser has published or made a public statement identifying the specific date after which Term SOFR shall no longer be used for determining interest rates for loans (either such date, a "Term SOFR Termination Date"), (B) a rate other than Term SOFR has become a widely recognized benchmark rate for newly originated loans in Dollars in the U.S. market, or (C) a public statement or publication of information was made by the regulatory supervisor for the administrator (if any) of Term SOFR or a Governmental Authority having jurisdiction over the Purchaser has made a public statement that Term SOFR is no longer representative, then the Purchaser may (in consultation with the Sellers) choose a replacement index for Term SOFR and make adjustments to applicable margins and related amendments to this Agreement as referred to below such that, to the extent practicable, the all-in discount rate based on the replacement index will be substantially equivalent to the all-in Term SOFR-based discount rate in effect prior to its replacement.

(ii) The Purchaser and the Sellers shall enter into an amendment to this Agreement to reflect the replacement index, the adjusted margins and such other related amendments as may be appropriate, in the discretion of the Purchaser, for the implementation and administration of the replacement index-based rate.

(iii) Selection of the replacement index, adjustments to the applicable margins, and amendments to this Agreement (A) will be determined with due consideration to the then-current market practices for determining and implementing a discount rate for non-recourse and limited recourse accounts receivable purchase facilities in the U.S., and (B) may also reflect adjustments to account for (x) the effects of the transition from Term SOFR to the replacement index and (y) yield- or risk-based differences between Term SOFR and the replacement index.

(iv) Until an amendment reflecting a new replacement index in accordance with this Section 1(h) is effective, each Purchase Request shall continue to be funded using Term SOFR as a component of the Discount; provided, however, that if the Purchaser determines (which determination shall be final and conclusive, absent manifest error) that a Term SOFR Termination Date has occurred, then upon such occurrence of the Term SOFR Termination Date, (A) no Purchase Request shall be funded using Term SOFR as a component of the Discount and (B) all outstanding and future Purchase Requests shall be funded using a Discount that is calculated

based on the Cost of Funds Rate plus a margin, which margin shall have the effect of approximating the return to the Purchaser that was expected prior to the existence of such condition until such time as an amendment reflecting a replacement index and related matters as described above is implemented.

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(v) Notwithstanding anything to the contrary contained herein, if at any time the replacement index is less than zero, at such times, such index shall be deemed to be zero for purposes of this Agreement.

2. Representations and Warranties. Each Seller and each Servicer represents and warrants to the Purchaser on each Purchase Date that (i) the representations and warranties set forth on Exhibit C hereto are true and correct in all respects as of such Purchase Date or, in the case of any representation or warranty that speaks as to a particular date or period, as of that particular date or period and (ii) each Proposed Receivable is an Eligible Receivable.

3. Covenants. Each Seller and each Servicer agrees to perform each of the covenants set forth on Exhibit D hereto.

4. Servicing Activities.

(a) Appointment of Servicer. The Purchaser appoints each Seller as its servicer and agent (each, in such capacity, the "Servicer" and collectively, the "Servicers") for the administration and servicing of its Purchased Receivables sold by such Person to the Purchaser hereunder, and each Seller hereby accepts such appointment and agrees to assume the duties and the administration and servicing obligations as a Servicer, and perform all necessary and appropriate commercial servicing and collection activities in seeking the timely payment of amounts due and owing by any Account Debtor (including the identification of the proceeds of the Purchased Receivables and related record-keeping that shall be made available to the Purchaser upon its reasonable request) all in accordance with Applicable Laws, with reasonable care and diligence, including, without limitation, diligently and faithfully performing all servicing and collection actions (including, if necessary, acting as party of record in foreign jurisdictions); provided, however, that such appointment as Servicer shall not release Seller from any of its duties, responsibilities, liabilities and obligations resulting from or arising hereunder. In connection with its servicing obligations, each Servicer shall (i) be responsible for identifying, matching and reconciling any payments received from Account Debtors with the Receivable associated with such payment and (ii) perform its duties under the Contract related to the Purchased Receivables with the same care and applying the same policies as it applies to its own Receivables generally and would exercise and apply if it owned the Purchased Receivables and shall act to maximize Collections thereon.

(b) Collection Accounts; Deposit Account Control Agreements. Each Seller and Servicer covenants and agrees (i) to direct each Account Debtor to pay all amounts owing under such Purchased Receivables only to a Collection Account or directly to the Purchaser's Account, (ii) not to change such payment instructions while any Purchased Receivable remains outstanding, (iii) not to permit funds other than amounts owing under the Purchased Receivables to be deposited into any Collection Account, (iv) to take any and all other reasonable actions, including actions requested by the Purchaser, to ensure that all amounts owing under the Purchased Receivables will be deposited exclusively to such Collection Account or directly to the Purchaser's Account and (v) to hold in trust as the Purchaser's exclusive property and safeguard for the benefit of the Purchaser all Collections and other amounts remitted or paid to such Seller or Servicer (or any of their respective Affiliates) in respect of Purchased Receivables for prompt deposit into the Purchaser's Account in the manner set forth in Section 4(c) below. Each Seller hereby grants to the Purchaser a security interest in such Seller's Collection Account as additional collateral to secure the payment and performance of such Seller's obligations to the Purchaser hereunder and under each of the other Transaction Documents or as may be determined in connection therewith by Applicable Law. Each Collection Account shall be subject to a Deposit Account Control Agreement at all times that a Seller has directed any Account Debtors to pay amounts owing under Purchased Receivables into such Collection Account and any Collections are deposited in such Collection Account. Prior to the occurrence of any Servicer Termination Event, each Seller (or Servicer on their behalf) shall be permitted to make withdrawals and distributions from each applicable Collection Account. After the occurrence of any Servicer Termination Event, the Purchaser will be authorized to give notice of exclusive control under each Deposit Account Control Agreement and, upon giving such notice (each, an "Activation Notice"), will have exclusive authority to make withdrawals and distributions from each Collection Account until the Final Collection Date.

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(c) Transfer of Collections to the Purchaser. Subject to Sections 4(d) and 5(a) below, each Seller and Servicer covenant and agree to deposit in the Purchaser's Account all Collections and other amounts received (or deemed received) by any Seller or Servicer (or any of their respective Affiliates) with respect to Purchased Receivables (whether such amounts were received by such Seller or Servicer directly or were deposited in a Collection Account or other account maintained by such Seller or

Servicer or otherwise) without adjustment, setoff or deduction of any kind or nature within two Business Days of receipt (or deemed receipt); provided, however, on any day on which a Seller or Servicer delivers Collections to the Purchaser with respect to a Purchased Receivable, such Seller or Servicer shall, with respect to such Purchased Receivable, in lieu of transferring funds to the Purchaser, deduct from such amounts to be transferred an amount equal to the Deferred Purchase Price Percentage of such Collections, up to the amount of any remaining and unused Deferred Purchase Price with respect to such Purchased Receivable in settlement of an equal amount of the Deferred Purchase Price obligation of the Purchaser on a dollar for dollar basis until such time as the Deferred Purchase Price has been reduced to \$0. Until remitted to the Purchaser's Account, such Seller or Servicer will hold such funds in trust as the Purchaser's exclusive property and safeguard such funds for the benefit of the Purchaser.

(d) Misdirected Payments. If, prior to the delivery of an Activation Notice by the Purchaser for such Collection Account, any Seller or Servicer receives any payment into a Collection Account that does not represent a Collection on a Purchased Receivable, such Seller and Servicer shall promptly identify such payment and remove such payment from such Collection Account within two Business Days of receipt. Following delivery of an Activation Notice by the Purchaser for a Collection Account, the Purchaser will return such amounts received into such Collection Account to the applicable Seller upon receipt of satisfactory evidence that such amounts do not constitute Collections on Purchased Receivables.

(e) No Changes to Receivables. Other than as specifically permitted by Section 5(a) (i) neither any Seller nor any Servicer will amend, modify or extend the payment terms under any Purchased Receivable, unless approved in writing in advance by the Purchaser, and shall not otherwise waive or permit or agree to any deviation from the terms or conditions of any Purchased Receivable and (ii) neither any Seller nor any Servicer will take, or cause to be taken, any action that otherwise reduces the amount payable of any Purchased Receivable or materially impairs the full and timely collection thereof.

(f) Reconciliation Report. Concurrently with (a) each transfer of funds by any Seller to the Purchaser's Account pursuant to Sections 4 and 5 hereof and (b) each request by any Seller for a return of payments received by the Purchaser that do not represent Collections on Purchased Receivables in accordance with Section 4(d), the Servicers shall provide to the Purchaser, in form and substance reasonably satisfactory to the Purchaser, a full reconciliation of all Collections and adjustments (including repurchases thereof, indemnifications and setoffs with respect thereto) with respect to each Purchased Receivable of an Account Debtor for which Collections were received or deemed received (each, a "Reconciliation Report") and, if requested by the Purchaser, a report of any creation and adjustments in Deferred Purchase Prices, if any. The Servicers shall submit each Reconciliation Report to the Purchaser via the Technology Platform; provided, however, and notwithstanding anything herein to the contrary, if (i) the Technology Platform is not operational or is otherwise offline or (ii) the Purchaser has, in its discretion, instructed the Servicers that the Technology Platform is no longer available for use, then the Servicers may deliver a written Reconciliation Report to the Purchaser, and this Agreement shall be construed and interpreted accordingly, *mutatis mutandis*.

(g) Non-Payment Report. If a Purchased Receivable remains unpaid, in part or in full, past the date that is five (5) days after the applicable Due Date therefor, the applicable Servicer shall report to the Purchaser in a written report describing in reasonable detail the cause of such non-payment, including whether a Dispute or Insolvency Event exists with respect to the applicable Account Debtor (each a "Non-Payment Report"). In the event a Purchased Receivable has not been paid in full by the date that is ten (10) days after the Due Date therefor and the reason for such non-payment is not a Dispute or an Insolvency Event, the Purchaser may in its sole discretion (i) contact such Account Debtor by phone or in person to discuss the status of such Purchased Receivable and to inquire whether such payment delay or non-payment is due to a Dispute or Insolvency Event and when payment can be expected and/or (ii) take any other lawful action to collect such Purchased Receivable directly from

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such Account Debtor and/or (iii) terminate the appointment of the relevant Seller as Servicer with respect to such Purchased Receivable.

(h) Servicer Indemnification. Each Servicer hereby agrees to indemnify and hold harmless the Purchaser and its officers, directors, agents, representatives, shareholders, counsel, employees and each of their respective Affiliates, successors and assigns (each, an "Indemnified Person") from and against any and all damages, claims, losses, costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees and expenses) (all of the foregoing being collectively referred to as "Indemnified Amounts") arising out of or resulting from or related to (i) any failure by any Servicer to perform its duties or obligations as Servicer hereunder in accordance with this Agreement or to comply with any Applicable Law, (ii) any breach of any Servicer's representations, warranties or covenants under any Transaction Document, (iii) any claim brought by any Person other than an Indemnified Person arising from any Servicer's servicing or collection activities with respect to the Purchased Receivables or (iv) the failure by a Seller to pay when due any amount described in Section 5(e); provided, however, that in all events there shall be excluded from the foregoing indemnification any damages, claims, losses, costs, expenses or liabilities to the extent resulting solely from (x) the gross negligence or willful misconduct of an Indemnified Person as determined in a final non-appealable judgment by a court of competent jurisdiction or (y) the failure of an Account Debtor to pay any sum due under its Purchased Receivables by reason of the financial or credit condition of such Account Debtor (including, without limitation, the occurrence of an Insolvency Event with respect to the applicable Account Debtor). Any amount due and payable pursuant to this Section shall be paid to the Purchaser's Account in immediately available funds by no later than the second (2nd) Business Day following demand therefor by the Purchaser.

(i) Replacement of Servicers. Following the occurrence of a Servicer Termination Event, the Purchaser may, at its discretion, replace any or all Servicers with itself or any agent for the Purchaser with respect to any and all Purchased Receivables. Sellers shall be responsible for all reasonable costs and expenses incurred in connection with such replacement and shall promptly reimburse the Purchaser with respect to same.

(j) The Purchaser as Attorney-in-Fact. Sellers hereby appoint the Purchaser as the true and lawful attorney-in-fact of Sellers, with full power of substitution, coupled with an interest, and hereby authorizes and empowers the Purchaser in the name and on behalf of Sellers at any time following removal of any Seller as Servicer pursuant to Sections 4(g) or 4(i), to take such actions, and execute and deliver such documents, as the Purchaser deems necessary or advisable in connection with any applicable Purchased Receivable (i) to perfect the purchase and sale of such Purchased Receivable, including, without limitation, to send a notice of such purchase and sale to the Account Debtor of the transfers contemplated hereby and the sale of such Purchased Receivable or (ii) to make collection of and otherwise realize the benefits of such Purchased Receivable. At any time that any Seller is no longer serving as Servicer hereunder, the Purchaser shall have the right to bring suit, in the Purchaser's or any Seller's name, and generally have all other rights of an owner and holder respecting each applicable Purchased Receivable, including without limitation the right to accelerate or extend the time of payment, settle, compromise, release in whole or in part any amounts owing on such Purchased Receivables and issue credits in its own name or the name of such Seller. At any time following removal of any Seller as Servicer, the Purchaser may endorse or sign the Purchaser's or any Seller's name on any checks or other instruments with respect to any applicable Purchased Receivables or the goods covered thereby. The Purchaser shall not be liable for any actions taken by it in accordance with this Section unless such actions constitute the gross negligence or willful misconduct of the Purchaser as determined by a court of competent jurisdiction in a final and non-appealable judgment. This power of attorney, being coupled with an interest, is irrevocable and shall not expire until the Final Collection Date.

(k) Payment of Deferred Purchase Price. In the event that Purchaser receives Collections with respect to a Purchased Receivable, and the full Deferred Purchase Price Percentage of such Collections for any reason have not been deducted therefrom and paid to Seller in accordance with Section 4(c) above, Purchaser shall promptly remit an amount equal to the Deferred Purchase Price Percentage of such Collections to Seller up to the amount of any remaining and unpaid Deferred Purchase Price with respect to such Purchased Receivable in settlement of an equal amount of the Deferred Purchase Price obligation of the Purchaser on a dollar for dollar basis until such time as the Deferred Purchase Price has been reduced to \$0.

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## 5. Seller Dilutions; Repurchase Events; Indemnities and Set-Off.

(a) Seller Dilutions. If, on any day, the outstanding balance of a Purchased Receivable is reduced (but not cancelled) as a result of any Dilution, the applicable Seller shall be deemed to have received on such day a Collection of such Purchased Receivable in the amount of such reduction. If on any day a Purchased Receivable is cancelled (or reduced to zero) as a result of any Dilution, the applicable Seller shall be deemed to have received on such day a Collection of such Purchased Receivable in the amount of the Outstanding Amount of such Purchased Receivable (as determined immediately prior to such Dilution). Any amount deemed to have been received under this Section 5(a) shall constitute a "Seller Dilution."

(b) Repurchase Events. If any of the following events (each, an "Repurchase Event") occurs with respect to a Purchased Receivable:

(i) such Purchased Receivable was not an Eligible Receivable at the time of purchase;

(ii) any Seller or Servicer fails to perform or observe any other term, covenant or agreement with respect to such Purchased Receivable set forth in any Transaction Document or any related Contract and such failure shall or could reasonably be expected to have an adverse effect on the ability to collect the Net Invoice Amount of such Purchased Receivable on the Due Date thereof;

(iii) without limiting clause (ii) above, any Seller or Servicer fails to comply with its obligation set forth in clause (f) of Exhibit D hereto to, at its expense, promptly execute and deliver all further instruments and documents, and take all further action that the Purchaser may reasonably request, from time to time, as may be necessary for the Purchaser to prosecute any claim under any applicable credit insurance policy;

(iv) any Seller or Servicer instructs the related Account Debtor to pay any amount with respect to such Purchased Receivable to an account other than the applicable Collection Account or the Purchaser's Account; or

(v) a Dispute has arisen with respect to any Purchased Receivable,

then, the applicable Seller shall within five (5) Business Days deliver notice thereof to the Purchaser and, at the time, in the manner and otherwise as hereinafter set forth, repurchase such Purchased Receivable at the Purchaser's option and demand. The repurchase price for a Purchased Receivable shall be the amount equal to (i) the Purchase Price for such Purchased Receivable, net of any Collections or other payments received by the Purchaser with respect to such Purchased Receivable, *plus* (ii) the Discount applicable to such Purchased Receivable and accrued for the period from the applicable Purchase Date to the date on which such Purchased Receivable is repurchased, *plus* (iii) all other amounts then payable by the applicable Seller under the Transaction Documents with respect to such Purchased Receivable as of the date on which such Purchased Receivable is repurchased (such amount herein referred to as the "Repurchase Price"). The Repurchase Price for any Purchased Receivable shall be paid to the Purchaser's Account in immediately available funds by no later than the second (2<sup>nd</sup>) Business Day following demand therefor by the Purchaser. Upon the payment in full of the repurchase price with respect to a Purchased Receivable, such Purchased Receivable shall hereby be, and be deemed to be, repurchased by such Seller from the Purchaser without recourse or warranty by the Purchaser. To the extent an affected Purchased Receivable has a Deferred Purchase Price that is

greater than \$0, the applicable Seller shall receive a credit against the Repurchase Price of such Purchased Receivable on a dollar for dollar basis (which credit will also reduce such Deferred Purchase Price on the same basis).

(c) Seller Indemnification. Each Seller hereby agrees jointly and severally to indemnify each Indemnified Person and hold each Indemnified Person harmless from and against any and all Indemnified Amounts arising out of or resulting from or related to any of the following: (i) any representation or warranty made or

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deemed made by such Seller (or any of its officers) under or in connection with this Agreement or any other Transaction Document that shall have been incorrect when made; (ii) the failure by any Seller to perform any of its covenants or obligations under any Transaction Document; (iii) the failure by any Seller or any Purchased Receivable or Contract to comply with any Applicable Law; (iv) the failure to vest in the Purchaser ownership of, and a first-priority perfected security interest (within the meaning of the UCC) in, each Purchased Receivable and all Collections in respect thereof, free and clear of any Adverse Claim; (v) any Dispute, Dilution or any other claim resulting from the services performed or merchandise furnished in connection with any Purchased Receivable or the furnishing or failure to furnish such services or merchandise or relating to collection activities with respect to any Purchased Receivable; (vi) any suit or claim arising out of or based on the actions or activities of any Seller and related to any Receivable, any Contract or any Transaction Document; (vii) the failure of any Seller to notify any Account Debtor of the sale of the Purchased Receivables to the Purchaser pursuant to this Agreement; (viii) the commingling by any Seller of Collections at any time with other funds of such Seller or any other Person or (ix) any civil penalty or fine assessed by OFAC or any other Governmental Authority administering any Anti-Money Laundering Law, Anti-Corruption Law or Sanctions, and all reasonable costs and expenses (including reasonable documented legal fees and disbursements) incurred in connection with defense thereof by, any Indemnified Person in connection with the foregoing; provided, however, that in all events there shall be excluded from the foregoing indemnification any Indemnified Amounts to the extent resulting solely from (x) the gross negligence or willful misconduct of an Indemnified Person as determined in a final non-appealable judgment by a court of competent jurisdiction or (y) the failure of an Account Debtor to pay any sum due under its Purchased Receivables by reason of the financial or credit condition of such Account Debtor (including, without limitation, the occurrence of an Insolvency Event with respect to the applicable Account Debtor). Any amount due and payable pursuant to this Section shall be paid to the Purchaser's Account in immediately available funds by no later than the second (2<sup>nd</sup>) Business Day following demand therefor by the Purchaser.

(d) Tax Matters.

(i) Indemnification. All payments on the Purchased Receivables or otherwise made hereunder from the Account Debtors, Servicer and Sellers will be made free and clear of any present or future taxes, levies, imposts, energy surcharges, duties, deductions, withholdings, assessments, fees or other charges whatsoever, including any interest, additions to tax or penalties applicable thereto (but for the avoidance of doubt not including taxes imposed upon the Purchaser with respect to its overall net income), including whether imposed on the making of such a payment or whether arising by reason of the sale of the Purchased Receivables to the Purchaser or relating to the underlying transactions between the applicable Seller and the related Account Debtors that gave rise to such Purchased Receivables (any such taxes, "Transaction Taxes") and Other Taxes, and the sum payable to the Purchaser shall be increased to the extent necessary to ensure that, after the making any withholding or payment of Transaction Taxes and Other Taxes, if any, the Purchaser receives on the due date and retains (free from any liability in respect of any Transaction Taxes and Other Taxes) a net sum equal to what it would have received and so retained, had no such withholding or payment of Transaction Taxes and Other Taxes been present, imposed, required or made. Each Seller jointly and severally will indemnify the Purchaser and hold the Purchaser harmless from any Transaction Taxes and Other Taxes, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any amount due and payable pursuant to this Section shall be paid to the Purchaser's Account in immediately available funds by no later than the second (2<sup>nd</sup>) Business Day following demand therefor by the Purchaser.

(ii) Form Delivery. The Purchaser will deliver any properly completed and executed documentation reasonably requested by Seller or Servicer as will allow Seller or Servicer to satisfy its tax reporting or withholding obligations to the extent the Purchaser is legally entitled to do so and the completion, execution and submission of such documentation would not in the Purchaser's judgment subject the Purchaser to any unreimbursed cost or expense or would prejudice the legal or commercial position of the Purchaser.

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(iii) Other Taxes. Each Seller shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Purchaser timely reimburse it for the payment of, any Other Taxes.

(e) **Set-Off.** Each Seller and Servicer hereby irrevocably instruct and authorize the Purchaser to setoff, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by the Purchaser or any branch, agency or Affiliate thereof, including the payment of the Purchase Price for any Proposed Receivables, to, or for the account of, any Seller, any Servicer or any of their respective Affiliates against amounts owing by each Seller or Servicer hereunder or under any other Transaction Document (even if contingent or unmatured).

(f) **UCC.** The rights granted to the Purchaser hereunder are in addition to all other rights and remedies afforded to the Purchaser as a secured party under the UCC.

6. **Notices.** Unless otherwise provided herein, all communications by any party to any other party hereunder or any other Transaction Document shall be in a writing personally delivered or sent by a recognized overnight delivery service, or certified mail, postage prepaid, return receipt requested, or by email to such party, as the case may be, at its address set forth on Exhibit H.

Each Seller and Servicer agree that the Purchaser may presume the authenticity, genuineness, accuracy, completeness and due execution of any email bearing a facsimile or scanned signature resembling a signature of an authorized Person of such Seller or Servicer without further verification or inquiry by the Purchaser. Notwithstanding the foregoing, the Purchaser in its sole discretion may elect not to act or rely upon such a communication and shall be entitled (but not obligated) to make inquiries or require further Seller or Servicer action to authenticate any such communication.

Any Purchase Request, and any supporting documentation in connection herewith or therewith, such as copies of invoices, not submitted via the Technology Platform may be sent by any Seller or Servicer by electronic mail attachment in portable document format (.pdf).

A party may change the address at which it is to receive notices hereunder by written notice in the foregoing manner given to the other parties hereto.

7. **Expenses.** Each Seller hereby agrees, jointly and severally, to reimburse the Purchaser on written demand for (a) all actual and reasonable costs and expenses (including due diligence expenses) incurred by the Purchaser in connection with the negotiation, preparation and execution of the Transaction Documents, including all reasonable fees and expenses of counsel to the Purchaser in connection therewith; (b) the administration (including periodic auditing as provided for herein) of this Agreement and the transactions contemplated thereby, including all reasonable expenses and accountants', consultants' and attorneys' fees incurred in connection with the administration and maintenance of this Agreement and the transactions contemplated thereby; (c) all reasonable and documented costs and expenses (including reasonable attorneys' fees and expenses) the Purchaser incurs in connection with the enforcement of this Section 7, or any of its other rights under this Agreement or any of the other Transaction Documents by such Seller; and (d) all Other Taxes.

8. **Interest on Overdue Amounts.** All amounts due for payment by any Seller or Servicer to the Purchaser pursuant to this Agreement shall accrue interest at the Overdue Payment Rate from the date on which payment thereof is due until the date on which payment thereof is made in accordance with the terms of this Agreement.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to the principles of conflicts of law thereof (other than Sections 5-1401 and 5 1402 of the New York General Obligations Law).

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10. **No Non-Direct Damages.** To the fullest extent permitted by Applicable Law, no Seller and no Servicer shall assert, and each such Seller and Servicer hereby waives, any claim against any Indemnified Person, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Transaction Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Transaction Documents or the transactions contemplated hereby or thereby; provided that the waiver provided for in this sentence shall not apply to damages resulting directly from such Indemnified Person's own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment.

11. **Joinder of Additional Sellers.** At any time during the term of this Agreement, with the written consent of the Purchaser in its sole and absolute discretion, one or more additional U.S. subsidiaries of Fluence (each, an "Additional Seller"), may join this Agreement as a Seller in all respects by delivering a Joinder Agreement to the Purchaser along with such other approvals, certificates, legal opinions and other documents as the Purchaser may request, in each case, in form and substance reasonably acceptable to the Purchaser. Upon receipt of such Joinder Agreement and such other documents, such Additional Seller shall become a Seller hereunder, subject to the rights, duties and obligations of a Seller in all respects.

12. **Joint and Several Obligations.** The obligations of the Sellers hereunder are joint and several. To the maximum extent permitted by Applicable Law, each Seller hereby waives any claim, right or remedy that such Seller now has or hereafter acquires against any other Seller that arises hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Purchaser against any Seller or any of its property which the Purchaser now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. In addition, each Seller hereby waives any right to proceed against the other Sellers, now or hereafter, for contribution, indemnity, reimbursement, and any other

suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which any Seller may now have or hereafter have as against the other Seller with respect to the transactions contemplated by this Agreement.

13. General Provisions.

(a) Final Agreement. This Agreement represents the final agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements with respect to such subject matter. No provision of this Agreement may be amended or waived except by a writing signed by the parties hereto. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that no Seller or Servicer may assign any of its rights hereunder without the Purchaser's prior written consent, given or withheld in the Purchaser's sole discretion. The Purchaser shall have the right, without the consent of or notice to the Sellers, to sell, transfer, negotiate, or grant participations in all or any part of, or any interest in, the Purchaser's obligations, rights and benefits hereunder (including in any Purchased Receivables).

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

(c) Execution; Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic mail attachment in portable document format (.pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

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(d) Termination. The term of this Agreement shall last from the initial effective date hereof until terminated by either the Purchaser or the Sellers at any time by thirty (30) days' prior written notice to the other party. Notwithstanding the foregoing, this Agreement, including all covenants, representations and warranties, repurchase obligations and indemnities made herein shall continue in full force and effect until the Final Collection Date. Each Seller's and Servicer's obligations to indemnify the Purchaser with respect to the expenses, damages, losses, costs and liabilities shall survive until the later of (x) the Final Collection Date and (y) all applicable statute of limitations periods with respect to actions that may be brought by the Purchaser under the Transaction Documents have run.

(e) Calculation of Interest. All interest amounts calculated on a per annum basis hereunder are calculated on the basis of a year of three hundred and sixty (360) days.

(f) WAIVER OF JURY TRIAL. EACH SELLER, EACH SERVICER AND THE PURCHASER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY APPLICATION, INSTRUMENT, DOCUMENT, AMENDMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER PURCHASE DOCUMENTS, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

(g) Consent to Jurisdiction. Any litigation based hereon, or arising out of, under or in connection with this Agreement or any other Transaction Document, may be brought and maintained in the courts of the State of New York sitting in New York County, New York or in the United States district court for the Southern District of New York; provided, any suit seeking enforcement against any Purchased Receivables or other property may be brought, at the Purchaser's option, in the courts of any jurisdiction where such Purchased Receivables or other property may be found. Each Seller and each Servicer hereby expressly and irrevocably submits to the jurisdiction of the courts of the State of New York sitting in New York County, New York and of the United States district court for the Southern District of New York for the purpose of any such litigation. Each Seller and each Servicer further irrevocably consents to the service of process by registered mail, postage prepaid, to the address specified on Exhibit H or by personal service within or without the State of New York. Each Seller and each Servicer expressly and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of any such litigation brought in any such court and any claim that any such litigation has been brought in an inconvenient forum.

(h) WAIVER OF IMMUNITIES. EACH PARTY HERETO HEREBY ACKNOWLEDGES AND AGREES THAT TO THE EXTENT THAT IT HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM THE JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID TO EXECUTION, EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, IT HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(i) Captions and Cross References. The various captions in this Agreement are provided solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement. Unless otherwise indicated, references in this Agreement to any Section, Schedule or Exhibit are to such Section or Schedule or Exhibit to this Agreement, as the case may be, and references in any Section, subsection, or clause to any subsection, clause or subclause are to such subsection, clause or subclause of such Section, subsection or clause.

(j) No Party Deemed Drafter. Each Servicer, Seller and the Purchaser agree that no party hereto shall be deemed to be the drafter of this Agreement.

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(k) PATRIOT Act. The Purchaser hereby notifies each other party hereto that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "PATRIOT Act"), it is required to obtain, verify and record information that identifies each such party, which information includes the name, address, tax identification number and other information that will allow the Purchaser to identify such party in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act. Promptly following any request therefor, each party to this Agreement shall deliver to the Purchaser all documentation and other information required by bank regulatory authorities requested by the Purchaser for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act or other applicable anti-money laundering laws, rules and regulations.

(l) Divisions. For all purposes under the Transaction Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (i) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (ii) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

(m) Accounting Treatment; Non-Reliance. Each Seller and each Servicer agrees and acknowledges that (i) it is a sophisticated party in relation to this Agreement; (ii) it has made its own independent decision to enter into the Agreement, the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby and, in connection therewith, has obtained such independent accounting, legal, tax, financial and other advice as it deems necessary and appropriate (including, without limitation, as to the appropriate treatment of such transactions for accounting, legal, tax and other purposes) and (iii) it has not relied upon any representation or advice from the Purchaser, any of their Affiliates or any of their respective directors, officers, employees, contractors, counsel, advisors or other representatives in this regard.

(n) Confidentiality. Each party hereto agrees to hold the Transaction Documents, the transactions contemplated thereby and all non-public information received by it in connection therewith from any other party hereto or its agents or representatives in confidence and agrees not to provide any Person with copies of this Agreement or such non-public information other than to (i) its Affiliates and any officers, directors, members, managers, employees, financing sources or outside accountants, auditors or attorneys of such party or its Affiliates, (ii) any prospective or actual assignee or participant which (in each case) has signed a confidentiality agreement containing provisions substantively similar to this Section 13(n) or has agreed to be subject to the terms of this Section 13(n), (iii) credit support providers (including any providers of trade credit insurance) if they agree to hold it confidential pursuant to customary commercial terms, (iv) Governmental Authorities with appropriate jurisdiction (including filings required under securities Laws) and (v) appropriate filings under the UCC. Notwithstanding the above stated obligations, the parties hereto will not be liable for disclosure or use of such information which: (i) was required by Applicable Law, including pursuant to a valid subpoena or other legal process, (ii) is disclosed or used in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Transaction Document or the enforcement of rights hereunder or thereunder, (iii) was in such Person's possession or known to such Person prior to receipt or (iv) is or becomes known to the public through disclosure in a printed publication (without breach of any of such Person's obligations hereunder).

(o) Third Party Rights. Other than as specifically provided in this Agreement, no Person not a party to this Agreement shall be deemed a third party beneficiary hereof.

(p) Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Purchaser could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of any Seller or Servicer in respect of any such sum due from it to the Purchaser hereunder shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that

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on the Business Day following receipt by the Purchaser of any sum adjudged to be so due in the Judgment Currency, the Purchaser may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Purchaser from any Seller or Servicer in the Agreement Currency, such Seller or Servicer agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Purchaser against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Purchaser in such currency, the Purchaser agrees to return the amount of any excess to such Seller or Servicer (or to any other Person who may be entitled thereto under Applicable Law).

14. **Agent For Service of Process.** Each Seller and each Servicer hereby irrevocably designates, appoints and empowers Fluence, with offices at 4601 Fairfax Drive, Suite 600, Arlington VA 22203, as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and its properties, assets and revenues, service for any and all legal process, summons, notices and documents that may be served in any such action, suit or proceeding brought in the courts referred to in Section 13(g) that may be made on such designee, appointee and agent in accordance with legal procedures prescribed for such courts, with respect to any suit, action or proceeding in connection with or arising out of this Agreement or the other Transaction Documents. If for any reason such designee, appointee and agent hereunder shall cease to be available to act as such, such Seller or Servicer, as applicable, agrees to designate a new designee, appointee and agent on the terms and for the purposes of this Section 14 satisfactory to the Purchaser. Each Seller and each Servicer further hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by serving a copy thereof upon the agent for service of process referred to in this Section 14 (whether or not the appointment of such agent shall for any reason prove to be ineffective or such agent shall accept or acknowledge such service) or by mailing copies thereof by registered or certified mail, postage prepaid, to it at its address specified above.

15. **Register.** The Purchaser, acting solely for this purpose as a non-fiduciary agent of the Sellers, shall maintain a register (the "Register") on which it shall record the rights of the Purchaser and any assignee or participant of the Purchaser with respect to the rights under this Agreement and any Purchased Receivable, and each assignment or participation. The Register shall include the names and addresses of the Purchaser, assignees, participants or successors and the percentage or portion of such rights and obligations assigned or participated. The entries in the Register shall be conclusive absent manifest error; provided, however, that a failure to make any such recordation, or any error in such recordation shall not affect the Sellers' obligations in respect of such rights.

[Signatures Commence on the Following Page]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**FLUENCE ENERGY, LLC,**  
as Seller and as Servicer

By: s/ Ahmed Pasha  
Name: Ahmed Pasha  
Title: SVP, CFO

By: s/ Frank Fuselier  
Name: Frank Fuselier  
Title: SVP, General Counsel and Secretary

**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, as Purchaser

By: s/ Gustavo Rizzo  
Name: Gustavo Rizzo  
Title: Director

By: Patricia Christy  
Name: Patricia Christy  
Title: Director

CACIB-Fluence Master Receivables Purchase Agreement

Schedule I  
Account Debtors

[On file with the Servicer and Purchaser]  
Schedule I-1

Exhibit A  
Certain Defined Terms

**A. Defined Terms.**

As used herein, the following terms shall have the following meanings:

**"Account Debtor"** means a Person listed as an account debtor on Schedule I to this Agreement, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

**"Account Debtor Buffer Period"** means for each Account Debtor, the number of days set forth under the heading "Account Debtor Buffer Period" for such Account Debtor on Schedule I to this Agreement, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

**"Account Debtor Discount Rate"** means with respect to any Account Debtor, the "Account Debtor Discount Rate" specified for such Account Debtor on Schedule I to this Agreement, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

**"Additional Seller"** has the meaning set forth in Section 11 hereof.

**"Adverse Claim"** means any ownership interest or claim, mortgage, deed of trust, pledge, lien, security interest, hypothecation, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including, but not limited to, any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security; it being understood that any thereof in favor of, or assigned to, the Purchaser shall not constitute an Adverse Claim.

**"Affiliate"** when used with respect to a Person means any other current or future Person controlling, controlled by, or under common control with, such Person. For the purposes of this definition, "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of its management and policies, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning set forth in the preamble hereto.

**"Agreement Currency"** has the meaning set forth in Section 13(p) hereof.

**"Anti-Corruption Laws"** means any applicable laws, rules, or regulations relating to bribery or corruption, including (a) the United States Foreign Corrupt Practices Act of 1977, as amended; (b) the United Kingdom Bribery Act of 2010, as amended; and (c) any other similar law, rule or regulation in any applicable jurisdiction currently in force or hereafter enacted as they may be amended from time to time.

**"Anti-Money Laundering Laws"** means any laws or regulations relating to money laundering or terrorist financing in any applicable jurisdiction currently in force or hereafter enacted as they may be amended from time to time.

**"Applicable Law"** means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree, judgment, award or similar item of or by a Governmental Authority or any interpretation, implementation or application thereof.

**"Business Day"** means any day that is not a Saturday, Sunday or other day on which banks in New York City are required or permitted to close.

Exhibit A-1

"CACIB" has the meaning set forth in the preamble hereto.

"Capital Stock" means, with respect to any Person, any and all common shares, preferred shares, interests, participations, rights in or other equivalents (however designated) of such Person's capital stock, partnership interests, limited liability company interests, membership interests or other equivalent interests and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options exchangeable for or convertible into such capital stock or other equity interests.

"Change in Control" has the meaning set forth in the Syndicated Facility Agreement.

"Closing Date" means the date of this Agreement.

"Collection Account" means each account specified as such in Exhibit G hereto, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

"Collections" means, with respect to any Purchased Receivable: (a) all funds that are received by any Seller, Servicer or any other Person on their behalf in payment of any amounts owed in respect of such Purchased Receivable (including purchase price, finance charges, interest and all other charges), or applied to amounts owed in respect of such Purchased Receivable (including insurance payments and net proceeds of the sale or other disposition of repossessed goods or other collateral or property of the related Account Debtor or any other Person directly or indirectly liable for the payment of such Purchased Receivable and available to be applied thereon), (b) all Seller Dilutions, (c) all proceeds of all Related Assets with respect to such Purchased Receivable and (d) all other proceeds of such Purchased Receivable.

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any replacement index in accordance with the terms of Section 1(h), any technical, administrative or operational changes (including, without limitation, changes to the definition of "Business Day", or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates, the applicability and length of lookback periods and other technical, administrative or operational matters) that the Purchaser decides may be appropriate to reflect the adoption and implementation of a replacement index or to permit the use and administration of a replacement index by the Purchaser in a manner substantially consistent with market practice (or, if the Purchaser decides that adoption of any portion of such market practice is not administratively feasible or if the Purchaser determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Purchaser decides is reasonably necessary in connection with the administration of this Agreement).

"Contract" means, for each Receivable, the invoice therefor and any other agreement or documentation between the applicable Seller and the applicable Account Debtor giving rise to, and/or setting forth terms and conditions related to the creation and payment of, such Receivable, including in each case any amendments.

"Cost of Funds Rate" means the rate per annum quoted from time to time as such by the Purchaser, which rate shall be determined and calculated by the Purchaser in its sole discretion, taking into account factors including, but not limited to, the Purchaser's external and internal funding costs and prevailing interbank market rates and conditions. Notwithstanding the foregoing, if the Cost of Funds Rate shall be less than 0%, such rate shall be deemed 0% for purposes of this Agreement.

"Deferred Purchase Price" means with respect to any Purchased Receivable, initially, the Purchase Price of such Purchased Receivable multiplied by the Deferred Purchase Price Percentage applicable to such Purchased Receivable, as such amount is reduced through the payment to the applicable Seller or application to any Seller Dilutions, from time to time after the Purchase Date for such Purchased Receivable, in each case, in accordance with the terms of this Agreement.

#### Exhibit A-2

"Deferred Purchase Price Percentage" means, with respect to any Purchased Receivable, the result of 100% minus the Funding Percentage.

"Deposit Account Control Agreement" means, with respect to any Collection Account, a deposit account control agreement executed among Seller, the Purchaser and a depositary bank, in form and substance reasonably acceptable to the Purchaser.

"Dilution" means on any date after the date of the related Purchase Request, an amount equal to the sum, without duplication, of the aggregate reduction effected on such day in the outstanding balance of any Purchased Receivable attributable to any non-cash items including credits, rebates, billing errors, sales or similar taxes, cash discounts, volume discounts, allowances, chargebacks, returned or repossessed goods, sales and marketing discounts, warranties, any unapplied credit memos and other adjustments or reductions that are made in respect of Account Debtors; provided, however, that (a) any of the foregoing to the extent related to the financial or credit condition of an Account Debtor (including the occurrence of an Insolvency Event with respect to the applicable Account Debtor) and (b) Disputes, in each case, shall not constitute Dilution.

**“Discount”** means, with respect to each Purchased Receivable purchased on a Purchase Date related to a specific Account Debtor, the discount cost applied by the Purchaser to such Purchased Receivable, equal to the product of (a) (i) if the Purchase Request with respect to such Purchased Receivable is not received by the Purchaser at least three (3) Business Days prior to the applicable Purchase Date in accordance with Section 1(d)(i), the Cost of Funds Rate *plus* the applicable Account Debtor Discount Rate per annum, and, (ii) otherwise, Term SOFR *plus* the applicable Account Debtor Discount Rate per annum, determined as of the Purchase Date for such Purchased Receivables, *multiplied by* (b) the Funding Percentage of the Net Invoice Amount of such Purchased Receivable, *multiplied by* (c) the result of (i) the applicable Discount Period, *divided by* (ii) 360.

**“Discount Period”** means, with respect to any Purchased Receivable, the number of days from and including (i) the Purchase Date for such Purchased Receivable to, but not including, (ii) the date that corresponds to the Due Date with respect to such Purchased Receivable plus the Account Debtor Buffer Period for such Account Debtor.

**“Dispute”** means any dispute, discount, deduction, claim, offset, defense, or counterclaim or similar position asserted of any kind relating to one or more Receivables (x) arising on account of the goods relating to such Receivables having been lost or damaged prior to receipt thereof by the related Account Debtor or otherwise not delivered to such Account Debtor in accordance with the Contract related thereto; (y) arising on account of the return of goods by an Account Debtor to any Seller, Servicer, any of their respective Affiliates or successors or assigns (including the Purchaser) relating to its obligation to pay an amount due with respect to a Purchased Receivable, or (z) otherwise asserted by the related Account Debtor as being a basis for non-payment in full of the Receivable; regardless of whether the same (i) is in an amount greater than, equal to or less than the applicable Purchased Receivable concerned or (ii) arises by reason of an act of God, civil strife, war, pandemic, currency restrictions, foreign political restrictions or regulations, or any other circumstance or event beyond the control of such Seller or the applicable Account Debtor; provided, that any of the foregoing to the extent related to the financial or credit condition of an Account Debtor (including the occurrence of an Insolvency Event with respect to the applicable Account Debtor) shall not constitute a Dispute.

**“Dollars”** means United States Dollars, the lawful currency of the United States of America.

**“Due Date”** means, with respect to any Purchased Receivable, the date the related Contract provides for timely payment in full of the amounts owing thereunder.

**“Eligible Receivable”** means a Receivable with respect to which each of the Eligibility Criteria set forth in Exhibit E is satisfied.

Exhibit A-3

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**“Executive Order”** means Executive Order No. 13224 on Terrorist Financings: Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism issued on September 23, 2001.

**“Final Collection Date”** means the date following the termination of this Agreement on which the Purchaser has received (i) all Collections owing on the Purchased Receivables and (ii) all payments, if any, required to be paid by any Seller or Servicer under this Agreement or any other Transaction Document, including with respect to Repurchase Events and Indemnified Amounts.

**“Funded Amount”** has the meaning set forth in Section 1(e) hereof.

**“Funding Percentage”** means, with respect to Receivables payable by any Account Debtor, the “Funding Percentage” specified for such Account Debtor on Schedule I to this Agreement, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion; provided, that in no event may the Funding Percentage be less than 85%.

**“GAAP”** means generally accepted accounting principles in the United States of America, applied on a consistent basis as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants and/or in statements of the Financial Accounting Standards Board or the rules and regulations of the U.S. Securities and Exchange Commission and/or their respective successors and that are applied in the circumstances as of the date in question.

**“Governmental Authority”** means any government or political subdivision or any agency, authority, bureau, regulatory body, central bank, commission, department or instrumentality of any such government or political subdivision, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any court, tribunal, grand jury or arbitrator, or any accounting board or authority (whether or not part of a government) that is responsible for the establishment or interpretation of national or international accounting principles, in each case whether foreign or domestic.

**“IFRS”** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements and/or any successor standards.

**“Indemnified Amounts”** has the meaning set forth in Section 4(h) hereof.

**“Indemnified Person”** has the meaning set forth in Section 4(h) hereof.

**"Insolvency Event"** shall mean, with respect to any Person (including an Account Debtor), such Person shall fail to pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against such Person seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of thirty (30) days, or any of the actions sought in such proceeding (including the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or such Person shall take any action to authorize any of the foregoing actions.

**"Inventory"** has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said

Exhibit A-4

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description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

**"Inventory Purchased Receivables"** means any Receivable comprised of accounts receivable (whether now existing or arising in the future) constituting proceeds of or otherwise relating to any Inventory included in the Borrowing Base (as defined in the Syndicated Facility Agreement), together with any collateral securing such accounts receivable, and any contracts, guarantees or other payment support obligations in respect of such accounts receivable, and any proceeds of such accounts receivable or other assets relating to any Inventory included in the Borrower Base (as defined in the Syndicated Facility Agreement).

**"Joinder Agreement"** means a joinder agreement substantially in the form and substance attached hereto as [Exhibit I](#).

**"Judgment Currency"** has the meaning set forth in [Section 13\(p\)](#) hereof.

**"Material Adverse Change"** means, with respect to any Person (or if no Person is specified, with respect to any Seller, Servicer or Performance Guarantor), an event or circumstance that results in, or could reasonably be expected to result in, a material adverse change in (i) the business, assets, operations or financial condition of such Person; (ii) the ability of such Person to perform its obligations under this Agreement or any other Transaction Document; (iii) the status, existence, perfection, priority, enforceability or other rights and remedies of the Purchaser associated with its interests in the Purchased Receivables or any material portion thereof; or (iv) (a) the validity or enforceability against such Person of any Transaction Document or any Contract or (b) the validity, enforceability or collectability of a material portion of the Purchased Receivables, including if such event or circumstance would increase the days to pay or Dilution with respect to a material portion of the Purchased Receivables.

**"Maximum Facility Amount"** means \$75,000,000.

**"Maximum Payment Term"** means for each Account Debtor, the number of days set forth under the heading "Maximum Payment Term" for such Account Debtor on [Schedule I](#) to this Agreement, as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

**"Net Invoice Amount"** means the amount of the applicable Purchased Receivable shown on the invoice for such Purchased Receivable as the total amount payable by the related Account Debtor (net of any Dilution, discounts, credits or other allowances shown on such invoice and agreed to prior to the Purchase Date).

**"Non-Payment Report"** has the meaning set forth in [Section 4\(g\)](#).

**"OFAC"** means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**"Other Taxes"** means all present or future stamp, excise, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, origination, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Transaction Document (including this Agreement) or Purchased Receivable.

**"Outstanding Amount"** means, as of any time of determination and with respect to a Purchased Receivable, (x) the Net Invoice Amount for such Purchased Receivable, minus (y) the aggregate amount of all Collections with respect to such Purchased Receivable that have been deposited into the Purchaser's Account as of such time. When such term is used without reference to any specific Purchased Receivables, it shall constitute a reference to all Purchased Receivables.

**"Overdue Payment Rate"** means 3% per annum over and above Term SOFR *plus* the highest Account Debtor Discount Rate in effect at such time.

Exhibit A-5

**"PATRIOT Act"** has the meaning set forth in [Section 13\(k\)](#).

**"Payment Term"** means, with respect to any Purchased Receivable, the number of days from and including (i) the date on which the invoice for such Purchased Receivable was issued to, but not including, (ii) the Due Date for such Purchased Receivable.

**"Performance Guarantor"** means and any Person that has guaranteed the performance obligations of the Sellers under this Agreement. As of the Closing Date, is no Performance Guarantor.

**"Performance Guaranty"** means a performance guaranty entered into by any Performance Guarantor in favor of the Purchaser.

**"Permitted Factoring Transactions"** has the meaning set forth in the Syndicated Facility Agreement.

**"Person"** means an individual, partnership, sole proprietorship, corporation (including a business trust), limited liability company, limited partnership, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

**"Proposed Receivables"** means, with respect to any Purchase Date, the Receivables proposed by Seller to the Purchaser for purchase hereunder and described in a Purchase Request to be purchased on such Purchase Date.

**"Purchase Date"** means each date on which the Purchaser purchases Receivables.

**"Purchase Price"** has the meaning set forth in [Section 1\(e\)](#) hereof.

**"Purchase Request"** has the meaning set forth in [Section 1\(a\)](#) hereof.

**"Purchase Sublimit"** means, with respect to each Account Debtor, the Dollar amount set forth on [Schedule I](#) to this Agreement as the "Purchase Sublimit," as such Schedule may be modified or supplemented from time to time, as approved in advance by the Purchaser in writing in its sole and absolute discretion.

**"Purchased Receivables"** has the meaning set forth in [Section 1\(a\)](#) hereof.

**"Purchaser"** has the meaning set forth in the preamble hereto.

**"Purchaser's Account"** means the account specified as such in [Exhibit G](#) hereto, or such other bank account identified in writing by the Purchaser to Seller from time to time.

**"Receivable"** means any right to payment of a monetary obligation, whether or not earned by performance, owed to any Seller or the Purchaser (as assignee of Seller) by an Account Debtor, whether constituting an account, instrument, document, contract right, chattel paper, payment intangible or general intangible, in each instance arising in connection with the sale of goods that have been or are to be sold or for services rendered or to be rendered, and includes, without limitation, the obligation to pay any finance charges, fees and other charges with respect thereto, together with the Related Assets with respect thereto, and with respect to each of the foregoing, all Collections and proceeds thereof. Any such right to payment arising from any one transaction, including any such right to payment represented by an individual invoice or agreement, shall constitute a Receivable separate from a Receivable consisting of any such right to payment arising from any other transaction.

**"Receivables Financing Limitations"** has the meaning set forth in the Syndicated Facility Agreement.

**"Reconciliation Report"** has the meaning set forth in [Section 4\(f\)](#).

**"Register"** has the meaning set forth in [Section 15](#) hereof.

Exhibit A-6

**"Related Assets"** means, with respect to any Receivable, (i) all rights to enforce payment of such Receivable under the related Contract; (ii) all instruments and chattel paper that evidence such Receivable; (iii) all guarantees, insurance and other agreements or arrangements of whatever character from time to time solely and to the extent supporting

payment of such Receivable whether pursuant to the Contract related to such Receivable or otherwise; (iv) all security interests or liens and property subject thereto from time to time solely and to the extent securing payment of such Receivable, whether pursuant to the Contract related to such Receivable or otherwise, together with all financing statements describing any collateral securing such Receivable; and (v) all books, records and other information (including computer programs, tapes, discs, punch cards, data processing software and related property and rights) solely and to the extent relating to such Receivable and the related Account Debtor.

"Repurchase Events" has the meaning set forth in Section 5(b) hereof.

"Sanctioned Jurisdiction" means any country or territory that is the subject of comprehensive Sanctions broadly restricting or prohibiting dealings with, in or involving such country or territory.

"Sanctioned Person" means any individual or entity (i) identified on a Sanctions List, (ii) organized, domiciled or resident in a Sanctioned Jurisdiction, or (iii) otherwise the subject or target of any Sanctions, including by reason of ownership or control by one or more individuals or entities described in clauses (i) or (ii).

"Sanctions" means any economic or financial sanctions or trade embargoes imposed, administered or enforced by (i) the U.S. (including OFAC, the U.S. Department of Commerce and U.S. Department of State), (ii) the United Nations Security Council, (iii) the European Union or any member state, (iv) the United Kingdom (including Her Majesty's Treasury), or (v) any other applicable jurisdiction.

"Sanctions List" means any list of designated individuals or entities that are the subject of Sanctions, including (i) the Specially Designated Nationals and Blocked Persons List maintained by OFAC, the Entity List maintained by the U.S. Department of Commerce, or any other similar publicly available list of any U.S. Governmental Authority to implement sanctions programs, (ii) the Consolidated United Nations Security Council Sanctions List, (iii) the consolidated list of persons, groups and entities subject to European Union financial sanctions maintained by the European Union or any member state, (iv) the Consolidated List of Financial Sanctions Targets in the United Kingdom maintained by Her Majesty's Treasury and (v) any other similar publicly available list of any applicable Governmental Authority to implement sanctions programs.

"Seller" has the meaning set forth in the preamble hereto.

"Seller Dilution" has the meaning set forth in Section 5(a) hereof.

"Sellers' Account" means the account specified as such in Exhibit G hereto, or such other bank account identified in writing by the Sellers to the Purchaser from time to time.

"Syndicated Facility Agreement" means that certain Syndicated Facility Agreement, dated as of November 22, 2023, among, *inter alia*, Fluence Energy, LLC and the other parties thereto from time to time as borrowers, Fluence Energy, Inc., as the parent, the lenders party thereto from time to time and Barclays Bank plc, as administrative agent on behalf of the lenders, as amended, supplemented or otherwise modified from time to time.

"Servicer" has the meaning set forth in Section 4(a) hereof.

"Servicer Termination Event" means an event specified in Exhibit F hereto.

"SOFR" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

Exhibit A-7

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"Solvent" means, with respect to any Person and as of any particular date, (i) the present fair market value (or present fair saleable value) of the assets of such Person is not less than the total amount required to pay the probable liabilities of such Person on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (ii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (iii) such Person is not incurring debts or liabilities beyond its ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in any business or transaction, and is not about to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the Capital Stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies 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; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding.

**"Technology Platform"** means the Purchaser's communication tool accessible via the internet to enable clients to offer various Receivables for sale to the Purchaser and for the loading approval and monitoring of such Receivables on a platform, the terms of use of which are set out in Annex I and are hereby incorporated herein.

**"Term SOFR"** means the Term SOFR Reference Rate for a tenor comparable to the applicable Discount Period or other period, as applicable, as such rate is published by the Term SOFR Administrator on the day (such day, the **"Term SOFR Determination Day"**) two (2) U.S. Government Securities Business Days prior to the Purchase Date for the applicable Purchased Receivable or two (2) U.S. Government Securities Business Days immediately preceding the first day for which such rate is accruing, as applicable; provided, that (i) if the Term SOFR Administrator does not publish the Term SOFR Reference for a tenor comparable to such Discount Period or other period, the Term SOFR Reference Rate shall be determined by the Purchaser by linear interpolation of (A) the Term SOFR Reference Rate for the longest published tenor which is shorter than such Discount Period or other period, as such rate is otherwise determined pursuant to the terms of this definition, and (B) the Term SOFR Reference Rate for the shortest published tenor which is longer than such Discount Period or other period, as such rate is otherwise determined pursuant to the terms of this definition, and (ii) if on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor is not published by the Term SOFR Administrator, then Term SOFR shall be the Term SOFR Reference Rate for the applicable tenor as most recently published by the Term SOFR Administrator. Notwithstanding the foregoing, if Term SOFR as determined above would be less than 0%, then Term SOFR shall be deemed to be 0.001% for purposes of the Agreement.

**"Term SOFR Administrator"** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Purchaser in its discretion).

**"Term SOFR Reference Rate"** means the forward-looking term rate based on SOFR.

**"Transaction Documents"** means this Agreement, any Performance Guaranty, each Deposit Account Control Agreement, each Purchase Request, each Reconciliation Report, each Non-Payment Report and all other documents and agreements to be executed and delivered by any Seller, any Servicer or any Performance Guarantor in connection with any of the foregoing, in each case, as amended, supplemented or otherwise modified from time to time.

**"Transaction Taxes"** has the meaning set forth in Section 5(e).

**"U.S. Government Securities Business Day"** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income

Exhibit A-8

departments of its members be closed for the entire day for purposes of trading in United States government securities.

**"UCC"** means the Uniform Commercial Code in effect in the State of New York from time to time; provided, if by reason of mandatory provisions of Applicable Law, the perfection, the effect of perfection or non-perfection or the priority of the security interests of the Purchaser is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

#### **B. Other Interpretive Matters.**

All accounting terms defined directly or by incorporation in this Agreement shall have the defined meanings when used in any certificate or other document delivered pursuant thereto unless otherwise defined therein. For purposes of this Agreement and all such certificates and other documents, unless the context otherwise requires: (a) except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP or IFRS, as in effect from time to time; (b) terms defined in Article 9 of the UCC and not otherwise defined in such agreement are used as defined in such Article; (c) references to any amount as on deposit or outstanding on any particular date means such amount at the close of business on such day; (d) the words "hereof," "herein" and "hereunder" and words of similar import refer to such agreement (or the certificate or other document in which they are used) as a whole and not to any particular provision of such agreement (or such certificate or document); (e) references to any Section, Schedule or Exhibit are references to Sections, Schedules and Exhibits in or to such agreement (or the certificate or other document in which the reference is made), and references to any paragraph, subsection, clause or other subdivision within any Section or definition refer to such paragraph, subsection, clause or other subdivision of such Section or definition; (f) the term "including" means "including without limitation"; (g) references to any Applicable Law refer to that Applicable Law as amended from time to time and include any successor Applicable Law; (h) references to any agreement refer to that agreement as from time to time amended, restated, extended or supplemented or as the terms of such agreement are waived or modified in accordance with its terms; (i) references to any Person include that Person's permitted successors and assigns; (j) headings are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof; (k) unless otherwise provided, in the calculation of time from a specified date to a later specified date, the term "from" means "from and including," and the terms "to" and "until" each means "to but excluding"; (l) terms in one gender include the parallel terms in the neuter and opposite gender; and (m) the term "or" is not exclusive.

Exhibit A-9

**Exhibit B**

**Conditions Precedent for Effectiveness**

Each of the following, in form and substance satisfactory to the Purchaser:

(a) A fully executed counterpart of this Agreement.

(b) A certificate (long form, if available) issued by the Secretary of State of the State of Delaware as to the legal existence and good standing of Fluence.

(c) A certificate of the Secretary or Assistant Secretary of each Seller and Servicer certifying attached copies of the formation documents and governing documents of such Person and all documents evidencing necessary corporate action to be taken by and governmental approvals, if any, to be obtained by such Person with respect to this Agreement and the names and true signatures of the incumbent officers of such Person authorized to sign this Agreement and any other documents to be delivered by it hereunder (including each Purchase Request) or thereunder or in connection herewith or therewith.

(d) UCC, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Seller as debtor and that are filed in those state and county jurisdictions in which such Seller is organized or maintains its principal place of business or chief executive office and such other searches that the Purchaser deems necessary or appropriate.

(e) Acknowledgment copies of proper termination statements (Form UCC-3) and any other relevant filings necessary to evidence the release of all security interests, ownership and other rights of any Person previously granted by any Seller in the Proposed Receivables.

(f) Acknowledgment or time-stamped receipt copies of proper financing statements (showing each Seller as "debtor/seller" and the Purchaser as "secured party/buyer") duly filed on or prior to the date hereof.

(g) Favorable opinions of legal counsel to each Seller and in form and substance satisfactory to the Purchaser, including opinions with respect to due organization and good standing of each such Person, due authorization, execution and delivery of this Agreement and the other Transaction Documents entered into on or about the date hereof by such Person, validity and enforceability of this Agreement and the other Transaction Documents with respect to such Person, non-contravention of organizational documents, material agreements and law, no consents, creation of security interest and perfection of security interest (including perfection by control with respect to each Collection Account), true sale and such other matters as the Purchaser may reasonably request.

**Exhibit B-1**

**Exhibit C**

**Representations and Warranties**

(a) Each Seller, Servicer and Performance Guarantor is duly incorporated or formed, validly existing and in good standing under the laws of its respective jurisdiction of organization and is duly qualified to do business, and is in good standing, in every jurisdiction where the nature of its business requires it to be so qualified.

(b) The execution, delivery and performance by each Seller, Servicer and Performance Guarantor of each Transaction Document to which it is party and each other document to be delivered by it thereunder, (i) are within its corporate powers, (ii) have been duly authorized by all necessary corporate action, (iii) do not contravene, violate or breach (1) its charter or by-laws, (2) any Applicable Law, (3) any indenture, sale agreement, credit agreement, loan agreement, security agreement, mortgage, deed of trust or other agreement or instrument to which such Seller, Servicer or Performance Guarantor is a party or by which it or any of its respective property is bound, including, without limitation, the Syndicated Facility Agreement or (4) any order, writ, judgment, award, injunction or decree binding on or affecting it or its property and (iv) do not result in the creation or imposition of any Adverse Claim upon any of its properties pursuant to the terms of any such indenture, credit agreement, loan agreement, security agreement, mortgage, deed of trust or other agreement or instrument, other than this Agreement and the other Transaction Documents.

(c) The sales of Receivables under the Transaction Documents are Permitted Factoring Transactions.

(d) Each Transaction Document to which any Seller, Servicer or Performance Guarantor is party has been duly executed and delivered by such Person.

(e) No authorization or approval or other action by, and no notice to, license from or filing with, any Governmental Authority is required for the due execution, delivery and performance by each Seller, Servicer and Performance Guarantor of each Transaction Document to which it is party or any other document to be delivered by it thereunder.

(f) Each Transaction Document to which each Seller, Servicer or Performance Guarantor is a party constitutes the legal, valid and binding obligation of such Person, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency, moratorium, fraudulent conveyance or other laws relating to the enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is sought at equity or law).

(g) There is no pending or, to its knowledge, threatened action, proceeding, investigation or injunction, writ or restraining order affecting any Seller, Servicer or Performance Guarantor or any of their respective Affiliates before any Governmental Authority that could reasonably be expected to result in a Material Adverse Change with respect to any Seller, Servicer or Performance Guarantor.

(h) Each Seller, Servicer and Performance Guarantor is Solvent and no Insolvency Event has occurred with respect to any Seller, Servicer or Performance Guarantor.

(i) No Material Adverse Change or event which, individually or in the aggregate, is reasonably likely to result in a Material Adverse Change has occurred with respect to any Seller, Servicer or Performance Guarantor.

(j) No Change in Control has occurred.

(k) All certificates, reports, statements, documents and other information furnished to the Purchaser by or on behalf of each Seller, Servicer or Performance Guarantor (including via the Technology Platform) pursuant to this Agreement or any other Transaction Document, or in connection with or pursuant to any amendment or modification of, or waiver under, this Agreement or any other Transaction Document, is, at the time

Exhibit C-1

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the same are so furnished, complete, true and correct in all material respects on the date the same are furnished to the Purchaser, and does not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not misleading.

(l) No Seller, Servicer or Performance Guarantor is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(m) The Purchaser has a first-priority perfected security interest in each Collection Account.

(n) No event has occurred and is continuing and no condition exists, or would result from any sale or assignment of any Purchased Receivable, that constitutes or may reasonably be expected to constitute, individually or in the aggregate, a Servicer Termination Event.

(o) The Purchase Price payable for each Purchased Receivable by the Purchaser will represent fair consideration and reasonably equivalent value therefore.

(p) No Seller nor any of its Subsidiaries or, any of their respective directors, officers or, to such Seller's knowledge, any of their respective Affiliates, agents or employees (i) has conducted their respective businesses or taken any action that would constitute or give rise to a violation of any Anti-Corruption Law or Anti-Money Laundering Law or (ii) is or has been subject to any action, proceeding, litigation, claim or, to such Seller's knowledge, investigation with regard to any actual or alleged violation of any Anti-Corruption Laws or Anti-Money Laundering Laws.

(q) No Seller nor any of its Subsidiaries or any of their respective directors, officers or, to such Seller's knowledge, any of their respective Affiliates, agents or employees (i) is a Sanctioned Person, (ii) is currently engaging or has engaged in any dealings or transactions with, involving or for the benefit of a Sanctioned Person, or in or involving any Sanctioned Jurisdiction, or (iii) is subject to any action, proceeding, litigation, claim or, to such Seller's knowledge, investigation with regard to any actual or alleged violation of Sanctions.

Exhibit C-2

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Until the Final Collection Date:

(a) Compliance with Laws; Corporate Existence. Each Seller and Servicer will comply in all material respects with all Applicable Laws and preserve and maintain its corporate existence, rights, franchises, qualifications and privileges. Each Seller will keep its jurisdiction of incorporation or its jurisdiction of formation, as applicable, unchanged from the applicable jurisdiction as in effect on the date hereof. Each Seller will keep its principal place of business and chief executive office and the office where it keeps its records concerning the Purchased Receivables at the address set forth Exhibit H hereto.

(b) Books and Records. Each Seller will keep its books and accounts in accordance with GAAP or IFRS, as applicable, and shall make a notation on its books and records, including any relevant computer files, to indicate which Receivables have been sold to the Purchaser. Each Seller and Servicer will maintain and implement administrative and operating procedures (including an ability to recreate records evidencing Receivables and related Contract in the event of the destruction of the originals thereof), and keep and maintain all relevant documents and other information reasonably necessary for collecting all Purchased Receivables (including records adequate to permit the daily identification of each Receivable and all collections of and adjustments to each existing Purchased Receivable).

(c) Sales; Liens. No Seller will sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to, the Purchased Receivables or upon or with respect to any account or lock-box to which any Collections are sent, or assign any right to receive income in respect thereof except the security interests in favor of the Purchaser created hereunder.

(d) Audits and Visits. Each Seller and Servicer will, at their expense, at any time and from time to time during regular business hours as requested by the Purchaser (but no more frequently than once per calendar year), permit the Purchaser, or its agents or representatives, upon reasonable notice, (i) to examine and make copies of and abstracts from all books, records and documents (including computer tapes and disks) in its possession or under its control relating to Purchased Receivables and Related Assets with respect thereto, including the Contract and (ii) to visit its offices and properties for the purpose of examining and auditing such materials described in clause (i) above, and to discuss matters relating to Purchased Receivables or its performance hereunder or under the related Contract with any of its officers having knowledge of such matters; provided, that, the Purchaser or any designee of the Purchaser shall be entitled to perform additional examinations, visitations and audits at any time or frequency as the Purchaser deems necessary at any time during the occurrence and continuance of a Servicer Termination Event.

(e) Reporting Requirements. Each Seller and Servicer will provide to the Purchaser the following: (i) promptly (and in no event later than three (3) Business Days following knowledge or notice thereof), written notice in reasonable detail, of any Adverse Claim or Dispute asserted or claim made against a Purchased Receivable; (ii) promptly (and in no event later than three (3) Business Days following knowledge or notice thereof), written notice in reasonable detail, of the occurrence of any Servicer Termination Event; (iii) prompt written notice of any amendment, restatement, amendment and restatement or other modification of the Syndicated Facility Agreement that amends any provision of the Syndicated Facility Agreement permitting, limiting or restricting a Seller's ability to enter into this Agreement and the transactions hereunder, including but not limited to any amendments to the definitions of "Change in Control," "Permitted Factoring Transactions" or "Receivables Financing Limitations" or Section 6.01(t), Section 6.02(r) or Section 6.09(e) thereof, together with an electronic copy of such amendment and (iv) as soon as possible and in any event within three (3) days after knowledge or notice of the occurrence thereof, written notice of any matter that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(f) Further Assurances. Each Seller will, at its expense, promptly execute and deliver all further instruments and documents, and take all further action that the Purchaser may reasonably request, from time

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to time, in order to perfect, protect or more fully evidence the full and complete ownership and security interest in the Purchased Receivables, or to enable the Purchaser to exercise or enforce the rights of the Purchaser hereunder or under or in connection with the Purchased Receivables (including, without limitation, as may be necessary for the Purchaser to prosecute any claim under one or more applicable credit insurance policies).

(g) Taxes. Each Seller and Servicer will file all income and material tax returns and will pay any and all taxes shown on such tax returns, other than any taxes that such Seller is contesting in good faith and for which adequate reserves have been taken. Each Seller shall pay any and all taxes (excluding the Purchaser's net income taxes) relating to the transactions contemplated under this Agreement, including but not limited to the sale, transfer and assignment of each Purchased Receivable.

(h) Perform Terms. Each Seller and Servicer will duly perform and comply with all terms under the Contract and promptly inform the Purchaser of any breach or default by such Seller or any Account Debtor of any of the terms thereof.

(i) **Not Adversely Affect the Purchaser's Rights.** Each Seller and Servicer will refrain from any act or omission which could reasonably be expected to, individually or in the aggregate, in any material way prejudice, diminish or limit the Purchaser's rights under or with respect to any of the Purchased Receivables or this Agreement.

(j) **Sanction Programs.** Each Seller shall, and shall cause its Subsidiaries to, continue to maintain and enforce policies and procedures designed to promote and achieve compliance by Borrower and its Subsidiaries with applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(k) **Sanctions Compliance.** No Seller shall, directly or indirectly, (A) use, lend, contribute or otherwise make available any part of the Purchase Price of the Purchased Receivables to fund any activities or business of a Sanctioned Person or in any other manner that would result in a violation of Sanctions by any Person party hereto or (B) fund all or part of any repayment or reimbursement of the obligations hereunder out of proceeds derived from any transaction or activity involving a Sanctioned Person or Sanctioned Jurisdiction.

(l) **Use of Proceeds.** No Seller shall, directly or indirectly, use any part of the Purchase Price of the Purchased Receivables for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in each case in violation of Anti-Corruption Law.

Exhibit D-2

Exhibit E  
Eligibility Criteria

(a) Such Receivable has been generated by each Seller in the ordinary course of its business from the bona fide sale of goods or services to an Account Debtor, an invoice for such Receivable has been delivered to and accepted by such Account Debtor and revenue for such Receivable has been or may be recognized by such Seller under GAAP or IFRS, as applicable, and Applicable Law.

(b) The information contained with respect to such Receivable in the applicable Purchase Request is true, accurate and correct in all material respects and contains a true, accurate and correct list in all material respects of the Account Debtor, invoice number, Due Date and unpaid amount due in respect of such Receivable.

(c) The related Account Debtor has been instructed to make payments on such Receivable only to the applicable Collection Account.

(d) The related Account Debtor (i) is neither a Governmental Authority nor a Sanctioned Person, (ii) is not (A) a material supplier to such Seller or its Affiliates or (B) an Affiliate of a material supplier to such Seller or its Affiliates, (iii) is not an Affiliate of any Seller, any Servicer or any Performance Guarantor and (iv) is not a natural person.

(e) Such Receivable and the related Contract is in full force and effect and is the valid and binding obligation of the related Account Debtor due on the applicable Due Date, enforceable in accordance with its terms, and constitutes the related Account Debtor's legal, valid and binding obligation to pay the applicable Seller the amount thereof, subject, as to enforcement of the related Account Debtor's payment obligation, to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws of general applicability relating to or affecting creditors' rights and Insolvency Events.

(f) Neither the applicable Seller nor the related Account Debtor is delinquent or in default in the performance of any of the provisions of the related Contract with respect to such Receivable.

(g) Such Receivable and the related Contract shall evidence and include the right to receive payment of interest or finance charges or other liabilities of the Purchaser under the relevant Contract to which the applicable Net Invoice Amount or other evidence of indebtedness relates.

(h) The applicable Seller has delivered to the related Account Debtor all property or fully performed all services required to be so delivered or performed by the terms of the Contract in order for the Seller to be entitled to payment of such Receivable, and the payments due with respect to such Receivable are not contingent upon such Seller's or any other Person's fulfillment of any further act or obligation.

(i) Such Receivable is an "account" within the meaning of Article 9 of the UCC of all applicable jurisdictions and is not evidenced by instruments or chattel paper.

(j) Such Receivable (i) is denominated and payable only in Dollars in the United States, (ii) does not have a Payment Term that exceeds the Maximum Payment Term for the related Account Debtor and (iii) does not represent a progress billing or a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, or any other repurchase or return basis, does not relate to payments of interest and has not been invoiced more than once (including any re-billed amount arising from a deduction taken by the related Account Debtor with respect to a previously arising Receivable).

(k) The Contract giving rise to such Receivable is governed by the law of one of the States of the United States.

(i) As of the related Purchase Date, immediately prior to the sale hereunder, the applicable Seller has good and marketable title to, and is the sole legal and beneficial owner of, such Receivable free and clear of any Adverse Claim, such Receivable is not subject to a Dispute, the amount owed under such Receivable is free of any amounts that would constitute Dilution not reflected in the Net Invoice Amount, and such Receivable has not been previously sold, assigned, pledged or otherwise transferred by such Seller to any other Person.

- (m) Immediately after giving effect to the sale of such Receivable hereunder, the Sellers are in compliance with the Receivables Financing Limitations.
- (n) No effective financing statement or other instrument similar in effect covering any part of such Receivable is on file in any recording office.
- (o) The sale, pledge or assignment of such Receivable pursuant to this Agreement (i) does not violate or contravene any Applicable Law, the related Contract or the Syndicated Facility Agreement, (ii) does not require notice thereof to the related Account Debtor or any consent therefrom or (iii) does not require any notice thereof or any consent from any Governmental Authority that has not been obtained.
- (p) No further action, including any filing or recording of any document or any notice to, license from or approval from any Governmental Authority is necessary in order to establish the ownership interest of the Purchaser effected by such sale or to permit the Purchaser to service, enforce or otherwise collect such Receivable from the related Account Debtor.
- (q) Such Receivable, together with the related Contract, does not contravene any Applicable Law.
- (r) Such Receivable is not a Receivable which arose as a result of the sale of consigned goods or finished goods that have incorporated any consigned goods into such finished goods or a sale in which the applicable Seller or Servicer acted as a bailee, consignee or agent of any other Person or otherwise not as principal or otherwise in respect of deferred or unearned revenues.
- (s) As of the related Purchase Date, no Insolvency Event has occurred with respect to the related Account Debtor to the knowledge of the applicable Seller.
- (t) There are no facts known to the applicable Seller concerning the related Account Debtor, such Purchased Receivable or the applicable Contract which could reasonably be expected to have an adverse impact on the ability or willingness of such Account Debtor to pay the Net Invoice Amount for such Purchased Receivable when due, including information concerning any existing or potential Disputes, except as otherwise previously disclosed to the Purchaser.

Exhibit F  
Servicer Termination Events

Each of the following shall constitute a "Servicer Termination Event" for purposes of this Agreement:

- (a) Any amount due for payment by any Seller or Servicer to the Purchaser pursuant to this Agreement or any other Transaction Document (including interest on any overdue amount as provided for in Section 8 hereof) or by any Performance Guarantor pursuant to any Performance Guaranty shall remain outstanding for more than two (2) Business Days from the due date thereof.
- (b) Any Seller or Servicer shall fail to be in material compliance with any of its covenants and other obligations under this Agreement or any other Transaction Document to which each such Person is a party, and such failure shall continue unremedied for ten (10) Business Days.
- (c) Any of the representations and warranties made by any Seller or Servicer in this Agreement (including with respect to the Proposed Receivables), or by any Performance Guarantor in any Performance Guaranty, shall fail to be true, accurate and correct in all material respects as of the date made or, in the case of any representation or warranty which speaks as to a particular date or period, as of that particular date or period and (to the extent such representation is capable of being remedied) such failure shall continue unremedied for ten (10) Business Days.

(d) Any Performance Guarantor shall fail to be in compliance in all material respects with any of its obligations under any Performance Guaranty and such failure shall continue unremedied for fifteen (15) Business Days.

(e) An Insolvency Event shall have occurred with respect to any Seller, Servicer or Performance Guarantor.

(f) A Change in Control shall have occurred.

(g) Any Transaction Document shall, in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any party thereto other than the Purchaser or any such party shall, contest in writing in any manner the effectiveness, validity, binding nature or enforceability of such Transaction Document.

(h) An "Event of Default" (as defined in the Syndicated Facility Agreement) shall have occurred and be continuing.

**Exhibit F-1**

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**Exhibit G**  
Accounts

[On file with the Purchaser and Servicer]

**Exhibit G-1**

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**Exhibit H**  
Notice Information

If to Fluence,

as Seller or Servicer: Fluence Energy, LLC

4601 Fairfax Drive, Suite 600

Arlington, VA 22203

Attention: Manavendra Sial, Ahmed Pasha and Jie Yuan]

Email: [Manavendra.Sial@fluenceenergy.com](mailto:Manavendra.Sial@fluenceenergy.com), [Ahmed.pasha@fluenceenergy.com](mailto:Aхmed.pasha@fluenceenergy.com) and [Jie.Yuan@fluenceenergy.com](mailto:Jie.Yuan@fluenceenergy.com)

With a copy to: Latham & Watkins LLP

330 North Wabash Avenue, Suite 2800

Chicago, IL 60611

Attention: Noah Weiss

Email: [noah.weiss@lw.com](mailto:noah.weiss@lw.com)

If to the Purchaser:

Credit Agricole Corporate and Investment Bank

1301 Avenue of the Americas

New York, New York 10019

Attention: Gustavo Rizzo

Email: [gustavo.rizzo@ca-cib.com](mailto:gustavo.rizzo@ca-cib.com)

With a copy to: Reed Smith LLP

10 South Wacker Drive

40th Floor

Exhibit I  
Form of Joinder Agreement

This JOINDER TO MASTER RECEIVABLES PURCHASE AGREEMENT dated as of [●], 20[●] (this "Agreement"), is by and among [NEW SELLER], a [jurisdiction and legal form] (the "New Seller") and Credit Agricole Corporate and Investment Bank, as the Purchaser (as defined below) under the RPA (as defined below). Capitalized terms used and not defined herein have the meanings given to them in the Syndicated Facility RPA.

WITNESSETH THAT:

WHEREAS, certain parties (the "Existing Sellers") have entered into that certain Master Receivables Purchase Agreement, identified below dated February 27, 2024 (as amended, restated, amended and restated, supplemented extended or otherwise modified from time to time, the "RPA"), among Fluence Energy, LLC, a Delaware limited liability company ("Fluence"), and any other seller party thereto as of the date hereof (each, in such capacity, an "Existing Seller" and collectively, the "Existing Sellers"), and as servicers (each, in such capacity, a "Servicer" and collectively, the "Servicers"), and Credit Agricole Corporate and Investment Bank, as the Purchaser ("CACIB" and the "Purchaser"); and

WHEREAS, New Seller desires to be joined as a party to the RPA;

NOW, THEREFORE, FOR VALUE RECEIVED, and in consideration of accommodations given or to be given, to New Seller and the Existing Sellers by the Purchaser from time to time, New Seller hereby agrees as follows:

1. New Seller acknowledges and agrees that it is a "Seller" under the RPA, effective upon the date of New Seller's execution of this Agreement. All references in the RPA to the term "Seller" or "Sellers" shall be deemed to include the New Seller. Without limiting the generality of the foregoing, New Seller hereby repeats and reaffirms all covenants, agreements, representations and warranties made or given by a Seller contained in the RPA.
2. In the event that, contrary to the mutual intent of the parties hereto, any purchase of Purchased Receivables is not characterized as a sale, the New Seller shall, effective as of the date hereof, be deemed to have granted to the Purchaser (and the New Seller hereby does grant to the Purchaser), in addition to and not in substitution for the rights and remedies described in the RPA, a first priority security interest in and to any and all present and future Purchased Receivables and the proceeds thereof to secure all obligations of such New Seller under the RPA and under each of the other Transaction Documents, whether now or hereafter existing, due or to become due, direct or indirect, absolute or contingent. The Purchaser may, at its discretion, file one or more UCC financing statements (or, if applicable, any foreign law equivalent thereof) evidencing the sale of the Purchased Receivables as well as the foregoing grant of security.
3. For purposes of the RPA, (a) the "Collection Account" with respect to the New Seller means the account of the New Seller located at [ ] (ABA [ ]) with account number [ ] and (b) the notice address for the New Seller shall be as set forth below the New Seller's signature to this Agreement.
4. [Each of the provisions set forth in Schedule 1 hereto is hereby incorporated into the RPA by reference. In connection with (a) the addition of the New Seller pursuant to the terms of Section 11 of the RPA and the terms of this Agreement or (b) the creation or perfection of the security interest granted pursuant to Section 2 of this Agreement over the assets of the New Seller, the provisions of Schedule 1 hereto shall apply to the New Seller.]
5. New Seller agrees to execute and deliver such further instruments and documents and do such further acts and things as the Purchaser may deem reasonably necessary or proper to carry out more effectively the

Exhibit I-1

- purposes of this Agreement.
6. By acknowledging this Agreement, the Performance Guarantor hereby consents to the New Seller's joinder to the RPA and confirms and acknowledges that the Performance Guaranty shall continue in full force and effect after giving effect to this Agreement and the New Seller's joinder to the RPA.

7. No reference to this Agreement need be made in the RPA or in any other Transaction Document or other document or instrument making reference to the same, any reference to Transaction Documents in any of such to be deemed a reference to the RPA, or other Transaction Documents, as applicable, as modified hereby.
8. The laws of the State of New York (without regard to the principles of conflicts of laws) shall govern all matters arising out of, in connection with or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement.

[Remainder of Page Intentionally Left Blank]

Exhibit J-2

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In witness whereof, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**NEW SELLER:**

[NEW SELLER],

as Seller

By: [ ]

Name: [ ]

Title: [ ]

**Notice Address:**

[ ]  
[ ]  
[ ]  
[ ]

Attn: [ ]

Tel: [ ]

Email: [ ]

*Signatures continue on next page.*

*Joiner to CACIB - Fluence Master Receivables Purchase Agreement*

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ACKNOWLEDGED AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE:

**PURCHASER:**

**Credit Agricole Corporate and Investment Bank**

By: [ ]

Name: [ ]

Title: [ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXISTING SELLERS:**

**Fluence Energy, LLC**, as a Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[REDACTED], as a Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[REDACTED], as a Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Joinder to CACIB - Fluence Master Receivables Purchase Agreement*

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**Schedule 1**

**Additional Provisions**

*Schedule I to Fluence Joinder Agreement*

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**Annex I**  
**Electronic Services Schedule**

This Electronic Services Schedule (this "Schedule") is attached and made a part of the Agreement (as defined herein). In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this Schedule, the terms and conditions of this Schedule shall control. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

**Section 1.** As used herein:

"Agreement" means the Master Accounts Receivable Purchase Agreement, dated as of [REDACTED], between [REDACTED], a [REDACTED] ("Seller A"), [REDACTED], a [REDACTED] ("Seller B"), [REDACTED], a [REDACTED] ("Seller C"); and, together with Seller A and Seller B, each, a "Seller", and collectively, the "Sellers"), and Credit Agricole Corporate and Investment Bank ("Bank"), including this Schedule, as such agreement may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

"Message" means all messages or other information sent or received by any Seller in connection with the Agreement using the Program web portal.

"PrimeRevenue" means PrimeRevenue, Inc., which is a Service Provider hereunder.

**"Program web portal"** means the system interface of the Service Provider to be used by Bank and the Sellers so as to operate the Agreement or any updated or replacement system from time to time.

**"Service Provider"** means any person with whom an agreement has been entered into by Bank and to whom the performance of certain obligations or exercise of certain rights in respect of the giving and receiving of Messages, and not in respect of any purchase of Receivables, is from time to time sub-contracted by Bank.

## **Section 2. Service Provider**

The parties to the Agreement agree that the Service Provider is and will be the service provider solely for Bank and not the sub-contractor or agent of any Seller. Each Seller consents to Bank outsourcing to the Service Provider the management of certain administrative functions under the Agreement, it being understood that only the rights and obligations issuing from this Schedule shall be outsourced.

## **Section 3. Service Provider's Systems and Platform**

- 3.1. To operate the Agreement, the Sellers and Bank shall use the Program web portal, subject to Section 4.9 below.
- 3.2. Program related data will be updated and available for view access by the Sellers and Bank on a day to day basis in the Program web portal.
- 3.3. The Sellers will upload and download information pertaining to Purchase Requests from the Program web portal.
- 3.4. As of the date of this Schedule, the Service Provider means PrimeRevenue. Bank may replace the Service Provider at any time or terminate this Schedule, and will give written notice thereof to the Sellers.

## **Section 4. Use of Service Provider's Systems and Platform**

- 4.1. The Sellers shall have the right to use the content of the Program web portal to print and use reports downloaded from the Program web portal, and to save reasonable copies to its hard drive, in each

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case solely for the purposes contemplated by the Agreement. Any copying, distribution, or commercial use of any of the content of the Program web portal not in furtherance of or related to the commercial purposes of the Agreement is strictly forbidden. Notwithstanding the foregoing, the Sellers are entitled to share any such content with its Affiliates (including the Sellers) and its and such Affiliates' attorneys, accountants, and tax advisors, or any Governmental Authority.

4.2. Service Provider retains all right, title, and interest in and to its Program web portal, including all software and other intellectual property underlying the Program web portal and associated therewith, all derivative works thereof, and in all media, but specifically excluding any materials, intellectual property or information provided by the Sellers or Bank (collectively, "Member Content"), all of which shall remain the property of the contributing party. Other than a royalty-free license to use the Program web portal during the term of this Schedule, nothing contained herein shall be construed as the grant of a license or other right by Service Provider to the Sellers of the Program web portal or any intellectual property underlying or associated with the Program web portal. Each Seller grants to Service Provider for the term of this Schedule a royalty free, non-exclusive license to use, reproduce, display and modify such Seller's Member Content for the purpose of allowing Service Provider to render the contracted-for services to Bank.

4.3. All of the design, text, graphics and the selection and arrangement thereof included in the Program web portal are protected by the copyright laws of the United States and foreign countries. The Program web portal and all associated intellectual property rights are owned by Service Provider and its licensors. All rights not expressly granted to the Sellers are reserved to Service Provider and its licensors. Each Seller acknowledges that (a) the Program web portal incorporates confidential and proprietary information developed or acquired by Service Provider, including the software underlying the Program web portal; (b) it shall use such information solely for the purposes set forth herein; and (c) it shall not disclose any such information to third parties except to its Affiliates (including the Sellers), and its and their employees, officers, legal counsel, financial advisors and auditors, so long as such parties are bound by written or fiduciary obligations no less stringent than those set forth herein, and such Seller remains primarily responsible for any unauthorized use or disclosure of the information by such third parties. This Section 4.3 shall survive the termination of this Schedule for a period of one year.

4.4. Service Provider may access and use the non-public financial, transactional and other information that is processed under the Agreement or otherwise acquired by Service Provider in connection with the Program web portal ("Seller Data") for the purposes of providing and operating the Program web portal. In addition, Service Provider may access and use Seller Data on an aggregate basis for the purpose of preparing statistical analyses, reports, and benchmarking statistics for Service Provider's own use and for general marketing purposes related to trends and overall use of the Program web portal and related services; provided, however, that any public marketing uses shall not individually identify any Seller or Seller Data. Each Seller represents that it has the right to permit Service Provider to use Seller Data as described in the Agreement and that such use will not violate any third person's rights.

4.5. Each Seller acknowledges that Service Provider may transfer Seller Data to a third person, in connection with: (a) any assignment arising from the acquisition of all or substantially all of its assets or equity interests; or (b) a delegation of hosting or other duties, provided that such third party service provider agrees to abide by appropriate confidentiality obligations. Any such transferee shall only be permitted to use the data as contemplated by this Schedule.

4.6. The parties may disclose Seller Data if required by applicable law to any government body, or duly authorized representatives thereof, upon an audit or other inspection by any of the same of the records or facilities of Service Provider. Each Seller will be notified promptly upon receipt of any order (to the extent allowed by the terms of such order or applicable law) and upon the implementation of any change in laws which requires disclosure of Seller Data.

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4.7. Each Seller hereby acknowledges that Service Provider reserves the right to: (a) terminate such Seller's access to and use of the Program web portal if such Seller permits any unauthorized third person or entity to access and use the Program web portal; and (b) interrupt or disable access to and use of all or any part of the Program web portal if necessary to prevent or protect against fraud, hacking, or illegal conduct or otherwise protect Service Provider's personnel or the Program web portal, in Service Provider's sole discretion and without notice.

4.8. EACH SELLER ACKNOWLEDGES THAT NO WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY SERVICE PROVIDER WITH RESPECT TO THE PROGRAM WEB PORTAL, THE UNDERLYING SOFTWARE, OR ANY SERVICES PROVIDED BY SERVICE PROVIDER, AND SUCH PROGRAM WEB PORTAL, SOFTWARE, AND SERVICES ARE PROVIDED ON AN "AS IS, WHERE IS, AND AS AVAILABLE" BASIS. SERVICE PROVIDER EXPRESSLY DISCLAIMS LIABILITY AND SPECIFICALLY DENIES ANY RESPONSIBILITY FOR (A) THE COMPLETENESS, ACCURACY OR QUALITY OF INFORMATION OR ANY MEMBER CONTENT OBTAINED THROUGH THE PROGRAM WEB PORTAL, AND (B) ANY SELLER'S USE OF OR INABILITY TO USE THE PROGRAM WEB PORTAL. THE USE OF THE PROGRAM WEB PORTAL, AND ANY MEMBER CONTENT OR INFORMATION OBTAINED VIA THE PROGRAM WEB PORTAL, IS AT THE SELLERS' OWN RISK. SERVICE PROVIDER SHALL NOT BE LIABLE TO ANY SELLER FOR ANY INDIRECT LOSS, INCLUDING LOSS OF TIME, MONEY OR GOODWILL, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND UNDER ANY LEGAL THEORY OR CAUSE OF ACTION IN EACH CASE BASED ON ANY SELLER'S USE, INABILITY TO USE, OPERATE OR MODIFY THE PROGRAM WEB PORTAL. FOR THE AVOIDANCE OF DOUBT, INDIRECT LOSS INCLUDES LOSS OF USE, LOST BUSINESS, LOST REVENUE, LOST PROFITS, LOST DATA, OR LOST GOODWILL EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF SUCH DAMAGE. EXCEPT FOR SERVICE PROVIDER'S INTENTIONAL TORTIOUS ACTS, FRAUD, OR GROSS NEGLIGENCE, SERVICE PROVIDER'S TOTAL LIABILITY FOR PROVEN DIRECT DAMAGES RESULTING FROM ANY CAUSE OF ACTION ARISING OUT OF ANY SELLER'S USE OF THE PROGRAM WEB PORTAL SHALL NOT EXCEED TEN THOUSAND DOLLARS (USD\$10,000.00).

4.9. Bank has the obligation to view the Messages sent in accordance with this Schedule and to act upon them under the terms of the Agreement, and, during any unavailability of the Program web portal for the purposes hereof, or following the change of Service Provider, accept or receive Purchase Requests and other notices as otherwise provided in the Agreement.

**Section 5. Security.** Each Seller agrees that:

5.1. such Seller's authorized employees may access the Program web portal using a unique user ID and password issued by Service Provider to such Seller's administrative user or any user ID and password maintained by a Seller user. Such Seller and each authorized employee shall not allow any other individual to use such employee's unique user ID and password to access the Program web portal. Such Seller and each authorized employee shall remain responsible for maintaining the strict confidentiality of the user IDs and passwords created for such Seller's authorized employees;

5.2. it will not intentionally or knowingly interfere with, defeat, disrupt, circumvent or tamper with or attempt to gain unauthorized access to the Program web portal or other information or instruction that is, by the terms of the Agreement to be transmitted through the Program web portal, or with the restrictions on use of functionality or access to information on any portion of the Program web portal, or attempt to do so; and

5.3. it will not intentionally or knowingly introduce into any portion of the Program web portal any device, software or routine, including but not limited to viruses, Trojan horses, worms, time bombs and

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cancelbots or other data or code that harms, or may adversely affect, the operation of the Program web portal.

**Section 6. Representations, Warranties and Covenants of the Sellers.** Each Seller hereby represents, warrants and covenants to and with Bank as follows:

6.1. Such Seller's use of the Program web portal is solely to settle genuine and lawful commercial trade transactions, arising in the ordinary course of business, for the purchase or sale of goods (including Receivables) and/or services by or to such Seller from or to Bank or other third parties. Such Seller shall not use the Program web portal for investment or arbitrage functions or purposes, or for any money laundering purpose, or in contravention of any law or regulation, and any activity undertaken via the Program web portal shall not be used in furtherance of any of the foregoing.

6.2. Information provided by such Seller to Bank or Service Provider from time to time in connection with this Schedule is and shall be true and accurate in all material respects at the time given.

**Section 7. No Implied Duties.** Without limiting the liabilities of Bank under the Agreement, Bank shall be obliged to perform such duties and only such duties as are specifically set forth herein, and no implied duties or responsibilities shall be read or implied into this Schedule against Bank. Bank shall have no duties or obligations under this Schedule to any person or entity other than the Sellers and, without limiting the foregoing, does not assume any obligation or relationship of agency or trust under this Schedule for, or with any other person or entity.

**Section 8. Third Party Beneficiary Rights.** Each Seller and Bank agree that Service Provider is an intended third party beneficiary of, and entitled to rely on Sections 2, 4, 5, and 6 of this Electronic Services Schedule and Section 13(n) of the Agreement.

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**Exhibit 10.2**

**Execution Version**

**AMENDMENT NUMBER ONE  
TO SYNDICATED FACILITY AGREEMENT**

**THIS AMENDMENT NUMBER ONE TO SYNDICATED FACILITY AGREEMENT** (this "Amendment"), dated as of April 8, 2024, is entered into by and among FLUENCE ENERGY, INC., a Delaware corporation ("Parent"), FLUENCE ENERGY, LLC, a Delaware limited liability company (the "Parent Borrower"), certain Subsidiaries of the Parent Borrower identified on the signature pages hereto as Co-Borrowers (the "Co-Borrowers" and together with the Parent Borrower and any Additional Borrowers, collectively, jointly and severally, the "Borrowers"), the other Guarantors party hereto, the lenders identified on the signature pages hereof (such lenders, and the other lenders party to the below-defined Credit Agreement, together with their respective successors and permitted assigns, each individually, a "Lender", and collectively, the "Lenders"), and BARCLAYS BANK PLC, as Administrative Agent (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent"):

**WITNESSETH**

**WHEREAS**, Parent, Borrowers, Lenders, and Administrative Agent are parties to that certain Syndicated Facility Agreement, dated as of November 22, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement");

**WHEREAS**, the Loan Parties have requested that Administrative Agent and Required Lenders make certain amendments to the Credit Agreement;

**WHEREAS**, upon the terms and conditions set forth herein, Administrative Agent and Required Lenders are willing to make certain amendments to the Credit Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of a copy and sufficiency of which is hereby acknowledged, by the Assignee. The Standard parties hereby agree as follows:

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

2. **Amendments to Credit Agreement.** Subject to the satisfaction of the conditions precedent set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

**For an agreed consideration, each Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from such Assignor, subject to and in accordance with the Standard Terms and Conditions and Section 3 hereof, the Credit Agreement shall be amended as follows:**

(a) Section 5.12(b) of the Effective Date set forth below (i) all of such Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement is hereby amended by amending and any other documents or instruments delivered pursuant thereto restating the penultimate sentence in such Section in its entirety as follows:

"The Administrative Agent agrees not to issue an Activation Instruction with respect to the extent related to Controlled Accounts unless a Full Cash Dominion Period has commenced and is continuing at the amount time when such Activation Instruction is issued; provided, that the parties hereto acknowledge and percentage interest identified agree that, during the period commencing on Annex II hereto of all of such outstanding rights and obligations of such Assignor under the facility identified below (including any letters of credit included in the facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of such Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "**Assigned Interest**"). Such sale and assignment is without recourse to any Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by any Assignor. March

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29, 2024 and continuing through and including May 10, 2024, and so long as no Event of Default has occurred and is continuing and the aggregate Revolving Credit Exposure of all Lenders is not greater than \$0, the Administrative Agent may, but shall not be required to, issue an Activation Instruction with respect to the Controlled Accounts notwithstanding the existence of a Full Cash Dominion Period."

(b) Section 6.10 of the Credit Agreement is hereby amended and restated in its entirety as follows:

**"Section 6.10 Financial Covenants.** (a) The Loan Parties will not, and will not permit any of their Subsidiaries to, permit Total Liquidity at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) \$64,000,000, and (b) the Loan Parties will not, and will not permit any of their Subsidiaries to, permit Excess Availability to be less than the greater of (i) \$15,000,000 and (ii) 10% of the Line Cap then in effect. The foregoing to the contrary notwithstanding, during the period commencing on March 29, 2024 and continuing through and including May 10, 2024, so long as the aggregate Revolving Credit Exposure of all Lenders at all times during such period is not greater than \$0, then the amount of Excess Availability required to be maintained by the Loan Parties and their Subsidiaries during such period under Section 6.10(b) shall be \$0."

3. **Conditions Precedent to Amendment.** The satisfaction (or waiver in writing by Administrative Agent) of each of the following shall constitute conditions precedent to the effectiveness of the Amendment (such date being the "**Amendment Effective Date**"):.

(a) Administrative Agent shall have received this Amendment, duly executed by the parties hereto, and the same shall be in full force and effect.

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

earlier date and (iii) to the extent that such representations and warranties are already qualified or modified by materiality in the text thereof, they shall be true and correct in all respects.

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

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

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

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

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

(d) Each of the Parent and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

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(e) The representations and warranties set forth in this Amendment, the Credit Agreement, as amended by this Amendment and after giving effect to this Amendment, and the other Loan Documents are true and correct in all material respects (or in all respects if qualified by

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

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

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

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

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

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

8. Counterpart Execution. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Amendment. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party

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delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

9. Effect on Loan Documents.

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

provisions of this Amendment conflict with those of the Credit Agreement or the other Loan Documents, the terms and provisions of this Amendment shall control.

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

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

(d) This Amendment is a Loan Document.

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

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

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

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

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

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

[Signature pages follow]

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

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

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President, General Counsel and Secretary

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

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President and Secretary

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

By: /s/ Ahmed Pasha

Name: Ahmed Pasha

Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: Senior Vice President, General Counsel and Secretary

*[Signature page to Amendment Number 1 to Syndicated Facility Agreement]*

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“Administrative Agent” and “Lender”

BARCLAYS BANK PLC

By: /s/ Joseph Jordan

Name: Joseph Jordan

Title: Managing Director

*[Signature page to Amendment Number 1 to Syndicated Facility Agreement]*

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JPMORGAN CHASE BANK N.A., as a Lender

By: /s/ Santiago Gascon

Name: Santiago Gascon

Title: Vice President

*[Signature page to Amendment Number 1 to Syndicated Facility Agreement]*

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Goldman Sachs Bank USA, as a Lender

By: /s/ Priyankush Goswami

Name: Priyankush Goswami

Title: Authorized Signatory

*[Signature page to Amendment Number 1 to Syndicated Facility Agreement]*

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HSBC BANK USA, NATIONAL ASSOCIATION, as a Lender

By: /s/ Jessica Smith

Name: Jessica Smith

Title: Director

*[Signature page to Amendment Number 1 to Syndicated Facility Agreement]*

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Morgan Stanley Senior Funding, Inc., as a Lender

By: /s/ Rikin Pandya

Name: Rikin Pandya

Title: Vice President

ROYAL BANK OF CANADA, as a Lender

By: /s/ Henry Chang

Name: Henry Chang

Title: Authorized Signatory

UBS AG, STAMFORD BRANCH, as a Lender

By: /s/ Muhammad Afzal

Name: Muhammad Afzal

Title: Director

By: /s/ Peter Hazoglou

Name: Peter Hazoglou

Title: Authorized Signatory

Citibank, N.A., as a Lender

By: /s/ Allister Chan

Name: Allister Chan

Title: Vice President

**Exhibit 10.3**

**Execution Version**

**AMENDMENT NUMBER TWO  
TO SYNDICATED FACILITY AGREEMENT**

**THIS AMENDMENT NUMBER TWO TO SYNDICATED FACILITY AGREEMENT** (this "Amendment"), dated as of May 8, 2024, is entered into by and among FLUENCE ENERGY, INC., a Delaware corporation ("Parent"), FLUENCE ENERGY, LLC, a Delaware limited liability company (the "Parent Borrower"), certain Subsidiaries of the Parent Borrower identified on the signature pages hereto as Co-Borrowers (the "Co-Borrowers" and together with the Parent Borrower and any Additional Borrowers, collectively, jointly and severally, the "Borrowers"), the other Guarantors party hereto, the lenders identified on the signature pages hereof (such lenders, and the other lenders party to the below-defined Credit Agreement, together with their respective successors and permitted assigns, each individually, a "Lender", and collectively, the "Lenders"), and BARCLAYS BANK PLC, as Administrative Agent (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent").

**WITNESSETH**

**WHEREAS**, Parent, Borrowers, Lenders, and Administrative Agent are parties to that certain Syndicated Facility Agreement, dated as of November 22, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement");

**WHEREAS**, the Loan Parties have requested that Administrative Agent and Lenders make certain amendments to the Credit Agreement;

**WHEREAS**, upon the terms and conditions set forth herein, Administrative Agent and Lenders constituting the Supermajority Lenders are willing to make certain amendments to the Credit Agreement.

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

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

**2. Amendments to Credit Agreement.** Subject to the satisfaction of the conditions precedent set forth in Section 3 hereof, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto; provided that, for the avoidance of doubt, except to the extent expressly set forth in this Amendment, the Schedules and Exhibits to the Credit Agreement shall remain in effect without any amendment or modification thereto

**3. Conditions Precedent to Amendment.** The satisfaction of each of the following shall constitute conditions precedent to the effectiveness of this Amendment (such date being the "Amendment Effective Date"):

(a) Administrative Agent shall have received this Amendment, duly executed by the parties hereto, and the same shall be in full force and effect.

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(b) Administrative Agent shall have received a completed Borrowing Base Certificate, prepared as of April 30, 2024, and executed by a Responsible Officer of the Borrower Representative.

(c) Administrative Agent shall have received, in immediately available funds, the Amendment Fee referred to in Section 6 hereof.

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

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

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

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

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

(c) The execution, delivery and performance by the Loan Parties of this Amendment and each of the Loan Documents to which it is party (A) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (B) except as would not reasonably be expected to have a Material Adverse

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Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (C) will not violate any charter, by-laws or other organizational document of the Parent or any of its Subsidiaries, (D) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (C)) binding upon the Parent or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent or any of its Subsidiaries, and (E) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Subsidiaries (other than Liens arising pursuant to the Security Documents or permitted under Section 6.02 of the Credit Agreement).

(d) Each of the Parent and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

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

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

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

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

6. **Amendment Fee.** On or before the Amendment Effective Date, Borrowers shall pay to Administrative Agent, for the ratable benefit of each Lender who unconditionally and irrevocably submits an executed signature page to this Amendment to the Administrative Agent on or prior to May 8, 2024 at 2:00 p.m. (New York time), an amendment fee in an amount equal to 0.05% of the total amount of such Lenders' aggregate Commitments in immediately available funds, which amendment fee shall be fully earned and non-refundable on the date hereof.

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

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

9. **Counterpart Execution.** This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Amendment. Delivery of an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Amendment, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment.

10. **Effect on Loan Documents.**

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

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

(c) To the extent that any of the terms and conditions in any of the Loan Documents shall contradict or be in conflict with any of the terms or conditions of the Credit Agreement, after giving

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effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified or amended hereby.

(d) This Amendment is a Loan Document.

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

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

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

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

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

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

[Signature pages follow]

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

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

By: /s/ Ahmed Pasha  
Name: Ahmed Pasha  
Title: Senior Vice President & Chief Financial Officer

By: /s/ Francis A. Fuselier  
Name: Francis A. Fuselier  
Title: Senior Vice President, General Counsel, and Secretary

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

By: /s/ Ahmed Pasha  
Name: Ahmed Pasha  
Title: Senior Vice President & Chief Financial Officer

By: /s/ Francis A. Fuselier  
Name: Francis A. Fuselier  
Title: Senior Vice President and Secretary

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

By: /s/ Ahmed Pasha  
Name: Ahmed Pasha  
Title: Senior Vice President & Chief Financial Officer

By: /s/ Francis A. Fuselier  
Name: Francis A. Fuselier  
Title: Senior Vice President, General Counsel, and Secretary

1.	"Administrative Agent" and "Lender"	Assignor:	Each Assignor listed on Annex II hereto
2.	BARCLAYS BANK PLC	Assignee:	Citibank, N.A.
	By: <i>/s/ Sydney G. Dennis</i> Name: Sydney G. Dennis Title: Director		
3.	Parent	Fluence Energy, LLC (the "Company")	
	Borrower:		
4.	Administrative	Barclays Bank PLC;	
	Agent:	as administrative agent under the Credit Agreement	
	Syndicated	Syndicated Facility Agreement, dated as of November 22,	
	Facility	2023, among the Company, as Parent Borrower, the other	
	Agreement:	Borrowers party thereto, Fluence Energy, Inc. (the "Parent"), as Parent, the other Guarantors party thereto, the Lenders party thereto and Barclays Bank PLC, as Administrative Agent.	
5.	Assigned	Each Assigned Interest listed on Annex II hereto	
6.	Interest:		
	Effective	December 15, 2023	
7.	Date:		

On the Effective Date, each Assignor shall pay, or cause to be paid, to the Administrative Agent, for the account of the Assignee, an upfront fee in the amount set forth with respect to such Assignor on Annex II hereto (each, an "Upfront Fee"). The Upfront Fees shall be fully earned as of the date of execution of this Assignment and Assumption.

The Assignee hereby agrees, as of the Effective Date, to become bound as an Issuing Bank by the terms, conditions and other provisions of, and to assume all of the right, title and interest in and to, and liabilities and obligations under, the Credit Agreement as an Issuing Bank, with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named therein as a party and as if the Assignee executed the Credit Agreement as of the date thereof. The Assignee further agrees, as of the date first above written, that each reference in the Credit Agreement to an "Issuing Bank" shall also mean and be a reference to the Assignee in its capacity as an Issuing Bank. Notwithstanding anything herein or in the Credit Agreement to the contrary, the Assignee's commitment to issue Letters of Credit shall equal \$40,000,000 in the aggregate (the "Citibank Letter of Credit Sublimit"). For the avoidance of doubt, the Citibank Letter of Credit Sublimit is part of, and not in addition to, the aggregate \$200,000,000 Letter of Credit sublimit for all Issuing Banks. Subject to the terms and conditions set forth in the Credit Agreement, from time to time during the Availability Period, the Assignee, in its capacity as an Issuing Bank, may be requested by the Borrowers to issue Letters of Credit denominated in Dollars, Australian Dollars, Canadian Dollars, Euros or Pounds Sterling.

The parties to this Assignment and Assumption (including each Assignee in its capacity as a Lender and a Lender directly affected thereby and collectively constituting Required Lenders) hereby agree that, from and after the Effective Date, (a) notwithstanding anything to the contrary contained in the definition of "Issuing Bank" under the Credit Agreement, each of Barclays Bank PLC, JPMorgan Chase Bank, N.A., Citibank, N.A. Goldman Sachs Bank USA and Morgan Stanley Senior Funding, Inc. shall constitute Issuing Banks for purposes of the

Credit Agreement and other Loan Documents, and (b) Schedule 2.01 of the Credit Agreement is amended by replacing the table set forth therein in its entirety with the table set forth in Annex III hereto.

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The Administrative Agent waives the \$3,500 processing and recordation fee required pursuant to Section 10.04(b)(ii)(C) of the Credit Agreement with respect to each assignment to be effected under this Assignment and Assumption.

*[signatures on following page]*

---

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNORS:**

BARCLAYS BANK PLC, as an Assignor

By: /s/Koruthu Mathew

Name: Koruthu Mathew

Title: VP

JPMORGAN CHASE BANK N.A., as an Assignor

Lender

By: /s/ Santiago Gascon

Name: Santiago Gascon

Title: Vice President

---

GOLDMAN SACHS BANK USA,

Citibank, N.A., as an Assignor

By: /s/ Andrew B. Vernon

Allister Chan

Name: Andrew Vernon

Allister Chan

Title: Authorized Signatory

Vice President

---

MORGAN STANLEY SENIOR FUNDING, INC., Goldman Sachs Bank USA, as an Assignor

a Lender

By: /s/ Michael King Priyankush Goswami

Name: Michael King Priyankush Goswami

Title: Vice President Authorized Signatory

---

HSBC BANK USA, NATIONAL ASSOCIATION,  
as an Assignor

a Lender

By: /s/ Jessica Smith

Name: Jessica Smith

Title: Director

---

Morgan Stanley Senior Funding, Inc., as a Lender

By: Karina Rodriguez

Name: Karina Rodriguez

Title: Vice President

---

ROYAL BANK OF CANADA, as **an Assignor**

a Lender

By: /s/ Henry Chang

Name: Henry Chang

Title: Authorized Signatory

---

**ASSIGNEE:**

**CITIBANK, N.A., UBS AG STAMFORD BRANCH, as Assignee and an Issuing Bank a Lender**

By: /s/ Allister Chan Anthony N. Joseph

Name: Allister Chan Anthony N Joseph

Title: Vice President

---

**CONSENTED TO AND ACCEPTED:**

**BARCLAYS BANK PLC,**  
as Administrative Agent

By: /s/ Koruthu Mathew

Name: Koruthu Mathew

Title: VP

**CONSENTED TO:**

**BARCLAYS BANK PLC,**  
as an Issuing Bank

By: /s/ Koruthu Mathew

Name: Koruthu Mathew

Title: VP

**CONSENTED TO:**

**BARCLAYS BANK PLC,**  
as Swingline Lender

By: /s/ Koruthu Mathew  
Name: Koruthu Mathew  
Title: VP

---

**GOLDMAN SACHS BANK USA,**  
as an Issuing Bank **Associate Director**

By: /s/ Andrew B. Vernon Peter Hazoglou  
Name: Andrew Vernon Peter Hazoglou  
Title: Authorized Signatory

---

**MORGAN STANLEY SENIOR FUNDING,**  
as an Issuing Bank

By: /s/ Michael King  
Name: Michael King  
Title: Vice President

---

**CONSENTED TO:**

**FLUENCE ENERGY, LLC**

By: /s/ Manavendra Sial  
Name: Manavendra Sial  
Title: Senior Vice President and Chief Financial Officer

By: /s/ Francis A. Fuselier

Name: Francis A. Fuselier  
Title: Senior Vice President, General Counsel and Secretary

---

[ANNEX I Exhibit A](#)

**EXECUTION VERSION**

conformed through Amendment No. ~~42~~, dated ~~April~~<sup>May</sup>8, 2024

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**SYNDICATED FACILITY AGREEMENT**

dated as of

November 22, 2023

among

FLUENCE ENERGY, LLC,  
as the Parent Borrower

THE OTHER BORROWERS PARTY HERETO

FLUENCE ENERGY, INC.,  
as the Parent

THE OTHER GUARANTORS PARTY HERETO

THE LENDERS PARTY HERETO  
and

BARCLAYS BANK PLC,  
as Administrative Agent

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BARCLAYS BANK PLC  
and  
JPMORGAN CHASE BANK N.A.,  
as Joint Lead Arrangers and Joint Bookrunners

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EXHIBIT B-1	Form of Borrowing Request
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EXHIBIT H-4	U.S. Tax Certificate (For Non-U.S. Participants that are Partnerships for U.S. Federal Income Tax Purposes)
EXHIBIT I	Form of Perfection Certificate

SYNDICATED FACILITY AGREEMENT, dated as of November 22, 2023, among FLUENCE ENERGY LLC, a Delaware limited liability company (the "Parent Borrower"), certain Subsidiaries of the Parent Borrower identified on the signature pages hereto as Co-Borrowers (the "Co-Borrowers" and together with the Parent Borrower and any Additional Borrowers, collectively, jointly and severally, the "Borrowers"), FLUENCE ENERGY, INC., a Delaware corporation ("Parent"), the other GUARANTORS party hereto, the LENDERS party hereto and BARCLAYS BANK PLC, as Administrative Agent.

The parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Standard Section 1.01 **Defined Terms and Conditions for**

Master Assignment and Assumption. As used in this Agreement, the following terms have the meanings specified below:

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

**"Acceptable Field Examination"** means a field examination conducted by the Administrative Agent or its designee of the Inventory and Warranties related working capital matters of the applicable Borrower and its Subsidiaries and of the related data processing and other systems of the applicable Borrower and its Subsidiaries, the results of which shall be satisfactory to the Administrative Agent in its Permitted Discretion.

**"Acceptable Inventory Appraisal"** means an appraisal of the Inventory of the applicable Borrower and its Subsidiaries from a firm (or firms) reasonably satisfactory to the Administrative Agent, which appraisal(s) shall be satisfactory to the Administrative Agent in its Permitted Discretion.

**"Account"** has the meaning set forth in the Security Agreement.

**"Account Debtor"** means any Person obligated on an Account.

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

**"Activation Instruction"** has the meaning set forth in Section 5.12(b).

**1.1 "Assignor Additional Borrower"** has the meaning set forth in Section 5.11(a).

**"Adjusted Daily Simple SOFR"** means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

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

**"Adjusted Term CORRA"** means, for purposes of any calculation, the rate per annum equal to (a) Term CORRA for such calculation plus (b) the Term CORRA Adjustment; provided that if Adjusted Term CORRA as so determined shall ever be less than the Floor, then Adjusted Term CORRA shall be deemed to be the Floor.

**"Adjusted Term SOFR Rate"** means, with respect to any Term Benchmark Borrowing denominated in Dollars for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

**"Administrative Agent"** means Barclays Bank PLC (or any of its designated branch offices or affiliates), in its capacity as administrative agent for the Lenders hereunder, or any successor administrative agent.

**"Administrative Agent Fee Letter"** means that certain Administrative Agent Fee Letter, dated as of the date hereof, by and among the Borrowers and the Administrative Agent.

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

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

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

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

**"Agent Parties"** has the meaning set forth in [Section 10.01](#).

**"Agents"** means the Administrative Agent and the Arrangers.

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

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

**"Alternate Base Rate"** means, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus  $\frac{1}{2}$  of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a U.S. Government Securities Business Day, the immediately preceding U.S. Government Securities Business Day) plus 1%, *provided* that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately (8:00 a.m New York time) on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to [Section 2.11](#) hereof (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to [Section 2.11\(b\)](#)), then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

**"Alternative Currency"** means (i) Euros, (ii) Canadian Dollars, (iii) for purposes of Letters of Credit only, Australian Dollars, (iv) for purposes of Letters of Credit only, Pounds Sterling, and (v) any additional currencies determined after the Effective Date by mutual agreement of the Borrowers, Lenders, Issuing Banks and Administrative Agent; *provided* that each such currency is a lawful currency that is readily available, freely transferable and not restricted, and able to be converted into Dollars.

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

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

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

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

**"Applicable Commitment Fee Rate"** means, for any day, (a) until the last day of the first full calendar quarter ending after the Effective Date, 0.450% *per annum*, and (b) thereafter, the applicable rate *per annum* set forth below based upon the Average Revolving Loan Utilization during the most recently ended calendar quarter:

Average Revolving Loan Utilization	Commitment Fee Rate
Category 1 $\leq$ 50%	0.450%
Category 2 $>$ 50%	0.375%

For purposes of the foregoing, each change in the Applicable Commitment Fee resulting from a change in Average Revolving Loan Utilization shall be effective during the period commencing on and including the first day of each calendar quarter and ending on the last day of such calendar quarter, it being understood and agreed that, for purposes of determining the Applicable Commitment Fee Rate on the first day of any calendar quarter, the Average Revolving Loan Utilization during the most recently ended calendar quarter shall be used.

**"Applicable LC Fee Rate"** means, for any day, a rate equal to the Applicable Rate then used to determine the interest rate on Term SOFR Loans; *provided* that, during any Covenant Relief Period, the Applicable LC Fee Rate with respect to any Lender's Non-Cash Collateralized LC Exposure shall be a rate equal to (a) the Applicable Rate then used to determine the interest rate on Term SOFR Loans, plus (b) 0.50%.

**"Applicable Percentage"** means, with respect to any Revolving Lender, the percentage of the total Commitments represented by such Revolving Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the

Commitments most recently in effect, giving effect to any assignments.

**“Applicable Pricing Grid”** means, for any day, with respect to any Term Benchmark Loans, ABR Loans or Canadian Prime Rate Loans, as the case may be, the applicable rate *per annum* set forth below under the caption “ABR/Canadian Prime Rate Spread” or “Term Benchmark Spread”, as the case may be, as defined in the table set forth below, based upon the Average Excess Availability (as a percentage of total Commitments of all Lenders) during the most recently ended calendar quarter; *provided* that the Applicable Pricing Grid shall be set at Category 2 during the period from the Effective Date to, and including, the last day of the first full calendar quarter ending after the Effective Date:

Average Excess Availability (as a percentage of Total Commitments)	ABR/Canadian Prime Rate Spread	Term Benchmark Spread
Category 1 $\geq$ 66%	1.00%	2.00%
Category 2 $<$ 66% and $\geq$ 33%	1.25%	2.25%
Category 3 $<$ 33%	1.50%	2.50%

For purposes of the foregoing, each change in the Applicable Pricing Grid resulting from a change in Average Excess Availability (as a percentage of total Commitments of all Lenders) shall be effective during the period commencing on and including the first day of each calendar quarter and ending on the last day of such calendar quarter, it being understood and agreed that, for purposes of determining the Applicable Pricing Grid on the first day of any calendar quarter, the Average Excess Availability (as a percentage of total Commitments of all Lenders) during the most recently ended calendar quarter shall be used.

Notwithstanding the foregoing, the Average Excess Availability (as a percentage of total Commitments of all Lenders) shall be deemed to be in Category 3 at the option of the Administrative Agent or at the request of the Required Lenders if the Borrowers fail to deliver any Borrowing Base Certificate required to be delivered by them pursuant to Section 5.01(g) during the period from the expiration of the time required for delivery thereof until the immediately following Business Day after the date such Borrowing Base Certificate is so delivered. In addition, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrowers (which notice may be revoked at the option of the Administrative Agent or the Required Lenders, as applicable, notwithstanding any provision of Section 10.01 requiring the consent of “each Lender directly affected thereby” for reductions in interest rates), declare that the highest rate set forth in each column of the Applicable Pricing Grid shall apply.

**“Applicable Rate”** means a rate *per annum* determined pursuant to the Applicable Pricing Grid based on Average Excess Availability as set forth in the definition of Applicable Pricing Grid.

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

**“Arranger Fee Letter”** means that certain Arranger Fee Letter, dated as of the date hereof, by and among the Borrowers and the Arrangers.

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

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

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

**“Availability Period”** means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

**“Availability Requirement Holiday”** means the period from and including the Effective Date to and including the earlier of (a) the date of the initial Borrowing of Loans under this Agreement and (b) January 31, 2024.

**“Available Commitment”** means as to any Lender at any time, an amount equal to the difference of (a) such Lender’s Commitment then in effect minus (b) such Lender’s Revolving Credit Exposure then outstanding.

**"Available Equity Amount"** means, at any time (the **"Available Equity Amount Reference Time"**), an amount equal to, without duplication, the sum of the following (but only to the extent Not Otherwise Applied): (a) the proceeds from issuances of Equity Interests (other than Disqualified Equity Interests) by the Parent that are received as cash equity by the Parent and contributed in cash as common equity to the Parent Borrower and that are applied for usage as Available Equity Amount substantially concurrently with receipt of such amounts, minus (b) the sum, without duplication, and, without taking into account the proposed portion of the Available Equity Amount calculated above to be used at the applicable Available Equity Amount Reference Time, of (i) the aggregate amount of any Investments made by any Loan Party or its Subsidiaries using the Available Equity Amount after the Effective Date and prior to the Available Equity Amount Reference Time, (ii) the aggregate amount of any Restricted Payments made by the Borrowers using the Available Equity Amount after the Effective Date and prior to the Available Equity Amount Reference Time, and (iii) the aggregate amount of any Restricted Debt Payments made by any Loan Party or its Subsidiaries using the Available Equity Amount after the Effective Date and prior to the Available Equity Amount Reference Time.

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

**"Average Excess Availability"** means, for any calendar quarter, an amount equal to the average daily Excess Availability during such calendar quarter, as determined by the Administrative Agent's system of records (absent manifest error); provided, that in order to determine Excess Availability on any day for purposes of this definition, the Borrowing Base for such day shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01(g) (or if prior thereto, Section 4.01(g) as of such day), as adjusted to give effect to Reserves following such delivery established pursuant to Section 2.01(b).

**"Average Revolving Loan Utilization"** means, as of the first day of any calendar quarter, an amount (expressed as a percentage) equal to (a) the average daily aggregate Revolving Credit Exposure (excluding any Revolving Credit Exposure resulting from any outstanding Swingline Loans) for the calendar quarter period immediately preceding such date (or, if less, the period from the Effective Date to such date), divided by (b) the aggregate Commitments at such time.

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

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

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

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

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

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

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

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

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

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

**"Benchmark Replacement Conforming Changes"** means, with respect to any Benchmark Replacement and/or Term Benchmark Loan, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides in its reasonable and good faith discretion (and in consultation with the Borrower Representative) may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides in its reasonable good faith discretion (and in consultation with the Borrower Representative) that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines in its reasonable good faith discretion that no market practice for the administration

of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

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

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

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

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

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark

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

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, the central bank for the Agreed Currency applicable to such Benchmark,

an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

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

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

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

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

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

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

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

**"Borrower Representative"** has the meaning specified in Section 1.10.

**"Borrowers"** has the meaning assigned to such term in the preamble to this Agreement.

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

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

**"Borrowing Base"** means at any time, the result of:

(a) the lesser of (i) 75% of each Borrower's Eligible Inventory (valued at the lower of cost (determined, with respect to any Eligible Inventory of the Borrowers, on a first-in-first-out basis) and market) and (ii) the product of (x) 85% multiplied by (y) the Net Orderly Liquidation Value percentage identified in the most recent Acceptable Inventory Appraisal received by the Administrative Agent, multiplied by (z) the Borrowers' Eligible Inventory valued at the lower of cost (determined, with respect to any Eligible Inventory of the Borrowers, on a first-in-first-out basis) or market, plus

(b) the lesser of (i) 75% of each Borrower's Eligible In-Transit Inventory (valued at the lower of cost (determined, with respect to any Eligible In-Transit Inventory of the Borrowers, on a first-in-first-out basis) and market) and (ii) the product of (x) 85% multiplied by (y) the Net Orderly Liquidation Value percentage identified in the most recent Acceptable Inventory Appraisal received by the Administrative Agent, multiplied by (z) the Borrowers' Eligible In-Transit Inventory valued at the lower of cost (determined, with respect to any Eligible In-Transit Inventory of the Borrowers, on a first-in-first-out basis) or market; provided that the aggregate amount of (A) Eligible In-Transit Inventory included in the Borrowing Base at any time,

plus (B) all Customer In-Transit Inventory included in the Borrowing Base pursuant to clause (l) of the definition of "Eligible Inventory" at such time, shall not exceed the In-Transit Inventory Cap then in effect.plus

**(c) 100% of Borrowing Base Qualified Cash; less**

(e) the aggregate amount of Reserves, if any (without duplication of any Reserves deducted in the calculation of any other Borrowing Base), established by the Administrative Agent from time to time under Section 2.01(b).

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent (and detailing the Borrowing Base), pursuant to Section 4.01(q) or 5.01(g), as adjusted to give effect to Reserves following such delivery established pursuant to Section 2.01(b).

**"Borrowing Base Certificate"** means a certificate, signed and certified as accurate and completed by a Responsible Officer of the Parent Borrower, in substantially the form of Exhibit G or another form which is reasonably acceptable to the Administrative Agent.

**"Borrowing Base Qualified Cash"** means, as of any date of determination, the lesser of (a) the aggregate amount of cash (other than Restricted Cash) of the Borrowers held in the Borrowing Base Qualified Cash Account as of such date and (b) \$100,000,000.

**"Borrowing Base Qualified Cash Account"** means that certain segregated Deposit Account of the Borrower Representative maintained with the Administrative Agent as security for the Obligations which has been identified by the Borrower Representative as the "Borrowing Base Qualified Cash Account" to the Administrative Agent and in which the Administrative Agent has a first priority perfected security interest and which is subject to the Borrowing Base Qualified Cash Account Agreement.

**"Borrowing Base Qualified Cash Account Agreement"** means that certain Escrow Agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Borrower Representative, the Administrative Agent and Barclays Bank PLC, New York Branch, as escrow agent.

**"Borrowing Base Qualified Cash Release Conditions"** means, with respect to any transfer of funds out of the Borrowing Base Qualified Cash Account at the request of the Borrower Representative, the satisfaction of the following conditions: (a) as of the date of any such transfer and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing; (b) the Borrower Representative shall have provided to the Administrative Agent at least two (2) Business Days' prior written notice of the request for such transfer, together with an updated Borrowing Base Certificate giving pro forma effect to such transfer of funds; (c) after giving effect to such transfer, the Total Revolving Extensions of Credit shall not exceed the Line Cap; (d) if a Covenant Relief Period is then in effect, the aggregate Revolving Credit Exposure of all Lenders shall not be greater than \$0 after giving effect to such transfer; and (e) if such transfer would result in a Covenant Relief Period ceasing to be in effect, then the Borrowers shall be in compliance with Section 6.10 on a pro forma basis after giving effect thereto, and the Administrative Agent shall have received a certificate of a Responsible Officer of the Parent Borrower certifying as to such compliance and demonstrating (in reasonable detail) the calculations evidencing such compliance.

**"Borrowing Limits"** has the meaning set forth in Section 2.01(a).

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

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

**"Canadian Dollars"** and **"C\$"** means the lawful currency of Canada.

**"Canadian Prime Rate"** means, on any day, the rate determined by the Administrative Agent to be the higher of (i) the rate of interest published by the Bank of Canada as the "Prime Rate" in Canada, or if such rate is no longer published, any similar rate published by the Bank of Canada (as determined by the Administrative Agent) and (ii) Adjusted Term CORRA for a one month Interest Period as published two Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0% per annum, provided that for the purpose of this definition, Adjusted Term CORRA for any day shall be based on the Term CORRA Reference Rate at approximately (1:00 p.m. Toronto time) on such

day (or any amended publication time for the Term CORRA Reference Rate, as specified by the Bank of Canada in the Term CORRA Reference Rate methodology), provided further that; provided that if any the above rates shall be less than 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement. Any change in the Canadian Prime Rate due to a change in the "Prime Rate" published by the Bank of Canada or Adjusted Term CORRA shall be effective from and including the effective date of such change in the "Prime Rate" published by the Bank of Canada or Adjusted Term CORRA, respectively.

**"Canadian Prime Rate Borrowing"** means any Borrowing comprised of Canadian Prime Rate Loans.

**"Canadian Prime Rate Loan"** means a Loan that is bearing interest at a rate determined by reference to the Canadian Prime Rate.

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

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

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

**"Cash Equivalents"** means:

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

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

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

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

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

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

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

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

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

(j) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one

(1) year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's;

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

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

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

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

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

**"Change in Control"** means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934, as amended, and the rules of the SEC thereunder) (other than the Permitted

Holders), of Equity Interests in each of the Parent and the Parent Borrower (i) representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower and (ii) representing more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower than the aggregate ordinary voting power represented by the issued and outstanding Equity Interests in each of the Parent and the Parent Borrower that are owned, directly or indirectly, beneficially or of record, by the Permitted Holders, or (b) the Parent or any successor thereto in accordance with Section 6.12(d) shall at any time cease to be the sole managing member of the Parent Borrower, or (c) the Parent Borrower shall at any time cease to directly or indirectly own 100% of the Equity Interests of each other Borrower.

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

**"Charges"** has the meaning set forth in Section 10.13.

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

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

**"Co-Borrowers"** has the meaning set forth in the preamble of this Agreement.

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

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

**"Collateral Access Agreement"** means any landlord waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, third party manufacturer or other similar Person) in possession of any Collateral or any landlord of any real

property where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

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

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

**"Commitment"** means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit, Swingline Loans and Protective Advances hereunder, expressed as an amount representing the maximum aggregate amount of such Lender's Revolving Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial amount of each Lender's Commitment as of the Effective Date is set forth on Schedule 2.01 opposite such Lender's name under the caption "Commitment". The initial aggregate amount of the Lenders' Commitments as of the Effective Date is \$400,000,000.

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

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

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

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

**"Consolidated EBITDA"** means, for the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP for any period, Consolidated Net Income for such period adjusted (i) to exclude, without duplication, (a) gains or losses from disposed, abandoned, transferred, closed or discontinued operations (excluding held for sale discontinued operations until actually disposed of), (b) any gains or losses attributable to business dispositions or asset dispositions other than in the ordinary course of business (as reasonably determined by the Parent Borrower acting in good faith), (c) any extraordinary or non-recurring gains or losses (provided that, in the case of extraordinary or non-recurring gains or losses, the amount added-back pursuant to this clause (c) shall not exceed, together with any amounts added back pursuant to clauses (j), (o) or (q), 35% of Consolidated EBITDA (prior to giving effect to any exclusions therefrom) in any Measurement Period), (d) any non-cash gains, losses, charges or expenses, (e) the cumulative effect of changes in accounting principles, including any changes to Accounting Standards Codification 715 (or any subsequently adopted standards relating to pension and

postretirement benefits) adopted by the Financial Accounting Standards Board after the date hereof, (f) Interest Expense, (g) consolidated tax expense, (h) all depreciation and amortization expense, including (1) the depreciation of property, plant and equipment, (2) the amortization of intangible assets, deferred financing fees and unrecognized prior service costs, and (3) actuarial gains and losses related to pensions and other post-employment benefits, (i) all other non-cash charges, including actuarial gains or losses from pension and post-retirement plans, impairment charges and asset write-offs, non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock or other Equity Interests, or non-cash compensation charges of officers, directors and employees, in each case, of the Parent and its Subsidiaries, (j) any costs and expenses related to employment of

terminated employees of the Parent and its Subsidiaries, not to exceed, together with any amounts added back pursuant to clauses (c), (o) or (q), 35% of Consolidated EBITDA (prior to giving effect to any exclusions therefrom) in any Measurement Period, (k) any costs and expenses realized in connection with or resulting from stock appreciation or similar rights, stock options, restricted stock or other Equity Interests, (l) any gains or losses attributable to the early extinguishment of Indebtedness, Swap Agreements or other derivative instruments, (m) any currency translation gains and losses, and any realized or unrealized net loss or gain resulting from hedging transactions, (n) any expenses or charges related to the Transactions, any issuance of Equity Interests, Investment, acquisition, Disposition, recapitalization, Restricted Payment, or incurrence or repayment of Indebtedness permitted hereunder or any other Specified Transaction permitted hereunder (in each case, whether or not consummated), provided, that, the aggregate amount of such expenses and charges related to any such unconsummated transactions shall not exceed \$5,000,000 in any Measurement Period, (o) restructuring losses and expenses (other than depreciation and amortization expenses) not to exceed, together with any amounts added back pursuant to clauses (c), (j) or (q), 35% of Consolidated EBITDA (prior to giving effect to any exclusions therefrom) in any Measurement Period, (p) any payments by the Parent to the Permitted Holders under the Tax Receivable Agreement permitted by Section 6.05(a)(x) (A)(2) paid during such period, and (q) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings and cost savings initiatives, each of which is reasonably identifiable, factually supportable and with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Parent) within 12 months after the occurrence of such merger, other business combination, acquisition, divestiture, restructuring or cost savings initiative, and each of which is projected by the Parent in good faith to be realized within 18 months after the occurrence of such merger, other business combination, acquisition, divestiture, restructuring or cost savings initiative (calculated on a pro forma basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of the period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such period from such actions, in an aggregate amount not to exceed, together with amounts added back pursuant to clauses (c), (j) or (o), 35% of Consolidated EBITDA (prior to giving effect to such addback) in any Measurement Period; and (ii) to include (a) proceeds received from business interruption insurance, (b) without duplication and to the extent increasing Consolidated Net Income for such period, any non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of

Consolidated EBITDA for any prior period ending after the Effective Date) and (c) any net income from disposed, abandoned, transferred, closed or discontinued operations (excluding held for sale discontinued operations until actually disposed of). For purposes of this definition, whenever Pro Forma Effect is to be given to any event, the Pro Forma Effect calculations shall be made in good faith by a Financial Officer of the Parent Borrower.

**"Consolidated Leverage Ratio"** means, as of any date of determination, the ratio of (a) Net Debt for Borrowed Money of the Parent and its Subsidiaries as of such date to (b) Consolidated EBITDA of the Parent and its Subsidiaries (to the extent positive) for the applicable Measurement Period.

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

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

**"Control Agreement"** means a control agreement, in form and substance reasonably satisfactory to the Administrative Agent, executed and delivered by a Loan Party, the Administrative Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

**"Controlled Account"** has the meaning assigned to such term in Section 5.12(a).

**"Controlled Account Bank"** has the meaning assigned to such term in Section 5.12(a).

**"Copyrights"** has the meaning assigned to such term in the Security Agreement.

**"CORRA"** means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

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

**"Covenant Relief Period"** means any period during which (a) no Default or Event of Default has occurred and is continuing and (b) either of the following shall exist: (i) the aggregate Revolving Credit Exposure of all Lenders is not greater than \$0; or (ii) each of (A) the Dollar Equivalent of the sum of the outstanding principal amount of Revolving Loans, Protective Advance Exposure, and Swingline Exposure of all Lenders is not greater than

\$0. (B) the Non-Cash Collateralized LC Exposure is not greater than \$15,000,000, and (C) the Borrowing Base exceeds the sum of all Lenders' LC Exposure. Any Covenant Relief Period then in effect shall

immediately terminate in the event that the criteria set forth in clause (a) or clause (b), as applicable, of this definition are no longer satisfied.

**"Covered Entity"** means any of the following:

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

**"Covered Party"** has the meaning assigned to it in Section 10.18.

**"Customer In-Transit Inventory"** has the meaning assigned to it in clause (l) of the definition of "Eligible Inventory".

**"Customer Related Destination"** has the meaning assigned to it in clause (k) of the definition of "Eligible Inventory".

**"Customs Broker Agreement"** means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among a Borrower, a customs broker, freight forwarder or other carrier, and the Administrative Agent, in which the customs broker, freight forwarder or other carrier acknowledges that it has control over and holds the documents evidencing ownership of, or other shipping documents relating to, the subject Inventory or other property for the benefit of the Administrative Agent, and agrees, upon notice from the Administrative Agent (which notice shall be delivered only upon the occurrence and during the continuance of an Event of Default), to hold and dispose of the subject Inventory and other property solely as directed by the Administrative Agent.

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

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

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

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

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

**"Default Right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**"Defaulting Lender"** means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to such funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (ii) fund any portion of its participation in Letters of Credit, Swingline Loans or Protective Advances hereunder within two Business Days of the date when due or (iii) pay to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrowers or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder; provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers, (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, interim receiver, custodian, conservator, trustee, monitor, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any

direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender, or (e) has become the subject of a Bail-In Action. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination to the Borrowers and each Lender.

**"Deposit Account"** has the meaning set forth in the UCC.

**"Disposition"** means, with respect to any property or right, any sale, lease, sale and leaseback, assignment, license, conveyance, transfer or other disposition thereof (in one

transaction or in a series of transactions and whether effected pursuant to a Division or otherwise). **"Dispose"** and **"Disposed of"** have meanings correlative thereto.

**"Disqualified Equity Interests"** means that portion of any Equity Interests which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change in Control or as a result of a Disposition of assets or casualty event), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change in Control or as a result of a Disposition of assets or casualty event) on or prior to the six-month anniversary of the Maturity Date.

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

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

**"Dividing Person"** has the meaning assigned to it in the definition of "Division".

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

**"Documents"** has the meaning set forth in the UCC.

**"Dollar Equivalent"** means, for any amount, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with the Alternative Currency last provided (either by publication or otherwise provided to the Administrative Agent) by Reuters on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with the

Alternative Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its reasonable discretion; provided that, in the case of any such amount that is expressed in a currency other than Dollars, to the extent such amount is the subject of a currency hedge arrangement evidenced by a Swap Agreement, the "Dollar Equivalent" of such amount shall be the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with such currency as set forth in such Swap Agreement.

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

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

**"EEA Financial Institution"** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**"EEA Member Country"** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**"EEA Resolution Authority"** means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**"Effective Date"** means the date on which each of the conditions set forth in Section 4.01 have been satisfied (or waived in accordance with Section 10.02).

**"Electronic Signature"** means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

**"Eligible In-Transit Inventory"** means, at any time, without duplication of other Eligible Inventory, Inventory of a Borrower which meets the following criteria:

(a) such Inventory has been shipped to a United States location for receipt by a Borrower within forty-five (45) days of the date of determination and has not yet been received by a Borrower;

(b) the purchase order for such Inventory is in the name of a Borrower and title has passed to a Borrower;

(c) either (i) such Inventory is subject to a negotiable bill of lading, freight forwarder's receipt or other document of title, in form reasonably satisfactory to the Administrative Agent, which shall, except as otherwise agreed by the Administrative Agent in its Permitted Discretion, have been endorsed to the Administrative Agent or an agent acting on its behalf or (ii) such Inventory is evidenced by a non-negotiable bill of lading, freight forwarder's receipt or other document of title in form reasonably acceptable to the Administrative Agent, or other shipping document reasonably acceptable to the Administrative Agent, which names a Borrower as consignee;

(d) from and after the date that is 90 days after the Effective Date (or such later date as agreed by the Administrative Agent in its sole discretion), (i) each relevant freight carrier, freight forwarder, customs broker, shipping company or other Person in possession of such Inventory and/or the documents relating to such Inventory, in each case, as reasonably requested by the Administrative Agent, shall have entered into a Customs Broker Agreement and (ii) as reasonably requested by the Administrative Agent, the documents relating to such Inventory shall be in the possession of the Administrative Agent or an agent (or sub-agent) acting on its behalf;

(e) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, reasonably satisfactory to the Administrative Agent in its Permitted Discretion, and the Administrative Agent shall have received a copy of the certificate of marine cargo insurance in connection therewith in which it has been named as an additional insured and loss payee in a manner reasonably acceptable to the Administrative Agent;

(f) such Inventory is subject, to the satisfaction of the Administrative Agent in its Permitted Discretion, to a first priority perfected security interest in and lien upon such Inventory in favor of the Administrative Agent (except for any possessory lien upon such goods in the possession of a freight carrier or shipping company securing only the freight charges for the transportation of such goods to a Borrower);

(g) such Inventory is not subject to a Denial Order under the Uyghur Forced Labor Protection Act or reasonably likely to have been sourced from Xinjiang Province, People's Republic of China and is not from a supplier on the DHS UFLPA Entity List; and

(h) such Inventory is not excluded from the definition of "Eligible Inventory" (except solely pursuant to clause (g), (h), (j) or (aa) thereof).

Eligible In-Transit Inventory shall not include Inventory accounted for as "in transit" by a Borrower by virtue of such Inventory's being in transit between the Borrowers' locations; rather such Inventory shall be treated as "Eligible Inventory" if it satisfies the conditions therefor. Standards of eligibility may be made more restrictive from time to time by the Administrative Agent in its Permitted Discretion pursuant to Section 2.01(b).

**"Eligible Inventory"** means, at any time, Inventory of a Borrower which the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's Permitted Discretion provided herein, Eligible Inventory shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent, governed by the laws of the jurisdiction in which the Inventory in question is located;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) so long as the Administrative Agent has established a Reserve in respect thereof to the extent determined to be necessary in its Permitted Discretion, a Lien permitted under Section 6.02 which does not have priority over the Lien in favor of the Administrative Agent;

(c) which is, in the Administrative Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business, or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation or warranty contained in this Agreement or in any Security Document has been breached or is not true and which does not conform to all standards imposed by any Governmental Authority having regulatory authority over such Inventory, in each case, in any material respect;

(e) in which any Person other than a Borrower shall (i) have any direct or indirect ownership, interest or title to such Inventory or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which is not raw materials, work-in-process or finished goods or which constitutes supplies, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the United States or which is in transit with a common carrier from vendors and suppliers (it being understood that any such Inventory that is in-transit from any Borrower to another Borrower or from any Borrower to a warehouse owned or leased by such Borrower or another Borrower within the United States shall not be excluded pursuant to this clause (g) solely because such Inventory is in transit; provided that, from and after the date that is 90 days after the Effective Date (or such later date as agreed by the Administrative Agent in its sole discretion), in the case of any such Inventory in transit to a warehouse leased by a Borrower, the Administrative Agent has received a Collateral Access Agreement in respect thereof that continues to be in effect or an appropriate Rent Reserve has been taken in respect thereof);

(h) which is located in any location leased by a Borrower unless, from and after the date that is 90 days after the Effective Date (or such later date as agreed by the Administrative Agent in its sole discretion), (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Rent Reserve has been established by the Administrative Agent in its Permitted Discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless, from and after the date that is 90 days after the Effective Date (or such later date as agreed by the Administrative Agent in its sole discretion), (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) an appropriate Rent Reserve has been established by the Administrative Agent in its Permitted Discretion;

(j) which is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party location or outside processor, unless, from and after the date that is 90 days after the Effective Date (or such later date as agreed by the Administrative Agent in its sole discretion) (provided that such 90 day period shall not apply to Jabil Inc.), (i) such third party or outside processor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) an appropriate Rent Reserve has been established by the Administrative Agent in its Permitted Discretion;

(k) which (i) is located at any customer location or any warehouse storage location designated by any customer for delivery or (ii) in the case of Inventory of the Parent Borrower, has been shipped to a location identified in clause (i) and is being held in any other third party storage location pending delivery to a location identified in clause (i) (any location referred to in the foregoing clause (i) or (ii), an **"Customer Related Destination"**);

(l) which is in-transit to any Customer Related Destination within the United States and, in the case of any Customer Related Destination of the type described in clause (k)(i) above, that is set forth on Schedule 1.01(b) (as supplemented by additional customer locations identified on any Compliance Certificate delivered pursuant to Section 5.01(c)) (such in-transit Inventory, **"Customer In-Transit Inventory"**); provided that if (x) title to such Customer In-Transit Inventory has transferred to a Borrower's customer or other purchaser of such Inventory at any time prior to shipping or while in-transit or (y) the Administrative Agent ceases to have a perfected Lien on such Customer In-Transit Inventory, such Customer In-Transit Inventory shall cease to constitute Eligible Inventory notwithstanding this clause (l); provided further that the aggregate amount of (A) all Customer In-Transit Inventory included in the Borrowing Base at any time pursuant to this clause (l), plus (B) all Eligible In-Transit Inventory included in the Borrowing Base at such time, shall not exceed the In-Transit Inventory Cap then in effect;

(m) which is a discontinued product or component thereof;

(n) which is the subject of a consignment by the applicable Loan Party as consignor;

(o) which is perishable;

(p) which contains or bears any Intellectual Property licensed to the applicable Borrower unless the Administrative Agent is satisfied in its Permitted Discretion that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(q) which is not reflected in a current perpetual inventory report of a Borrower (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(r) for which reclamation rights have been asserted by the seller;

(s) which has been acquired from a Sanctioned Person;

(t) for which (i) any contract or related documentation (including invoices or purchase orders) relating to such Inventory includes retention of title rights in favor of the vendor or supplier thereof or (ii) under applicable governing laws, retention of title may be imposed unilaterally by the vendor or supplier thereof;

(u) subject to any dealer floor planning arrangement;

(v) which is at any location with less than \$1,000,000 in Inventory;

(w) consisting of or containing Hazardous Materials (other than lithium ion batteries, gasoline, diesel or oil);

(x) which is not insured in compliance with this Agreement;

(y) which is acquired by a Borrower after the Effective Date in an acquisition or other bulk purchase of assets (other than from another Borrower) until such time as the Administrative Agent shall have received an Acceptable Inventory Appraisal and an Acceptable Field Examination; provided that Inventory that otherwise satisfies the applicable eligibility criteria will be deemed Eligible Inventory and included in the Borrowing Base prior to receipt of the Acceptable Inventory Appraisal and Acceptable Field Examination, but in no event shall the aggregate amount of (1) all of the Inventory acquired in acquisitions or other bulk purchases of assets permitted hereunder prior to receipt of an Acceptable Inventory Appraisal and Acceptable Field Examination with respect thereto that may be included in the Borrowing Base pursuant to this clause (x), plus (2) all of the Inventory of any new Borrower permitted to be included in the Borrowing Base pursuant to Section 5.11 prior to receipt of an Acceptable Inventory Appraisal and Acceptable Field Examination with respect thereto, at any time exceed 10% of the Borrowing Base; provided that, notwithstanding the foregoing provisions of this clause (x), that such Inventory shall be deemed Eligible Inventory and be included in the Borrowing Base pursuant to this clause (x) until the earlier of (A) the date that the Acceptable Inventory Appraisal and the Acceptable Field Examination are received (to the extent required) with

respect to such Inventory and (B) the date that is 60 days after the acquisition or other bulk purchase of assets has been consummated;

(z) that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(aa) that it is the subject of a bill of lading or other document of title;

(bb) that is not insured in compliance with this Agreement; or

(cc) which the Administrative Agent in its Permitted Discretion determines is unacceptable in accordance with Section 2.01(b).

Standards of eligibility may be made more restrictive from time to time by the Administrative Agent in its Permitted Discretion pursuant to Section 2.01(b).

**"Environmental Laws"** means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, transportation, storage, treatment, disposal, management, release or threatened release of any Hazardous Material or to health and safety matters (to the extent related to Hazardous Material).

**"Environmental Liability"** means any liability, contingent or otherwise (including any liability for damages, costs of investigation, reclamation or remediation, fines, penalties or indemnities), of the Parent, the Parent Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any Environmental Law, including compliance or noncompliance therewith, (b) the generation, use, handling, transportation, storage, treatment or

disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the presence, release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**"Equity Interests"** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options, share appreciation rights or other rights, contractual or otherwise, entitling the holder thereof to purchase or acquire any such equity interest; provided that Equity Interests shall not include any debt securities that are convertible into or exchangeable for any combination of Equity Interests and/or cash.

**"ERISA"** means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

**"ERISA Affiliate"** means any person that for purposes of Title I or Title IV of ERISA or Section 412 of the Code would be deemed at any relevant time to be a single employer or

otherwise aggregated with the Parent, the Parent Borrower or a Subsidiary under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

**"ERISA Event"** means any one or more of the following: (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Plan, as to which the PBGC has not waived under subsection .22, .23, .25, .26, .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Regulation Section 4043 the requirement of Section 4043(a) of ERISA that it be notified of such event; (b) the termination of any Plan under Section 4041(c) of ERISA; (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (d) the failure to make a required contribution to any Plan that would result in the imposition of a lien or other encumbrance or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a lien or encumbrance; (e) the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived; or a determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Plan; (g) the complete or partial withdrawal of the Parent, the Parent Borrower, Subsidiary or any ERISA Affiliate from a Multiemployer Plan which results in the imposition of Withdrawal Liability or the insolvency under Title IV of ERISA of any Multiemployer Plan or (h) a determination that any Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

**"EU Bail-In Legislation Schedule"** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

**"EURIBOR Interpolated Rate"** means, at any time, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the rate per annum (rounded to the same number of decimal places as the EURIBOR Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the EURIBOR Screen Rate for the longest period (for which the EURIBOR Screen Rate is available for Euros) that is shorter than the Impacted EURIBOR Rate Interest Period; and (b) the EURIBOR Screen Rate for the shortest period (for which the EURIBOR Screen Rate is available for Euros) that exceeds the Impacted EURIBOR Rate Interest Period, in each case, at such time; provided that, if any EURIBOR Interpolated Rate shall be less than the Floor, such rate shall be deemed to be the Floor for the purposes of this Agreement.

**"EURIBOR Rate"** means, with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the EURIBOR Screen Rate at approximately 11:00 a.m., Brussels time, two TARGET Days prior to the commencement of such Interest Period; provided that, if the EURIBOR Screen Rate shall not be available at such time for such Interest Period (an "**Impacted EURIBOR Rate Interest Period**") with respect to Euros then the EURIBOR Rate shall be the EURIBOR Interpolated Rate.

**"EURIBOR Screen Rate"** means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters as of 11:00 a.m. Brussels time two TARGET Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Borrower. If the EURIBOR Screen Rate shall be less than the Floor, the EURIBOR Screen Rate shall be deemed to be the Floor for purposes of this Agreement.

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

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

**"Excess Availability"** means at any time, an amount equal to (a) the lesser of (i) the total Commitments of all Lenders and (ii) the Borrowing Base, minus (b) the Total Revolving Extensions of Credit then outstanding (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Revolving Percentage of all outstanding Revolving Loans).

**"Excluded Account"** means (a) Deposit Accounts specifically and exclusively used for trust, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party's employees, (b) escrow, trust, fiduciary or similar Deposit Accounts or Securities Accounts exclusively holding funds or property for the benefit of third parties in the ordinary course of business, (c) Deposit Accounts holding solely cash collateral encumbered by Liens permitted under Section 6.02, (d) Deposit Accounts holding solely proceeds of Receivables Assets that have been sold, contributed, conveyed or assigned to a Receivables Subsidiary or any other Person (other than a Loan Party) pursuant to a Permitted Factoring Transaction or a Permitted Receivables Facility, and (e) Deposit Accounts containing an average daily balance for any thirty (30) day period for all such Deposit Accounts not to exceed \$2,500,000 in the aggregate. For the avoidance of doubt, the Borrowing Base Qualified Cash Account shall not constitute an Excluded Account.

**"Excluded Property"** means (a) any fee interest in real property having a value of less than \$5,000,000 and any leasehold interest in real property, (b) any property that secures Indebtedness permitted to be incurred pursuant to Section 6.01(d) to the extent the documents governing such Indebtedness do not permit any other Lien on such property, (c) motor vehicles, aircraft, boats and other assets subject to a certificate of title to the extent a Lien on such other assets cannot be perfected by filing a UCC-1 financing statement having an aggregate value of less than \$10,000,000, (d) property the grant of a security interest thereon to secure the Obligations is (1) prohibited by applicable law, rule or regulation or (2) which requires governmental consent, approval, license or authorization to be pledged (unless such consent, approval, license or authorization has been received and the Borrowers shall be under no obligation to seek such consent) (in each case under this clause (d), except to the extent such

prohibition or requirement is unenforceable after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law), (e) any lease, license, contract or other agreement covering real or personal property of any Loan Party to the extent that a grant of a security interest therein to secure the Obligations would violate or invalidate such lease, license, contract or other agreement or create a right of termination in favor of any other party thereto (other than any Loan Party or any Subsidiary or Affiliate thereof), and the consent of the other party to such lease, license, contract or other agreement has not been obtained (provided that the foregoing exclusions of this clause (e) shall in no way be construed to apply to the extent that any described prohibition or restriction is ineffective after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law), (f) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby or require the consent of any Governmental Authority (to the extent such consent has not been obtained; provided that the Borrowers shall be under no obligation to seek such consent) (provided that (i) the foregoing exclusions of this clause (f) shall in no way be construed to apply to the extent that any described prohibition or restriction is ineffective after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law and (ii) the foregoing exclusions of clauses (d), (e) and (f) shall be in no way be construed to limit, impair, or otherwise affect any of the Administrative Agent's or any other Secured Party's continuing security interests in, and liens upon, any rights or interests of any Loan Party in or to (A) monies due or to become due under or in connection with any described contract, lease, permit, license, other agreement, or property (including any Accounts or Equity Interests), or (B) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, other agreement, or property), unless, in each case, such proceeds otherwise independently constitute Excluded Property), (g) any lease, license or other agreement or any property subject to a purchase money security interest, capital lease obligation or similar arrangements, in each case, to the extent permitted under this Agreement, to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement, purchase money, capital lease or a similar arrangement or create a right of termination in favor of any other party thereto (other than any Loan Party, or any Subsidiary or Affiliate thereof) after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable law notwithstanding such prohibition, (h) pending United States "intent-to-use" trademark applications for which a verified statement of use or an amendment to allege use has not been filed with and accepted by the United States Patent and Trademark Office, (i) commercial tort claims in an amount not exceeding \$5,000,000 individually; (j) those assets (including Equity Interests) as to which the Administrative Agent and the Parent Borrower reasonably agree that the costs or other consequence (including any material adverse tax consequence) of obtaining such a security interest or perfection thereof are excessive in relation to the value of the security to be afforded thereby; (k) Receivables Assets sold, contributed or otherwise transferred pursuant to a Permitted Factoring Transaction or in connection with a Permitted Receivables Facility, and (l) Excluded Securities; provided that immediately upon the lapse or termination of any prohibitions or the obtaining of any consents, as applicable, referred to herein, such property shall be considered Collateral.

**"Excluded Securities"** means (a) voting Equity Interests of any CFC or any CFC Holdco in excess of 65% of the outstanding voting Equity Interests of such Subsidiary, (b) any Equity Interests or Indebtedness to the extent and for so long as the pledge thereof would be prohibited by any applicable law after giving effect to the applicable anti-assignment provisions of Article 9 of the UCC, (c) any Equity Interests in any Person that is not a Wholly-Owned Subsidiary, (d) any Equity Interests in any Excluded Subsidiary (other than (x) any Receivables Subsidiary (subject to Section 5.11) and (y) any other Excluded Subsidiary as defined in clauses (b), (c), (d), (g) (except to the extent the assumed Indebtedness prohibits the Equity

Interests in such Subsidiary from being pledged) and (i) (unless the Equity Interests in such Subsidiary are otherwise excluded pursuant to this definition of "Excluded Securities" in the definition thereof), (e) any margin stock (as defined in Regulation U and Regulation X of the Board of Governors of the Federal Reserve System), and (f) Equity Interests of the Parent Borrower that are not owned by the Parent.

**"Excluded Subsidiary"** means (a) each Subsidiary that is not a direct or indirect Wholly Owned Subsidiary of the Parent Borrower, (b) each Immaterial Subsidiary, (c) any Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code any shares of which are treated as owned directly or indirectly by a United States shareholder (within the meaning of Section 951(b) of the Code) as measured for purposes of Section 958(a) of the Code (a "CFC"), (d) any Subsidiary substantially all the assets of which consist of Equity Interests (or Equity Interests and Indebtedness) of one or more CFCs (a "CFC Holdco") or other CFC Holdcos, (e) any Subsidiary of a CFC, (f) any Subsidiary that is prohibited by Law, regulation or contractual obligation existing on the Effective Date or on the date such entity becomes a Subsidiary after the Effective Date (so long as such prohibition did not arise in contemplation of such entity becoming a Subsidiary) from providing the Guaranty or that would require a an approval of a Governmental Authority or third party (other than an Affiliate of any Loan Party) (pursuant to a contractual obligation) consent, approval, license or authorization in order to grant such Guaranty that has not been obtained, (g) any Subsidiary acquired pursuant to a permitted Investment financed with Indebtedness permitted to be assumed pursuant to the Loan Documents and any Subsidiary thereof that Guarantees such Indebtedness, in each case to the extent such Indebtedness prohibits such Subsidiary from becoming a Guarantor (but only for as long as such prohibition exists and only if such indebtedness is not an asset-based credit facility), provided that such Indebtedness is not created in contemplation of or in connection with such permitted Investment or such Person becoming a Subsidiary, (h) any Special Purpose Subsidiary, (i) each Foreign Subsidiary, and (j) each Subsidiary as to which the Administrative Agent and the Parent Borrower reasonably agree in writing that the costs or other consequence (including any material adverse tax consequence) of obtaining a guaranty of the Obligations therefrom are excessive in relation to the value to be afforded thereby; provided, however, that (i) any Person that is or that becomes a Guarantor shall not at any time thereafter be designated as or deemed an Excluded Subsidiary (other than, with respect to any such Person that becomes a non-Wholly Owned Subsidiary, in accordance with Section 10.17(a)), (ii) no Borrower may be designated or deemed an Excluded Subsidiary, and (iii) except as permitted under Section 6.14, no Excluded Subsidiary may own or have an exclusive license to any Intellectual Property that is material to the business of the Parent Borrower and its Subsidiaries (taken as a whole).

**"Excluded Swap Obligation"** with respect to any Guarantor, (a) any Swap Agreement Obligation if, and to the extent that, and only for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Agreement Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure to constitute an "eligible contract participant," as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Agreement Obligation. If a Swap Agreement Obligation arises under a master agreement governing more than one Swap Agreement, such exclusion shall apply only to the portion of such Swap Agreement Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

**"Excluded Taxes"** means, with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Parent or any Borrower, as applicable, hereunder, (a) Taxes imposed on (or measured by) its net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that otherwise are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (other than pursuant to an assignment request by the Borrowers under Section 2.16(b)) or designates a new lending office, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office or assignment, to receive additional amounts from with respect to such withholding tax pursuant to Section 2.14(a), (c) Taxes attributable to such recipient's failure to comply with Section 2.14(g), and (d) any withholding Taxes imposed under FATCA.

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

**"Existing Indebtedness Refinancing"** has the meaning set forth in Section 5.1(n).

**"Factoring Transaction"** means any transaction or series of transactions that may be entered into by the Parent Borrower or any Subsidiary thereof pursuant to which the Parent Borrower or such Subsidiary may sell, convey, assign or otherwise transfer Receivables Assets (which may include a backup or precautionary grant of security interest in such Receivables Assets so sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) to any Person that is not a Subsidiary.

**"FATCA"** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any

agreements entered into pursuant to Section 1471(b)(1) of the Code or any published intergovernmental agreement and any fiscal or regulatory legislation, rules or

official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

**"Federal Funds Effective Rate"** means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

**"Fee Letters"** means the Administrative Agent Fee Letter and the Arranger Fee Letter.

**"Financial Officer"** means, with respect to any Loan Party, the chief financial officer, principal accounting officer, treasurer, vice president of finance or corporate controller of such Loan Party.

**"Flood Laws"** means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

**"Floor"** means a rate of interest equal to 0.00%.

**"Foreign Lender"** means any Lender that is organized under the laws of a jurisdiction other than the United States of America, each State thereof and the District of Columbia.

**"Foreign Subsidiary"** means any Subsidiary of the Parent that is not a Domestic Subsidiary.

**"Fronting Exposure"** means, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender's Applicable Percentage of the outstanding Obligations with respect to Letters of Credit issued by such Issuing Bank other than such Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**"Full Cash Dominion Period"** means (a) each period when an Event of Default shall have occurred and be continuing or (b) after the Availability Requirement Holiday, each period beginning on the date on which Excess Availability is less than the greater of (i) 12.5% of the Line Cap and (ii) if the Borrowing Base then in effect is (A) less than \$200,000,000, \$25,000,000 and (B) greater than or equal to \$200,000,000, \$50,000,000; provided that any such subject to the following proviso, any Full Cash Dominion Period commencing pursuant to clause (b) shall end when and if Excess Availability shall have been not less than such specified level for 30 consecutive days; provided further that no Full Cash Dominion Period may commence

during a Covenant Relief Period and any Full Cash Dominion Period then in effect shall immediately terminate upon the commencement of a Covenant Relief Period; provided further, for the avoidance of doubt, if a Full Cash Dominion Period would have been in effect but for the existence of a Covenant Relief Period, then such Full Cash Dominion Period shall be deemed to exist immediately upon termination of such Covenant Relief Period.

**"GAAP"** means generally accepted accounting principles in the United States of America, as set forth in the Accounting Standards Codification of the Financial Accounting Standards Board from time to time.

**"Governmental Authority"** means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**"Guarantee"** of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to

enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business, or customary indemnification obligations entered into in connection with any acquisition or disposition of assets or of other entities (other than to the extent that the primary obligations that are the subject of such indemnification obligation would be considered Indebtedness hereunder).

**“Guarantor”** means (i) any Subsidiary (not including any Borrower or any Excluded Subsidiary) of the Parent Borrower party hereto as a Guarantor or that has executed a guaranty supplement pursuant to [Section 5.11](#) or [Section 9.07](#), (ii) the Parent, and (iii) other than with respect to its own Obligations, each Borrower.

**“Guaranty”** means the guaranty and other provisions in [Article 9](#).

**“Guaranty Subordinated Debt”** has the meaning set forth in [Section 9.02\(b\)](#).

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum

distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“Immaterial Subsidiary”** means any Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Parent most recently ended for which financials have been delivered pursuant to [Section 5.01\(a\)](#) or [\(b\)](#), have (i) total assets with a value in excess of 5% of the Total Assets, or (ii) revenues representing in excess of 5% of the Total Revenues, for the four fiscal quarters ended as of such date and (b) taken together with all Immature Subsidiaries as of the last day of the fiscal quarter of the Parent most recently ended for which financials have been delivered pursuant to [Section 5.01\(a\)](#) or [\(b\)](#), did not have (i) total assets with a value in excess of 10% of the Total Assets, or (ii) revenues representing in excess of 10% of the Total Revenues for the four fiscal quarters ended as of such date; provided that (w) no Borrower may be deemed an Immature Subsidiary, (x) no Subsidiary that is then a Loan Party shall be deemed an Immature Subsidiary, (y) no Immature Subsidiary may hold Equity Interests in any Loan Party, and (z) except as permitted by Section 6.14, no Immature Subsidiary may own or have an exclusive license to any Intellectual Property that is material to the business of the Parent Borrower and its Subsidiaries (taken as a whole). Each Immature Subsidiary as of the Effective Date shall be set forth in [Schedule 3.13](#).

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

**“Increased Amount Date”** has the meaning set forth in [Section 2.18](#).

**“Incremental Amount”** means \$250,000,000.

**“Indebtedness”** of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for any earn-outs or similar obligations or the deferred purchase price of property or services, in each case, to the extent required to be included as a liability on the balance sheet of such Person at such time in accordance with GAAP (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers’ acceptances, letters of credit, surety bonds or similar arrangements, (g) all obligations of such Person in respect of Disqualified Equity Interests, (h) all Guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned or acquired by such Person, whether or not such Person has assumed or become liable for the payment of such obligation. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is

liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** has the meaning set forth in [Section 10.03\(b\)](#).

**“Information”** has the meaning set forth in [Section 10.12\(a\)](#).

**“Intellectual Property”** means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or other applicable laws, including, without limitation, all Copyrights, Patents, industrial designs, Trademarks, proprietary rights in technology, trade secrets, know-how and processes, and all registrations and applications therefor.

**“Intercompany Subordination Agreement”** means an intercompany subordination agreement, dated as of the Effective Date, executed and delivered by each of the Loan Parties, each of their respective Subsidiaries party thereto, and the Administrative Agent, the form and substance of which is reasonably satisfactory to the Administrative Agent.

**“Interest Election Request”** has the meaning set forth in [Section 2.05\(b\)](#).

**“Interest Expense”** means, with reference to any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Parent and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Parent and its Subsidiaries (including all net payments and receipts (if any) under Swap Agreements in respect of interest rates to the extent such net payments and receipts are made in cash in such period and allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Parent and its Subsidiaries for such period in accordance with GAAP.

**“Interest Payment Date”** means (a) with respect to any ABR Loan (other than any Swingline Loan) or Canadian Prime Rate Loan, the last Business Day of each March, June, September and December, (b) with respect to any Term Benchmark Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

**“Interest Period”** means, with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, with the consent of each Lender, twelve months or less than one month) thereafter (provided, that in the case of any Term CORRA

Borrowing, such period shall be one or three months thereafter), (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment for any Agreed Currency) as the Borrowers may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Term Benchmark Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

**“In-Transit Inventory Cap”** means, as of any date of determination, (a) during the period from and including the Effective Date through the date that is 90 days after the Effective Date, \$75,000,000, and (b) at any time thereafter, the lesser of (i) \$50,000,000 and (ii) 15% of the Borrowing Base then in effect.

**“Inventory”** has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

**“Inventory Customer Contracts”** means any customer contracts of any Borrower and its Subsidiaries relating to any Inventory included in the Borrowing Base.

**“Inventory IP Licenses”** has the meaning given to such term in the Security Agreement.

**“Inventory Receivables Assets”** means any Receivables Assets comprised of accounts receivable (whether now existing or arising in the future) constituting proceeds of or otherwise relating to any Inventory included in the Borrowing Base, together with any collateral securing such accounts receivable, and any contracts, guarantees or other payment support obligations in respect of such accounts receivable, and any proceeds of such accounts receivable or other assets relating to any Inventory included in the Borrowing Base.

**"Inventory Reporting Period"** means the period (a) commencing on the day that Excess Availability is less than 25% of the Line Cap and (b) continuing until the date that during the previous thirty (30) consecutive days Excess Availability has been greater than 25% of the Line Cap at all times; provided that no Inventory Reporting Period may commence during a Covenant Relief Period and any Inventory Reporting Period then in effect shall immediately terminate

upon the commencement of a Covenant Relief Period; provided further, notwithstanding anything to the contrary contained in the foregoing, an Inventory Reporting Period shall be deemed to exist at any time during a Covenant Relief Period that the amount of Non-Cash Collateralized LC Exposure exceeds \$0.

**"Investment"** has the meaning given to such term in Section 6.04.

**"IRS"** means the U.S. Internal Revenue Service.

**"Issuing Bank"** means, with respect to a particular Letter of Credit, (a) each of Barclays Bank PLC, Goldman Sachs Bank USA and Morgan Stanley Senior Funding, Inc., each in its capacity as the issuer of such Letter of Credit, and its successors in such capacity as provided in Section 2.19(j), (b) such other Lender selected by the Borrowers from time to time to issue such Letter of Credit hereunder upon receipt by the Administrative Agent of documentation in form and substance reasonably satisfactory to the Administrative Agent pursuant to which such Lender agrees to assume the rights and obligations of an Issuing Bank hereunder (provided that no Lender shall be required to become an Issuing Bank pursuant to this subclause (b) without such Lender's consent), and/or (c) any Lender selected by the Borrowers (with the prior consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned)) to replace a Lender who is a Defaulting Lender at the time of such Lender's appointment as an Issuing Bank (provided that no Lender shall be required to become an Issuing Bank pursuant to this subclause (c) without such Lender's consent) or any successor in such capacity as provided in Section 2.19(j). Any Issuing Bank may, in its reasonable discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate or branch.

**"Junior Debt"** means (i) any junior lien secured Indebtedness, (ii) any unsecured Indebtedness, and (iii) any subordinated Indebtedness. For the avoidance of doubt, Capital Lease Obligations and Purchase Money Indebtedness shall not constitute Junior Debt.

**"LC Commitment"** means, with respect to any Issuing Bank, the amount set forth on Schedule 2.01 opposite such Issuing Bank's name under the caption "LC Commitment".

**"LC Disbursement"** means a payment made by an Issuing Bank pursuant to a Letter of Credit.

**"LC Exposure"** means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrowers at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

**"LC Sublimit"** means the lesser of (a) \$200,000,000 and (b) the aggregate unused amount of the Commitments then in effect; provided that no Issuing Bank shall be required to issue Letters of Credit in an aggregate amount outstanding at any time in excess of the LC

Commitment of such Issuing Bank, it being understood that the aggregate amount of the LC Commitments of the Issuing Banks as of the Effective Date is \$90,000,000.

**"Lender Joinder Agreement"** means a lender joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

**"Lenders"** means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and the Issuing Banks.

**"Letter of Credit"** means any letter of credit issued (or deemed to be issued) under and pursuant to this Agreement. A Letter of Credit may be issued in Dollars or in any Alternative Currency.

**"Letter of Credit Request"** means a request by any Borrower for a Letter of Credit in accordance with Section 2.19.

**"Lien"** means, with respect to any asset or right, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset or right, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or right.

**"Line Cap"** means the lesser of (a) the total Commitments of all Lenders and (b) the Borrowing Base.

**"Loan Documents"** means this Agreement (including any amendment hereto or waiver hereunder), the Notes (if any), any Borrowing Base Certificate, the Intercompany Subordination Agreement, any Lender Joinder Agreement, any guaranty supplement delivered pursuant to Section 5.11 hereof, the Security Documents, the Fee Letters and any other agreement, instrument or document executed by one or more Loan Parties after the Effective Date and designated by its terms as a Loan Document.

**"Loan Parties"** means the Borrowers and the Guarantors.

**"Loans"** means the loans made by the Lenders to any of the Borrowers pursuant to this Agreement, including Swingline Loans and Protective Advances.

**"Local Time"** means (a) in the case of a Loan, Borrowing or LC Disbursement denominated in Dollars, New York City time, (b) in the case of a Loan, Borrowing or LC Disbursement denominated in Canadian Dollars, local time in Toronto, Canada, and (c) in the case of a Loan, Borrowing or LC Disbursement denominated in an Alternative Currency (other than Canadian Dollars), London, England time unless otherwise notified by the Administrative Agent.

**"Material Adverse Effect"** means a material adverse effect on (a) the business, property, financial condition or results of operations of the Parent and its Subsidiaries taken as a whole, (b) the ability of the Parent or any Borrower to perform any of its payment obligations under this Agreement or any other Loan Document or (c) the rights of or remedies available to the Agents and the Lenders, taken as a whole, under this Agreement or any other Loan Document.

**"Material Indebtedness"** means Indebtedness (other than any Indebtedness under the Loan Documents and Letters of Credit hereunder), or obligations in respect of one or more Swap Agreements, of any one or more of the Parent and its Subsidiaries having an outstanding principal amount exceeding \$20,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Parent or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Parent or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

**"Maturity Date"** means November 22, 2027.

**"Maximum ASR Amount"** has the meaning set forth in Section 6.05(a)(vi).

**"Maximum Rate"** has the meaning set forth in Section 10.13.

**"Measurement Period"** means, as of any date of determination, the most recently ended period of four consecutive fiscal quarters of the Parent ended on or prior to such date for which financial statements with respect to each fiscal quarter included in such period have been delivered pursuant to Section 5.01(a) or 5.01(b).

**"Minimum Collateral Amount"** means, at any time, with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of an Issuing Bank with respect to Letters of Credit (105% for any Fronting Exposure with respect to Letters of Credit denominated in a currency other than Dollars) issued and outstanding at such time.

**"Moody's"** means Moody's Investors Service, Inc.

**"Mortgages"** means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party in favor of the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, that encumber the real property included in the Collateral.

**"Multiemployer Plan"** means any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is or would be an obligation to contribute of) the Parent, the Parent Borrower or a Subsidiary or an ERISA Affiliate, and each such plan for the five- year period immediately following the latest date on which the Parent, the Parent Borrower, or a Subsidiary or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

**"Net Debt for Borrowed Money"** means, as to the Parent and its Subsidiaries at any time of determination on a consolidated basis, an amount equal to (i) the sum of (a) the outstanding principal amount of all Indebtedness for borrowed money (including (x) reimbursement obligations with respect to any drawn letters of credit and (y) Indebtedness in respect of the Parent Convertible Notes) of the Parent and its Subsidiaries, (b) the aggregate amount of all Capital Lease Obligations and purchase money Indebtedness of the Parent and its Subsidiaries, and (c) to the extent not duplicative with the Indebtedness and obligations specified in clauses (a) and (b) above, all Guarantees of the Parent and its Subsidiaries with respect to outstanding Indebtedness and obligations of the types specified in clauses (a) and (b) above of other Persons, minus (ii) all cash and Cash Equivalents (except, for the avoidance of doubt, any Restricted Cash) of the Parent and its Subsidiaries in an aggregate amount not to exceed

\$75,000,000. For the avoidance of doubt, the amount of Net Debt for Borrowed Money shall be deemed to be zero with respect to any letter of credit, unless and until a drawing is made with respect thereto.

**"Net Orderly Liquidation Value"** means with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner reasonably acceptable to the Administrative Agent (including, without limitation, on a blended, product-line or other basis) by an appraiser reasonably acceptable to the Administrative Agent, net of all costs of liquidation thereof.

"**New Commitments**" has the meaning set forth in [Section 2.18](#).

"**New Lender**" has the meaning set forth in [Section 2.18](#).

"**New Loans**" has the meaning set forth in [Section 2.18](#).

"**Non-Cash Collateralized LC Exposure**" means, as of any time, the excess (if any) of the sum of all Lenders' LC Exposure at such time over the amount of the Borrowing Base Qualified Cash at such time.

"**Non-Consenting Lender**" means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of [Section 10.02](#) and (ii) has been approved by the Required Lenders or the Supermajority Lenders, as applicable.

"**Non-Defaulting Lender**" means, at any time, each Lender that is not a Defaulting Lender at such time.

"**Non-U.S. Plan**" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to (regardless of whether through direct contributions or through employee withholding) or maintained outside the United States by the Parent, the Parent Borrower or one or more Subsidiaries primarily for the benefit of employees of the Parent, the Parent Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a

deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"**Note**" has the meaning set forth in [Section 2.07](#).

"**Not Otherwise Applied**" means, with reference to any amount otherwise eligible for inclusion in the Available Equity Amount, that such amount (a) was not previously applied to prepay the Obligations, (b) was not previously utilized (meaning such funds remain available for application as Available Equity Amount) for some other purpose (including, without limitation, to finance any Capital Expenditures), and (c) was not committed to be applied, provided that such commitment remains outstanding or has not otherwise terminated or expired, for some other purpose.

"**NYFRB**" means the Federal Reserve Bank of New York.

"**NYFRB Rate**" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"**Obligations**" means all amounts owing by any Loan Party to the Administrative Agent, any Issuing Bank or any Lender (or, in the case of (x) Specified Cash Management Agreements, any Affiliate of any Lender and (y) Specified Swap Agreements, any Person that was a Lender or an Affiliate of a Lender at the time the relevant Swap Agreement was entered into) pursuant to the terms of this Agreement or any other Loan Document, including any obligation to provide Cash Collateral, or in respect of any Letter of Credit, any Specified Swap Agreement or any Specified Cash Management Agreement (including all interest which accrues after the commencement of any case or proceeding in bankruptcy after the insolvency of, or for the reorganization of the Parent or any of its Subsidiaries, whether or not allowed in such case or proceeding).

"**Other Connection Taxes**" means, with respect to the Administrative Agent, any Issuing Bank, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Parent or any Borrower, as applicable, hereunder, Taxes imposed as a result of a present or former connection between such Administrative Agent, Issuing Bank, Lender or other recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Administrative Agent, Issuing Bank, Lender or recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

**"Other Taxes"** means any and all present or future stamp, court or documentary taxes or any other excise, property, intangible, recording, filing or similar Taxes which arise from any payment made, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement and the other Loan Documents; excluding, however, such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than such Taxes imposed with respect to an assignment that occurs as a result of the Parent Borrower's request pursuant to Section 2.16(b)).

**"Overnight Bank Funding Rate"** means, for any day, the rate comprised of both overnight federal funds and overnight Term Benchmark borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

**"Parent"** has the meaning set forth in the preamble to this Agreement.

**"Parent Borrower"** has the meaning set forth in the preamble to this Agreement.

**"Parent Convertible Notes"** means senior unsecured convertible notes issued by the Parent which (i) are not guaranteed by or otherwise of recourse to the Parent Borrower or any of its Subsidiaries, (ii) do not mature or require any principal payments prior to the date that is 180 days following the Maturity Date and (iii) contain terms which (x) are customary for similar types of Indebtedness at such time (as reasonably determined by the Parent) and (y) are not more restrictive on the Parent and its Subsidiaries than this Agreement and do not contain any financial maintenance covenants.

**"Participant"** has the meaning set forth in Section 10.04(c)(i).

**"Participant Register"** has the meaning set forth in Section 10.04(c)(iii).

**"Participating Member State"** means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

**"Patents"** has the meaning assigned to such term in the Security Agreement.

**"Payment"** has the meaning specified in Section 8.11(a).

**"Payment Account"** has the meaning specified in Section 5.12(b).

**"Payment Conditions"** means, with respect to any Specified Restricted Transaction, the satisfaction of the following conditions:

(a) as of the date of any such Specified Restricted Transaction and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) the applicable condition below shall be satisfied:

(i) Consolidated EBITDA for the applicable Measurement Period calculated on a Pro Forma Basis is less than or equal to \$0, then (i) Total Liquidity immediately before and after giving pro forma effect to such Specified Restricted Transaction shall be greater than or equal to \$600,000,000 and (ii) Excess Availability (both before and after giving pro forma effect to such Specified Restricted Transaction both as of such date and on an average daily basis during the thirty (30) consecutive day period ending on and including the date of the applicable Specified Restricted Transaction) shall be not less than (x) in the case of a Specified Restricted Payment or Specified Restricted Debt Payment, the greater of (A) 15% of the Line Cap and (B) \$60,000,000, or (y) in the case of a Specified Restricted Investment, the greater of (A) 12.5% of the Line Cap and (B) \$50,000,000, in each case, as of such date;

(ii) if Consolidated EBITDA for the applicable Measurement Period calculated on a Pro Forma Basis is greater than \$0 but less than \$150,000,000, then (i) Total Liquidity immediately before and after giving pro forma effect to such Specified Restricted Transaction shall be greater than or equal to \$400,000,000 and (ii) Excess Availability (both before and after giving pro forma effect to such Specified Restricted Transaction both as of such date and on an average daily basis during the thirty (30) consecutive day period ending on and including the date of the applicable Specified Restricted Transaction) shall be not less than (x) in the case of a Specified Restricted Payment or Specified Restricted Debt Payment, the greater of (A) 15% of the Line Cap and (B) \$60,000,000, or (y) in the case of a Specified Restricted Investment, the greater of (A) 12.5% of the Line Cap and (B) \$50,000,000, in each case, as of such date; or

(iii) if Consolidated EBITDA for the applicable Measurement Period calculated on a Pro Forma Basis is greater than or equal to \$150,000,000, then (i) the Consolidated Leverage Ratio for the applicable Measurement Period after giving Pro Forma Effect to such Specified Restricted Transaction shall be less than or equal to 2.00:1.00 and (ii) Excess Availability (both before and after giving pro forma effect to such

Specified Restricted Transaction both as of such date and on an average daily basis during the thirty (30) consecutive day period ending on and including the date of the applicable Specified Restricted Transaction) shall be not less than (x) in the case of a Specified Restricted Payment or Specified Restricted Debt Payment, the greater of (A) 15% of the Line Cap and (B) \$60,000,000, or (y) in the case of a Specified Restricted Investment, the greater of (A) 12.5% of the Line Cap and (B) \$50,000,000, in each case, as of such date; and

(c) the Administrative Agent shall have received a certificate of a Responsible Officer of the Parent Borrower certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

**"Payment Notice"** has the meaning specified in [Section 8.11\(b\)](#).

**"PBGC"** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

**"Pension Plan"** means any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, that is subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA and is maintained in whole or in part by the Parent, the Parent Borrower, any Subsidiary or any ERISA Affiliate or with respect to which any of the Parent, the Parent Borrower, any Subsidiary or any ERISA Affiliate has actual or contingent liability.

**"Perfection Certificate"** means a certificate in the form of [Exhibit I](#) hereto.

**"Permitted Bond Hedge Transaction"** means any call or capped call option (or substantively equivalent derivative transaction) on the Parent's common Equity Interests purchased by the Parent in connection with the issuance of the Parent Convertible Notes; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Parent from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Parent from the sale of such Parent Convertible Notes issued in connection with the Permitted Bond Hedge Transaction.

**"Permitted Discretion"** means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender similarly situated) business judgment.

**"Permitted Encumbrances"** means:

(a) Liens imposed by law for taxes, assessments or governmental charges or levies that are not yet delinquent or are being contested in compliance with [Section 5.04](#);

(b) carriers', warehousemen's, mechanics', materialmen's, landlord's, supplier's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or are being contested in compliance with [Section 5.04](#);

(c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) Liens (other than any Lien imposed under ERISA or Section 430(k) of the Code) to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business and to secure surety and appeal bonds in respect of judgments that do not constitute an Event of Default under [Section 7.01\(k\)](#);

(e) Liens in respect of judgments that do not constitute an Event of Default under [Section 7.01\(k\)](#);

(f) easements, zoning restrictions, rights-of-way, encroachments and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Parent, the Parent Borrower or any Subsidiary;

(g) UCC financing statements filed (or similar filings under applicable law) solely as a precautionary measure in connection with operating leases;

(h) leases or subleases not prohibited under this Agreement which are granted to other Persons and not interfering in any material respect, individually or taken as a whole, with the business of the lessor or sublessor;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements;

(k) rights of consignors of goods in goods consigned in the ordinary course of business, whether or not perfected by the filing of a financing statement or other registration, recording or filing;

(l) Liens (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (ii) in favor of the commodities broker or intermediary attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iii) in favor of banking institutions arising as a matter of law or under other customary general terms and conditions encumbering deposits maintained with such banking institutions (including the right of set-off) which Liens secure obligations related to the maintenance of such accounts and do not secure Indebtedness for borrowed money;

(m) [reserved];

(n) [reserved];

(o) Liens given to a public utility or any Governmental Authority when required by such utility or Governmental Authority in connection with the operations of that Person in the ordinary course of its business; provided that such Liens do not materially interfere with the ordinary conduct of business of the Parent, the Parent Borrower or any Subsidiary; and

(p) operating leases of vehicles or equipment which are entered into in the ordinary course of the business.

**"Permitted Factoring Net Investment"** means the aggregate cash amount paid by the purchasers under any Permitted Factoring Transactions in connection with their purchase of Receivables Assets, as the same may be reduced from time to time by collections with respect to

such Receivables Assets or otherwise in accordance with the terms of such Permitted Factoring Transactions (but excluding any such collections used to make payments of commissions, discounts, yield and other fees and charges incurred in connection with any Permitted Factoring Transactions which are payable to any Person other than the Parent, any Borrower or any of their Subsidiaries).

**"Permitted Factoring Transaction"** means any Factoring Transaction so long as (a) such Factoring Transaction is non-recourse to, and does not obligate, the Parent, any Borrower or any Subsidiary thereof, or their respective properties or assets (other than Receivables Assets) in any way other than pursuant to Standard Securitization Undertakings, (b) all sales, conveyances and/or assignments of Receivables Assets by the Parent Borrower or any Subsidiary thereof in connection with such Factoring Transaction are made at fair market value (as determined in good faith by the Parent Borrower or any applicable Subsidiary), and 100% of the proceeds of such sales, conveyances and/or assignments are received in cash, (c) such Factoring Transaction (including financing terms, covenants, termination events (if any) and other provisions thereof) is on market terms at the time such Factoring Transaction is first entered into (as determined in good faith by the Parent Borrower or any applicable Subsidiary) and may include Standard Securitization Undertakings, and (d) such Factoring Transaction shall be in compliance with each of the Receivables Financing Limitations. The grant of a security interest in any accounts receivable of the Parent Borrower or any of its Subsidiaries (other than a Receivables Subsidiary) to secure any credit agreement shall not be deemed a Permitted Factoring Transaction in and of itself.

**"Permitted Holders"** means one or more of AES and Siemens.

**"Permitted Receivables Facility"** means any Receivables Facility so long as (a) such Receivables Facility does not obligate the Parent, any Borrower or any Subsidiary thereof, or their respective properties or assets (other than Receivables Assets) in any way other than pursuant to Standard Securitization Undertakings, (b) all sales, contributions, conveyances and/or assignments of Receivables Assets by the Parent Borrower or any Subsidiary to any Receivables Subsidiary in connection with such Receivables Facility are made at fair market value (as determined in good faith by the Parent Borrower or any applicable Subsidiary), (c) the proceeds from the sale, contribution, conveyance and/or assignment of such Receivables Assets by the Parent, any Borrower or any Subsidiary thereof are received in cash or a dollar for dollar increase in the value of the Equity Interest of the Parent, such Borrower or such Subsidiary, as applicable, in the Receivables Subsidiary, and at least 75% of the face value of the sold, contributed, conveyed and/or assigned Receivables Assets shall be paid to the Parent, such Borrower or such Subsidiary, as applicable, in cash, (d) any such Receivables Facility (including financing terms, covenants, termination events (if any) and other provisions thereof) is on market terms at the time such Receivables Facility is first entered into (as determined in good faith by the Parent Borrower or any applicable Subsidiary) and may include Standard Securitization Undertakings, and (e) such Receivables Facility shall be in compliance with each of the Receivables Financing Limitations. The grant of a security interest in any accounts receivable of the Parent Borrower or any of its Subsidiaries (other than a Receivables Subsidiary) to secure any credit agreement shall not be deemed a Permitted Receivables Facility in and of itself.

**"Permitted Receivables Facility Principal Amount"** means, on any date of determination, the aggregate cash amount advanced by the lenders or purchasers under Permitted Receivables Facilities to Receivables Subsidiaries in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables

Assets, principal payments or otherwise in accordance with the terms of the documents and agreements evidencing, relating to or otherwise governing the Permitted Receivables Facilities.

**"Permitted Refinancing"** means, with respect to any Indebtedness, any Indebtedness constituting a refinancing or replacement thereof so long as (a) on the date of such refinancing or replacement, no Event of Default shall have occurred and be continuing or would arise therefrom; (b) any such refinancing or replacement Indebtedness shall (i) not have a stated maturity or, other than in the case of a revolving credit facility, a weighted average life to maturity that is shorter than that of the Indebtedness being refinanced or replaced, (ii) if the Indebtedness being refinanced or replaced (or the Liens securing such Indebtedness) is subordinated to the Obligations (or to the Liens securing the Obligations, if applicable) by its terms or by the terms of any agreement or instrument relating to such Indebtedness, be (and be secured by Liens, if applicable) at least as subordinate to the Obligations (or to the Liens securing the Obligations) as the Indebtedness being refinanced or replaced (and unsecured if the refinanced or replaced Indebtedness is unsecured) and (iii) be in a principal amount that does not exceed the principal amount so refinanced or replaced plus, accrued interest, any customary premium or other payment required to be paid in connection with such refinancing or replacement, the amount of customary fees and expenses of the Borrowers or any of their Subsidiaries incurred in connection with such refinancing or replacement, and any unutilized commitments thereunder; and (c) the obligors on such refinancing or replacement Indebtedness shall be the obligors on such Indebtedness being refinanced or replaced; provided that any Loan Party shall be permitted to guarantee any such refinancing or replacement Indebtedness of any other Loan Party.

**"Permitted Third Party Bank"** means any bank or other financial institution, other than the Lenders, with whom any Loan Party maintains a Controlled Account.

**"Permitted Warrant Transaction"** means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Parent's common Equity Interests sold by the Parent substantially concurrently with any purchase by the Parent of a related Permitted Bond Hedge Transaction.

**"Person"** means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Plan"** means any "employee benefit plan" as defined in Section 3 of ERISA (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA maintained or contributed to by the Parent, the Parent Borrower, a Subsidiary or any ERISA Affiliate or to which the Parent, the Parent Borrower, a Subsidiary or an ERISA Affiliate has or would have an obligation to contribute, and each such plan subject to

the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA for the five-year period immediately following the latest date on which the Parent, the Parent Borrower, a Subsidiary or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to (or is deemed under Section 4069 of ERISA to have maintained or contributed to or to have had an obligation to contribute to, or otherwise to have liability with respect to) such plan.

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

**"Prime Rate"** means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

**"Principal Office"** means the office of the Administrative Agent as set forth in Section 10.01, or such other office or office of a third party or sub-agent, as appropriate, as the Administrative Agent may from time to time designate in writing to the Borrowers and each Lender.

**"Pro Forma Basis" or "Pro Forma Effect"** means, with respect to compliance with any test or covenant or calculation of any ratio hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with Section 1.09.

**"Proceeds"** means all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC and, in any event, shall include, without limitation, all dividends or other income from investment property, collections thereon or distributions or payments with respect thereto.

**"Protective Advance Exposure"** means at any time, the Dollar Equivalent of the sum of the aggregate amount of all outstanding Protective Advances at such time. The Protective Advance Exposure of any Lender at any time shall be its Applicable Percentage of the total Protective Advance Exposure at such time.

**"Protective Advances"** has the meaning set forth in Section 2.02(e).

**"Purchase Money Indebtedness"** means Indebtedness incurred to finance the acquisition, construction or improvement of any fixed or capital asset to the extent incurred prior to or within 180 days following such acquisition, construction or improvement.

**"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**"QFC Credit Support"** has the meaning assigned to it in [Section 10.18](#).

**"Qualified Equity Interests"** means any Equity Interests that is not Disqualified Equity Interests.

**"Qualified Keepwell Provider"** has the meaning assigned to it in [Section 9.01\(i\)](#).

**"Receivables Assets"** means accounts receivable (whether now existing or arising in the future) owed to the Parent Borrower or any of its Subsidiaries which has been sold, conveyed, assigned or otherwise transferred to a Receivables Subsidiary or any other Person in connection with a Factoring Transaction or a Receivables Facility, and (i) all collateral securing such accounts receivable, (ii) all contracts and all guarantees or other payment support obligations (including letters of credit, promissory notes or trade credit insurance) in respect of such accounts receivable, (iii) all proceeds of such accounts receivable and other assets which are of the type customarily transferred or in respect of which security interests are customarily granted in connection with non-recourse, asset securitization or factoring transactions involving accounts receivable, and (iv) any Swap Agreements entered into by the Parent Borrower or any such Subsidiary in connection with such accounts receivable.

**"Receivables Facility"** means any transaction or series of transactions that may be entered into by the Parent Borrower or any Subsidiary pursuant to which the Parent Borrower or such Subsidiary, as applicable, sells, contributes, conveys, assigns or otherwise transfers Receivables Assets to (a) a Receivables Subsidiary (in the case of a transfer by the Parent Borrower or any of its Subsidiaries), and such Receivables Subsidiary pays all the proceeds of the Receivables Facility, which may be net of transaction expenses, to the transferors of such Receivables Assets as the purchase price for all or a portion of such Receivables Assets, and (b) any other Person (in the case of a transfer by a Receivables Subsidiary), which in either case, may include a backup or precautionary grant of security interest in such Receivables Assets so sold, contributed, conveyed, assigned or otherwise transferred).

**"Receivables Financing Limitations"** means, collectively, (a) the sum of (i) the aggregate outstanding amount of all Permitted Factoring Transactions (provided that the outstanding amount of any Permitted Factoring Transactions for purposes of this definition shall be deemed to be equal to the Permitted Factoring Net Investment for the most recent Measurement Period with respect thereto), plus (ii) the aggregate outstanding amount of all Permitted Receivables Facilities (provided that the outstanding amount of any Permitted Receivables Facility for purposes of this definition shall be deemed to be equal to the Permitted Receivables Facility Principal Amount at such time with respect thereto), shall not exceed ~~\$150,000,000~~200,000,000, and (b) in addition to the foregoing with respect to any Permitted Factoring Transactions and/or Permitted Receivables Facilities involving Inventory Receivables Assets, the sum of (i) the aggregate outstanding amount of all such Permitted Factoring Transactions involving Inventory Receivables Assets (provided that the outstanding amount of any Permitted Factoring Transactions for purposes of this definition shall be deemed to be equal to the Permitted Factoring Net Investment for the most recent Measurement Period with respect thereto), plus (ii) the aggregate outstanding amount of all such Permitted Receivables Facilities involving Inventory Receivables Assets (provided that the outstanding amount of any Permitted

Receivables Facility for purposes of this definition shall be deemed to be equal to the Permitted Receivables Facility Principal Amount at such time with respect thereto), shall not exceed \$50,000,000.

**"Receivables Subsidiary"** means a Wholly Owned Subsidiary of the Parent Borrower (or another Person formed for the purposes of engaging in a Permitted Receivables Facility) to which the Parent Borrower or any Subsidiary sells, conveys, assigns or otherwise transfers Receivables Assets (which may include a backup or precautionary grant of security interest in such Receivables Assets sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred) which engages in no activities other than in connection with the purchase, acquisition or financing of Receivables Assets, and any business or activities incidental or related to such business, and which is designated by senior management or the board of directors of the Parent Borrower as a Receivables Subsidiary, and:

(A) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary, excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary) in any way other than pursuant to Standard Securitization Undertakings, or (iii) subjects any property or asset of the Parent Borrower or any Subsidiary (other than a Receivables Subsidiary), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,

(B) with which neither the Parent Borrower nor any Subsidiary (other than a Receivables Subsidiary) has any material contract, agreement, arrangement or understanding other than on terms which the Parent Borrower reasonably believes to be no less favorable to the Parent Borrower or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Parent Borrower, and

(C) to which neither the Parent Borrower nor any other Subsidiary of the Borrower has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by senior management or the Board of Directors of the Parent Borrower shall be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Parent Borrower or the determination by applicable senior management of the Parent Borrower, in each case giving effect to such designation and an officer's certificate certifying that such designation complied with the foregoing conditions.

**"Reference Time"** with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 8:00 a.m. (New York time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (2) if such Benchmark is EURIBOR Rate, 11:00 a.m. Brussels time two TARGET Days preceding the date of such

setting, (3) if such Benchmark is Term CORRA, then 1:00 p.m. (Toronto time) on the day that is two Business Days prior to such setting, or (4) if such Benchmark is not the Term SOFR Rate, the EURIBOR Rate or Term CORRA, the time determined by the Administrative Agent in its reasonable discretion.

**"Register"** has the meaning set forth in [Section 10.04\(b\)](#).

**"Regulation D"** means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**"Regulation U"** means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**"Regulation X"** means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**"Related Parties"** means, with respect to any specified Person, such Person's Affiliates and the respective partners, trustees, shareholders, directors, officers, employees, agents, representatives, attorneys, controlling Persons and advisors of such Person and such Person's Affiliates.

**"Relevant Governmental Body"** means (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto, (ii) with respect to a Benchmark Replacement in respect of Loans denominated in Canadian Dollars, the Bank of Canada, or a committee officially endorsed or convened by the Bank of Canada, or any successor thereto, (iii) with respect to a Benchmark Replacement in respect of Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto and (iv) with respect to a Benchmark Replacement in respect of Loans denominated in any other currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

**"Relevant Rate"** means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Adjusted Term SOFR Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Rate, and (iii) with respect to any Borrowing denominated in Canadian Dollars, the Term CORRA Reference Rate.

**"Relevant Screen Rate"** means (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Term SOFR Reference Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Screen Rate, and (iii) with respect to any Term Benchmark Borrowing denominated in Canadian Dollars, the Term CORRA Reference Rate, as applicable.

**"Rent Reserve"** means the aggregate of (a) all past due rent, storage charges, fees and other amounts owing by the Parent or any Subsidiary to any landlord, bailee, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker, contract manufacturer or other Person who possesses any Inventory of a Borrower or could assert a Lien on any Inventory of a Borrower and (b) an amount equal to three months' rent, storage

charges, fees or other amounts (or, if greater and the Administrative Agent so elects in its Permitted Discretion, the number of months' rent, storage charges, fees or other amounts for which any such Person will have, under applicable law, a Lien on any Inventory of a Borrower to secure payment of such amounts) payable to any such Person (such amount to be determined by the Administrative Agent in its Permitted Discretion, in each case, unless such Person has executed and delivered a Collateral Access Agreement to the Administrative Agent.

**"Report"** means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

**"Reporting Trigger Period"** means the period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) Excess Availability is less than the greater of (A) \$50,000,000 or (B) 12.5% of the Line Cap and (b) continuing until the date that during the previous thirty (30) consecutive days (i) no Event of Default has existed and (ii) Excess Availability has been greater than the greater of (A) \$50,000,000, or (B) 12.5% of the Line Cap at all times; provided that no Reporting Trigger Period may commence during a Covenant Relief Period and any Reporting Trigger Period then in effect shall immediately terminate upon the commencement of a Covenant Relief Period; provided further, notwithstanding anything to the contrary contained in the foregoing, a Reporting Trigger Period shall be deemed to exist at any time during a Covenant Relief Period that the amount of Non-Cash Collateralized LC Exposure exceeds \$0.

**"Required Lenders"** means, at any time, Lenders (a) having Revolving Credit Exposure and unused Commitments representing more than 50% of the sum of the Total Revolving Extensions of Credit and unused Commitments of all Lenders at such time, or (b) at any time after the Commitments of all Lenders shall have been terminated, holding more than 50% of the Total Revolving Extensions of Credit at such time; provided that, for purposes of this definition of "Required Lenders", a Lender and its Affiliates shall be deemed to be one Lender. The Revolving Credit Exposure and Commitment of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**"Reserves"** means, as of any date of determination, Rent Reserves and those other reserves which the Administrative Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.01(b), to establish and maintain (including, without limitation, (a) reserves with respect to sums that any Loan Party or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased personal property assets, rents or other amounts payable under such leases) and has failed to pay, (b) reserves for slow-moving Inventory and Inventory shrinkage and other reserves based on the results of appraisals, (c) reserves for rebates, discounts, warranty claims, rejections and returns, (e) reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation and reserves for taxes, fees, assessments, and other governmental charges, (e) reserves to reflect any impediments to the Administrative Agent's ability to realize upon the Collateral included in the Borrowing Base or the proceeds thereof, (f) reserves to reflect claims and liabilities that the Administrative Agent determines will need to be satisfied in connection with the realization upon the Collateral included in the Borrowing Base or the proceeds thereof, (g) reserves with respect to amounts owing by any Loan Party or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral, which Lien or trust, in the Permitted Discretion of the Administrative Agent likely would have a priority superior to the Administrative Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral), (h) reserves with respect to Inventory that is subject to any Person's right or claim which is (or is capable of being) senior to, or *pari passu* with, the Lien of the Administrative Agent (such as, without limitation, a right of reclamation or stoppage in transit), (i) reserves with respect to customer deposits or milestone payments or amounts which in the Permitted Discretion of the Administrative Agent are likely to be set-off amounts payable in respect of customer contracts, (j) customs duties, and other costs to release Inventory which is being imported into the United States, (k) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base or the proceeds thereof, and (l) to reflect matters that adversely affect the enforceability or priority of the Administrative Liens on the Collateral) with respect to the Borrowing Base or the Line Cap.

**"Resolution Authority"** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**"Responsible Officer"** means any of the president, the chief executive officer or any Financial Officer of the applicable Loan Party, or any other Person designated by any such Loan Party in writing to the Administrative Agent from time to time, acting singly.

**"Restricted Cash"** means, at any time, the cash and Cash Equivalents of the Parent and its Subsidiaries to the extent (a) classified (or required to be classified) as restricted cash or restricted Cash Equivalents on the balance sheet of the Parent and its Subsidiaries in accordance with GAAP or (b) such cash or Cash Equivalents are subject to any Lien (other than (x) Liens in favor of the Secured Parties pursuant to the Security Documents and (y) Liens permitted

pursuant to clauses (a), (e), (l)(i) and (l)(iii) of the definition of Permitted Encumbrances and under Section 6.02(l)).

**"Restricted Debt Payment"** has the meaning specified in Section 6.05(b).

**"Restricted Payment"** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Parent, the Parent Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interest. For the avoidance of doubt, the receipt or acceptance by the Parent, the Parent Borrower or any Subsidiary of the return of Equity Interests issued by the Parent, the Parent Borrower or any Subsidiary to the seller of a Person, business or division as consideration for the purchase of such Person, business or division, which return is in settlement of indemnification claims owed by such seller in connection with such acquisition, shall not be deemed to be a Restricted Payment.

**"Reuters"** means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

**"Revaluation Date"** means (a) with respect to any Loan denominated in any Alternative Currency, each of the following: (i) the date of the Borrowing of such Loan, (ii) with respect to any Term Benchmark Loan, each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement, (iii) the date of delivery of any Borrowing Base Certificate pursuant to Section 5.01(g), and (iv) the date of any voluntary reduction of the Commitments pursuant to Section 2.06; (b) with respect to any Letter of Credit denominated in an Alternative Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month, (iii) the date of any extension of such Letter of Credit, (iv) the date of any amendment of such Letter of Credit that has the effect of increasing the available balance thereof, (v) the date of delivery of any Borrowing Base Certificate pursuant to Section 5.01(g), and (vi) each date of any payment by the applicable Issuing Bank under any Letter of Credit denominated in an Alternative Currency; (c) for purposes of calculating the Commitment Fee, the last day of any calendar quarter; and (d) any additional date as the Administrative Agent or the relevant Issuing Bank, as applicable, may determine or the Required Lenders may require.

**"Revolving Credit Exposure"** means, with respect to any Lender at any time, the Dollar Equivalent of the sum of the outstanding principal amount of such Lender's Revolving Loans, its Protective Advance Exposure, its Swingline Exposure and its LC Exposure at such time.

**"Revolving Lender"** means each Lender that has a Commitment or that holds Revolving Loans.

**"Revolving Loans"** has the meaning set forth in Section 2.01(a).

**"S&P"** means Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business.

**"Sanctioned Country"** means, at any time, a country, region or territory which is the subject or target of any country-wide or territory-wide Sanctions (and, as of the Effective Date, Crimea, Zaporizhzhia and Kherson Regions of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, Cuba, Iran, North Korea and Syria).

**"Sanctioned Person"** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union, any EU member state, the Government of Canada, His Majesty's Treasury of the United Kingdom or any other applicable sanctions authority in which the Parent and its Subsidiaries operate (except to the extent inconsistent with U.S. law), (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

**"Sanctions"** means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, the Government of Canada, His Majesty's Treasury of the United Kingdom or any other applicable sanctions authority in which the Parent and its Subsidiaries operate.

**"SEC"** means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

**"Secured Parties"** means the collective reference to the Administrative Agent, the Lenders, the Swingline Lenders, the Issuing Banks and any other Person to which Obligations are owed.

**"Securities Account"** has the meaning set forth in the UCC.

**"Security Agreement"** means the Security Agreement, dated as of the Effective Date, among the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, as amended, restated, supplemented or otherwise modified from time to time, including by each joinder agreement thereto.

**"Security Documents"** means the collective reference to the Security Agreement, the Control Agreements, any Mortgages and all other security documents hereafter delivered to the Administrative Agent by a Loan Party granting or perfecting a Lien on any property or right of any person to secure the obligations and liabilities of any Loan Party under any Loan Document.

**"Shortfall Amount"** means the amount by which the Maximum Amount exceeds the Distributed Amount.

**"Siemens"** refers to Siemens AG, a company incorporated under the laws of Germany, and its subsidiaries and affiliates, including Siemens Industry, Inc., a Delaware corporation.

**"SOFR"** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**"SOFR Administrator"** means the NYFRB (or a successor administrator of the secured overnight financing rate).

**"SOFR Administrator's Website"** means the NYFRB's website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**"SOFR Determination Date"** has the meaning specified in the definition of "Daily Simple SOFR".

**"SOFR Rate Day"** has the meaning specified in the definition of "Daily Simple SOFR".

**"Solvent"** means, with respect to the Parent and its Subsidiaries on a particular date, that on such date (a) the fair value of the assets of the Parent and its Subsidiaries, on a consolidated basis, is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of the Parent and its Subsidiaries, on a consolidated basis, (b) the present fair saleable value of the assets of the Parent and its Subsidiaries, on a consolidated basis, is not less than the total amount of liabilities, including contingent liabilities, of the Parent and its Subsidiaries, on a consolidated basis, (c) the Parent and its Subsidiaries, on a consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities (including current obligations and contingent liabilities) beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business, and (d) the Parent and its Subsidiaries on a consolidated basis have, and will have, adequate capital with which to conduct the business they are presently conducting and reasonably anticipate conducting. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5 (ASC 450)).

**"Special Purpose Subsidiary"** means (a) any not-for-profit Subsidiary, (b) any Captive Insurance Company, and (c) any Receivables Subsidiary.

**"Specified Cash Management Agreement"** means any agreement providing for treasury, depositary, purchasing card or cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions between the Parent or any Subsidiary thereof and any Lender or Affiliate thereof, which (i) is in effect as of the Effective Date or (ii) has been designated by such Lender and the Parent Borrower, by notice to

the Administrative Agent after the execution and delivery thereof, as a "Specified Cash Management Agreement". For the avoidance of doubt, the Citi Supplier Financing Agreement shall not constitute a Specified Cash Management Agreement.

**"Specified Restricted Debt Payment"** means any Restricted Debt Payment made pursuant to [Section 6.05\(b\)\(iv\)](#).

**"Specified Restricted Investment"** means any Investment made pursuant to [Section 6.04\(m\)](#).

**"Specified Restricted Payment"** means any Restricted Payment made pursuant to [Section 6.05\(a\)\(iii\)](#), [Section 6.05\(a\)\(vi\)](#), [Section 6.05\(a\)\(ix\)](#) or [Section 6.05\(a\)\(x\)\(G\)](#).

**"Specified Restricted Transaction"** means each Specified Restricted Debt Payment, Specified Restricted Investment and Specified Restricted Payment that by the terms of this Agreement requires such test to be calculated under the Payment Conditions.

**"Specified Swap Agreement"** means any Swap Agreement in respect of interest rates or currency exchange rates (i) entered into by the Parent or any Subsidiary thereof and any Person that is a Lender or an Affiliate of a Lender which is in effect as of the Effective Date or (ii) designated as a Specified Swap Agreement pursuant to [Section 2.21](#); provided that such Swap Agreement is entered into to hedge or mitigate risks, and not for speculative purposes, in the ordinary course of the Parent's or such Subsidiary's business or in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Parent or such Subsidiary.

**"Specified Transaction"** means (a) any incurrence or repayment of Indebtedness of the Parent Borrower or a Subsidiary, (b) any Investment that results in a Person becoming a Subsidiary, (c) any Disposition, (d) the establishment, acquisition or creation of any new joint venture of the Parent Borrower or any Subsidiary, (e) any issuance of Equity Interests, (f) any acquisition or Investment constituting an acquisition of assets constituting a

business unit, line of business or division of another Person or of all or substantially all of the assets of a Person, and (g) any Specified Restricted Transaction.

**"Standard Securitization Undertakings"** means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Parent, any Borrower or any Subsidiary thereof which the Parent Borrower has determined in good faith to be customary in a Factoring Transaction or Receivables Facility, as applicable, including, without limitation, those relating to the servicing of Receivables Assets.

**"Standby Letter of Credit"** means any Letter of Credit other than any Commercial Letter of Credit.

**"Statutory Reserve Rate"** means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of

the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted EURIBOR Rate, as applicable, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Term Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

(i) being a Subsidiary of the Parent or an Affiliate thereof; or

(ii) having acquired (directly or indirectly) any Commitment, participation in any Loan and/or any other participation rights (including by way of sub-participation) in any of the Loans and/or any other rights and obligations under the Loan Documents from a Subsidiary of the Parent or an Affiliate thereof in accordance with Section 10.04 or otherwise.

**"Subsidiary"** means, unless otherwise specified, any subsidiary of the Parent.

**"subsidiary"** means, with respect to any Person (the **"parent"**) at any date, any corporation, limited liability company, unlimited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent and which is required by GAAP to be consolidated in the consolidated financial statements of the parent.

**"Supermajority Lenders"** means at any time, Lenders (a) having Revolving Credit Exposure and unused Commitments representing more than 66 2/3% of the sum of the Total Revolving Extensions of Credit and unused Commitments of all Lenders at such time, or (b) at any time after the Commitments of all Lenders shall have been terminated, holding more than 66 2/3% of the Total Revolving Extensions of Credit at such time; provided that, for purposes of this definition of "Supermajority Lenders", a Lender and its Affiliates shall be deemed to be one Lender. The Revolving Credit Exposure and Commitment of any Defaulting Lender shall be disregarded in determining Supermajority Lenders at any time.

**"Supplier Financing Excess Amount"** has the meaning assigned to it in Section 6.01(k).

**"Supported QFC"** has the meaning assigned to it in Section 10.18.

**"Swap Agreement"** means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Parent or its Subsidiaries shall be a Swap Agreement.

**"Swap Obligation"** has the meaning assigned to it in Section 9.01(i).

**"Swingline Commitment"** means the ability of the Swingline Lender, in its discretion, to make Swingline Loans pursuant to Section 2.02(f) in an aggregate principal amount at any one time outstanding not to exceed \$~~50,000,000~~100,000,000.

**"Swingline Exposure"** means at any time, the sum of the aggregate amount of all outstanding Swingline Loans at such time. The Swingline Exposure of any Lender at any time shall be the sum of (a) its Applicable Percentage of the total Swingline Exposure at such time related to Swingline Loans other than any Swingline Loans made by such Lender in its capacity as a Swingline Lender and (b) if such Lender shall be a Swingline Lender, the principal amount of all Swingline Loans made by such Lender outstanding at such time (to the extent that the other Lenders shall not have funded their participations in such Swingline Loans).

**"Swingline Lender"** means Barclays Bank PLC, in its capacity as a lender of Swingline Loans.

**"Swingline Loans"** has the meaning set forth in Section 2.02(f).

**"Swingline Participation Amount"** has the meaning set forth in Section 2.03(b)(iii).

**"Swingline Exposure"** means at any time, the Dollar Equivalent of the sum of the aggregate amount of all outstanding Swingline Loans at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

**"T2"** means the real time gross settlement system operated by the Eurosystem, or any successor system.

**"TARGET Day"** means any day on which T2 is open for the settlement of payments in Euro.

**"Tax Receivable Agreement"** means that certain Tax Receivable Agreement, dated as of November 1, 2021, among the Parent, the Parent Borrower and the other parties thereto, as the same may hereafter be modified, supplemented, extended, amended, restated or amended and restated from time to time.

**"Taxes"** means any and all present or future taxes, levies, imposts, duties, deductions, goods and services tax, charges, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**"Term Benchmark"** when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA.

**"Term CORRA"** means, for any calculation with respect to a Term CORRA Loan, the Term CORRA Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **"Periodic Term CORRA Determination Day"**) that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term CORRA Administrator; provided, however, that if as of 1:00 p.m. (Toronto time) on any Periodic Term CORRA Determination Day the Term CORRA Reference Rate for the applicable tenor has not been published by the Term CORRA Administrator and a Benchmark Replacement Date with respect to the Term CORRA Reference Rate has not occurred, then Term CORRA will be the Term CORRA Reference Rate for such tenor as published by the Term CORRA Administrator on the first preceding Business Day for which such Term CORRA Reference Rate for such tenor was published by the Term CORRA Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term CORRA Determination Day.

**"Term CORRA Adjustment"** means, for any calculation with respect to a Term CORRA Loan, a percentage per annum equal to (a) 0.29547% for a one-month Interest Period and (b) 0.32138% for a three-month Interest Period.

**"Term CORRA Administrator"** means Candeal Benchmark Administration Services Inc., TSX Inc., or any successor administrator.

**"Term CORRA Borrowing"** means, as to any Borrowing, the Term CORRA Loans comprising such Borrowing.

**"Term CORRA Loan"** means a Loan that bears interest at a rate based on Adjusted Term CORRA.

**"Term CORRA Reference Rate"** means the forward-looking term rate based on CORRA.

**"Term SOFR Determination Day"** has the meaning assigned to it under the definition of Term SOFR Reference Rate.

**"Term SOFR Rate"** means, with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 8:00 a.m., New York time, two U.S. Government

Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

**"Term SOFR Reference Rate"** means, for any day and time (such day, the **"Term SOFR Determination Day"**), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum published by the

CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five (5) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

**"Total Assets"** means, as of any date of determination, the total assets of the Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Parent delivered pursuant to Section 5.01(a) or (b).

**"TotalLiquidity"** means, at any time and subject to Section 6.01(k), the sum of (a) all cash and Cash Equivalents (other than any Restricted Cash and without duplication of any Borrowing Base Qualified Cash included in the calculation of Excess Availability pursuant to clause (b) of this definition) held by the Loan Parties held in (i) the Borrowing Base Qualified Cash Account or (ii) a Controlled Account maintained by a branch office of the depository bank or securities intermediary located within the United States (which Controlled Account requirement shall not be required with respect to cash and Cash Equivalents (other than any Restricted Cash) held at a depository bank of securities located within the United States until the date that is 90 days after (x) (in the case of Controlled Accounts existing as of the Effective Date) the Effective Date or (y) (in the case of a Controlled Account opened after the Effective Date) the date such account is opened), and (b) the aggregate amount of Excess Availability at such time.

**"Total Revenues"** means, as of any date of determination, the gross revenues of the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent income statement of the Parent delivered pursuant to Section 5.01(a) or (b).

**"Total Revolving Extensions of Credit"** means, at any time, the Dollar Equivalent aggregate amount of the Revolving Credit Exposure of the Lenders outstanding at such time.

**"Trademarks"** has the meaning assigned to such term in the Security Agreement.

**"Transactions"** means the execution, delivery and performance by the Loan Parties of each Loan Document to which it is a party, the borrowing of Loans and the issuance of Letters of Credit hereunder, the use of the proceeds thereof, the Existing Indebtedness Refinancing, and the payment of fees and expenses relating to each of the foregoing.

**"Type"**, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate, Adjusted Term CORRA, the Canadian Prime Rate or the Alternate Base Rate.

**"UCC"** means the Uniform Commercial Code as in effect in the State of New York from time to time; provided, that if attachment, perfection or the effect of perfection or non-perfection or the priority of any security interest in, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, effect of perfection or non-perfection, priority or remedies.

**"UK Financial Institutions"** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**"UK Resolution Authority"** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**"Unadjusted Benchmark Replacement"** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**"Unfunded Pension Liability"** means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

**"USA Patriot Act"** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time.

**"U.S. Government Securities Business Day"** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**"U.S. Person"** means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**"U.S. Special Resolution Regime"** has the meaning assigned to it in [Section 10.18](#).

**"Wholly Owned Subsidiary"** means as to any Person, any other Person all of the Equity Interests of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

**"Withdrawal Liability"** means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

**"Withholding Agent"** means any Loan Party and the Administrative Agent.

**"Write-Down and Conversion Powers"** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**Section 1.02 Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Term Benchmark Loan"). Borrowings also may be classified and referred to by Type (e.g., a "Term Benchmark Borrowing").

**Section 1.03 Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, amendments and restatements, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property"

shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

**Section 1.04 Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrowers notify the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrowers that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all financial covenants contained herein shall be calculated (1) without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (ASC 825) (or any similar accounting principle)

permitting or requiring a Person to value its financial liabilities or Indebtedness at the fair value thereof, (2) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof and (3) all leases and obligations under any leases of any Person that are or would be characterized as operating leases and/or operating lease obligations in accordance with GAAP on December 14, 2018 (whether or not such operating leases and/or operating lease obligations were in effect on such date) shall continue to be accounted for as operating leases and/or operating lease obligations (and not as Capital Lease Obligations) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such obligations to be recharacterized as Capital Lease Obligations. Prior to the first delivery of financial statements pursuant to Section 5.01(a) or (b) on or after the Effective Date, any reference in this Agreement to the financial statements delivered pursuant to Section 5.01(a) or

(b) or similar reference to the same effect shall be deemed to refer to the most recently delivered financial statements.

**Section 1.05 Interest Rates; Benchmark Notification.** The interest rate on a Loan denominated in dollars or an Alternative Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.11(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrowers, pursuant to Section 2.11(b), of any change to the reference rate upon which the interest rate on Term Benchmark Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the continuation of, administration of, submission of, calculation of or any other matter related to the Alternate Base Rate, Adjusted Daily Simple SOFR, the Adjusted EURIBOR Rate, Adjusted Term CORRA, the Adjusted Term SOFR Rate or the Canadian Prime Rate or any component definition thereof or rates referred to in the definition thereof, or any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b) upon the occurrence of a Benchmark Transition Event, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any the Alternate Base Rate, Adjusted Daily Simple SOFR, the Adjusted EURIBOR Rate, Adjusted Term CORRA, the Adjusted Term SOFR Rate or the Canadian Prime Rate, any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Alternate Base Rate, Adjusted Daily Simple SOFR, the Adjusted EURIBOR Rate, Adjusted Term CORRA, the Adjusted Term SOFR Rate, the Canadian Prime Rate or any other Benchmark, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**Section 1.06 Diversions.** For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

**Section 1.07 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit agreement related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is available to be drawn.

**Section 1.08 Exchange Rates; Currency Equivalents.** (a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Dollar Equivalent amounts of Borrowings or Letter of Credit extensions denominated in Alternative Currencies. Such Dollar Equivalent shall become effective as of such Revaluation Date and shall be the Dollar Equivalent of such amounts until the next Revaluation Date to occur. Except for purposes of financial statements delivered by the Borrowers hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any Agreed Currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing Bank, as applicable. Notwithstanding the foregoing, all Borrowing Base Certificates and related calculations delivered under this Agreement shall express such calculations or determinations in Dollars, as applicable based on a currency exchange rate used in preparing the applicable financial statements or financial reporting for the period applicable to such Borrowing Base Certificates.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Term Benchmark Loan or a Canadian Prime Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the Dollar Equivalent of such amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

Section 1.09 Certain Calculations and Tests.

(a) Notwithstanding anything to the contrary herein, the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated in the manner prescribed by this Section 1.09.

(b) For purposes of calculating the Consolidated Leverage Ratio (and the component definitions thereof), Specified Transactions that have been consummated (i) during the applicable Measurement Period or (ii) subsequent to such Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made in each case shall be calculated on a Pro Forma Basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Measurement Period. If, since the beginning of any Measurement Period, any Person that

subsequently became a Subsidiary or was merged, amalgamated or consolidated with or into any Borrower or any of its Subsidiaries since the beginning of such Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.09, then the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated to give Pro Forma Effect thereto in accordance with this Section 1.09.

(c) In the event that any Borrower or any Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, prepayment, retirement, exchange, extinguishment or satisfaction and discharge) any Indebtedness included in the calculations of the Consolidated Leverage Ratio (and the component definitions thereof), as the case may be (in each case, other than Indebtedness incurred or repaid under this Agreement), (i) during the applicable Measurement Period and/or (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Consolidated Leverage Ratio (and the component definitions thereof) shall be calculated giving Pro Forma Effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Measurement Period. Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Parent Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a London interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Parent Borrower may designate.

(d) Notwithstanding anything to the contrary herein, unless the Borrowers otherwise notify the Administrative Agent, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (any such amounts, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with a financial ratio or test (any such amounts, the "**Incurrence-Based Amounts**"), it is understood and agreed that the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts in connection with such substantially concurrent incurrence.

(e) For the avoidance of doubt, notwithstanding any classification under GAAP of any Person or business in respect of which a definitive agreement for the Disposition thereof has been entered into as discontinued operations, the earnings of such Person or business shall not be excluded from the calculation of Consolidated EBITDA until such Disposition shall have been consummated.

Section 1.10 Borrower Representative. Each **Assignor** Borrower hereby designates the Parent Borrower as the Borrower Representative. The Borrower Representative will be acting as agent on each Borrower's behalf for the purposes of issuing notices of Borrowing and notices of conversion/continuation of any Loans pursuant to Article 2 or similar notices, giving instructions with respect to the disbursement of the proceeds of the Loans, selecting interest rate options,

requesting Letters of Credit, giving and receiving all other notices and consents hereunder or under any of the other Loan Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or the Borrowers under the Loan Documents. The Borrower Representative hereby accepts such appointment. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by the Borrower Representative shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

**ARTICLE 2**  
**THE CREDITS**

**Section 2.01 Commitments.**

(a) **represents** Subject to the terms and **warrants** conditions set forth herein, each Revolving Lender severally agrees to make revolving credit loans (collectively, "**Revolving Loans**") in Dollars or in one or more Alternative Currencies to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in:

- (i) such Revolving Lender's Revolving Credit Exposure exceeding such Revolving Lender's Commitment; or
- (ii) the Total Revolving Extensions of Credit exceeding the Line Cap.

(clauses (i) and (ii) above, collectively, the "**Borrowing Limits**") subject to, in each case, the authority of the Administrative Agent, in its sole discretion, to make Protective Advances pursuant to the terms of Section 2.02(e). Within the foregoing limits and subject to the terms and conditions set forth herein, during the Availability Period, the Borrowers may use the Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof.

(b) Anything to the contrary in this Section 2.01 notwithstanding, the Administrative Agent shall have the right (but not the obligation) at any time, in the exercise of its Permitted Discretion, to establish and increase or decrease Reserves and against the Borrowing Base, and to make more restrictive the eligibility criteria set forth in the definitions of Eligible Inventory and Eligible In-Transit Inventory in accordance with the definitions thereof; **provided**, that the Administrative Agent shall notify and consult with the Borrowers at least three Business Days prior to the date on which any such reserve is to be established or increased, or on which any such change to the eligibility criteria is effective; **provided further**, that (A) the Borrowers may not obtain any new Loans (including Swingline Loans) or Letters of Credit to the extent that such Loan (including Swingline Loans) or Letter of Credit would exceed the Borrowing Limits after giving effect to the establishment or increase of such Reserve, or such change in eligibility criteria, as set forth in such notice; (B) no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation set forth in this Agreement or previously utilized; (C) no such prior notice shall be required during the continuance of any Event of

Default; and (D) no such prior notice shall be required with respect to any Reserve established in respect of any Lien that has priority over the Administrative Agent's Liens on the Collateral. The amount of any Reserve established by the Administrative Agent, and any changes to the eligibility criteria set forth in the definitions of Eligible Inventory and Eligible In-Transit Inventory, shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve or change in eligibility and shall not be duplicative of any other reserve established and currently maintained or eligibility criteria. Upon notice of or establishment or increase in Reserves, or change to make the eligibility criteria set forth in the definitions of Eligible Inventory or Eligible In-Transit Inventory more restrictive, the Administrative Agent agrees to make itself available to discuss the Reserve or increase, or change in eligibility criteria, and the Borrowers may take such action as may be required so that the event, condition, circumstance, or fact that is the basis for such Reserve or increase, or change in eligibility criteria, no longer exists, in a manner and to the extent reasonably satisfactory to the Administrative Agent in the exercise of its Permitted Discretion. Subject to the notice period described above (if applicable), in no event shall such notice and opportunity limit the right of the Administrative Agent to establish or change such Reserve or such eligibility criteria.

**Section 2.02 Loans and Borrowings.**

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Revolving Lenders in accordance with their respective Applicable Percentages. The failure of any Revolving Lender to make any Revolving Loan required to be made by it shall not relieve any other Revolving Lender of its obligations hereunder; **provided** that the Commitments of the Revolving Lenders are several and no Revolving Lender shall be responsible for any other Revolving Lender's failure to make Revolving Loans as required hereby.

(b) Subject to Section 2.11, each Borrowing shall be comprised (A) in the case of Borrowings in Dollars, entirely of ABR Loans or Term Benchmark Loans, (B) in the case of Borrowings in Canadian Dollars, entirely of Canadian Prime Rate Loans or Term Benchmark Loans, and (C) in the case of Borrowings in any other Agreed Currency, entirely of Term Benchmark Loans, in each case of the same Agreed Currency, as the applicable Borrower may request in accordance herewith. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; **provided** that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Term Benchmark Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of the Dollar Equivalent of \$1,000,000 and not less than the Dollar Equivalent of \$1,000,000. At the time that each ABR Borrowing or Canadian Prime Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of the Dollar

Equivalent of \$1,000,000 and not less than the Dollar Equivalent of \$1,000,000; provided that (i) an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total

Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.19(e) and (ii) the Swingline Lender may request, on behalf of any Borrower, an ABR Borrowing in other amounts pursuant to Section 2.03(b). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of fifteen (15) Term Benchmark Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(e) (i) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's Permitted Discretion, but shall have absolutely no obligation, to make Loans to the Borrowers, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (C) to pay any other amount chargeable to or required to be paid by any Loan Party pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 10.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "**Protective Advances**"). Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be made in Dollars as ABR Loans. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time (x) the amount equal to the Line Cap minus the Total Revolving Extensions of Credit then outstanding (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Loans) exceeds the amount of any Protective Advance and (y) the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.02(e).

(ii) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Protective Advances then due).

(f) (i) Subject to the terms and conditions hereof, from time to time during the Availability Period, the Swingline Lender, may, in its sole discretion, make a portion of the credit otherwise available to the applicable Borrower under the Commitments by making swing line loans ("**Swingline Loans**") to such Borrower; provided that (in each case, with respect to the Dollar Equivalent thereof) (A) the sum of (w) the Swingline Exposure of the Swingline Lender (in its capacity as the Swingline Lender and a Lender), (x) the aggregate principal amount of outstanding Loans made by the Swingline Lender (in its capacity as a Lender), (y) the LC Exposure of the Swingline Lender (in its capacity as an Issuing Bank) and (z) the Protective Advance Exposure of the Swingline Lender (in its capacity as a Lender) shall not exceed its Commitment then in effect, (ii) the sum of the outstanding Swingline Loans shall not exceed the Swingline Commitment, and (iii) the applicable Borrower shall not request, and the Swingline Lender shall not make, any Swingline Loan if, after giving effect to the making of such Swingline Loan, any of the Borrowing Limits would be exceeded, subject to the authority of the Administrative Agent, in its sole discretion, to make Protective Advances pursuant to the terms of Section 2.02(e). During the Availability Period, the applicable Borrower may use the Swingline Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swingline Loans shall be in Dollars and be ABR Loans only.

(ii) The applicable Borrower shall repay to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and five (5) Business Days after such Swingline Loan is made; provided that on each date that a Loan is borrowed, such Borrower shall repay all Swingline Loans then outstanding to such Borrower and the proceeds of any such Revolving Loans made to such Borrower shall be applied by the Administrative Agent to repay any Swingline Loans outstanding to such Borrower.

### Section 2.03 Requests for Borrowings.

(a) To request a Borrowing, the applicable Borrower shall notify the Administrative Agent of such request by telephone or telecopy (i) (A) in the case of a Term Benchmark Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three U.S. Government Securities Business Days before the date of the proposed Borrowing and (B) in the case of any other Term Benchmark Borrowing, not later than 12:00 noon, New York City time, three Business Days before the date of the proposed Borrowing, or (ii) in the case of an ABR Borrowing or a Canadian Prime Rate Borrowing, not later than 12:00 noon, New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request in substantially the form of Exhibit B-1 attached hereto and signed by the applicable Borrower. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the Agreed Currency and aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing, a Canadian Prime Rate Borrowing or a Term Benchmark Borrowing;

(iv) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the account or accounts to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

If no election as to the currency of a Borrowing is specified, then the requested Revolving Borrowing shall be made in Dollars. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Borrowing, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing. Except as otherwise provided herein, a Borrowing Request for a Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the applicable Borrower shall be bound to make a borrowing in accordance therewith. As soon as practicable after 10:00 a.m., New York City time, on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Term Benchmark Borrowing for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrowers and each Lender.

(b) (i) Whenever the applicable Borrower desires that the Swingline Lender make a Swingline Loan it shall give the Swingline Lender irrevocable notice by submitting a Borrowing Request (which Borrowing Request must be received by the Swingline Lender not later than 12:00 noon, Local Time, on the proposed Borrowing Date), specifying (i) the currency and amount to be borrowed and (ii) the requested Borrowing Date (which shall be a Business Day during the Availability Period). Each borrowing under the Swingline Commitment shall be in a Dollar Equivalent amount equal to \$500,000 (or the Dollar Equivalent thereof), or a whole multiple of \$100,000 (or the Dollar Equivalent thereof) in excess thereof. Not later than 3:00 p.m., Local Time, on the Borrowing Date specified in the Borrowing Request in respect of Swingline Loans, the Swingline Lender shall, if it has agreed in its discretion to make such Swingline Loan, make available to the Administrative Agent at the relevant Funding Office an amount in immediately available funds equal to the amount of the Swingline Loan to be made by the Swingline Lender. The Administrative Agent shall make the proceeds of such Swingline Loan available to the applicable Borrower on such Borrowing Date by depositing such proceeds in the account designated by such Borrower on such Borrowing Date in immediately available funds.

(ii) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of each Borrower (each of which hereby irrevocably direct the Swingline Lender to act on its behalf), on one Business Day's notice given by the Swingline Lender no later than, 12:00 noon, Local Time, request each Revolving Lender to make, and each Revolving Lender hereby agrees to make, a Revolving Loan, in an amount equal to such Revolving Lender's Applicable Percentage of the aggregate amount of the Swingline Loans (the "**Refunded Swingline Loans**") outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Lender shall make the amount of such Revolving Loan available to the Administrative Agent at the relevant Funding Office in immediately available funds, not later than 10:00 a.m., Local Time, one Business Day after the date of such notice. The proceeds of such Revolving Loans shall be immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Refunded Swingline Loans. Each Borrower irrevocably authorizes the Swingline Lender to charge such Borrower's accounts with the Administrative Agent (up to the amount available in each such account) in order to immediately pay the amount of such Refunded Swingline Loans made to such Borrower to the extent amounts received from the Revolving Lenders are not sufficient to repay in full such Refunded Swingline Loans. Each Refunded Swingline Loan shall be an ABR Loan.

(iii) If prior to the time a Revolving Loan would have otherwise been made pursuant to Section 2.03(b)(ii), one of the events described in Section 7.01(h) or (i) shall have occurred and be continuing with respect to any Borrower or if for any other reason, as determined by the Swingline

Lender in its sole discretion, Revolving Loans may not be made as contemplated by Section 2.03(b)(ii), each Revolving Lender shall, on the date such Revolving Loan was to have been made pursuant to the notice referred to in Section 2.03(b)(ii), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the “**Swingline Participation Amount**”) equal to (i) such Revolving Lender’s Applicable Percentage times (ii) the sum of the aggregate principal amount of Swingline Loans then outstanding that were to have been repaid with such Revolving Loans.

(iv) Whenever, at any time after the Swingline Lender has received from any Revolving Lender such Lender’s Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Lender its ratable portion of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender’s participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender’s pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided, that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(v) Each Revolving Lender’s obligation to make the Loans referred to in Section 2.03(b)(ii) and to purchase participating interests pursuant to Section 2.03(b)(ii) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Lender or any

Borrower may have against the Swingline Lender, any Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 4.02, (iii) any adverse change in the condition (financial or otherwise) of the applicable Borrower, (iv) any breach of this Agreement or any other Loan Document by the applicable Borrower, any other Loan Party or any other Revolving Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

#### Section 2.04 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for the purpose of receiving payments of such type by notice to the Lenders. The Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the applicable Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.19(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s Applicable Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Percentage available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of a Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender’s Loan included in such Borrowing.

#### Section 2.05 Interest Elections.

(a) Each Borrowing initially shall be of the Type and Agreed Currency specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated among the Lenders

holding the Loans comprising such Borrowing in accordance with their respective Applicable Percentages, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the applicable Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 if a Borrower were requesting a Borrowing of the Type resulting from such

election to be made on the effective date of such election. Each such telephonic request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written request (an "Interest Election Request") in substantially the form of Exhibit C attached hereto and signed by the applicable Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Agreed Currency and principal amount of the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (ii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing (in the case of Borrowings denominated in Dollars), a Canadian Prime Rate Borrowing (in the case of Borrowings denominated in Canadian Dollars), or a Term Benchmark Borrowing; and

(iv) if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing. Except as otherwise provided herein, an Interest Election Request for conversion to, or continuation of, any Term Benchmark Borrowing shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrowers shall be bound to effect a conversion or continuation in accordance therewith.

(e) If the Borrowers fail to deliver a timely Interest Election Request with respect to a Term Benchmark Revolving Borrowing in Dollars prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such

Interest Period, such Borrowing shall be converted to an ABR Borrowing at the end of such Interest Period. If the Borrowers fail to deliver a timely and complete Interest Election Request with respect to a Term Benchmark Borrowing in an Alternative Currency prior to the end of the Interest Period therefor, then, unless such Term Benchmark Borrowing is repaid as provided herein, the Borrowers shall be deemed to have selected that such Term Benchmark Borrowing shall automatically be continued as a Term Benchmark Borrowing in its original Agreed Currency with an Interest Period of one month at the end of such Interest Period. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrowers, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing and (ii) unless repaid, (x) each Term Benchmark Borrowing denominated in Dollars shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto and (y) each Term Benchmark Borrowing denominated in an Alternative Currency shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall either be (A) converted to an ABR Borrowing denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternative Currency) at the end of the Interest Period, as applicable, therefor or (B) prepaid at the end of the applicable Interest Period, as applicable, in full; provided that if no election is made by the Borrowers by the earlier of (x) the date that is three Business Days after receipt by the Borrowers of such notice and (y) the last day of the current Interest Period for the applicable Term Benchmark Loan, the Borrowers shall be deemed to have elected clause (A) above.

## Section 2.06 Termination and Reduction of Commitments.

(a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrowers shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of any Revolving Loans and Swingline Loans in accordance with Section 2.08, the Total Revolving Extensions of Credit would exceed the Line Cap or any of the Borrowing Limits would be exceeded.

(c) The Borrowers shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrowers pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the

Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or another transaction, in which case such notice may be revoked by the Borrowers (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be applied to the Lenders in accordance with their respective Applicable Percentages.

#### Section 2.07 Repayment of Loans; Evidence of Debt.

(a) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof, the currency thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (each such promissory note being called a "Note" and all such promissory notes being collectively called the "Notes"). In such event, the Borrowers shall prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in substantially the form of Exhibit D attached hereto. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

#### Section 2.08 Prepayment of Loans.

(a) The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (subject to the requirements of Section 2.13), subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrowers shall notify the Administrative Agent by telephone (confirmed by telecopy or delivery of written notice) or telecopy of any prepayment hereunder (i)(x) in the case of prepayment of a Term Benchmark Borrowing denominated in Dollars, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, (y) in the case of prepayment of a Term Benchmark Borrowing denominated in Euros, not later than 12:00 noon, New York City time, three Business Days before the date of prepayment and (z) in the case of prepayment of a Term Benchmark Borrowing denominated in Canadian Dollars, not later than 12:00 noon, New York City time three Business Days before the date of prepayment or (ii) in the case of prepayment of an ABR Borrowing or a Canadian Prime Rate Borrowing, not later than 12:00 noon, New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.06, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans of the Lenders in accordance with their respective Applicable Percentages. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10 and any costs incurred as contemplated by Section 2.13.

(c) The Borrowers shall from time to time prepay the Revolving Loans and Swingline Loans to the extent necessary so that the Total Revolving Extensions of Credit shall not at any time exceed the Line Cap then in effect.

(d) If at any time, the Total Revolving Extensions of Credit (calculated, with respect to any Loans or LC Exposure denominated in an Alternative Currency, as of the most recent Revaluation Date with respect to such Loan or LC Exposure) exceed (i) the total Commitments of all Lenders then in effect, (ii) the Total Revolving Extensions of Credit (excluding for such purposes Protective Advances) exceed the Line Cap, or (iii) any

of the Borrowing Limits are exceeded, the Borrowers shall immediately repay Borrowings, Protective Advances and Cash Collateralize LC Exposure in accordance with the procedures set forth in Section 2.17(d) in an aggregate principal amount equal to such excess (it being understood that the Borrowers shall prepay Revolving Loans, Swingline Loans and/or Protective Advances prior to Cash Collateralization of LC Exposure).

(e) On each Business Day during any Full Cash Dominion Period, the Administrative Agent shall apply all funds credited to any applicable Payment Account as of 10:00 a.m., Local Time, on such Business Day (whether or not immediately available), first to prepay any Protective Advances that may be outstanding, second, to prepay the Swingline Loans, third, to

Cash Collateralize LC Exposure to the extent required by, and in accordance with the procedures set forth in, Section 2.17(d), fourth to prepay other Revolving Loans (without a corresponding reduction in Commitments), and fifth, any balance remaining shall be paid over to the Borrowers. In the event and to the extent that any Obligations, Protective Advances or Loans remain unpaid (the “**Payment Requirements**”) following such application as a result of a mismatch between the currencies of the amounts in the Payment Accounts and the currencies in which the outstanding Payment Requirements are denominated, the Borrowers shall be deemed to have requested the Administrative Agent to convert any excess funds remaining in the Payment Accounts to the currency or currencies of the outstanding Payment Requirements and apply such converted amounts to such outstanding Payment Requirements.

#### Section 2.09 Fees.

(a) The Borrowers agree to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) a commitment fee (the “**Commitment Fee**”), which shall accrue at the Applicable Commitment Fee Rate on the average daily amount of the unused Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which such Commitment terminates. Accrued commitment fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the Effective Date; provided that any commitment fees accruing after the date on which the Commitments terminate shall be payable on demand. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable LC Fee Rate from time to time used to determine the interest rate on Term SOFR Loans on the Dollar Equivalent of the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender’s Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate or rates *per annum* separately agreed upon between the applicable Borrower and such Issuing Bank (but not to exceed 0.20% *per annum*) on the Dollar Equivalent of the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank’s standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Accrued participation fees and fronting fees shall be payable on the last day of March, June, September and December of each year, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to

this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent in the Administrative Agent Fee Letter.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

#### Section 2.10 Interest.

(a) The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate *plus* the Applicable Rate.

(b) The Loans comprising each Canadian Prime Loan Borrowing shall bear interest at the Canadian Prime Rate *plus* the Applicable Rate.

(c) The Loans comprising each Term Benchmark Borrowing shall bear interest at the Adjusted Term SOFR Rate, Adjusted Term CORRA or the Adjusted EURIBOR Rate, as applicable, for the Interest Period in effect for such Borrowing *plus* the Applicable Rate.

(d) Notwithstanding the foregoing, at all times when an Event of Default listed in paragraph (a) or (b) of Section 7.01 has occurred hereunder and is continuing, all overdue amounts outstanding hereunder shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 2% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other overdue amount, 2% *plus* the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan or a Canadian Prime Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) Interest computed by reference to the Term SOFR Rate or the EURIBOR Rate hereunder shall be computed on the basis of a year of 360 days. Interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate,

Term CORRA or the Canadian Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). All interest hereunder on any Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable Alternate Base Rate, Canadian Prime Rate, Adjusted Term CORRA, Term CORRA, Adjusted Term SOFR Rate, Term SOFR Rate, Adjusted EURIBOR Rate or EURIBOR Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.11 Alternate Rate of Interest. (a) Subject to clauses (b), (d), (e), (f) and (g) of this Section 2.11, if:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate, the Term SOFR Rate, the Adjusted EURIBOR Rate, the EURIBOR Rate, Adjusted Term CORRA or Term CORRA, as applicable (including because the Relevant Screen Rate is not available or published on a current basis), for the applicable Agreed Currency and such Interest Period; or

(ii) the Administrative Agent is advised by the Required Lenders that, prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate, the Term SOFR Rate, the Adjusted EURIBOR Rate, the EURIBOR Rate, Adjusted Term CORRA or Term CORRA for the applicable Agreed Currency and such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for the applicable Agreed Currency and such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrowers and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing shall be ineffective, (B) if any Borrowing Request requests a Term Benchmark Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing, (C) if any Borrowing Request requests a Term Benchmark Borrowing in Canadian Dollars, such Borrowing shall be made as a Canadian Prime Rate Borrowing, and (D) if any Borrowing Request requests a Term Benchmark Borrowing (other than a Term Benchmark Borrowing in Dollars), then such request shall be ineffective; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan is outstanding on the date of the Borrowers' receipt of the notice from the Administrative Agent referred to in this Section 2.11(a)(i) with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day),

such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrowers' election prior to such day: (A) be prepaid by the Borrowers on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a "Loan Document" for purposes of this Section 2.11(b)), if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" with respect to Dollars for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" with respect to any Agreed Currency for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(c) [reserved].

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right (in consultation with the Borrower Representative) to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrowers and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11(e), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11(e).

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Rate or EURIBOR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the legal Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrower may revoke any request for a Term Benchmark Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, beneficial owner failing that, either (x) the applicable Borrower will be deemed to have converted any request for a Term Benchmark Borrowing denominated in Dollars into a request for a Borrowing of or conversion to ABR Loans, (y) the applicable Borrower will be deemed to have converted any request for a Term Benchmark Borrowing denominated in Canadian Dollars into a request for a Borrowing of or conversion to Canadian Prime Rate Loans or (z) any Term Benchmark Borrowing denominated in an Alternative Currency (other than Canadian Dollars) shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan in any Agreed Currency is outstanding on the date of the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan, then until such time as a

Benchmark Replacement for such Agreed Currency is implemented pursuant to this Section 2.11(g), (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, an ABR Loan denominated in Dollars on such day, (ii) if such Term Benchmark Loan is denominated in Canadian Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding

Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, a Canadian Prime Rate Loan denominated in Canadian Dollars on such day, or (iii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars or Canadian Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate for Term Benchmark Loans; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrowers' election prior to such day: (A) be prepaid by the Borrowers on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time.

## Section 2.12 Increased Costs.

### (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted EURIBOR Rate) or any Issuing Bank;

(ii) subject the Administrative Agent, any Issuing Bank, any Lender, the London or other applicable offshore interbank market for the applicable Agreed Currency or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (e) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its ~~Assigned~~ loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or Issuing Bank or the London interbank market any other condition, cost or expense (other than Indemnified Taxes and Excluded Taxes) affecting this Agreement or Term Benchmark Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or Issuing Bank of making, continuing, converting to or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered.

(b) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments hereunder or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company would have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrowers will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or Issuing Bank setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or Issuing Bank the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefore; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive (or has retroactive effect), then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) Notwithstanding the foregoing, increased costs due to a Change in Law resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III may only be requested by a Lender imposing such increased costs on borrowers similarly situated to the Borrowers under

syndicated credit facilities comparable to those provided hereunder.

**Section 2.13 Break Funding Payments.** With respect to Term Benchmark Loans, in the event of (i) the payment or prepayment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue or prepay any Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.08(b) and is revoked in accordance therewith), (iv) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrowers pursuant to Section 2.16 or (v) the failure by any Borrower to make any payment of any Loan or drawing under any Letter of Credit (or interest due thereof) denominated in an Alternative Currency on its Assigned scheduled due date or any payment thereof in a different currency, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Term Benchmark Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted Term SOFR Rate, the Adjusted EURIBOR Rate or Adjusted Term CORRA, as applicable, that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the applicable Agreed Currency of a comparable amount and period from other banks in the applicable offshore interbank market for such Agreed Currency. A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

**Section 2.14 Taxes.**

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any lien, encumbrance Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall make such deduction or withholding and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrowers shall be increased as necessary so that after making such deduction or withholding for Indemnified Taxes (including such deductions and withholdings for Indemnified Taxes applicable to additional sums payable under this Section) the Administrative Agent, Issuing Bank or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.

(b) In addition, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Loan Parties shall jointly and severally indemnify the Administrative Agent, each Issuing Bank and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, or required to be withheld or deducted from any payment to such recipient by or on account of any obligation of any Borrower hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by an Issuing Bank or a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an Issuing Bank or a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of any Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.04 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other adverse claim, evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall, to the extent legally entitled to do so, deliver to the Borrowers, at the time or times reasonably requested by a Borrower, such properly completed and executed documentation reasonably requested by the Borrowers as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by a Borrower, shall, to the extent legally entitled to do so, deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers as will enable the Borrowers to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(g) Any Foreign Lender, if it is legally entitled to do so, shall deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be required by law or requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrowers or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable;

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a portfolio interest certificate in compliance with Section 2.14(g)(iii), IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a certificate in compliance with Section 2.14(g)(iii) on behalf of such direct or indirect partner or partners; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers to determine the withholding or deduction required to be made unless, in the Foreign Lender's reasonable determination, such completion would subject such Foreign Lender to any material cost or expense or would materially prejudice the legal or commercial position of such Foreign Lender.

In addition, any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of

the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding. In addition, each Lender shall deliver such forms (including those forms required pursuant to Section 2.14(h)) promptly upon the obsolescence or invalidity of any form previously delivered by such Lender or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(h) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender failed to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such other documentation reasonably requested by the Borrowers and the Administrative Agent sufficient for the Administrative Agent and the Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.14(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(i) If any party determines, in its sole discretion exercised in good faith, that it has full power received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and authority, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party,

shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h), the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(j) The Administrative Agent shall deliver to the Parent Borrower on or prior to the date on which the Administrative Agent becomes the Administrative Agent under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of the Borrowers), an executed, properly completed copy (together with all required attachments thereto) of: (i) IRS Form W-9 or any successor thereto, or (ii) (A) IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto evidencing its agreement with the Borrowers to be treated as a U.S. Person for U.S. federal withholding purposes. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has taken expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrowers.

(k) Each party's obligations under this Section 2.14 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all action obligations under any Loan Document.

(l) For purposes of this Section, the term "Lender" includes any Issuing Bank and the Swingline Lender and the term applicable law includes FATCA.

#### Section 2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) (i) Except with respect to principal of and interest on Loans denominated in an Alternative Currency, each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 2.12, 2.13 or 2.14, or otherwise) in Dollars prior to 12:00 noon, Local Time, on the date when due and (ii) all payments with respect to principal and interest on Loans denominated in an Alternative Currency shall be made in such Alternative Currency not later than the Local Time specified by the Administrative Agent on the dates specified herein, in each case, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent (i) in the case of payments denominated in Dollars, at its Principal Office and (ii) in the case of payments denominated in an Alternative Currency, at its Alternative Currency Payment Office for such Alternative Currency; provided that payments pursuant to Sections 2.12, 2.13 or 2.14 and Section 10.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment or performance hereunder shall be due on a day that is not a Business Day, the date for payment or performance shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder of principal or interest in respect of any Loan or LC Disbursement shall, except as otherwise expressly provided herein, be made in the currency of such Loan or LC Disbursement, and all other payments hereunder and under each other Loan Document shall be made in Dollars. Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan or LC Disbursement in any Alternative Currency, currency control or exchange regulations are imposed in the country which issues such Alternative Currency with the result that such Alternative

Currency no longer exists or the Borrowers are not able to make payment to the Administrative Agent for the account of the Lenders in such Alternative Currency, then all payments to be made by any Borrower hereunder in such Alternative Currency shall instead be made when due in a currency that replaced such Alternative Currency or, if no such replacement currency exists, in Dollars in an amount equal to the Dollar Equivalent (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrowers take all risks of the imposition of any such currency control or exchange regulations.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of any principal or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to any Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the applicable Issuing Bank hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(b), Section 2.03(c)(iii) or (iv), paragraph (d) or (e) of Section 2.19, or paragraph (d) of this Section, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

#### Section 2.16 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.12, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.14, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.12, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14 or (iii) any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice by the Borrowers to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers shall have received the prior written consent of the Administrative Agent (and if a Commitment is being assigned, the Issuing Banks), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents, from the assignee (to the extent of such outstanding principal and accrued interest and fees so assigned) or the Borrowers (in the case of all other amounts so assigned), (iii) in the case of any such assignment resulting from a

claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments, (iv) such assignment does not conflict with applicable law and (v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, (x) the applicable assignee shall have consented to, or shall consent to, the applicable amendment, waiver or consent and (y) the Borrowers exercises their rights pursuant to this clause (b) with respect to all Non-Consenting Lenders relating to the applicable amendment, waiver or consent; provided, further, that in the event such Lender shall have received payment of the amount referred to in

clause (ii) above, such Lender shall be deemed to have so assigned and delegated all its interests, rights and obligations under this Agreement and the other Loan Documents pursuant to the terms set forth in Exhibit A hereto. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

## Section 2.17 Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and in Section 10.02.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to prepay such Defaulting Lender's Protective Advance Exposure; *third*, to prepay such Defaulting Lender's Swingline Exposure; *fourth*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder; *fifth*, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17(d); *sixth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *seventh*, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.17(d); *eighth*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach

of its obligations under this Agreement; *ninth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *tenth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement obligations with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the Commitments without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) (A) No Defaulting Lender shall be entitled to receive any commitment fee pursuant to Section 2.09(a) or participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); *provided* that such Defaulting Lender shall be entitled to receive participation fees pursuant to Section 2.09(b)(i) for any period during which that Lender is a Defaulting Lender only to extent allocable to its Applicable Percentage of the available balance of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.17(d); and (B) with respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) So long as no Event of Default shall have occurred and be continuing, all or any part of such Defaulting Lender's Protective Advance Exposure, Swingline Exposure and participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment.

Subject to Section 10.19, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting

Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to them hereunder or under law, Cash Collateralize each Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 2.17(d).

(b) If the Borrowers, the Administrative Agent, the Swingline Lender and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to ~~execute~~ cause the Loans and ~~deliver this Assignment~~ funded and ~~Assumption~~ and unfunded participations in Letters of Credit to ~~consummate~~ be held on a pro rata basis by the ~~transactions contemplated hereby~~ and ~~Lenders~~ in accordance with their respective Applicable Percentages (without giving effect to Section 2.17(a)(iv) it is not), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and (b) ~~assumes~~provided, further, that except to the extent otherwise expressly agreed by the affected parties, no ~~responsibility~~ change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) So long as any Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and each Issuing Bank shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that the related exposure and the participations in any then existing Letters of Credit as well as the new, extended, renewed or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iv) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.17(d).

(d) At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent), the Borrowers shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the

Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.17 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) Cash Collateral (or the appropriate portion thereof) provided to reduce each Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.17 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by the Administrative Agent and such Issuing Bank that there exists excess Cash Collateral; provided that, subject to the other provisions of this Section 2.17, the Person providing Cash Collateral and such Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

## Section 2.18 Incremental Facility.

(a) The Borrowers may by written notice to the Administrative Agent elect to request prior to the Maturity Date, one or more increases to the existing Commitments (any such increase, the "New Commitments"), in Dollars, by an amount not in excess of the Incremental Amount in the aggregate and not less than \$5,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser

amount that shall constitute the difference between the Incremental Amount and all such New Commitments obtained prior to such date), and integral multiples of \$1,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an **"Increased Amount Date"**) on which the Borrowers propose that the New Commitments shall be effective, which shall be a date not less than 5 Business Days after the date on which such notice is delivered to the Administrative Agent (unless otherwise agreed by the Administrative Agent in its sole discretion), (B) the requested amount of the New Commitment, and (C) the identity of each Lender or other Person that is an eligible assignee under Section 10.04(b), subject to approval thereof by the Administrative Agent in the case of a Person that is not a Lender (such approval not to be unreasonably withheld or delayed) (each, a **"New Lender"**), to whom the Borrowers propose any portion of such New Commitments be allocated and the amounts of such allocations; provided that any Lender approached to provide all or a portion of the New Commitments may elect or decline, in its sole discretion, to provide a New Commitment; and provided, further that any Lender approached to provide all or a portion of the New Commitments and that does not respond in writing within 5 Business Days of receipt of such offer shall be deemed to have declined. Such New Commitments shall become effective as of such Increased Amount Date; provided that (1) on such Increased Amount Date before or

after giving effect to such New Commitments, each of the conditions set forth in Section 4.02 shall be satisfied; (2) the New Commitments shall be effected pursuant to one or more Lender Joinder Agreements executed and delivered by the Borrowers, the New Lenders and the Administrative Agent, and each of which shall be recorded in the Register and each New Lender shall be subject to the requirements set forth in Section 2.14; (3) the Borrowers shall make any payments required pursuant to Sections 2.12 and 2.13 in connection with the New Commitments; and (4) the Borrowers shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(b) On any Increased Amount Date on which New Commitments are effected, subject to the satisfaction (or waiver by the Required Lenders) of the foregoing terms and conditions, (i) each of the Lenders shall assign to each of the New Lenders, and each of the New Lenders shall purchase from each of the Lenders, at the principal amount thereof (together with accrued interest), such interests in the Loans, and participations in the Letters of Credit, in each case outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Loans and participations in such Protective Advances and Letters of Credit will be held by existing Lenders and New Lenders ratably in accordance with their Commitments after giving effect to the addition of such New Commitments to the Commitments, (ii) each New Commitment shall be deemed for all purposes a Commitment (and the terms and provisions (including pricing and available currency) of the New Commitments shall be identical to the existing Commitments), and each Loan made thereunder (a **"New Loan"**) shall be deemed, for all purposes, a Loan and (iii) each New Lender shall become a Lender for all purposes hereunder.

(c) The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (i) the New Commitments and the New Lenders, and (ii) the respective interests in such Lender's Loans, in each case subject to the assignments contemplated by this Section 2.18.

(d) The terms and provisions (including Available Currency) of the New Loans shall be identical to the existing Loans. Notwithstanding anything in Section 10.02 to the contrary, each Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate in the opinion of the Administrative Agent to effect the provision of this Section 2.18.

(e) Upon each increase in the Commitments pursuant to this Section 2.18, the dollar thresholds set forth in the definitions of "Full Cash Dominion Period", "Reporting Trigger Event," and "Payment Conditions" and in Sections 5.07(b) and (c), 6.09(k) and 6.10 shall be increased in proportion to the amount of the New Commitments.

#### Section 2.19 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, each Borrower may request the issuance of (and subject to the terms of this Section 2.19, each Issuing Bank shall

issue) Letters of Credit as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the applicable Borrower to, or entered into by the applicable Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, (i) no Borrower shall request, and no Issuing Bank shall issue, any Letter of Credit the proceeds of which would be made to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country, region or territory, that at the time of such funding is a Sanctioned Country or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit if the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank now or hereafter in effect applicable to letters of credit

generally, (iii) no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit (1) if the aggregate LC Exposure with respect to all Letters of Credit issued by such Issuing Bank would exceed such Issuing Bank's LC Commitment, (2) denominated in a currency other than Dollars or with respect to each Issuing Bank, any applicable Alternative Currency set forth adjacent to its name on Schedule 2.01, or otherwise consented to by such Issuing Bank or (3) unless it is a Standby Letter of Credit (or, with the consent of such Issuing Bank (in its sole discretion), a Commercial Letter of Credit) and (iv) no Borrower shall request, and no Issuing Bank shall issue, any Letter of Credit if after giving effect to such issuance of a Letter of Credit, (1) any Lender's Revolving Credit Exposure would exceed such Lender's Commitment or (2) the Total Revolving Extensions of Credit would exceed the Line Cap or any of the Borrowing Limits would be exceeded.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the applicable Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than three Business Days in connection with a Letter of Credit denominated in Dollars and five Business Days in connection with a Letter of Credit denominated in a currency other than Dollars) a written Letter of Credit Request in substantially the form of Exhibit B-2 attached hereto and signed by the applicable Borrower requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the Agreed Currency applicable thereto, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the applicable Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or

extension of each Letter of Credit, the applicable Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Dollar Equivalent of the LC Exposure shall not exceed the LC Sublimit, (ii) the Total Revolving Extensions of Credit shall not exceed the Line Cap and none of the Borrowing Limits shall be exceeded, (iii) the Dollar Equivalent of the LC Exposure of the applicable Issuing Bank shall not exceed the LC Sublimit applicable to such Issuing Bank and (iv) the Revolving Credit Exposure of the applicable Issuing Bank shall not exceed the Commitment of such Issuing Bank.

(c) Currency; Expiration Date. Each Letter of Credit shall be denominated in Dollars or any Alternative Currency to the extent provided in Section 2.19(a) above. Each Letter of Credit shall expire (or be subject to termination by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit unless otherwise consented to by the applicable Issuing Bank (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; provided that, notwithstanding anything to the contrary in this paragraph (c), a Letter of Credit may expire on a date following the Maturity Date if the Borrowers provide Cash Collateral for, "backstops" or replaces such Letter of Credit, in each case, at the time of issuance of any such Letter of Credit in an amount equal to 103% of the applicable Issuing Bank's LC Exposure attributable to such Letter of Credit (105% for any LC Exposure with respect to Letters of Credit denominated in a currency other than Dollars) plus any accrued and unpaid interest thereon and pursuant to arrangements (and with "backstop" letter of credit issuers) reasonably acceptable to the applicable Issuing Bank.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of any Issuing Bank or the Lenders, the applicable Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the applicable Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit; provided that the Lenders' participations in a Letter of Credit shall terminate upon giving effect to any Deemed LC Termination in respect of such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for the account of such Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such LC Disbursement by paying to the

Administrative Agent an amount equal to such LC Disbursement in the applicable Agreed Currency within one (1) Business Day after the Borrowers shall have received notice of such LC Disbursement; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with an ABR Borrowing in an amount equal to the Dollar Equivalent of such LC Disbursement and, to the extent so financed, the Borrowers' obligation to make such payment shall be discharged and replaced by the resulting ABR Borrowing; provided further that, if a Covenant Relief Period shall exist at the time an LC Disbursement is made in respect of any Letter of Credit, the Borrowers agree that such LC Disbursement shall be reimbursed in the manner set forth in Section 5.12(d). If the Borrowers fail to make such payment when due, (x) any LC Disbursement denominated in an Alternative Currency shall automatically be converted to an LC Disbursement denominated in Dollars in an amount equal to the Dollar Equivalent of such LC Disbursement at such time and (y) the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.04 with respect to Loans made by such Lender (and Section 2.04 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse any Issuing Bank for any LC Disbursement (other than the funding of ABR Loans as contemplated above) shall not constitute a Loan and shall not relieve any Borrower of its obligation to reimburse such LC Disbursement. If the Borrowers' reimbursement of, or obligation to reimburse, any amounts in any Alternative Currency would subject the Administrative Agent, any Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, the Borrowers shall, at their option, either (x) pay the amount of any such tax requested by the Administrative Agent, such Issuing Bank or such Lender or (y) reimburse each LC Disbursement made in such Alternative Currency in Dollars, in an amount equal to the Dollar Equivalent of such LC Disbursement on the date such LC Disbursement is made.

(f) Obligations Absolute. Each Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any statements, warranties, lack of validity or representations made enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of

this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by applicable law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, any Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank shall, within the time allowed by applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder and, upon receipt of such notice, the Administrative Agent shall promptly notify the Borrowers by telephone (confirmed by telecopy) of the same; provided that any failure to give or delay by the Issuing Bank or the Administrative Agent in giving such notice shall not relieve any Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the Borrowers shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate *per annum* then applicable to ABR Loans; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.10(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of

payment by any Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Administrative Agent, any Issuing Bank or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50.0% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, the Borrowers shall provide Cash Collateral in an amount equal to 103% of the LC Exposure (105% for any LC Exposure with respect to Letters of Credit denominated in a currency other than Dollars) as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Loan Party described in Section 7.01(h) or Section 7.01(i). Such Cash Collateral shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of each Issuing Bank), be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

(j) Replacement of an Issuing Bank. Any Issuing Bank may be replaced at any time by written agreement among the Borrowers, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of any Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.09(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(k) Resignation of an Issuing Bank. Any Issuing Bank may resign at any time that such Issuing Bank (or its applicable Affiliate) ceases to hold a Commitment hereunder. The Administrative Agent shall notify the Lenders of any such resignation of any Issuing Bank. After the resignation of an Issuing Bank hereunder, the resigning Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit.

(l) Deemed Letter of Credit Requests. The Borrowers may, from time to time, request (a "Deemed LC Request") that (i) any undrawn Letter of Credit issued hereunder be deemed to be terminated and issued under a separate letter of credit facility with the applicable Issuing Bank (a "Deemed LC Termination") or (ii) any undrawn letter of credit issued under a separate letter of credit facility with an Issuing Bank be deemed to be terminated and issued hereunder as a Letter of Credit (a "Deemed LC Issuance"). Any such Deemed LC Request shall identify the applicable Letter of Credit, and the Deemed LC Termination or Deemed LC Issuance specified therein shall, subject to the prior written consent of each of the Administrative Agent and the applicable Issuing Bank (which consent may be withheld in its sole discretion) and, in the case of any Deemed LC Issuance, the satisfaction of the conditions set forth in Section 4.02, be effective upon receipt of such written consent.

Section 2.20 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which the Administrative Agent could, in accordance with normal banking procedures applicable to arm's length transactions, purchase the specified currency with such other currency at the Administrative Agent's Principal Office on the Business Day immediately preceding that on which final, non-appealable judgment is given. The obligations of each Loan Party in

respect of any sum due to the Administrative Agent, any Issuing Bank or any Lender hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent, such Issuing Bank or such Lender of any sum adjudged to be so due in such other currency, the Administrative Agent, such Issuing Bank or such Lender may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency, each Loan Party agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent, such Issuing Bank or such Lender against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to the Administrative Agent, such Issuing Bank or such Lender in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.15(c), the Administrative Agent, such Issuing Bank or such Lender agrees to remit such excess to the Loan Parties.

**Section 2.21 Swap Agreements.** Each Lender or Affiliate thereof that enters into any Swap Agreement with the Parent or any Subsidiary thereof after the Effective Date shall deliver to the Administrative Agent written notice designating such Swap Agreement as a Specified Swap Agreement. In addition, each such Lender or Affiliate thereof shall deliver to the Administrative Agent, from time to time upon the Administrative Agent's reasonable request therefor, a summary of the amounts due or to become due in respect of such Swap Agreement.

## **ARTICLE 3** **REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

**Section 3.01 Organization; Powers.** Each of the Parent and its Subsidiaries is duly organized or formed, validly existing and in good standing (or such other analogous status, if any) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing (or such other analogous status, if any) in, every jurisdiction where such qualification is required.

**Section 3.02 Authorization; Enforceability.** The Transactions are within each Borrower's and each Guarantor's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational and, if required, equity holder action. Each of the Borrowers and the Guarantors has duly executed and delivered each of the Loan Documents to which it is party, and each of such Loan Documents constitute its legal, valid and binding obligations, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**Section 3.03 Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) those approvals, consents, registrations, filings or other actions, the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect, (b) except as would not reasonably be expected to have a Material Adverse Effect, will not violate any applicable law or regulation or any order of any Governmental Authority, (c) will not violate any charter, by-laws or other organizational document of the Parent or any of its Subsidiaries, (d) except as would not reasonably be expected to have a Material Adverse Effect, will not violate or result in a default under any indenture, agreement or other instrument (other than the agreements and instruments referred to in clause (c)) binding upon the Parent or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Parent or any of its Subsidiaries, and (e) will not result in the creation or imposition of any Lien on any asset of the Parent or any of its Subsidiaries (other than Liens arising pursuant to the Security Documents or permitted under Section 6.02).

**Section 3.04 Financial Condition; No Material Adverse Change.**

(a) The audited consolidated balance sheets of the Parent and its Subsidiaries and related consolidated statements of operations and comprehensive loss, consolidated statements of changes in stockholders' (deficit) equity, and consolidated statements of cash flows as of and for the fiscal years ended September 30, 2021 and September 30, 2022, reported on by Ernst & Young LLP, independent public accountants present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Parent and its Subsidiaries as of such dates and for such periods. The consolidated balance sheets the Parent and its Subsidiaries and related consolidated statements of operations and comprehensive loss, consolidated statements of changes in stockholders' (deficit) equity, and consolidated statements of cash flows as of the end of and for the fiscal quarters ended December 31, 2022, March 31, 2023 and June 30, 2023 and the then elapsed portion of the fiscal year present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent and its Subsidiaries as of such dates and for such

periods (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved.

(b) Since September 30, 2022, no event, development or circumstance exists or has occurred that has had or would reasonably be expected to have a Material Adverse Effect.

#### Section 3.05 Properties.

(a) Each of the Parent and its Subsidiaries has good title to, or valid leasehold interests in or rights to use, all real and tangible personal property material to its business, other than those Liens permitted by Section 6.02, except in each case where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Parent and its Subsidiaries owns, or has the valid right to use, all Intellectual Property material to its business as currently conducted, free and clear of all Liens other than Liens permitted by Section 6.02 except to the extent such failure to own or have the right to use, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and the operation of such business or the use of such Intellectual Property by the Parent and its Subsidiaries does not infringe upon, misappropriate, or otherwise violate the rights of any other Person, except for any such infringements, misappropriations, or violations that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### Section 3.06 Litigation and Environmental Matters.

(a) Except as set forth on Schedule 3.06, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing (including "cease and desist" letters and invitations to take a patent license) against or affecting the Parent or any of its Subsidiaries (i) that would reasonably

be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve this Agreement, any other Loan Document or the Transactions.

(b) Except with respect to any matter that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Parent nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

Section 3.07 Compliance with Laws and Agreements; No Default. Each of the Parent and its Subsidiaries is in compliance with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.08 Investment Company Status. None of the Parent or any of its Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 3.09 Margin Stock. None of the Parent or any of its Subsidiaries is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U and Regulation X issued by the Board).

Section 3.10 Taxes. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each of the Parent and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed with respect to income, properties or operations of the Parent and its Subsidiaries, (ii) such returns accurately reflect in all material respects all liability for Taxes of the Parent and its Subsidiaries as a whole for the periods covered thereby and (iii) each of the Parent and its Subsidiaries has paid or caused to be paid all Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and, to the extent required by GAAP, for which the Parent or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP.

#### Section 3.11 ERISA.

(a) Each Plan is in compliance in form and operation with its terms and with ERISA and the Code (including without limitation the Code provisions compliance with which is necessary for any intended favorable tax treatment) and all other applicable laws and regulations, except where any failure to comply would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. Each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that it meets the requirements of Sections 401(a) and 501(a) of the Code covering all applicable tax law changes or is comprised of a master

or prototype plan that has received a favorable opinion letter from the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of a Plan with no determination, nothing has occurred that would materially adversely affect the issuance of a favorable determination letter or otherwise materially adversely affect such qualification), in each case, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect. No ERISA Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) None of the Parent, any Subsidiary or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the five calendar years immediately preceding the date this assurance is given or deemed given, made or accrued an obligation to make contributions to any Multiemployer Plan, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Parent, any Subsidiary or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to result in any Material Adverse Effect.

(e) The Parent, its Subsidiaries and its ERISA Affiliates have made all contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan save where any failure to comply, individually or in the aggregate, would not reasonably be expected to result in any Material Adverse Effect.

(f) Except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect: (i) no Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA and (ii) the Parent, any Subsidiary, and any ERISA Affiliate have not ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Plan subject to Section 4064(a) of ERISA to which it made contributions. None of the Parent, any Subsidiary or any ERISA Affiliate have incurred or reasonably expect to incur any liability to PBGC except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, save for any liability for premiums due in the ordinary course or other liability which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and no lien imposed under the Code or ERISA on the assets of the Parent or any Subsidiary or, to the knowledge of the Parent or any

Subsidiary, any ERISA Affiliate exists or, to the knowledge of the Parent or any Subsidiary, is likely to arise on account of any Plan. None of the Parent, any Subsidiary or any ERISA Affiliate has engaged in a transaction that would reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA, except as would not, individually or in the aggregate, reasonably be expected to result in any Material Adverse Effect.

(g) Each Non-U.S. Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All contributions required to be made with respect to a Non-U.S. Plan have been timely made, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Parent nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Non-U.S. Plan, except as would not reasonably be expected to result in a Material Adverse Effect. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan, determined as of the end of the Parent's most recently ended fiscal year on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities, except as would not reasonably be expected to result in a Material Adverse Effect.

### Section 3.12 Disclosure.

(a) All written information provided by any Responsible Officer of any Loan Party (other than any projected financial information, estimates, budgets, forward looking statements and other than information of a general economic or industry specific nature) to the Administrative Agent or any Lender in connection with this Agreement or delivered hereunder, as modified or supplemented by other information so furnished and when taken as a whole together with any information disclosed in the Parent's public filings with the SEC, does not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not materially misleading; provided that, with respect to any projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time furnished (it being understood that such projected financial information and all information concerning future proposed and intended activities are forward-looking statements by their nature and are subject to significant uncertainties and contingencies, any of which are beyond the Loan Parties' control, that no assurance can be given that any particular projections will

be realized and that actual results during the period or periods covered by any such projected financial information may differ significantly from the projected results and such differences may be material).

(b) As of the Effective Date, to the best knowledge of the Loan Parties, to the extent required to be delivered pursuant to Section 4.01(h), the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all material respects.

**Section 3.13 Subsidiaries.** Schedule 3.13 sets forth as of the Effective Date a list of all Subsidiaries, together with (a) the percentage ownership (directly or indirectly) of the Parent and the Parent Borrower, as applicable, therein and (b) whether such Subsidiary is a Guarantor or an Excluded Subsidiary. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the shares of capital stock or other Equity Interests of all Subsidiaries of the Parent and the Parent Borrower, as applicable, are fully paid and non-assessable and are owned by the Parent and the Parent Borrower, as applicable, directly or indirectly, free and clear of all Liens other than Liens permitted under Section 6.02.

**Section 3.14 Solvency.** On the Effective Date, the Parent and its Subsidiaries, on a consolidated basis, are and, after giving effect to the incurrence of any Loans being incurred on such date, will be Solvent.

**Section 3.15 Anti-Terrorism Law.**

(a) None of (x) the Parent, any of its Subsidiaries or any of their respective directors, officers or employees, or (y) to the knowledge of the Loan Parties, any agent or Affiliate of the Parent or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is any of the following:

(i) a Person that is listed in the annex to, or is otherwise the target of the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "Executive Order");

(ii) a Person owned or (where applicable under Sanctions) controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any legal requirement relating to applicable laws with respect to terrorism or money laundering (collectively, "Anti-Terrorism Laws");

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a Sanctioned Person.

(b) Neither the Parent nor any of its Subsidiaries, nor, to the knowledge of the Loan Parties, any of their respective Affiliates, (i) conducts any business with, or engages in making or receiving any contribution of funds, goods or services to or for the benefit of, a Person described in Section 3.15(a)(i)-(v) above, except as permitted under U.S. law, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) None of the Loan Parties will use, nor will permit any of its Subsidiaries or Affiliates to use, the proceeds of the Loans or Letters of Credit or otherwise make available such proceeds to any Person described in Section 3.15(a)(i)-(v) above, for the purpose of financing the activities of any Person described in Section 3.15(a)(i)-(v) above, in any Sanctioned Country or in any other manner that would violate any Anti-Terrorism Laws or Sanctions by any party hereto.

**Section 3.16 Anti-Corruption Laws and Sanctions.**

(a) No part of the proceeds of the Loans or Letters of Credit will be used by the Borrowers or any of their Subsidiaries, or, to the knowledge of the Parent, the Parent Borrower and any of their respective Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, the United Kingdom Bribery Act of 2010, as amended, or any other applicable Anti-Corruption Law.

(b) The Parent has implemented and maintains in effect policies and procedures designed to promote compliance by the Parent, the Parent Borrower, their respective Subsidiaries and their respective directors, officers, employees, Affiliates and agents with Anti-Corruption Laws and applicable Sanctions, and the Parent, the Borrower, their respective Subsidiaries and their respective directors, officers and employees, and, to the

knowledge of the Parent, the Borrower, their respective Affiliates and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

**Section 3.17 Security Documents.** The Security Documents are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest (subject to Liens permitted by Section 6.02) in the Collateral described therein and proceeds thereof. In the case of any Equity Interests required to be pledged under the Security Documents, when stock certificates representing such Equity Interests are delivered to the Administrative Agent (together with a properly completed and signed stock power or endorsement), in the case of Collateral consisting of Deposit Accounts or Securities Accounts, when such Deposit Accounts or Securities Accounts located in the United States are subject to a Control Agreement and in the case of the other Collateral described in the Security Documents, when financing statements and other filings specified on Schedule 3 to the Security Agreement, in appropriate form are filed in the offices specified on Schedule 3 to the Security Agreement, the Liens granted under the Security Documents shall constitute fully perfected Liens on, and security interests (subject to Liens permitted by Section 6.02) in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations, in each case prior and superior in right to any other Person (except for Liens permitted by Section 6.02), to the extent that such Liens can be perfected by (i) the filing of financing statements, (ii) the delivery to the Administrative Agent of stock certificates representing Equity Interests pledged pursuant to the Security Documents accompanied by stock power or endorsement, (iii) the recordation of intellectual property security agreements with the

United States Patent and Trademark Office or the United States Copyright Office, and (iv) entry into Control Agreements, as applicable.

**Section 3.18 Eligible Inventory.** As of the date of any Borrowing Base Certificate, the Inventory included in the calculation of Eligible Inventory and Eligible In-Transit Inventory on such Borrowing Base Certificate satisfy in all material respects the requirements of "Eligible Inventory" and "Eligible In-Transit Inventory", as applicable, hereunder.

## ARTICLE 4 CONDITIONS

**Section 4.01 Effective Date.** The obligations of the Lenders to make Loans and the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 10.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received (i) the Security Agreement, executed and delivered by the Loan Parties and in form and substance reasonably acceptable to the Administrative Agent, (ii) each short-form intellectual property security agreement required pursuant to Section 4.8(l) of the Security Agreement, (iii) each of the Fee Letters, executed and delivered by the Borrowers, (iv) the Intercompany Subordination Agreement, executed and delivered by each of the Loan Parties and their applicable Subsidiaries, and (v) a Note executed by the Borrowers in favor of each Lender requesting a Note at least 5 Business Days prior to the Effective Date.

(c) The Administrative Agent shall have received favorable written opinions (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Latham & Watkins, LLP, counsel for the Loan Parties, in form and substance reasonably satisfactory to the Administrative Agent. The Loan Parties hereby request such counsel to deliver such opinion.

(d) The Administrative Agent shall have received (i) certified copies of the resolutions of the board of directors of the Loan Parties approving the transactions contemplated by the Loan Documents to which each such Loan Party is a party and the execution and delivery of such Loan Documents to be delivered by such Loan Party on the Effective Date, and all documents evidencing other necessary organizational action and governmental approvals, if any, with respect to the Loan Documents and (ii) all other documents reasonably requested by the Administrative Agent relating to the organization, existence and good standing of the Loan Parties and authorization of the transactions contemplated hereby.

(e) The Administrative Agent shall have received a certificate of the Secretary or an Assistant Secretary (or other equivalent officer) of each Loan Party certifying the names and true signatures of the officers of such entity authorized to sign the Loan Documents to which it is a party, to be delivered by such entity on the Effective Date and the other documents to be delivered hereunder on the Effective Date.

(f) The Administrative Agent shall have received (i) a certificate, dated the Effective Date and signed on behalf of the Parent Borrower by the President, a Vice President or a Financial Officer of the Parent Borrower, confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 as of the Effective Date, and (ii) a certificate, dated the Effective Date and signed on behalf of the Parent Borrower by the chief financial officer of the Parent Borrower, certifying that, as of the Effective Date, the Parent and each Borrower is, individually and together with its respective Subsidiaries, and after giving effect to the incurrence of any Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(g) The Lenders, the Administrative Agent and the Arrangers shall have received all fees required to be paid by the Borrowers on the Effective Date (including, without limitation, the fees payable under the Fee Letters), and all expenses required to be reimbursed by the Borrowers for which invoices have been presented at least three business days prior to the Effective Date, on or before the Effective Date.

(h) (i) The Administrative Agent shall have received, to the extent reasonably requested by any of the Lenders at least five Business Days prior to the Effective Date, all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA Patriot Act and the Proceeds of Crime Act and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least three days prior to the Effective Date, any Lender that has requested, in a written notice to the Parent Borrower at least ten days prior to the Effective Date, a Beneficial Ownership Certification in relation to such Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(i) The Administrative Agent shall have received (i) audited consolidated financial statements of the Parent and its Subsidiaries for the two most recent fiscal years ended at least 90 days prior to the Effective Date as to which such financial statements are available, (ii) unaudited interim consolidated financial statements of the Parent and its Subsidiaries for each quarterly period ended subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and at least 45 days prior to the Effective Date as to which such financial statements are available and (iii) reasonably detailed projections of the Parent and its Subsidiaries through its fiscal year ending September 30, 2027.

(j) All outstanding Equity Interests (other than Excluded Securities) owned by or on behalf of any Loan Party shall have been pledged pursuant to any of the Security Documents.

(k) The Administrative Agent shall have received the results of a recent Lien search with respect to each Loan Party, and such search shall reveal no Liens on any of the assets of the

Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

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

(m) The Administrative Agent shall have received an Acceptable Field Examination and an Acceptable Inventory Appraisal.

(n) Prior to or substantially concurrently with the initial extensions of credit under this Agreement on the Effective Date, (A) the Credit Agreement, dated as of November 1, 2021 (as in effect as of the date hereof, the "Existing CF Revolving Facility"), *inter alia*, among the Parent, the Parent Borrower, the Subsidiaries of the Parent party thereto, each lender party thereto and JPMorgan Chase Bank, N.A., as administrative agent and (B) all other existing Indebtedness for borrowed money (other than Indebtedness permitted under Section 6.01 of this Agreement) of the Parent, the Parent Borrower and their respective Subsidiaries, in each case shall have been paid in full (such repayment, the "Existing Indebtedness Refinancing") and all Liens granted in connection with each of the foregoing shall have been terminated such that on the Effective Date, after giving effect to Transactions, none of the Parent, the Parent Borrower or any of their respective Subsidiaries shall have any material Indebtedness for borrowed money other than (i) Indebtedness outstanding under this Agreement and (ii) other Indebtedness permitted under Section 6.01.

(o) The Administrative Agent shall have received a completed Perfection Certificate dated as of the Effective Date and executed by a Responsible Officer of each Loan Party.

(p) The Administrative Agent shall have received a completed Borrowing Base Certificate, prepared as of November 17, 2023, and executed by a Responsible Officer of the Borrower Representative.

(q) The Borrowers shall have (i) Excess Availability, after giving effect to the Borrowings under this Agreement and the payment of all fees and expenses to be paid by Borrowers on the Effective Date under this Agreement or the other Loan Documents, of at least the greater of (x) an amount that is equal to 50% of the Borrowing Base as of November 17, 2023 and (y) \$25,000,000, and (ii) Total Liquidity, after giving effect to the payment of all fees and expenses to be paid by Borrowers on the Effective Date under this Agreement or the other Loan Documents and the consummation of the Existing Indebtedness Refinancing, of at least \$200,000,000.

The Administrative Agent shall notify the Borrowers and the Lenders of the Effective Date, and such notice shall be conclusive and binding. Without limiting the generality of the provisions of Article 8, for purposes of determining compliance with the conditions specified in this Section,

each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

**Section 4.02 Each Credit Event.** The obligation of each Lender to make a Loan on the occasion of any Borrowing (provided that a conversion or a continuation shall not constitute a "Borrowing" for purposes of this Section 4.02), and of the applicable Issuing Bank to issue, renew or extend any Letter of Credit, is subject to the satisfaction (or waiver by in accordance with Section 10.02) of the following conditions:

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

(b) At the time of and immediately after giving effect on a Pro Forma Basis to such Borrowing or the issuance, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) At the time of and immediately after giving effect on a Pro Forma Basis to such Borrowing or the issuance of such Letter of Credit, as applicable, the Borrowers shall be in compliance with Section 6.10.

(d) With respect to any issuance of a Letter of Credit during any Covenant Relief Period, the Letter of Credit Request delivered to the Administrative Agent with respect thereto shall include a calculation of Borrowing Base Qualified Cash and Total Liquidity as of the date of such issuance.

Each Borrowing and each issuance, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Loan Parties that the conditions specified in paragraphs (a), (b) and (c) and (d) of this Section have been satisfied as of the date thereof.

## ARTICLE 5 AFFIRMATIVE COVENANTS

Until each of (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan and all other Obligations hereunder (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) shall have been paid in full in cash, and (iii) all Letters of Credit shall have (x) expired or terminated, in each case, without any pending draw, (y) been backstopped or Cash Collateralized in an amount not less than the Minimum Collateral Amount or (z) been deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank, the Loan Parties covenant and agree with the Administrative Agent and the Lenders that:

**Section 5.01 Financial Statements; Ratings Change; Borrowing Base and Other Information.** The Parent will furnish to the Administrative Agent (for distribution to each Lender):

(a) on or before the date on which such financial statements are required to be filed with the SEC after the end of each fiscal year of the Parent (or, if such financial statements are not required to be filed with the SEC, within 120 days after the end of each fiscal year of the Parent), its audited consolidated balance sheet and related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception (other than a qualification related to the maturity of the Commitments and the Loans at the Maturity Date or upcoming maturity date under any other Indebtedness occurring within one year from the time such report is delivered or potential inability to satisfy a financial covenant under this Agreement or other Indebtedness) and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) on or before the date on which such financial statements are required to be filed with the SEC after the end of each of the first three fiscal quarters of each fiscal year of the Parent (or, if such financial statements are not required to be filed with the SEC, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent), its consolidated balance sheets and related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the

balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Parent and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate (i) certifying as to whether a Default has occurred and is continuing as of the date thereof and, if a Default has occurred and is continuing as of the date thereof, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) demonstrating compliance with Section 6.10, (iii) setting forth a reasonably detailed calculation of Consolidated EBITDA and the Consolidated Leverage Ratio for the applicable Measurement Period, (iv) if and to the extent that any change in GAAP that has occurred since the date of the audited financial statements referred to in Section 3.04 had an impact on such financial statements, specifying the effect of such change on the financial statements accompanying such certificate, (v) setting forth a list of any issued Patents, registered industrial designs, registered Trademarks or registered Copyrights, and applications for any of the foregoing, acquired or filed by the Parent and its Subsidiaries since the Effective Date or the date of the most recent Compliance Certificate delivered pursuant to this Section 5.01(c) prior to the date thereof, as applicable, which Intellectual Property (including any applications therefor) was not included in the Collateral as of the Effective Date or date of such Compliance Certificate, as applicable, (vi) following the Effective Date, setting forth additional locations to supplement the customer locations set forth on Schedule 1.01(b), and (vii) solely with respect to any delivery of financial statements under clause (a), setting forth a list of all Inventory IP Licenses entered into since the Effective Date or the date of the most recent Compliance Certificate delivered pursuant to this Section 5.01(c) prior to the date thereof in connection with the delivery of financial statements under clause (a), as applicable;

(d) as soon as available, and in any event no later than 90 days after the end of each fiscal year, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Parent and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow and projected income, forecasts with respect to the Borrowing Base and Excess Availability) (collectively, the “**Projections**”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer of the Parent stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Parent or any Subsidiary with the SEC or any Governmental Authority succeeding to any or all of the functions of said Commission under Section 13 or 15(d) of the Securities Exchange Act of 1934, as the case may be, in each case that is not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) promptly following any reasonable request in writing (including any electronic message) therefor, (i) such other information regarding the operations, business affairs and financial condition of the Parent or any Subsidiary, or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request, (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable

“know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act, the Proceeds of Crime Act and the Beneficial Ownership Regulation, and (iii) such further information as may be required by applicable banking supervisory laws and regulations, provided that, notwithstanding the foregoing, none of the Parent or any of its Subsidiaries shall be required to disclose any document, information or other matter that (A) constitutes non-financial trade secrets or non-financial proprietary information, (B) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party contract legally binding on the Parent or its Subsidiaries or (C) is subject to attorney, client or similar privilege or constitutes attorney work-product;

(g) as soon as available but in any event within 20 days following the end of each calendar month (or, if such day is not a Business Day, on the next succeeding Business Day), and on Wednesday of each week during a Reporting Trigger Period (or, if such day is not a Business Day, on the next succeeding Business Day), a Borrowing Base Certificate and the information supporting the calculations with respect to each Borrowing Base required by the Borrowing Base Certificate, including, without limitation, a calculation of Borrowing Base Qualified Cash and Total Liquidity and the following information described under Section 5.01(g)(i) through (v) (such information being the “**Borrowing Base Information**”):

(i) accounts payable report (including, when available, accounts payable agings), and if requested by the Administrative Agent in its Permitted Discretion, updated customer and project lists, surety bond reports, and milestone payment reports;

(ii) a worksheet of calculations prepared by the Borrowers to determine Eligible Inventory and Eligible In-Transit Inventory, such worksheets detailing the Inventory excluded from Eligible Inventory and Eligible In-Transit Inventory and the reason for such exclusion;

(iii) when available and in a form consistent with past practices, reconciliations of the Borrowers’ Inventory to the Borrowers’ general ledger and to the Borrowers’ financial statements, in each case, reasonably acceptable to the Administrative Agent;

(iv) when available and in a form reasonably acceptable to the Administrative Agent, Inventory status reports, all with supporting materials as the Administrative Agent shall reasonably request; and

(v) within five (5) Business Days after such request and without duplication of any requests made pursuant to Section 5.01(f), such additional financial and other information as the Administrative Agent may from time to time reasonably request in its Permitted Discretion;

provided that, if, as of any date of determination, any sales or dispositions by the Loan Parties or other transactions outside the ordinary course of business, or any sales, contributions, conveyances, assignments or other transfers in connection with any Permitted Factoring Transaction or any Permitted Receivables Facility, in each case, since the most recent Borrowing

Base Certificate was delivered to the Administrative Agent, either, individually or in the aggregate, involve \$5,000,000 or more of assets included in the Borrowing Base (based on the fair market value of the assets so disposed), or results in a reduction of the Borrowing Base of greater than \$5,000,000, then the Borrowers shall deliver to Administrative Agent an updated Borrowing Base Certificate that reflects the removal of the applicable assets from the Borrowing Base (which shall be provided prior to the consummation of the relevant sale or disposition or other transaction);

(h) on Wednesday of each week during an Inventory Reporting Period (or, if such day is not a Business Day, on the next succeeding Business Day), updated Inventory reporting as required by the Administrative Agent in its Permitted Discretion;

(i) promptly upon the Administrative Agent's request, in the Administrative Agent's Permitted Discretion:

(i) copies of invoices issued by the Borrowers in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(j) promptly with notice in writing of (i) the creation or acquisition of any new Receivables Subsidiary and (ii) the Parent or any Subsidiary thereof entering into any Factoring Transaction or Receivables Facility, together with copies of any indenture, loan agreement or similar agreement or any other agreements entered into by the Parent or any Subsidiary thereof in connection therewith; and

(k) concurrently with the delivery thereof, copies of all reports, certificates and notices provided by the Parent or any Subsidiary thereof under any Permitted Factoring Transaction or Permitted Receivables Facility, and promptly upon their becoming available, copies of any amendments, modifications, supplements, restatements or amendments and restatements of, or waivers or consents with respect to, any indenture, loan agreement or similar agreement or any other agreements entered into by the Parent or any Subsidiary thereof in connection with any Permitted Factoring Transaction or Permitted Receivables Facility.

Information required to be delivered pursuant to Section 5.01(a) or Section 5.01(b) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such information is posted on the Borrowers' or the Parent's behalf on an Internet or intranet website, if any, to which the Lenders and the Administrative Agent have been granted access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

Notwithstanding the foregoing, the obligations in Section 5.01(a) or Section 5.01(b) may be satisfied by furnishing (A) the applicable financial statements or other information required by such clauses of Parent (or any other parent company) or (B) the Parent's or the Parent Borrower's (or any other parent company), as applicable, Form 10-K or 10-Q, as applicable, filed with the SEC or any securities exchange, in each case, within the time periods specified in such paragraphs; provided that, with respect to each of clauses (A) and (B), upon reasonable request by the Administrative Agent, (i) to the extent such financial statements are delivered under Section 5.01(a) or Section 5.01(b) and relate to the Parent, such financial statements shall be accompanied by consolidating information that explains in reasonable detail the differences between the information relating to the Parent, on the one hand, and the information relating to the Borrowers and their Subsidiaries on a standalone basis, on the other hand, which consolidating information shall be certified by a Responsible Officer of the Parent as having been fairly presented and (ii) to the extent such statements are in lieu of statements required to be provided under Section 5.01(a), such statements shall be accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing, which report and opinion shall satisfy the applicable requirements set forth in Section 5.01(a).

**Section 5.02 Notices of Material Events.** The Borrowers will furnish to the Administrative Agent (for distribution to each Lender) prompt written notice of the following:

- (a) the occurrence of any Default;
- (b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Parent or any of its Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect;
- (c) any change in the Parent's or any other Loan Party's state of incorporation or organization, name as it appears in the state of its incorporation or other organization, type of entity, organizational identification number, or form of organization, each as applicable, at least ten (10) Business Days (or such shorter period to which the Administrative Agent may agree in its discretion) prior to the occurrence of any such change;
- (d) the receipt by the Parent or any of its Subsidiaries of written notice in respect of any Inventory Customer Contract to the effect that (i) the customer under such Inventory Customer Contract, or the issuer of any surety, performance or similar bond or guaranty in connection with such Inventory Customer Contract, has declared, or has threatened (in writing) to declare, a default or event of default under, or has terminated, or has threatened (in writing) to terminate, such Inventory Customer Contract (for the avoidance of doubt, this clause (i) shall not require notice with respect to claims solely relating to liquidated damages payable under Inventory Customer Contracts to the extent such liquidated damages are in an aggregate amount of less than 10% of the total contract price with respect to such Inventory Customer Contract), or (ii) the customer under such Inventory Customer Contract has given written notice to the issuer of any surety, performance or similar bond or guaranty of any of the circumstances described in the foregoing clause (i) or has made a claim against or under any surety, performance or similar bond or guaranty issued in connection with such Inventory Customer Contract; provided that the Borrowers shall use commercially reasonable efforts to notify the Administrative Agent of any of the circumstances described in the foregoing clauses (i) or (ii) if the Borrowers otherwise learn of any such information; and
- (e) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Parent Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**Section 5.03 Existence; Conduct of Business.** Each Loan Party will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence in its jurisdiction of organization and the rights, licenses, permits, privileges and franchises material to the conduct of its business; **provided** that (i) the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under [Section 6.03](#) and (ii) none of the Parent or any of its Subsidiaries shall be required to preserve, renew or keep in full force and effect its rights, licenses, permits, privileges or franchises where failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**Section 5.04 Payment of Taxes.** Each Loan Party will, and will cause each of its Subsidiaries to, pay all Tax liabilities, including all Taxes imposed upon it or upon its income or profits or upon any properties belonging to it that, if not paid, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, before the same shall become delinquent or in default, and all lawful claims other than Tax liabilities that, if unpaid, would become a Lien upon any properties of the Parent or any of its Subsidiaries not otherwise permitted under [Section 6.02](#), in both cases except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and (b) to the extent required by GAAP, the Parent or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

**Section 5.05 Maintenance of Properties; Protection of Intellectual Property; Insurance.** Each Loan Party will, and will cause each of its Subsidiaries to, (a) keep and maintain all property used in the conduct of its business in good working order and condition, ordinary wear and tear and casualty events excepted, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, (b) preserve, renew and maintain in full force and effect all rights, licenses, Intellectual Property, domain names, permits, privileges, authorizations and other rights necessary for the conduct of its business, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect and (c) maintain insurance with financially sound and reputable insurance companies in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses or owning assets in the general areas in which the Borrowers and their Subsidiaries operate.

**Section 5.06 Maintenance of Material Agreements.** Each Loan Party will, and will cause each of its Subsidiaries to maintain in full force and effect the agreements listed on [Schedule 5.06](#) hereto, except to the extent that failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **Section 5.07 Books and Records; Inspection Rights; Appraisals; Field Examinations.**

(a) Each Loan Party will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries full, true and correct in all material respects are made and are sufficient to prepare financial statements in accordance with GAAP. Each Loan Party will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender (pursuant to the request made through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and

records to the extent reasonably necessary, and to discuss its affairs, finances and condition with its officers and independent accountants (provided that such Loan Party or such Subsidiary shall be afforded the opportunity to participate in any discussions with such independent accountants), all at such reasonable times and as often as reasonably requested (but no more than once annually if no Event of Default exists). Notwithstanding anything to the contrary in this Section, none of the Parent or any of its Subsidiaries shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by applicable law or any third party contract legally binding on the Parent or its Subsidiaries or (iii) is subject to attorney, client or similar privilege or constitutes attorney work-product.

(b) The Loan Parties will cooperate with an appraiser selected and engaged by the Administrative Agent to provide one "full" Inventory appraisal and one "desktop" Inventory appraisal during each twelve-month period during the term of this Agreement, in each case, prepared on a basis reasonably satisfactory to the Administrative Agent, such appraisals to include information required by applicable law and regulations, and the Administrative Agent shall cause at least one "full" Inventory appraisal and one "desktop" Inventory appraisal to be conducted during each twelve-month period during the term of this Agreement; provided that, notwithstanding anything to the contrary contained in the foregoing, (i) if an Event of Default has occurred and is continuing, there shall be no limitation on the number or frequency of "full" Inventory appraisals (or "desktop" Inventory appraisals) (which shall be performed at the discretion of the Administrative Agent) and (ii) if (A) Excess Availability is at any time less than the greater of (x) 15% of the Line Cap and (y) \$60,000,000 at any time(1) if the Borrowing Base then in effect is less than \$200,000,000, \$30,000,000 and (2) if the Borrowing Base then in effect is greater than or equal to \$200,000,000, \$50,000,000, or (B) the cost of such appraisal is borne by the Administrative Agent, the Loan Parties will cooperate with the Administrative Agent to provide (at the request of the Administrative Agent, and the Administrative Agent ~~shall~~may so request in the event clause (ii)(A) is triggered in its Permitted Discretion) one additional "full" Inventory appraisal and one additional "desktop" appraisal, in each case, during the twelve month period commencing with any month during which clause (ii)(A) is triggered (or such cost

is borne). For purposes of this Section 5.07(b), it is understood and agreed that a single appraisal may consist of appraisals conducted at multiple relevant sites and involve one or more relevant Loan Parties and their assets; provided that, with respect to a request for an appraisal exam at a given time, such request shall apply to all the Loan Parties to which such request will be applicable in a single request. All such appraisals shall be commenced upon reasonable notice to the Parent Borrower and performed during normal business hours of the applicable Loan Party, and all reasonable and documented out-of-pocket costs of such appraisals shall be at the sole expense of the Loan Parties (unless borne by the Administrative Agent pursuant to clause (ii) above).

(c) The Loan Parties will permit, upon reasonable notice, the Administrative Agent or its designee to conduct one field examination during each twelve-month period during the term of this Agreement, and the Administrative Agent shall conduct at least one field examination during each twelve-month period during the term of this Agreement, to ensure the adequacy of Collateral included in the Borrowing Base and related reporting and control systems; provided that (i) if an Event of Default has occurred and is continuing, there shall be no limitation on the number or frequency of such field examinations (which shall be performed at the discretion of the Administrative Agent) and (ii) if (A) Excess Availability is at any time less than the greater of (x) 15% of the Line Cap and (y) \$60,000,000 at any time(1) if the Borrowing Base then in effect is less than \$200,000,000, \$30,000,000 and (2) if the Borrowing Base then in effect is greater than or equal to \$200,000,000, \$50,000,000, or (B) the cost of such field exam is borne by the Administrative Agent, the Loan Parties will permit the Administrative Agent to conduct such examinations (at the request of the Administrative Agent, and the Administrative Agent ~~shall~~may so request in the event clause (ii)(A) is triggered in its Permitted Discretion) one additional time during the twelve month period commencing with any month during which clause (ii)(A) above is triggered (or such cost is borne). For purposes of this Section 5.07(c), it is understood and agreed that (i) a single field examination may be conducted at multiple relevant sites and involve one or more relevant Loan Parties and their assets and (ii) the Administrative Agent shall use commercially reasonable efforts to coordinate any such field exams; provided that, with respect to a request for a field exam at a given time, such request shall apply to all the Loan Parties to which such request will be applicable in a single request. All such field examinations shall be commenced upon reasonable notice to the Parent Borrower and performed during normal business hours of the applicable Loan Party, and all reasonable and documented out-of-pocket costs of such field examinations shall be at the sole expense of the Loan Parties (unless borne by the Administrative Agent pursuant to clause (ii) above).

**Section 5.08 ERISA Events.** The Borrowers will furnish to the Administrative Agent and each Lender prompt written notice of the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

**Section 5.09 Compliance with Laws and Agreements.** Each Loan Party will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property and rights and all indentures, agreements, and other instruments binding upon it or its property and rights, except where the failure to do so,

individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions.

**Section 5.10 Use of Proceeds.** The proceeds of the Revolving Loans, Swingline Loans and Letters of Credit will be used only for working capital and general corporate purposes, including, without limitation, for stock repurchases under stock repurchase programs approved by the Borrowers and for acquisitions not prohibited hereunder. No part of the proceeds of any Loan or Letter of Credit will be used, whether directly or indirectly, to purchase or carry margin stock (within the meaning of Regulations U and X of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**Section 5.11 Additional Loan Parties; Additional Collateral.**

(a) At the time any Loan Party forms any direct or indirect Subsidiary (other than an Excluded Subsidiary) or acquires any direct or indirect Subsidiary (other than an Excluded Subsidiary) after the Effective Date, or any Subsidiary ceases to be an Excluded Subsidiary, such Loan Party shall within sixty (60) days (or such later date as permitted by the Administrative Agent in its sole discretion) of such formation or acquisition or change in status: provide, and cause any such Subsidiary to provide, to the Administrative Agent:

(i) (A) if such Subsidiary is a Wholly-Owned Subsidiary that is a Domestic Subsidiary and the Borrower Representative requests that such Subsidiary be joined as a Borrower hereunder under Section 10.20, a joinder to this Agreement in the form of Exhibit E-1 hereto pursuant to which such Subsidiary will become a Borrower (an “**Additional Borrower**” and all references to the “Borrowers” shall include such Additional Borrower) hereunder (provided that (I) the Administrative Agent shall have received at least 15 Business Days’ prior notice of such requested Additional Borrower and (II) until the Administrative Agent’s receipt of an Acceptable Inventory Appraisal and an Acceptable Field Examination with respect to the Inventory of such new Borrower, such Inventory that satisfies the applicable eligibility criteria will be deemed Eligible Inventory and be included in the Borrowing Base prior to the Administrative Agent’s receipt of such Acceptable Inventory Appraisal and Acceptable Field Examination, but in no event shall the aggregate amount of (1) all such Inventory permitted to be included in the Borrowing Base hereunder prior to receipt of such Acceptable Inventory Appraisal and Acceptable Field Examination, plus (2) the aggregate amount of all Inventory included in the Borrowing Base pursuant to clause (y) of the definition of “Eligible Inventory”, at any time exceed 10% of the Borrowing Base; provided, further, that such Inventory shall be included in the Borrowing Base pursuant to this provision until the earlier of (x) the date that the Acceptable Inventory Appraisal and Acceptable Field Examination is received with respect to such Inventory and (y) the date that is 60 days after such Borrower is joined to this Agreement), (B) if such Subsidiary is a Domestic Subsidiary that the Borrower Representative has not requested be joined as a Borrower hereunder, a guaranty supplement in the form of Exhibit E-2

hereto pursuant to which such Subsidiary will become a Guarantor hereunder, and (C) at least three Business Days prior to the date such Additional Borrower or additional Guarantor becomes a party hereto, all documentation and other information about the Additional Borrower or additional Guarantor reasonably requested by the Administrative Agent (including any such documentation and other information that the Administrative Agent reasonably determines is required by United States bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act, the Proceeds of Crime Act and the Beneficial Ownership Regulation) in writing at least 10 Business Days prior to such date; provided that, notwithstanding anything to the contrary in Section 10.02 or in any Loan Document, the Loan Documents may be amended as necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Parent Borrower (and without the consent of any other parties thereto) to effect the provisions of or be consistent with this Section 5.11(a)(i);

(ii) such security documents (or amendments to existing Security Documents), as well as appropriate UCC financing statements and filings with the United States Patent and Trademark Office and United States Copyright Office, all in form and substance reasonably satisfactory to the Administrative Agent, sufficient to cause the Obligations to be secured by a perfected first-priority Lien on all of the assets (including all outstanding Equity Interests in any of its Subsidiaries, but excluding, for the avoidance of doubt, real property which is covered by Section 5.11(c) and Excluded Property) of such Subsidiary, so that the Administrative Agent, for its benefit and the benefit of the Secured Parties, shall have a legal, valid and enforceable perfected first-priority Lien on the Collateral (and subject to any limitations and exceptions consistent with those contained in any such documents or instruments);

(iii) a pledge agreement (or an addendum to an applicable existing Security Document), in form and substance reasonably satisfactory to the Administrative Agent, and appropriate certificates and powers or financing statements, pledging (to the extent not excluded or excused by the Security Documents) all of the direct or beneficial Equity Interests in such Subsidiary (for the avoidance of doubt, 100% of the Equity Interests of each Borrower shall be required to be pledged under Security Documents governed by the local laws of the jurisdiction of such Borrower’s organization or incorporation); and

(iv) all other documentation, including such proof of corporate, partnership or limited liability company action, incumbency of officers, and customary joinder and, if reasonably requested by the Administrative Agent, one or more opinions of counsel reasonably satisfactory to the

Administrative Agent, which in its reasonable opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

(b) Subject to any applicable limitations set forth in the Security Documents, with respect to any property acquired from time to time by any Loan Party (other than any property described in paragraph (c) below or Excluded Property) as to which the Administrative Agent, for the benefit of the Secured Parties, does not have a perfected Lien as required herein, the applicable Loan Party will promptly (i) execute and deliver to the Administrative Agent such amendments to the Security Documents or such other documents as the Administrative Agent

deems necessary or reasonably advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such property and (ii) take all actions necessary or reasonably advisable to grant to the Administrative Agent, for the benefit of the Secured Parties, a perfected security interest in any such property, including the filing of UCC financing statements in such jurisdictions as may be required by the Security Documents or by law or as may be requested by the Administrative Agent.

(c) With respect to any fee interest in any real property at any location having a value (together with improvements thereof) of at least the Dollar Equivalent of \$5,000,000 acquired after the Effective Date by any Loan Party (including a Person that owns such real property and becomes a Loan Party pursuant to Section 5.11(a)) (other than any Excluded Property), within sixty (60) days after the acquisition thereof (or 120 days in the case of the establishment or amendment of any Mortgage) (or such later date as the Administrative Agent shall agree to in its sole discretion), the applicable Loan Party shall (i) execute and deliver a first priority Mortgage, in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such real property, (ii) if reasonably requested by the Administrative Agent, provide the Lenders with (x) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably satisfactory to the Administrative Agent) as well as a current ALTA survey thereof, together with a surveyor's certificate and (y) any consents or estoppels reasonably deemed necessary by the Administrative Agent in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and (iii) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement (including this Section 5.11) or in any other Loan Document, the Administrative Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and the Administrative Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise satisfactory to such Lender.

(d) At the time any Loan Party forms any direct or indirect Receivables Subsidiary, such Loan Party shall within sixty (60) days (or such later date as permitted by the Administrative Agent in its sole discretion) of such formation, provide to the Administrative Agent a pledge agreement (or an addendum to an applicable existing Security Document), in form and substance reasonably satisfactory to the Administrative Agent, and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial Equity Interests in such Receivables Subsidiary; provided that the security interest of the Administrative Agent in the Equity Interests of any Receivables Subsidiary shall be subordinated to any Liens on such Equity Interests granted by such Loan Party in favor of the agent, trustee, lenders or other secured parties under the Permitted Receivables Facility to which such Receivables Subsidiary is a party pursuant to an intercreditor agreement, in form and substance reasonably acceptable to the Administrative Agent, that provides for a "silent second" Lien in favor of the Administrative Agent.

(e) Subject to the terms of the Security Documents, the Parent Borrower will, and will cause each Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements), which may be required under any applicable law, or which the Administrative Agent may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties.

(f) Notwithstanding the foregoing or anything to the contrary in this Agreement, none of the Parent or its Subsidiaries shall be required to take any action to create or perfect any security interest in the Collateral (including the registration of Intellectual Property in, and the execution of any agreement, document or other instrument governed by the law of, and the filing of any agreement, document or other instrument) in any jurisdiction other than the United States, any State thereof or the District of Columbia.

#### Section 5.12 Cash Management; Control Agreements.

(a) Within 90 days of the Effective Date (or such later date as the Administrative Agent may agree in its discretion), each Loan Party shall (i) establish and maintain cash management arrangements relative to Deposit Accounts, Securities Accounts and other bank accounts (other than Excluded Accounts) of a type and on customary terms at one or more Lenders or Permitted Third Party Banks (each a "Controlled Account Bank"), and shall take commercially reasonable steps to ensure that all of its Account Debtors forward payment of the amounts owed by them directly to their respective Controlled Account at a Controlled Account Bank, and (ii) deposit or cause to be deposited promptly, and in any event no later than the

second Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to a Loan Party) into a Deposit Account or Securities Account (in each case, other than an Excluded Account) of such Loan Party (each, a “**Controlled Account**”) at one of the Controlled Account Banks. For the avoidance of doubt, each Borrower shall maintain a separate Controlled Account into which only the Account Debtors of such Borrower forward payments, which Controlled Account shall not also operate as a disbursement account.

(b) Subject to Section 5.15 (or, in the case of any Person that becomes a Loan Party after the Effective Date pursuant to Section 5.11, or any Deposit Account, Securities Account and other bank account that is not an Excluded Account or the Borrowing Base Qualified Cash Account acquired or opened after the Effective Date, within 90 days (or such later date as the Administrative Agent may agree in its discretion) of the date that such Person becomes a Loan Party or the date such Deposit Account, Securities Account or other bank account is opened or acquired, as applicable), each Loan Party shall establish and maintain Control Agreements with the Administrative Agent and the applicable Controlled Account Bank with respect to each Loan Party’s Controlled Accounts, as contemplated by the applicable Security Document (or otherwise

as contemplated by this Section 5.12 if specified herein) to which such Loan Party is party or otherwise. Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, each such Control Agreement shall provide, among other things, that (i) the Controlled Account Bank will comply with any instructions originated by the Administrative Agent directing the disposition of the funds in such Controlled Account without further consent by the applicable Loan Party, (ii) the Controlled Account Bank waives, subordinates, or agrees not to exercise any rights of setoff or recoupment or any other claim against the applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment, and (C) upon the instruction of the Administrative Agent (an “**Activation Instruction**”), the Controlled Account Bank will forward by daily (or such other frequency as may be specified by the Administrative Agent) sweep all amounts in the applicable Controlled Account to one or more accounts designated by and under the sole control and dominion of the Administrative Agent (the “**Payment Accounts**”). ~~The Except as set forth in Section 5.12(d), the~~ Administrative Agent agrees not to issue an Activation Instruction with respect to the Controlled Accounts unless a Full Cash Dominion Period has commenced and is continuing at the time when such Activation Instruction is issued; ~~provided, that the parties hereto acknowledge and agree that, during the period commencing on March 29, 2024 and continuing through and including May 10, 2024, and so long as no Event of Default has occurred and is continuing and the aggregate Revolving Credit Exposure of all Lenders is not greater than \$0, the Administrative Agent may, but shall not be required to, issue an Activation Instruction with respect to the Controlled Accounts notwithstanding the existence of a Full Cash Dominion Period.~~ All amounts received in a Payment Account pursuant to this Section 5.12 (except as otherwise set forth in Section 5.12(c) and (d)) shall be applied by the Administrative Agent pursuant to Section 7.03.

(c)Upon the request of the Administrative Agent acting in its Permitted Discretion, the Borrowers shall provide the Administrative Agent with daily reporting (which may be “read only” access) to the Borrowing Base Qualified Cash Account. Prior to the initial deposit of Borrowing Base Qualified Cash into the Borrowing Base Qualified Cash Account (or such later date as the Administrative Agent may agree in its discretion, so long as the Dollar Equivalent of the sum of the outstanding principal amount of Revolving Loans, Protective Advance Exposure, and Swingline Exposure of all Lenders is not greater than \$0), the Borrower Representative shall establish and maintain the Borrowing Base Qualified Cash Account Agreement with the Administrative Agent and Barclays Bank PLC, New York Branch with respect to the Borrowing Base Qualified Cash Account. The Borrowing Base Qualified Cash Account Agreement shall provide, among other things, that funds may only be distributed or released from the Borrowing Base Qualified Cash Account with the written consent (which may be by email) of (or, solely in accordance with Section 5.12(d), at the direction of) the Administrative Agent. The Administrative Agent shall provide such direction or consent, and the Borrowers and each of the Lenders authorize the Administrative Agent to provide such direction or consent, (i) at the request of Borrower Representative so long as the Borrowing Base Qualified Cash Release Conditions are satisfied with respect thereto or (ii) in the event an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit to reimburse such LC Disbursement in accordance with Section 5.12(d).

(d)If any Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit during the existence of a Covenant Relief Period, the Borrowers’ reimbursement obligation in respect thereof shall be satisfied (i) first, by the Administrative Agent directing the transfer of funds from the Borrowing Base Qualified Cash Account in an amount sufficient to reimburse the applicable Issuing Bank with respect to such LC Disbursement, (ii) second, to the extent that the amount on deposit in the Borrowing Base Qualified Cash Account is insufficient to reimburse the applicable Issuing Bank with respect to such LC Disbursement, the Administrative Agent may issue an Activation Instruction with respect to the Controlled Accounts and apply the funds received in the Payment Accounts to reimburse the applicable Issuing Bank, and (iii) third, in accordance with the terms set forth in Section 2.19(e) that would have otherwise applied but for this Section 5.12(d).

Section 5.13 Further Assurances. Promptly upon the reasonable request by the Administrative Agent, each Loan Party will (a) correct any error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) perfect and maintain the validity, effectiveness and priority of any of the Security Documents and any of the Liens created thereunder and (ii) assure, preserve, protect and confirm more effectively unto the Lenders, or the Administrative Agent for the benefit of the Lenders, the rights granted to the

Lenders, or the Administrative Agent for the benefit of the Lenders, under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party.

**Section 5.14 Accuracy of Information.** Each Loan Party will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any amendment or modification hereof or waiver hereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading.

**Section 5.15 Post-Closing Covenants.** Each Loan Party shall, and shall cause its Subsidiaries to, complete the items set forth on Schedule 5.15 within the time periods set forth therein (or such longer periods of time as agreed to by the Administrative Agent in its sole discretion).

## ARTICLE 6 NEGATIVE COVENANTS

Until each of (i) the Commitments have expired or been terminated, (ii) the principal of and interest on each Loan and all other Obligations hereunder (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) shall have been paid in full in cash, and (iii) all Letters of Credit shall have (x) expired or terminated, in each case, without any pending draw, (y) been backstopped or Cash Collateralized in an amount not less than the Minimum Collateral Amount or (z) been deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank, the Loan Parties covenant and agree with the Administrative Agent and the Lenders that:

**Section 6.01 Indebtedness.** Each Loan Party will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness other than:

(a) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any Permitted Refinancing thereof;

(b) Indebtedness of (i) the Parent Borrower owing to any Subsidiary, (ii) any Loan Party owing to the Parent Borrower or any other Subsidiary, (iii) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party, and (iv) any Subsidiary that is not a Loan Party owing to any Loan Party to the extent permitted pursuant to Section 6.04(c)(i), Section 6.04(d), Section 6.04(e), Section 6.04(f), Section 6.04(h), Section 6.04(m), Section 6.04(n), Section 6.04(o) or Section 6.04(r); provided that (x) any Indebtedness of any Loan Party shall be unsecured and shall be subordinated in right of payment to the Obligations pursuant to the Intercompany Subordination Agreement or otherwise on terms customary for intercompany subordinated Indebtedness, as reasonably determined by the Administrative Agent, and (y) if any such Indebtedness owing to any Loan Party shall be evidenced by a promissory note, such promissory note shall have been pledged pursuant to the Security Documents;

(c) Guarantee obligations incurred by any Loan Party or Subsidiary thereof of obligations of any other Loan Party or Subsidiary thereof to the extent such obligations are not prohibited hereunder; provided that (i) to the extent any such obligations are subordinated to the Obligations, any such related Guarantee obligations incurred by a Loan Party shall be subordinated to the guarantee of such Loan Party of the Obligations on terms no less favorable to the Lenders than the subordination provisions of the obligations to which such Guarantee obligation relates and (ii) any Guarantee obligations incurred by any Loan Party of obligations of a Subsidiary that is not a Loan Party shall be permitted to the extent permitted pursuant to Section 6.04(c)(i), Section 6.04(d), Section 6.04(e), Section 6.04(f), Section 6.04(h), Section 6.04(m), Section 6.04(n), Section 6.04(o) or Section 6.04(r);

(d) Indebtedness of the Parent Borrower or any Subsidiary constituting Capital Lease Obligations and Purchase Money Indebtedness; provided that the aggregate principal amount of Indebtedness pursuant to this clause (d) shall not exceed in an aggregate principal amount at any time outstanding the greater of (i) \$55,000,000 and (ii) 3.0% of the Total Assets at any time outstanding;

(e) Indebtedness of the Parent Borrower or any Subsidiary in an aggregate principal amount at any time outstanding not to exceed the greater of (i) \$195,000,000 and (ii) 11.25% of the Total Assets at such time; provided that such Indebtedness is (x) if incurred or guaranteed only by Loan Parties, is either unsecured or secured by a Lien permitted pursuant to Section 6.02(o), and (y) if incurred or guaranteed by any Subsidiary that is not a Loan Party, the aggregate principal amount thereof shall not exceed the greater of (i) \$44,000,000 and (ii) 2.5% of the Total Assets at such time;

(f) Indebtedness of the Parent Borrower or any Subsidiary so long as the Consolidated Leverage Ratio does not exceed 2.50:1.00 after giving Pro Forma Effect thereto; provided that any Indebtedness incurred or guaranteed pursuant to this clause (f) (i) is incurred or guaranteed solely by Loan Parties, (ii) is unsecured, (iii) shall not mature prior to date that is 91 days after the Maturity Date, (iv) either (x) shall not require any payment of principal prior to the Maturity Date or (y) shall not require payments of principal in an aggregate amount *per annum* in excess of 1.0% of the principal amount thereof, and (v) contains terms customary for similar issuances of Indebtedness at such time (as determined in good faith by the Parent Borrower) (it being understood that, other than in the case of any issuance of a debt security, such terms shall be no more restrictive, taken as a whole

(as determined in good faith by the Parent Borrower), than the Loans, and in any event no such Indebtedness (including any debt securities) shall contain a financial maintenance covenant more restrictive than any financial maintenance covenant contained herein);

(g) unsecured Indebtedness of the Parent Borrower or any Subsidiary in an aggregate principal amount not to exceed the greater of (i) \$55,000,000 and (ii) 3.0% of the Total Assets at any time outstanding;

(h) Indebtedness of Subsidiaries that are not Loan Parties in an aggregate principal amount at any time outstanding not to exceed the greater of (i) \$33,000,000 and (ii) 1.875% of the Total Assets at such time;

(i) Indebtedness incurred pursuant to any agreement or arrangement to provide ordinary course services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash management arrangements;

(j) Obligations under the Loan Documents;

(k) Indebtedness arising under the Citi Supplier Financing Agreement, only to the extent (A) such agreement pertains to ordinary course supplier financing arrangements and (B) the aggregate principal amount of Indebtedness outstanding thereunder does not exceed \$200,000,000 at any time; provided, however, that the Loan Parties shall be in compliance with Section 6.10 on a Pro Forma Basis on each date that any Loan Party incurs Indebtedness under the Citi Supplier Financing Agreement that results in the outstanding amount thereunder exceeding \$100,000,000 (such excess amount, the “Supplier Financing Excess Amount”), it being understood and agreed that solely for the purposes of such pro forma calculation the amount of “Total Liquidity” shall be deemed reduced by the Supplier Financing Excess Amount then outstanding;

(l) Indebtedness of the Parent Borrower or any Subsidiary in connection with one or more bankers’ acceptances, worker’s compensation claims, surety bonds, appeal bonds, performance bonds or completion guarantees issued in the ordinary course of business or pursuant to self-insurance and similar obligations and not in connection with the borrowing of money or the obtaining of advances or credit;

(m) Acquired Indebtedness in an aggregate amount not to exceed the sum of (i) the greater of (x) \$45,000,000 and (y) 3.0% of the Total Assets at such time, plus (ii) an unlimited amount so long as after giving Pro Forma Effect to the incurrence of such Acquired Indebtedness the Consolidated Leverage Ratio for the applicable Measurement Period would not be greater than 2.50:1.00, and any Permitted Refinancing thereof;

(n) obligations under Swap Agreements entered into by the Parent Borrower or its Subsidiaries not for speculative purposes;

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business;

(p) unsecured Indebtedness arising from agreements of the Parent Borrower or any Subsidiary providing for deferred purchase price for goods or services, earn-outs, indemnification, adjustment of purchase price, seller notes or similar obligations, in each case, incurred or assumed in connection with the acquisition or Disposition of any business, assets or Person otherwise permitted by this Agreement;

(q) Indebtedness consisting of the financing of insurance premiums or take-or-pay obligations contained in supply arrangements;

(r) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Parent Borrower or any Subsidiary incurred in the ordinary course of business;

(s) Indebtedness of the Parent Borrower or any Subsidiary arising under one or more letter of credit facilities in an aggregate face amount not to exceed \$330,000,000;

(t) Permitted Factoring Transactions and Permitted Receivables Facilities; and

(u) Indebtedness of the Parent permitted under Section 6.12(a).

Notwithstanding the foregoing, any Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party shall be permitted only to the extent subordinated to the Obligations on customary terms reasonably satisfactory to the Administrative Agent.

Section 6.02 Liens. Each Loan Party will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Parent or any Subsidiary existing on the Effective Date and set forth in Schedule 6.02 and any modifications, renewals and extensions thereof and any Lien granted as a replacement or substitute therefor; provided that (i) such Lien shall not apply to any other property or asset of the Parent or any Subsidiary other than

improvements thereon or proceeds thereof and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and any Permitted Refinancing thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by the Parent or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the Effective Date prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Parent or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and any Permitted Refinancing thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Parent Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness that is permitted by Section 6.01(d), (ii) such security interests and the Indebtedness secured thereby are initially incurred prior to or within 180 days after such acquisition or the completion of such construction or improvement and (iii) such security interests shall not apply to any other property or assets of the Parent Borrower or any Subsidiary other than the property financed by such Indebtedness and any additions, accessions, parts, attachments or improvements thereon or proceeds and products hereof and customary security deposits and related property; provided that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender;

(e) non-exclusive licenses, sublicenses, leases or subleases granted to others in the ordinary course of business not interfering in any material respect with the business of the Parent Borrower and its Subsidiaries, taken as a whole;

(f) the interest and title of a lessor under any operating lease or sublease entered into by the Parent or any Subsidiary in the ordinary course of its business and other statutory and common law landlords' Liens and leases;

(g) the rights reserved or vested in any Person (including any Governmental Authority) by the terms of any lease, sublease, non-exclusive license, or non-exclusive sublicense held by the Parent or any of its Subsidiaries or by a statutory provision, to terminate any such lease, sublease, license, or sublicense, or to require annual or periodic payments as a condition to the continuance thereof;

(h) the interests of non-exclusive licensors and non-exclusive sublicensees under license and sublicense agreements;

(i) in connection with the sale or transfer of any assets in a transaction not prohibited hereunder, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(j) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under Section 6.01(g);

(k) Liens on earnest money deposits of cash or Cash Equivalents made in connection with any acquisition not prohibited hereunder;

(l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Parent or any Subsidiary, in each case granted in the ordinary course of business in favor of the banks, securities intermediaries or other depository institutions with which such accounts are maintained, securing amounts owing to such institutions with respect to cash management and operating account arrangements;

(m) Liens in the nature of the right of setoff in favor of counterparties to contractual agreements not otherwise prohibited hereunder with the Parent or any of its Subsidiaries in the ordinary course of business;

(n) Liens created pursuant to the Security Documents;

(o) other Liens securing obligations in an aggregate amount at any time outstanding not to exceed the greater of (i) \$195,000,000 and (ii) 11.25% of the Total Assets at such time; provided that (A) any such Liens on the Collateral shall be subordinated to the Liens of the Administrative Agent under the Security Documents pursuant to a customary intercreditor agreement that is reasonably acceptable to the Administrative Agent and (B) any such Liens on assets that are not Collateral shall secure obligations in an aggregate amount at any time not to exceed the greater of (x) \$40,000,000 and (y) 2.50% of the Total Assets at such time;

(p) Liens on assets of Excluded Subsidiaries securing Indebtedness incurred by Excluded Subsidiaries; provided that such security interests secure Indebtedness that is permitted by Section 6.01;

(q) any customary encumbrance or restriction (including put and call arrangements) with respect to Equity Interests of any joint venture or similar customary arrangement pursuant to any joint venture or similar agreement;

(r) Liens on Receivables Assets incurred in connection with Permitted Factoring Transactions and Permitted Receivables Facilities (including Liens on such Receivables Assets resulting from precautionary UCC filings or from recharacterization or any such with Permitted Factoring Transactions or Permitted Receivables Facilities as a financing or a loan);

(s) rights reserved to or vested in any Governmental Authority to control or regulate, or obligations or duties to any Governmental Authority with respect to (i) the use of any real property or vessel, or (ii) any right, power, franchise, grant, license, or permit, including present or future zoning laws, building codes and ordinances, zoning restrictions, or other laws and ordinances restricting the occupancy, use, or enjoyment of real property or vessel;

(t) Liens on assets of a Person existing at the time such Person is acquired or merged with or into or consolidated with the Parent Borrower or any Subsidiary (and not created in connection with or in anticipation or contemplation thereof) to the extent such Liens secure Acquired Indebtedness permitted under Section 6.01(m); provided, however, that such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements and attachments thereon, accessions thereto and proceeds thereof) and any Inventory subject to such acquired Lien shall only be included in the Borrowing Base if such acquired Lien is junior to the Liens on such Inventory securing the Obligations and subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent;

(u) Liens securing Indebtedness permitted under Section 6.01(l) on cash collateral or arising from a backstop letter of credit arrangement to the extent permitted hereunder;

(v) Liens on cash collateral securing standalone letters of credit permitted pursuant to Section 6.01(s);

(w) Liens on cash and Cash Equivalents (and on the related escrow accounts or similar accounts, if any) required to be paid to the lessors (or lenders to such lessors) under leases in the ordinary course of business or maintained in an escrow account or similar account pending application of such proceeds in accordance with the applicable lease;

(x) exclusive licenses of Intellectual Property in effect on the Effective Date, which are more fully described on, and granted pursuant to the agreements identified on, Schedule 6.14, in each case, so long as such licenses are limited in time and geography and are entered into on an arm's length basis; and

(y) Liens encumbering deposits made to secure obligations arising from statutory or regulatory requirements of that Person or its Subsidiaries.

### Section 6.03 Fundamental Changes.

(a) Each Loan Party will not, and will not permit any Subsidiary to, (x) enter into a Division, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge or amalgamate into or consolidate with it, (y) otherwise Dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or (z) liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing:

(i) any Subsidiary of the Parent may be merged, consolidated or amalgamated with or into the Parent Borrower (provided that the Parent Borrower shall be the continuing or surviving corporation) or with or into any other Subsidiary (provided, that when any Loan Party is merging, consolidating or amalgamating with or into another Subsidiary, such Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall, substantially simultaneously with such merger, amalgamation or consolidation, become a Loan Party; provided further that, in the event that such merger, amalgamation or consolidation involves one or more Loan Parties and the parties thereto are organized in different jurisdictions, the Parent Borrower shall provide evidence in form and substance reasonably satisfactory to the Administrative Agent that the security interest in the Collateral granted to the Administrative Agent remains in full force and effect;

(ii) any Subsidiary may merge, consolidate or amalgamate with any other Person (other than the Parent) in order to effect an Investment permitted pursuant to Section 6.04; provided that (x) a Borrower must be the continuing or surviving Person of any such merger, consolidation or amalgamation to which it is a party and (y) if such Subsidiary is a Loan Party the continuing or surviving Person shall be a Loan Party; provided, further, that, in the event that such merger, amalgamation or consolidation involves one or more Loan Parties and the parties thereto are organized in different jurisdictions, the Parent Borrower shall provide evidence in form and substance reasonably satisfactory to the Administrative Agent that the security interest in the Collateral granted to the Administrative Agent remains in full force and effect;

(iii) any Excluded Subsidiary may Dispose of its assets to any Loan Party (other than the Parent) or to any other Excluded Subsidiary;

(iv) any Subsidiary of the Parent may Dispose of any or all of its assets (i) to any Borrower or any Subsidiary that is a Guarantor (upon voluntary liquidation or otherwise) or (ii) pursuant to a Disposition permitted by Section 6.09;

- (v) any Loan Party may Dispose of its assets to any other Loan Party (other than the Parent);
- (vi) subject to compliance with Section 6.04(d), any Loan Party may Dispose of its assets in order to effect any Investment permitted under Section 6.04(d);
- (vii) any Subsidiary may liquidate or dissolve if the Parent Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Parent Borrower and its Subsidiaries (taken as a whole) and is not materially disadvantageous to the Lenders; and
- (viii) any Subsidiary may consummate a Division as the Dividing Person if, immediately upon the consummation of the Division, all the assets of the applicable Dividing Person are held by one or more Subsidiaries at such time; provided that, if the applicable Dividing Person is a Loan Party, all of the assets of such Dividing Person shall be held by one or more Loan Parties at such time; and

provided that any such merger, consolidation or amalgamation involving a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation shall not be permitted unless also permitted by Section 6.04.

(b) Each Loan Party will not, and will not permit any of its Subsidiaries to, engage to any material extent in any material line of business substantially different from those lines of businesses conducted or proposed to be conducted by the Parent and its Subsidiaries on the Effective Date and businesses substantially related or incidental thereto.

Section 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. Each Loan Party will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger or amalgamation with any Person that was not a Wholly Owned Subsidiary prior to such merger or amalgamation) any Equity Interests, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or assets constituting a division, business line or business unit of any other Person, or make any capital contributions to any other Person, or make any investment in any other Person pursuant to the Division of any Person that was not a Wholly Owned Subsidiary prior to such Division, or make an investment in the form of any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP (the foregoing activities are collectively referred to herein as "Investments"), except:

- (a) Investments in cash and Cash Equivalents;
- (b) (i) Investments by the Parent existing on the date hereof in the Equity Interests of its Subsidiaries; and (ii) Investments in existence, contemplated or made pursuant to binding commitments in effect on the Effective Date and identified on Schedule 6.04(p)(ii);
- (c) (i) Investments made by the Parent or any Subsidiary in any Loan Party (other than the Parent); and (ii) Investments by Excluded Subsidiaries in other Excluded Subsidiaries;
- (d) Investments made by any Loan Party in any Excluded Subsidiary, provided that the aggregate amount of such Investments at any time outstanding shall not exceed the greater of (i) \$75,000,000 and (ii) 4.5% of the Total Assets at such time;
- (e) Investments in an aggregate amount at any time outstanding not to exceed the greater of (i) \$30,000,000 and (ii) 2.0% of the Total Assets at such time;
- (f) intercompany Investments in connection with reorganization activities and other activities related to tax planning, provided that, after giving effect to any such activities, the Liens of the Lenders in the Collateral, taken as a whole, would not be impaired in any material respect;
- (g) Investments received in settlement of debts, claims or disputes owed to any Borrower or any Subsidiary that arose out of transactions in the ordinary course of business;
- (h) advances and extensions of credit in the nature of accounts receivable arising from the sale or lease of goods or services or the licensing of property in the ordinary course of business;
- (i) Investments made by any Borrower or any Subsidiary in the Parent to the extent permitted to be made as a Restricted Payment by Section 6.05(a);
- (j) Investments in joint ventures in an aggregate amount at any time outstanding not to exceed the greater of (i) \$45,000,000 and (ii) 3.0% of the Total Assets at such time;
- (k) Investments among Excluded Subsidiaries pursuant to any agreement or arrangement to provide ordinary course facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, electronic funds transfer and other cash

management arrangements;

- (l) Guarantees constituting Indebtedness permitted by Section 6.01 and guarantees by the Parent permitted by Section 6.12(c);
- (m) so long as the Payment Conditions for Specified Restricted Investments are satisfied with respect thereto, any Loan Party may make Investments (except in the Parent) and other acquisitions;
- (n) Investments funded with (i) Equity Interests (other than Disqualified Equity Interests) of the Parent (or any parent company thereof) or (ii) so long as no Default or Event of Default then exists or would result therefrom, the Available Equity Amount at the time such Investment is made;
- (o) Investments consisting of the non-exclusive licensing or sublicensing of any Intellectual Property pursuant to joint marketing, collaboration or other similar arrangements with other Persons in the ordinary course of business;
- (p) advances up to an aggregate principal amount of \$500,000 per year to officers, directors and employees of the Parent and its Subsidiaries for travel, entertainment, relocation and analogous ordinary business purposes;
- (q) purchases or redemption of the Parent's or the Parent Borrower's Equity Interests to the extent permitted by Section 6.05(a);
- (r) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss (including in connection with the bankruptcy or reorganization of such account debtors);
- (s) to the extent constituting Investments, capital expenditures and Investments consisting of acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of Intellectual Property in the ordinary course of business;
- (t) Investments representing all or a portion of the sales price for property sold to another Person in a transaction permitted under this Agreement;
- (u) Investments in a Receivables Subsidiary in connection with a Permitted Receivables Facility and holding the Equity Interests in a Receivables Subsidiary;
- (v) Investments of a Person existing at the time such Person is acquired, becomes a Subsidiary or is amalgamated, merged or consolidated with or into any Borrower or any Subsidiary after the Effective Date to the extent that such transaction was permitted under Section 6.03(a) and such Investments were not made in contemplation of or in connection with such acquisition, designation, redesignation, amalgamation, merger or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (w) Investments resulting from pledges and deposits under clauses (c), (d), (e) and (l) and of Permitted Encumbrances and Sections 6.02(w) and (y);
- (x) Investments constituting non-cash consideration for Dispositions permitted under Section 6.09;
- (y) Investments in connection with Swap Agreements permitted under Section 6.01;
- (z) to the extent constituting Investments, transactions permitted under Section 6.02; and
- (aa) to the extent constituting Investments, transactions permitted under Section 6.03.

For purposes of this Section 6.04, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but, except to the extent the Parent Borrower shall otherwise elect, deducted by the amount of any repayment, interest, return, profit, distribution, income or similar amount in respect of such Investment which has actually been received in cash or Cash Equivalents or has been converted into cash or Cash Equivalents.

#### Section 6.05 Restricted Payments and Restricted Debt Payments.

- (a) Each Loan Party will not, and will not permit any of their Subsidiaries to, declare or make any Restricted Payments with respect to the Parent or any of its Subsidiaries, except:
  - (i) (A) any Subsidiary of the Parent may make Restricted Payments to the Parent Borrower or to any direct or indirect Wholly Owned Subsidiary of the Parent Borrower that is a Loan Party, and (B) any non-Wholly Owned Subsidiary may make Restricted Payments to the Parent

Borrower or any of its other Subsidiaries that are Loan Parties and to each other owner of Equity Interests of such Subsidiary ratably based on their relative ownership interests of the relevant class of Equity Interests;

(ii) the Parent Borrower may declare and make dividends payable solely in the form of additional shares of the Parent Borrower's or the Parent's Qualified Equity Interests;

(iii) the Parent Borrower may repurchase fractional shares of its Equity Interests (or Equity Interests of the Parent) arising out of stock dividends, splits or combinations;

business combinations or conversions of convertible securities or, so long as the Payment Conditions for Specified Restricted Payments are satisfied with respect thereto, make cash settlement payments upon the exercise of warrants to purchase its Equity Interests (or Equity Interests of the Parent), or "net exercise" or "net share settle" warrants;

(iv) the Parent may redeem or otherwise cancel Qualified Equity Interests or rights in respect thereof granted to (or make payments on behalf of) directors, officers, employees or other providers of services to the Parent, the Parent Borrower and the Subsidiaries in an amount required to satisfy tax withholding obligations relating to the vesting, settlement or exercise of such Equity Interests or rights;

(v) the Parent and the Parent Borrower may make any Restricted Payment that has been declared by the Parent or the Parent Borrower, so long as (A) such Restricted Payment would be otherwise permitted under clause (ix) of this [Section 6.05\(a\)](#) at the time so declared (and shall be deemed to be a utilization of such capacity from and after such time) and (B) such Restricted Payment is made within 60 days of such declaration;

(vi) the Parent and the Parent Borrower may make any repurchase (or deemed repurchase) of Equity Interests pursuant to any accelerated stock repurchase or similar agreement (each, an "**ASR Agreement**") publicly announced by the Parent or the Parent Borrower and specifying the maximum aggregate amount of the stock to be repurchased pursuant to such ASR Agreement (the "**Maximum ASR Amount**"); provided that, at the time such ASR Agreement is publicly announced, the Payment Conditions for Specified Restricted Payments would be satisfied with respect thereto immediately after giving Pro Forma Effect to the Maximum ASR Amount;

(vii) so long as no Default or Event of Default then exists or would result therefrom, the Parent may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans or agreements for directors, management, employees or other eligible service providers of the Parent or its Subsidiaries, including the repurchase of Qualified Equity Interests or rights in respect thereof granted to directors, management, employees or other eligible service providers of the Parent or its Subsidiaries pursuant to a right of repurchase set forth in any such stock option plans or other benefit plans or agreements in connection with a cessation of service; provided that any such payments do not exceed \$10,000,000 in any fiscal year; provided further that cancellation of Indebtedness owing to the Parent or any of its Subsidiaries from directors, management, employees or other eligible service providers in connection with a repurchase of Qualified Equity Interests will not be deemed to constitute a Restricted Payment for purposes of this clause (vii);

(viii) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties may make Restricted Payments not otherwise permitted under this Section 6.05 in an amount equal to the Available Equity Amount at the time such Restricted Payments are made;

(ix) the Parent and the Parent Borrower may make Restricted Payments not otherwise permitted under this [Section 6.05\(a\)](#) in an unlimited amount, in each case, so long as the Payment Conditions for Specified Restricted Payments are satisfied with respect thereto; and

(x) the Parent Borrower may make and pay Restricted Payments to the Parent (and in the cases of clause (A) and clause (B), to the other equity owners of the Parent Borrower):

(A) (1) with respect to any taxable period (x) for which the Parent Borrower and/or any of its Subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state or local income Tax purposes of which the Parent or any holding company of the Parent is the common parent, or (y) for which the Parent Borrower is a partnership or disregarded entity for U.S. federal income tax purposes that is wholly owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local income Tax purposes, in an amount not to exceed the amount of any U.S. federal, state and/or local income Taxes that the Parent Borrower and/or its Subsidiaries, as applicable, would have paid for such taxable period had the Parent Borrower and/or its Subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group and (2) such amounts as are needed to pay any amounts owed by the Parent under the Tax Receivable Agreement but which shall not include any amounts required to be paid due to a change of control or any early termination payments; provided that distributions pursuant to clause (A)(1) in respect of an Excluded Subsidiary shall be permitted only to the extent that cash distributions were made by such Excluded Subsidiary to the Parent Borrower or any other Subsidiary that is a Loan Party for such purpose;

(B) (1) with respect to any taxable period ending after the Effective Date for which the Parent Borrower is a partnership or disregarded entity for U.S. federal income Tax purposes (other than a partnership or disregarded entity described in clause (x)(A)(1)(y) above), distributions to its owners in amounts not to exceed (x) the taxable income of the Parent Borrower and its Subsidiaries for such fiscal year (as determined based on such assumptions as may be made by the managing member (or equivalent governing body) of the Parent Borrower, including, without limitation, not taking into account for this purpose for any such taxable period any adjustments under Sections 743(b) of the Code), multiplied by (y) the highest combined federal, state and local tax rates applicable to the income of individuals or corporations, resident of New York, New York, whichever is higher and (2) if payments to the Parent pursuant to the foregoing clause (1) are not sufficient for the Parent to pay its income tax liabilities and also the amounts owed by the Parent under the Tax Receivable Agreement, such additional amounts as are needed to pay any amounts owed by the Parent under the Tax Receivable Agreement but which shall not include any amounts required to be paid due to a change of control or any early termination payments; provided that no payment may be made pursuant to both this subclause (B) and subclause (A) of this clause (x) with respect to any period;

(C) the proceeds of which shall be used to allow the Parent to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including administrative, legal, accounting and other professional costs and expenses), in each case, to the extent attributable to the ownership or operation of the Parent Borrower and its Subsidiaries, in an aggregate amount not to exceed \$20,000,000 in any twelve (12) month period;

(D) [reserved];

(E) the proceeds of which shall be used to allow the Parent to pay customary fees and expenses (other than to Affiliates) related to any equity issuance or offering or debt issuance, incurrence or offering, Disposition or acquisition or investment transaction permitted by this Agreement, whether or not consummated;

(F) the proceeds of which shall be used to pay fees and expenses (including franchise, excise or similar taxes) required to maintain its corporate existence or good standing under applicable law;

(G) ~~subject to satisfaction of the Payment Conditions for Specified Restricted Payments immediately after giving Pro Forma Effect to such Restricted Payment~~, the proceeds of which shall be used to pay interest payments on the Parent Convertible Notes; and

(H) the proceeds of which shall be used by the Parent to make payments and consummate other transactions otherwise contemplated to be Restricted Payments permitted to be made by the Parent Borrower for the purposes set forth in this Section 6.05(a) (and shall be deemed to be a utilization of such capacity from and after such time); and

(xi) the Parent Borrower may make Restricted Payments in accordance with Article 9 of the Third Amended and Restated Limited Liability Company Agreement of the Parent Borrower, so long as such Restricted Payments are funded with Qualified Equity Interests of the Parent or, so long as no Default or Event of Default then exists or would result therefrom, the Available Equity Amount at the time such Restricted Payments are made.

(b) Each Loan Party will not, and will not permit any of its Subsidiaries to, make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption or otherwise optionally or voluntarily defease or segregate funds with respect to any Junior Debt (any of the foregoing, a "Restricted Debt Payment") other than:

(i) refinancings of Junior Debt with the proceeds of Permitted Refinancing Indebtedness permitted in respect thereof under Section 6.01;

(ii) the conversion of any Junior Debt into Qualified Equity Interests;

(iii) prepayments of intercompany Junior Debt permitted hereunder owed by the Parent Borrower or any Subsidiary to the Parent Borrower or any Subsidiary in the ordinary course of business to the extent permitted under the Intercompany Subordination Agreement; provided that no prepayment of any Junior Debt owed by any Loan Party to any Subsidiary that is not a Loan Party shall be permitted so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(iv) Restricted Debt Payments, so long as the Payment Conditions for Specified Restricted Debt Payments are satisfied with respect thereto;

(v) Restricted Debt Payments consisting of regularly scheduled principal and interest (including, for the avoidance of doubt, regularly scheduled interest payments in respect of the Parent Convertible Notes); and

(vi) so long as no Default or Event of Default then exists or would result therefrom, the Loan Parties may make Restricted Debt Payments not otherwise permitted under this Section 6.05 in an amount equal to the Available Equity Amount at the time such Restricted Debt Payments are made.

Notwithstanding anything to the contrary contained in this Section 6.05(b), in no event shall any payment in respect of subordinated Indebtedness be permitted if such payment is in violation of the subordination provisions of such subordinated Indebtedness.

(c) Each Loan Party will not, and will not permit any of its Subsidiaries to, amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of any Junior Debt (other than any such amendment, modification, waiver or other change that would not materially and adversely affect the interests of the Lenders so long as no Event of Default has occurred and is continuing or would result therefrom).

**Section 6.06 Restrictive Agreements**. Each Loan Party will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Parent Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets to secure the Obligations, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or other Equity Interests or to make or repay loans or advances to the Parent Borrower or any other Subsidiary or of any Loan Party to Guarantee Indebtedness of the Parent Borrower or any other Subsidiary under the Loan Documents; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement or any other Loan Document, (ii) the foregoing shall not apply to restrictions and conditions existing on the Effective Date identified on Schedule 6.06 (and shall apply to any extension or renewal of, or any amendment or modification materially expanding the scope of, any such restrictions or conditions taken as a whole), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets of the Parent or any Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary or assets to be sold and such sale is not prohibited

hereunder, (iv) the foregoing shall not apply to any agreement or restriction or condition in effect at the time any Subsidiary becomes a Subsidiary of the Parent, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Parent, (v) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures, (vi) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (vii) clause (a) of the foregoing shall not apply to customary provisions in leases, licenses, subleases and sublicenses and other contracts, (viii) the foregoing shall not apply to restrictions or conditions set forth in any agreement governing Indebtedness not prohibited by Section 6.01; provided that such restrictions and conditions are customary for such type of Indebtedness, and (ix) the foregoing shall not apply to restrictions on cash or other deposits (including escrowed funds) imposed under contracts entered into in the ordinary course of business.

**Section 6.07 Transactions with Affiliates**. Each Loan Party will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than between or among the Parent and its Subsidiaries to the extent otherwise permitted hereunder), except (a) on terms and conditions not less favorable to the Parent or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) payment of customary directors' fees, reasonable out-of-pocket expense reimbursement, indemnities (including the provision of directors and officers insurance) and compensation arrangements for members of the board of directors, officers or other employees of the Parent or any of its Subsidiaries, (c) transactions approved by a majority of the disinterested directors of the Parent's board of directors or the audit committee thereof, (d) any transaction involving amounts less than, in the aggregate, the greater of (i) \$37,500,000 and (ii) 2.50% of the Total Assets at such time, (e) any Restricted Payment permitted by Section 6.05(a) and (f) the agreements listed on Schedule 6.07 hereto.

**Section 6.08 Use of Proceeds**. The Borrowers will not request any Borrowing or Letter of Credit, and the Borrowers shall not use, and shall procure that their respective Subsidiaries and their and their Subsidiaries' respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**Section 6.09 Disposition of Property**. Each Loan Party will not, and will not permit any of its Subsidiaries to, Dispose of any of its property, whether now owned or hereafter acquired, in each case, except:

(a) Dispositions of obsolete or worn out property in the ordinary course of business or property that is no longer used or useful in the Parent's or its Subsidiaries' business and the leasing or subleasing in the ordinary course of business of owned or leased properties which are excess

properties or are no longer used or useful in the Parent's or its Subsidiaries' businesses;

- (b) the sale of inventory and other immaterial assets in the ordinary course of business;
- (c) (i) Dispositions to a Loan Party (other than the Parent), (ii) Dispositions by an Excluded Subsidiary to any other Excluded Subsidiary, and (iii) Dispositions by a Loan Party to an Excluded Subsidiary that are otherwise permitted under Section 6.04;
- (d) (i) Dispositions that constitute Investments that are permitted under Section 6.04, (ii) Dispositions that constitute Restricted Payments that are permitted under Section 6.05(a), and (iii) Dispositions that constitute Liens that are permitted under Section 6.02;
- (e) any sale, contribution, assignment or other transfer of Receivables Assets to a Receivables Subsidiary in a Permitted Receivables Financing or to any other Person in a Permitted Factoring Transaction;
- (f) Dispositions permitted by clause (iii), (iv) or (vi) of Section 6.03(a);
- (g) the grant in the ordinary course of business of any non-exclusive licenses of Intellectual Property, to the extent they do not materially interfere with the operation of the business of the Parent and its Subsidiaries (taken as a whole);
- (h) the lapse, abandonment, or other Dispositions of Intellectual Property of the Parent or any of its Subsidiaries that, in the good faith determination of the Parent or such Subsidiary, is no longer economically desirable to maintain or useful in the conduct of the business of the such Person;
- (i) the sale or issuance of any Subsidiary's Equity Interests to the Parent Borrower or any Loan Party that is a Wholly Owned Subsidiary (provided if such Subsidiary is a Domestic Subsidiary, such sale or issuance shall be to a Loan Party);
- (j) the Disposition of other property having a fair market value not to exceed \$10,000,000 in the aggregate for each fiscal year of the Parent; provided that, if required pursuant to Section 5.01(f) as a result of such Disposition (or the disposition of the Equity Interests of any Loan Party), the Borrower Representative shall have delivered to the Administrative Agent an updated Borrowing Base Certificate giving pro forma effect to such Disposition (or the disposition of the Equity Interests of such Person);
- (k) Dispositions of other property or assets (other than (x) Inventory and (y) Accounts arising from or in connection with the Disposition of Inventory); provided that (i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default or Event of Default exists or would result

therefrom), no Default or Event of Default then exists or would result from such Disposition, (ii) such Disposition is for fair market value as reasonably determined by the Parent Borrower, (iii) if the fair market value exceeds \$5,000,000 in the aggregate, not less than 75% of the total consideration for the asset or property sold in such Disposition shall be in the form of cash or Cash Equivalents (with (A) any debt secured by such property assumed by the purchaser of such property, (B) any consideration received in the form of Indebtedness that is converted into cash within 90 days after the Disposition of such property, and (C) aggregate non-cash consideration received by the Parent or applicable Subsidiary having an aggregate fair market value (determined for all Dispositions as of the closing of the applicable Disposition for which such non-cash consideration is received) not to exceed in the aggregate the greater of (i) \$45,000,000 and (ii) 3.0% of the Total Assets at such time, in each case deemed to be cash for purposes of this provision), (iv) Excess Availability (after giving pro forma effect to such Disposition on an average daily basis during the thirty (30) consecutive day period ending on and including the date of such Disposition) shall not be less than the greater of (x) 15% of the Line Cap and (y) \$60,000,000 and (v) if required pursuant to Section 5.01(f) as a result of such Disposition (or the disposition of the Equity Interests of any Loan Party), the Borrower Representative shall have delivered to the Administrative Agent an updated Borrowing Base Certificate giving pro forma effect to such Disposition (or the disposition of the Equity Interests of such Person);

- (l) Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements, drag-along rights, put rights, call rights or similar arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (m) Dispositions, terminations or non-renewals of leases or subleases or licensing or sublicensing agreements (i) the Disposition, termination or non-renewal of which will not materially interfere with the business of the Parent and its Subsidiaries or (ii) which relate to closed facilities or the discontinuation of any product line to the extent such closing or discontinuation is permitted pursuant to the terms herein, or (iii) is made in the ordinary course of business;
- (n) Dispositions of cash, Cash Equivalents and short-term marketable securities;
- (o) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

- (p) Disposition of receivables in connection with the compromise, settlement or collection thereof;
- (q) any surrender or waiver of contractual rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind that occur in the ordinary course of the Parent's or any Subsidiary's business; and
- (r) Dispositions consisting of the transfer of contracts from a Loan Party to another Loan Party (other than the Parent), from an Excluded Subsidiary to a Loan Party (other than the Parent), or from an Excluded Subsidiary to another Excluded Subsidiary.

Section 6.10 Financial Covenants. (a) The Loan Parties will not, and will not permit any of their Subsidiaries to, permit Total Liquidity at any time to be less than the greater of (i) 20% of the Line Cap then in effect and (ii) (A) if the Borrowing Base then in effect is less than \$200,000,000, \$50,000,000 and (B) if the Borrowing Base then in effect is greater than or equal to \$200,000,000, \$64,000,000, and (b) unless a Covenant Relief Period is then in effect, the Loan Parties will not, and will not permit any of their Subsidiaries to, permit Excess Availability at any time to be less than the greater of (i) \$15,000,000 and (ii) 10% of the Line Cap then in effect. The foregoing to the contrary notwithstanding, during the period commencing on March 29, 2024 and continuing through and including May 10, 2024, so long as the aggregate Revolving Credit Exposure of all Lenders at all times during such period is not greater than \$0, then the amount of Excess Availability required to be maintained by the Loan Parties and their Subsidiaries during such period under Section 6.10(b) shall be \$0.

Section 6.11 Swap Agreements. Neither the Parent Borrower nor any Guarantor will enter into any Swap Agreement for purely speculative purposes.

Section 6.12 Permitted Activities of Parent. Parent shall not:

- (a) incur any Indebtedness for borrowed money other than (i) Guarantees of Indebtedness or other obligations of the Parent Borrower and/or any Subsidiary, which Indebtedness or other obligations are otherwise permitted hereunder, (ii) Indebtedness owed to the Parent Borrower or any Subsidiary otherwise permitted hereunder, and (iii) subject to satisfaction of the applicable Payment Conditions for Specified Restricted Debt Payments, the Parent Convertible Notes;
- (b) create or suffer to exist any Lien on any property or asset now owned or hereafter acquired by it other than (i) the Liens created under the Security Documents and (ii) Liens of the type permitted under Section 6.02 (other than in respect of Indebtedness for borrowed money not referred to in clause (a) of this Section 6.12); or
- (c) engage in any material business activity or own any material assets other than (i) holding the Equity Interest of the Parent Borrower, and, indirectly, any other subsidiary of the Parent Borrower (and/or any joint venture of any thereof) or Indebtedness owing by, the Parent Borrower, (ii) performing its obligations under the Loan Documents and other Indebtedness, Liens (including the granting of Liens) and Guarantees permitted hereunder; (iii) issuing its own Equity Interests (including, for the avoidance of doubt, the making of any dividend or distribution on account of, or any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value of, any shares of any class of Equity Interest permitted hereunder) and the maintenance and administration of equity subscriptions, stock option and stock ownership plans and activities incidental thereto; (iv) filing tax reports and paying Taxes, including tax distributions made pursuant to Section 6.05(a)(x) and other customary obligations in the ordinary course (and contesting any Taxes); (v) preparing reports to Governmental Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable laws; (vii) effecting any public offering of its Equity Interests; (viii) holding (A) cash, Cash Equivalents and other assets received in connection with permitted distributions or dividends received from, or permitted Investments or permitted Dispositions made by, any of its subsidiaries or permitted contributions to the capital of, or proceeds from the issuance of Equity Interest of, the Parent pending the application thereof, or otherwise received and held so long as such other assets are not "operated" and (B) the proceeds of Indebtedness permitted by Section 6.01; (ix) providing indemnification for its officers, directors, members of management, employees and advisors or consultants and other ordinary course obligations; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under any document, agreement and/or investment contemplated by the Transactions or otherwise not prohibited under this Agreement, including the preparation of financial statements and other reporting obligations required under this Agreement; (xii) complying with applicable laws (including with respect to the maintenance of its corporate existence and activities incidental thereto); (xiii) financing activities, including the receipt and payment of dividends and distributions and the making of certain other Restricted Payments, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Parent Borrower and the Parent Borrower's Subsidiaries to the extent permitted hereunder; (xiv) activities incidental to acquisitions permitted hereunder or similar investments consummated by the Parent Borrower and/or any Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or investments incidental to such acquisitions permitted hereunder or similar investments; (xv) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes related to such maintenance); (xvi) any transaction expressly permitted pursuant to clauses (a), (b) and/or (d) of this Section 6.12, (xvii) the obtainment of, and the payment of any fees and expenses for, management, consulting, investment banking and advisory services to

Authorities and to its shareholders; (vi) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable laws; (vii) effecting any public offering of its Equity Interests; (viii) holding (A) cash, Cash Equivalents and other assets received in connection with permitted distributions or dividends received from, or permitted Investments or permitted Dispositions made by, any of its subsidiaries or permitted contributions to the capital of, or proceeds from the issuance of Equity Interest of, the Parent pending the application thereof, or otherwise received and held so long as such other assets are not "operated" and (B) the proceeds of Indebtedness permitted by Section 6.01; (ix) providing indemnification for its officers, directors, members of management, employees and advisors or consultants and other ordinary course obligations; (x) participating in tax, accounting and other administrative matters; (xi) the performance of its obligations under any document, agreement and/or investment contemplated by the Transactions or otherwise not prohibited under this Agreement, including the preparation of financial statements and other reporting obligations required under this Agreement; (xii) complying with applicable laws (including with respect to the maintenance of its corporate existence and activities incidental thereto); (xiii) financing activities, including the receipt and payment of dividends and distributions and the making of certain other Restricted Payments, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Parent Borrower and the Parent Borrower's Subsidiaries to the extent permitted hereunder; (xiv) activities incidental to acquisitions permitted hereunder or similar investments consummated by the Parent Borrower and/or any Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or investments incidental to such acquisitions permitted hereunder or similar investments; (xv) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes related to such maintenance); (xvi) any transaction expressly permitted pursuant to clauses (a), (b) and/or (d) of this Section 6.12, (xvii) the obtainment of, and the payment of any fees and expenses for, management, consulting, investment banking and advisory services to

the extent otherwise permitted under this Agreement, (xviii) entry into Permitted Bond Hedge Transactions and Permitted Warrant Transactions, (xix) participation and the making of payments under the Tax Receivable Agreement, and (xx) activities incidental or reasonably related to any of the foregoing; or

(d) consolidate or amalgamate with, or merge with or into, or convey, sell or otherwise transfer all or substantially all of its assets to, any Person; provided that, so long as no Default or Event of Default exists or would result therefrom, the Parent may consolidate or amalgamate with, or merge with or into, any other Person (other than the Parent Borrower and any of its Subsidiaries) so long as (i) the Parent is the continuing or surviving Person or (ii) if the Person formed by or surviving any such consolidation, amalgamation or merger is not the Parent, (x) (A) the successor Person expressly assumes all obligations of the Parent under this Agreement and the other Loan Documents to which the Parent is a party pursuant to a supplement hereto and/or thereto in a form reasonably satisfactory to the Administrative Agent and (B) the successor Person will be a Person organized or existing under the laws of the United States of America, any State of the United States or the District of Columbia or any territory thereto, and (y) the Administrative Agent shall have received all documentation and other information required by regulatory authorities with respect to the successor Person under

applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the USA PATRIOT Act and the Proceeds of Crime Act, reasonably requested by the Lenders.

#### Section 6.13 [Reserved].

Section 6.14 Material Intellectual Property. Notwithstanding anything herein to the contrary, (a) no Domestic Subsidiary of the Parent that owns or has an exclusive license to any Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole) (or that owns Equity Interests of any Subsidiary of the Parent which Subsidiary owns or has an exclusive license to Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole)) may constitute an Excluded Subsidiary, and (b) no Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole) (nor any Equity Interests of any Subsidiary of the Parent that owns or has an exclusive license to Intellectual Property that is material to the business of the Parent and its Subsidiaries (taken as a whole)) may be transferred from, or contributed by, the Parent or any of its Subsidiaries to, or exclusively licensed by, (i) any Excluded Subsidiary or any other Subsidiary that is not a Loan Party, or (ii) any other Person that is an Affiliate of a Loan Party or an Affiliate of any Permitted Holder which Person is not also a Loan Party unless, in the case of this clause (ii), (A) such transfer is made on an arm's length basis and the consideration paid or payable shall be in cash and in an amount not less than the fair market value of the Intellectual Property transferred, contributed or exclusively licensed, as the case may be or (B) such transfer is set forth on Schedule 6.14.

## ARTICLE 7

### EVENTS OF DEFAULT

#### Section 7.01 Events of Default. If any of the following events (each, an "**Event of Default**") shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable and in the Agreed Currency required hereunder, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under any of the Loan Documents, when and as the same shall become due and payable and in the Agreed Currency required hereunder, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party in this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), Section 5.03 (solely with respect to the Parent's or any Borrower's existence), Section 5.10, Section 5.15 or in Article 6;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any of the Loan Documents (other than those specified in clause (a), (b) or (d) of this Article of this Agreement), and such failure shall continue unremedied for a period of (i) five Business Days after notice thereof from the Administrative Agent to the Borrowers if such breach relates to the terms or provisions of Section 5.01(g) or Section 5.12, and (ii) 30 days after notice thereof from the Administrative Agent to the Borrowers for all other breaches;

(f) any Loan Party or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration,

demand, or otherwise) and such failure shall have continued after the applicable notice or cure period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both, but with all applicable grace periods in respect of such event or condition under the documentation representing such Material Indebtedness having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (w) any requirement to, or any offer, to repurchase, prepay or redeem Indebtedness of a Person acquired in an acquisition permitted hereunder, to the extent such offer is required as a result of, or in connection with, such acquisition, so long as such requirement is satisfied at the time of such acquisition, (x) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (y) any redemption, repurchase, conversion or settlement with respect to any convertible debt instrument including the Parent Convertible Notes (including any termination of any related Swap Agreement) pursuant to its terms unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (z) an early payment requirement, unwinding or termination with respect to any Swap Agreement except (i) an early payment, unwinding or termination that results from a default or non-compliance thereunder by any Loan Party or any Subsidiary, or another event of the type that would constitute an Event of Default or (ii) an early termination of such Swap Agreement by the counterparty thereto;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) administration, liquidation, reorganization or other relief in respect of any Loan Party or any Subsidiary or of a substantial part of its assets, under any Debtor Relief Law or (ii) the appointment of a receiver, interim receiver, trustee, monitor, custodian, sequestrator,

conservator or similar official for any Loan Party or any Subsidiary or for a substantial part of its assets, and, in any such case, and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking administration, liquidation, reorganization or other relief under any Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, interim receiver, trustee, monitor, custodian, sequestrator, conservator or similar official for any Loan Party or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or any Subsidiary shall become unable and admit in writing its inability or fail generally to pay its debts as they become due;

(k) [reserved];

(l) one or more judgments for the payment of money in excess of \$20,000,000 in the aggregate shall be rendered against any Loan Party, any Subsidiary or any combination thereof (to the extent not paid or covered by a reputable and solvent independent third-party insurance company which has not disputed coverage) and the same shall remain undischarged for a period of 30 consecutive days during which execution legality shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary to enforce any such judgment and such action shall not be stayed;

(m) one or more ERISA Events shall have occurred that would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect;

(n) a Change in Control shall occur;

(o) the guarantee contained in Article 9 shall cease, for any reason, to be in full force and effect or any Loan Party or any Subsidiary shall so assert, except the release thereof as provided in Section 10.17; or

(p) any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the obligations hereunder or thereunder, ceases to be in full force and effect thereto; or any Loan Party contests in any manner the validity or enforceability of any Loan Document; or any Lien created by any of the Security Documents shall cease to be enforceable on a material portion of the Collateral and of the same effect and priority (subject to Liens permitted by Section 6.02) to be created thereby for any reason other than as expressly permitted hereunder or satisfaction in full in cash of all the Obligations;

then, and in every such event (other than an event with respect to any Borrower described in clause (h) or (i) of this Article and subject to Section 7.02), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrowers, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon

the Commitments shall terminate immediately, (ii) Cash Collateralize any outstanding Letters of Credit and (iii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party; and in case of any event with respect to any Loan Party described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Loan Party.

**Section 7.02 [Reserved].**

**Section 7.03 Application of Proceeds.**

(a) Any proceeds of Collateral of any Loan Party received by the Administrative Agent (i) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct or (ii) at any other time, not constituting (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the applicable Borrower), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.08(d)) or (C) amounts to be applied from any Payment Account (which shall be applied in accordance with Section 2.08(e)), shall be applied, as follows: (1) ratably first, to pay any fees, indemnities, or expense reimbursements then owing to the Administrative Agent and any Issuing Bank from, or guaranteed by, such Loan Party under the Loan Documents (other than in connection with Specified Cash Management Agreements or Specified Swap Agreements); (2) second, to pay any fees or expense reimbursements then owing to the Lenders from, or guaranteed by, such Loan Party under the Loan Documents (other than in connection with Specified Cash Management Agreements or Specified Swap Agreements); (3) third, to pay interest due in respect of the Protective Advances owing by or guaranteed by such Loan Party; (4) fourth, to pay the principal of the Protective Advances owing by or guaranteed by such Loan Party; (5) fifth, to pay interest then due and payable on the Loans (other than the Protective Advances) and unreimbursed LC Disbursements, in each case owing or guaranteed by such Loan Party, ratably; (6) sixth, to prepay principal on the Loans (other than the Protective Advances) and unreimbursed LC Disbursements owing or guaranteed by such Loan Party, and to pay an amount to the Administrative Agent equal to 103% of the aggregate undrawn available balance of all outstanding Letters of Credit (105% of the aggregate undrawn available balance of any Letters of Credit denominated in a currency other than Dollars) issued on behalf of, or guaranteed by, such Loan Party, to be held as Cash Collateral for such Obligations, (7) seventh,

to the payment of any amounts owing with respect to Obligations under any Specified Cash Management Agreements and Specified Swap Agreements owing or guaranteed by such Loan Party, ratably; (8) eighth, to the payment of any other Obligations owing to the Administrative Agent or any Lender by, or guaranteed by, such Loan Party, ratably, and (9) ninth, any balance remaining after the Obligations shall have been paid in full and no Letters of Credit shall be outstanding (other than Letters of Credit which have been Cash Collateralized in accordance with the foregoing) shall be paid over to the applicable Loan Party at its account designated for such purpose by written notice by such Loan Party to the Administrative Agent or to whomsoever else may be lawfully entitled to receive the same. The application of any payment pursuant to this Section 7.03(a) shall be made first, to ABR Loans and Canadian Prime Rate Loans and second, to Term Benchmark Loans. Each of the Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations to maximize realization of the Collateral (it being understood that, notwithstanding the foregoing, in no event shall be payments be made pursuant to levels "seventh" or "eighth" above prior to the payment in full of all obligations described in levels "first" through "sixth" above). Notwithstanding the foregoing, no amount received from any Loan Party shall be applied to any Excluded Swap Obligation of such Loan Party.

**ARTICLE 8  
THE AGENTS**

**Section 8.01 Appointment of Administrative Agent.** Barclays Bank PLC is hereby appointed Administrative Agent hereunder and under the other Loan Documents and each Lender hereby authorizes Barclays Bank PLC to act as Administrative Agent in accordance with the terms hereof and the other Loan Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. The provisions of this Article 8 are solely for the benefit of the Agents and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Loan Party or any of its Subsidiaries. As of the Effective Date, none of the Arrangers in such capacity shall have any obligations but shall be entitled to all benefits of this Article 8. The Arrangers may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower.

**Section 8.02 Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and

responsibilities that are expressly specified herein and the other Loan Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Loan

Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Loan Documents except as expressly set forth herein or therein.

#### Section 8.03 General Immunity.

(a) No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, genuineness, collectability or sufficiency hereof or value any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Loan Party to any Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or any collateral thereunder, (iii) as to the financial condition use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, the Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans, the Revolving Credit Exposures, the Total Revolving Extensions of Credit or the component amounts thereof or any Dollar Equivalent.

(b) No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.02) and, upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Parent and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent

acting or (where so instructed) refraining from acting hereunder or any of the Company, other Loan Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.02).

(c) The Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 8.03 and of Section 8.06 shall apply to any the Affiliates of the Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 8.03 and of Section 8.06 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by the Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to the Administrative Agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

**Section 8.04 Administrative Agent Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Loan Parties or any of their respective Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from the Loan Parties or such Affiliates, as applicable, for services in connection herewith and otherwise without having to account for the same to Lenders.

**Section 8.05 Lenders' Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Parent and its Subsidiaries in connection with Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Parent and its Subsidiaries. No Agent shall have any duty or **Affiliates** responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement, an Assignment and Assumption or a Lender Joinder Agreement and funding its Loans on or after the Effective Date or by the funding of any New Loans, as the case may be, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Issuing Bank or Lender, as applicable on the Effective Date or as of the date of funding of such New Loans.

**Section 8.06 Right to Indemnity.** Each Lender, in proportion to its Applicable Percentage, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Loan Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Applicable Percentage thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**Section 8.07 Successor Administrative Agent.** The Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and the Borrowers. The Administrative Agent shall have the right to appoint a financial institution to act as the Administrative Agent hereunder, subject to the reasonable satisfaction of (i) except if an Event of Default has occurred and is continuing, the Parent Borrower and (ii) the Required Lenders, and the Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by the Parent Borrower and the

Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. Upon any such notice of resignation, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, in consultation with the Parent Borrower, to appoint a successor Administrative Agent. If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums held under the Loan Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the Loan Documents, whereupon such retiring Administrative Agent shall be discharged from its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Article). After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 8 and Section 10.03 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

## Section 8.08 Guaranty and Security Documents.

(a) Each Lender hereby further authorizes the Administrative Agent, on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty and the Loan Documents. Subject to Section 10.02, without further written consent or authorization from any Lender, the Administrative Agent may execute any documents or instruments necessary to release any Guarantor from the Guaranty pursuant to Section 10.17 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.02) have otherwise consented.

(b) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, the Administrative Agent and each Lender hereby agree that no Lender shall have any right individually to enforce the Guaranty or the Security Documents, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent, for the benefit of the Secured Parties, in accordance with the terms hereof and thereof.

(c) Notwithstanding anything to the contrary contained herein or any other Person obligated Loan Document, when all Obligations (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) have been paid in full in cash and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject to any pending draw (or shall be otherwise Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), upon request of the Borrowers, the Administrative Agent shall take such actions as shall be required to release all guarantee obligations provided for in and Liens created by any Loan Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Loan Document Borrower or (iv) any Guarantor, or upon or as a result of the performance appointment of a receiver, interim receiver, intervenor or observance conservator of, or trustee, monitor or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

Section 8.09 Withholding Taxes. To the extent required by any applicable law, the Parent, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Company, any of their respective Subsidiaries or Affiliates Internal Revenue Service or any other Person Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of their a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 8.10 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under Sections 2.09 and 10.03 allowed in such judicial proceeding); and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, assignee, trustee, monitor, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 10.03. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due to the Administrative Agent under Sections 2.09 and 10.03 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on,

and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or the Issuing Banks may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### Section 8.11 Acknowledgment of Lenders and Issuing Banks.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.11(a) shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a

different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) Each Loan Party hereby agrees that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by any Loan Party; provided that this Section 8.11(c) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such erroneous Payment is, and solely with respect to the amount of such erroneous Payment that is, comprised of funds received by the Administrative Agent from any Loan Party for the purpose of making such erroneous Payment.

Each party's obligations under this Section 8.11(a) shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

## **ARTICLE 9 GUARANTY**

#### 1.2 Section 9.01 Assignee Guaranty.

(a) Each Guarantor hereby irrevocably and unconditionally guarantees, jointly with the other Guarantors and severally, as a primary obligor and not merely as a surety, the Obligations of each Person other than such Guarantor. Each Guarantor further agrees that the due and punctual payment of the Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension or renewal of any Obligation.

(b) To the maximum extent permitted by applicable law, each Guarantor waives presentment to, demand of payment from and protest to any Person of any of the Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Lender to assert any claim or demand or to enforce any right or remedy against any Person under the provisions of this Agreement, any other Loan Document or otherwise; (ii) any extension or renewal of any of the Obligations; (iii) any rescission, waiver, amendment or modification of, or release from, any of the terms or provisions of this Agreement or any other Loan Document or other agreement; (iv) the failure or delay of any Lender to exercise any right or remedy against any other guarantor of the Obligations; (v) the failure of any Lender to assert any claim or demand or to enforce any remedy under any Loan Document or any other agreement or instrument; (vi) any default, failure or delay, willful or otherwise, in the performance of the Obligations; or (vii) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of such Guarantor or otherwise operate as a discharge of such Guarantor as a matter of law or equity or which would impair or eliminate any right of any Guarantor to subrogation (other than payment in full of the Obligations (excluding contingent obligations as to which no claim has been made) or release pursuant to [Section 10.17](#)).

(c) Each Guarantor further agrees that its guarantee hereunder constitutes a promise of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by any Lender or any Issuing Bank to any balance of any deposit account or credit on the books of any Lender or any Issuing Bank in favor of any Loan Party or any Subsidiary or any other Person.

(d) Except for the release or termination of a Guarantor's obligations hereunder as provided in [Section 10.17](#), the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason other than the payment in full in cash of the Obligations (excluding contingent obligations as to which no claim has been made), and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of the Obligations, any impossibility in the performance of the Obligations or otherwise.

(e) Each Guarantor further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by any Lender upon the bankruptcy or reorganization of any Loan Party or otherwise.

(f) In furtherance of the foregoing and not in limitation of any other right which any Lender may have at law or in equity against any Guarantor by virtue hereof, upon the failure of any Person to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Administrative Agent, forthwith pay, or cause to be paid, to the Administrative Agent for distribution to the applicable Lenders in cash an amount equal to the unpaid principal amount of such Obligation.

(g) Notwithstanding anything to the contrary in this Agreement, each Guarantor shall be liable under this Agreement only for amounts aggregating up to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provision of any other applicable law.

(h) Upon payment in full by any Guarantor of any Obligation of any Person, each Lender and Issuing Bank shall, in a reasonable manner, assign to such Guarantor the amount of such Obligation owed to such Lender or Issuing Bank and so paid, such assignment to be *pro tanto* to the extent to which the Obligation in question was discharged by such Guarantor, or make such disposition thereof as such Guarantor shall direct (all without recourse to any Lender or Issuing Bank and without any representation or warranty by any Lender or Issuing Bank). Upon payment by any Guarantor of any sums as provided above, all rights of such Guarantor against such Person arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior payment in full of all the Obligations owed to the Lenders and Issuing Banks (it being understood that, after the discharge of all the Obligations owing to the Lenders and Issuing Banks, such rights may be exercised by such Guarantor notwithstanding that the Loan Parties may remain contingently liable for indemnity or other Obligations).

(i) Each Qualified Keepwell Provider hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of such Loan Party's obligations under this guarantee in respect of any obligation to pay or perform under any Swap Agreement (a "**Swap Obligation**") (provided, however, that each Qualified Keepwell Provider shall only be liable under this [Section 9.01\(i\)](#) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this [Section 9.01\(i\)](#), or otherwise under this guarantee, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified Keepwell Provider under this [Section 9.01\(i\)](#) shall remain in full force and effect until termination of this Agreement. A "**Qualified Keepwell Provider**" shall mean, in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes effective with respect to such Swap Obligation, has total assets exceeding \$10,000,000 or otherwise constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" with respect to such Swap Obligation at such time by entering into a keepwell or guarantee pursuant to Section 1a(18)(A)(v)(II) of the Commodity Exchange Act. Each Qualified Keepwell Provider

intends that this Section 9.01(i) constitute, and this Section 9.01(i) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**Section 9.02 Additional Agreements.**

(a) Until the Commitments have expired or terminated and all Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), each Guarantor covenants and agrees with the Administrative Agent for the benefit of the Secured Parties that it will be bound by each of the covenants contained herein to the extent applicable to such Guarantor.

(b) Each Guarantor hereby agrees that upon the occurrence of any Event of Default, any Indebtedness of any Borrower or any other Guarantor now or hereafter owing to it, whether heretofore, now or hereafter created (the "**Guaranty Subordinated Debt**"), is hereby subordinated to all of the Obligations under this Agreement and the Notes, and that, except as expressly permitted by this Agreement, the Guaranty Subordinated Debt shall not be paid in whole or in part until such Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank) and this Agreement is terminated and of no further force or effect. No Guarantor shall accept any payment of or on account of any Guaranty Subordinated Debt at any time in contravention of the foregoing. Upon the occurrence and during the continuance of an Event of Default, any applicable Borrower and any other applicable Guarantor shall pay to the Administrative Agent any payment of all or any part of the Guaranty Subordinated Debt and any amount so paid to the Administrative Agent shall be applied to payment of the Obligations as provided herein. Each payment on the Guaranty Subordinated Debt received in violation of any of the provisions hereof shall be deemed to have been received by the Guarantors as trustee for the Administrative Agent and the Lenders and shall be paid over to the Administrative Agent immediately on account of the Obligations, but without otherwise affecting in any manner the Guarantors' liability under this Agreement. Each Guarantor agrees to file all claims against any applicable Borrower or any other applicable Guarantor in any bankruptcy or other proceeding in which the filing of claims is required by law in respect of any Guaranty Subordinated Debt, and the Administrative Agent shall be entitled to all of such Guarantor's rights thereunder. If for any reason any Guarantor fails to file such claim at least ten (10) Business Days prior to the last date on which such claim should be filed, such Guarantor hereby irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact and is hereby authorized to act as attorney-in-fact in such Guarantor's name to file such claim or, in the Administrative Agent's discretion, to assign such claim to and cause proof of claim to be filed in the name of the Administrative Agent or its nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Administrative Agent the full amount payable on the claim in the proceeding, and, to the full extent necessary for that purpose, each Guarantor hereby assigns to the Administrative Agent all of such Guarantor's rights to any payments or distributions to which such Guarantor otherwise would be entitled. If the amount so paid is greater than such Guarantor's liability hereunder, the Administrative Agent shall pay the excess amount to the party entitled thereto.

**Section 9.03 Information.** Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any Lender will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

**Section 9.04 Guarantor Notices.** All communications and notices to any Guarantor shall be given to it in care of the Parent Borrower as provided in Section 10.01.

**Section 9.05 Termination.** The **Assignee** Guarantees set forth in this Article 9 shall terminate when all the Obligations (excluding contingent obligations as to which no claim has been made) have been paid in full in cash and no Letter of Credit shall be outstanding or subject to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), and the Lenders have no further commitment to lend and the Issuing Banks has no further obligation to issue Letters of Credit.

**Section 9.06 [Reserved].**

**Section 9.07 Additional Guarantors.** It is understood and agreed that any Subsidiary of the Parent that is required to execute a counterpart of, or joinder to, this Agreement after the date hereof pursuant to Section 5.11 shall become a Guarantor hereunder by (x) executing and delivering a guaranty supplement in the form of Exhibit E-2 hereto and delivering the same to the Administrative Agent and (y) taking all actions as specified in this Agreement as would have been taken by such Guarantor had it been an original party to this Agreement, in each case with all documents and actions required to be taken above to be taken to the reasonable satisfaction of the Administrative Agent.

Section 9.08 Article 9 Severability. In the event any one or more of the provisions contained in this Article 9 should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Article 9 shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

## ARTICLE 10 MISCELLANEOUS

### Section 10.01 Notices.

(a) represents Except in the case of notices and warrants other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing (including electronic communications) and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by electronic communications, as follows:

(i) if to any Loan Party, in care of the Parent Borrower (including in its capacity as Borrower Representative) at:

Fluence Energy, LLC  
4601 Fairfax Drive, Suite 600  
Arlington, VA 22203  
United States  
Attention: Manavendra Sial, Ahmed Pasha and Jie Yuan  
Email: [Manavendra.Sial@fluenceenergy.com](mailto:Manavendra.Sial@fluenceenergy.com), [Ahmed.pasha@fluenceenergy.com](mailto:Ahmed.pasha@fluenceenergy.com) and [Jie.Yuan@fluenceenergy.com](mailto:Jie.Yuan@fluenceenergy.com)

With copies (which shall not constitute notice) to:

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attention: Noah Weiss  
Email: [noah.weiss@lw.com](mailto:noah.weiss@lw.com)

(ii) if to the Administrative Agent, to it at:

Barclays Bank PLC  
745 Seventh Avenue  
New York, NY 10019  
Attention: Arup Ghosh  
Phone: (201) 499-8490  
Email: [arup.ghosh@barclays.com](mailto:arup.ghosh@barclays.com)

With copies (which shall not constitute notice) to:

Paul Hastings LLP  
695 Town Center Drive, Seventeenth Floor  
Costa Mesa, CA 92626  
Attention: Katherine Bell  
Email: [katherinebell@paulhastings.com](mailto:katherinebell@paulhastings.com)

(iii) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(iv) With respect to any Issuing Bank, at its address provided by notice to the other parties hereto.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to

Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Parent Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) it has full notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(d) The Loan Parties agree that the Administrative Agent may make the Communications (as defined below) available to the Lenders and the Issuing Banks by posting the Communications on Debt Domain, IntraLinks, Syndtrak, or another similar electronic system (the "Platform"). THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications effected thereby (the "Communications"). No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") be responsible or liable for damages arising from the unauthorized use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Agent Party (as determined in a final, non-appealable judgment by a court of competent jurisdiction).

#### Section 10.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and authority, remedies of the Administrative Agent, the Issuing Banks and has taken all action the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on any Loan Party in any case shall entitle such Loan Party to any other or further notice or demand in similar or other circumstances. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.11(b) and (d), Section 10.02(c) and Section 10.02(d) below, none of this Agreement, any other Loan Document or any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders or by the Loan Parties and the Administrative Agent with the consent of the Required Lenders; provided, however, that no such amendment, waiver or consent shall: (i) amend the definition of "Applicable Percentage" without the consent of each Lender, or extend or increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby; provided, however, that notwithstanding clause (ii) or (iii) of this Section 10.02(b), only the consent of the Required Lenders shall be necessary to execute waive any obligation of the Borrowers to pay interest at the default rate set forth in Section 2.10(d), (iv) change Section 2.15(b), Section 2.15(c) or any other Section hereof providing for the ratable treatment of the Lenders, in each case in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender, (v) release all or substantially all of the Guarantors or the value of the Guaranty or release all or substantially all of the Collateral, without the written consent of each Lender, except to the extent the release of any Guarantor or the Collateral is permitted pursuant to Article 8 or Section 10.17 (in which case such release may be made by the Administrative Agent acting alone), (vi) change any of the provisions of this Section or the percentage referred to in the definition of "Required Lenders" or "Supermajority Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender,

(vii) subordinate all or any portion of the Administrative Agent's Liens on all or any of the Collateral, or contractually subordinate all or any portion of the Obligations in right of payment or otherwise adversely affect the priority of

payment of all or any portion of the Obligations, in each case without the written consent of each Lender, (viii) amend Section 7.03 without the written consent of the Administrative Agent and deliver each Lender adversely affected thereby, (ix) amend the definition of "Alternative Currency" without the written consent of the Administrative Agent and each Lender adversely affected thereby, or (x) modify the definition of "Line Cap" or increase the expressly stated advance rates set forth in the definition of "Borrowing Base" or make any change to the definition of "Borrowing Base" (in each case, by adding additional categories or components thereof) or the definition of "Borrowing Base Qualified Cash", "Borrowing Base Qualified Cash Account", "Borrowing Base Qualified Cash Release Conditions", "Eligible Inventory" or "Eligible In-Transit Inventory", in each case, that would have the effect of increasing the amount of the Borrowing Base, without the consent of the Supermajority Lenders; provided that the Administrative Agent may increase or decrease the amount of, or otherwise modify or eliminate, any Reserves that it implements in its Permitted Discretion in accordance with Section 2.1(b) or otherwise in accordance with the terms of this Assignment Agreement, and Assumption in any such case, such change will not be deemed to require any Supermajority Lender or other Lender consent. Notwithstanding anything to the contrary herein, no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Swingline Lender or any Issuing Bank hereunder without the prior written consent of the Administrative Agent, the Swingline Lender or such Issuing Bank, as the case may be.

(c) This Agreement may be amended as contemplated by Section 2.18 to effect New Commitments pursuant to a Joinder Agreement with the consent only of the Administrative Agent, the Borrower Representative and the New Lenders providing New Commitments. If the Administrative Agent and the Borrower Representative acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document, then the Administrative Agent and the Borrower Representative shall be permitted to consummate amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

(d) Except as provided in Section 5.11 or Section 9.07, no provision of Article 9 may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into between the Administrative Agent and each Guarantor with respect to which such waiver, amendment or modification is to apply, in accordance with this Section 10.02.

#### Section 10.03 Expenses; Indemnity; Damage Waiver.

(a) Except for the costs and expenses relating to field examinations and inventory appraisals which shall be addressed in Section 5.07, the Parent Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable and documented fees, disbursements and other charges of one firm of primary counsel for all such Persons taken as a whole, one firm of local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons) in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of this Agreement, any other Loan Document or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) costs, expenses, Taxes, assessments and to become other charges incurred by the Administrative Agent or any Lender in connection with any filing, registration, recording, or perfection of any security interest contemplated by this Agreement, (iii) all reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iv) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including the fees, disbursements and other charges of one firm of primary counsel for all such Persons taken as a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified whole, one firm of local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons), in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Each Loan Party, jointly and severally, shall indemnify the Administrative Agent, the Arrangers, any Issuing Bank and each Lender, and each Related Party, successor or assign of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable and documented out-of-pocket fees, charges and disbursements of one firm of primary counsel for all such Persons taken as a whole, one firm of local counsel in each

relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) as may be necessary in the reasonable judgment of the Administrative Agent, and one firm of specialty counsel in each reasonably necessary specialty area, as determined in the reasonable judgment of the Administrative Agent (and, solely in the case of an actual or perceived conflict of interest, one additional counsel (and, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and one specialty counsel in each reasonably necessary specialty area) to all affected Persons) for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the

consummation of the Transactions or any other transactions contemplated hereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned, leased or operated by the Parent or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation or proceeding is brought by the Parent, the Parent Borrower or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available, (x) with respect to Taxes and amounts relating thereto (other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim), the indemnification for which shall be governed solely and exclusively by Section 2.14, (y) to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence, willful misconduct or material breach of the Loan Documents by such Indemnitee or (z) to the extent that such losses, claims, damages, liabilities or related expenses arise from any proceeding that does not involve the Parent, the Parent Borrower or any of their respective Affiliates and that is brought by an Indemnitee against any other Indemnitee, other than any proceeding against the Administrative Agent or any Arranger, in each case acting in such capacity.

(c) To the extent that any Loan Party fails to pay any amount required to be satisfied paid by it to the Administrative Agent, the Swingline Lender or any Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Swingline Lender and the applicable Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Swingline Lender or such Issuing Bank in order their capacity as such; provided, further, that, notwithstanding anything to acquire the Assigned Interest contrary herein, no Lender shall be liable for any portion of any such unreimbursed expenses or indemnified loss, claim, damage, liability or related expense, as the case may be, of the Administrative Agent, the Swingline Lender and/or the Issuing Banks (or, in each case, any Affiliate thereof) as a result of the bad faith, gross negligence or willful misconduct of the relevant Person or Persons, as determined by a court of competent jurisdiction by a final or non-appealable judgment.

(d) Without limiting in any way the indemnification obligations of the Loan Parties pursuant to Section 10.03(b) or of the Lenders pursuant to Section 8.06, to the extent permitted by applicable law, each party hereto shall not assert, and become hereby waives, any claim against any Indemnitee or any Loan Party or any of its Subsidiaries, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out

of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or any Loan or Letter of Credit or the use of the proceeds thereof; provided that nothing in this clause (d) shall relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

#### Section 10.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer

by any Borrower without such consent shall be null and void), (ii) no Guarantor shall have the right to assign or transfer any of its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (but not to any Loan Party or an Affiliate thereof) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Parent Borrower; provided that no consent of the Parent Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; and provided further that the Parent Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, an Affiliate of a Lender, or an Approved Fund;

(C) the Swingline Lender; and

(D) each Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 (or a greater amount that is an integral multiple of \$1,000,000) unless each of the Parent Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Parent Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, including, for greater certainty, such assigning Lender's obligation to make Loans and other extensions of credit available to all Borrowers in each Agreed Currency;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Parent, the Parent Borrower and their respective Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws;

(E) no such assignment shall be made to (i) any Loan Party nor any Affiliate of a Loan Party, and (ii) any Defaulting Lender or any of its subsidiaries, or any Person, who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this subsection (E)(ii);

(F) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall

make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Parent Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not

funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs; and

(G) no assignment shall be made to any Disqualified Lender; provided that notwithstanding anything in this Agreement or any other Loan Document to the contrary, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or potential Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the Effective Date, the effective date specified in each Assignment and Assumption the assignee thereunder shall be bound by the provisions of the Credit Agreement as a Lender thereunder party hereto and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received and/or had the opportunity to review a copy of the Credit Agreement to the extent it has in its sole discretion deemed necessary, together with copies of the most recent financial statements delivered pursuant to Section 5.01(a) and Section 5.01(b) thereof, as applicable, and interest assigned by such other documents and information as it has in its sole discretion deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) attached to this Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; (b) agrees that it will, independently and without reliance on the Administrative Agent, any Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents; (c) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are delegated to or otherwise conferred upon the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (d) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to each Assignor for amounts owing to the applicable Assignor which

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have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. Effect of Assignment. Upon the delivery of a fully executed original hereof to the Administrative Agent, as of the Effective Date, (i) the Assignee shall be a party to the Credit Agreement and, to the extent provided in this Assignment and Assumption, have the rights and obligations of a Lender thereunder under this Agreement, and under the other Loan Documents and (ii) each Assignor assigning Lender thereunder shall, to the extent provided in this of the interest assigned by such Assignment and Assumption, relinquish its rights and be released from its obligations under this Agreement (and, in the Credit case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.12, Section 2.13, Section 2.14 and Section 10.03); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and amounts (including interest) on the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive (absent manifest error), and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. The Loans (including principal and interest) are registered obligations and the right, title, and interest of any Lender or its assigns in and to such Loans shall be transferable only upon notation of such transfer in the Register.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04(b), Section 2.15(d) or Section 8.06, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of, or notice to, any Borrower or the Administrative Agent, Swingline Lender or any Issuing Bank, sell participations to one or more banks or other entities (but not to any Loan Party, an Affiliate thereof or a Disqualified Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Loan Documents. Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had

acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.15(c) as though it were a Lender.

4. (ii) A Participant shall not be entitled to receive any greater payment under General Provisions, Sections 2.12 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant except to the extent such entitlement to receive a greater payment results from a Change in Law requiring a payment under Section 2.12 that occurs after the Participant acquired the applicable participation. Participants entitled to the benefits of Sections 2.12, 2.13 and 2.14 are entitled to such benefits subject to the requirements and limitations therein, including the requirements under Section 2.14(g) (it being understood that the documentation required under Section 2.14(g) shall be delivered to the participating Lender).

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (and, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

**Section 10.05 Survival.** All covenants, agreements, representations and warranties made by any of the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement, the other Loan Documents and the making of any Loans and issuance of any

Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding or subject to any pending draw and so long as the Commitments have not expired or terminated. The provisions of Section 2.12, Section 2.13, Section 2.14 and Section 10.03 and Article 8 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, the resignation of the Administrative Agent, the replacement of any Lender, or the termination of this Agreement or any provision hereof.

**Section 10.06 Counterparts; Integration; Effectiveness.**

(a) This Assignment Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and Assumption any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Assignment Agreement shall be construed as a separate agreement with respect to each Loan Party and Assumption may be executed in amended, modified, supplemented, waived or released with respect to any number Loan Party without the approval of counterparts, which together shall constitute one instrument, any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

(b) Delivery of an executed counterpart of a signature page of (x) this Assignment and Assumption Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 10.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "**Ancillary Document**") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of electronic imaging an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Assignment Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and Assumption. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case

**Exhibit 10.2**

January 8, 2024

Dear Krishna Vanka,

In may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic

Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with **your separation from your role** any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as Senior Vice President any paper original, (B) agrees that the Administrative Agent and Chief Digital Officer each of Fluence Energy, LLC ("Fluence" and, together with the Lenders may, at its affiliated and related entities, option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the "Company"), we believe it is mutually beneficial to putform of an imaged electronic record in writing any format, which shall be deemed created in the terms ordinary course of such separation. This letter (this "Agreement") Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), upon your (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature will constitute an agreement between us regarding the terms pages thereto and conditions of your separation (D) waives any claim against any Person for any liabilities arising solely from the Company.

Effective January 1, 2024, you shall cease serving Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any liabilities arising as Senior Vice President a result of the Company butfailure of any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 10.07 **Severability.** Subject to Section 9.08, any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, remain as Chief Digital Officer to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the Company, provided remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that such role the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall immediately transition into that of non-officer employee role at the Company and you hereby resign from all roles be limited by Debtor Relief Laws, as an officer of the Company and its subsidiaries effective January 1, 2024 (and shall take all actions requested determined in good faith by the Company Administrative Agent, then such provisions shall be deemed to be in effect such resignations). From January 1, 2024 to January 31, 2024 (the "Transition Period"), you shall provide the transition services only to the Company extent not so limited.

Section 10.08 **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, as reasonably requested by you by the President and Chief Executive Officer and Chief Financial Officer (such services, the "Transition Services"), provided that the parties acknowledge and agree that the level of Transition Services to be provided to the Company is reasonably anticipated to be no less than 20% of the average level of services performed during the immediately preceding 36-month period. In consideration of the Transition Services, the Company will provide you with your annual base salary through January 31, 2024, your annual cash incentive opportunity and welfare benefits consistent with the terms thereof as provided to you as of the date hereof. Further any outstanding equity awards held by you shall continue to be eligible to vest through the end of the Transition Period. For all severance plans and in all benefit plans, you will be treated as though you retained the position as Senior Vice President and Chief Digital Officer through the end of the Transition Period.

Unless otherwise determined by the Company, your employment will terminate effective January 31, 2024 (the "Termination Date"). Subject to your compliance with this letter (including, without limitation, the provision of Transition Services through the end of the Transition Period) you shall be eligible to receive the severance payments and benefits payable upon an Involuntary Termination (as defined in the Fluence Energy, Inc. Executive Severance Plan (the "Executive Severance Plan")) outside of the CIC Period (as defined in the Executive Severance Plan), on the terms and conditions set forth in the Executive Severance Plan (including, without limitation, the requirement to execute and not revoke a release, a copy of which attached hereto as Exhibit A, within 21 days of the Termination Date). However, at your request, the Company has agreed to pay for expenses related to specific training programs in such amount not to exceed \$25,000 in lieu of any outplacement benefits you may have been provided under the terms of the Executive Severance Plan and in consideration for such payment by the Company for specific training programs, you have agreed to expressly waive and relinquish all rights and benefits to any outplacement benefits available under the Executive Severance Plan.

To consent to the terms of and accept this Agreement, please date and sign this document and return it to Larissa Cerqueira, Chief Human Resources Officer.

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Very truly yours,

Fluence Energy, LLC

By: /s/ Larissa Cerqueira

Name: Larissa Cerqueira

Title: Chief Human Resources Officer

By: /s/Krishna Vanka

Krishna Vanka

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**Exhibit A General Release**

1. Your employment is terminated effective January 31, 2024 (the "Termination Date"). You acknowledge and agree that you have been paid your earned compensation through and including the Termination Date. You have received or will receive by separate cover information regarding your rights to continuation of your health insurance which will cease as of the last day of the month in which your Termination Date occurs. You acknowledge and agree that you have submitted all expense reimbursement requests for legitimate business expense to Fluence Energy, LLC (together with its affiliated and related entities, the "Company") and the Company has reimbursed you in accordance with its existing policies for all such legitimate expenses you incurred on Company business prior to the Termination Date.
2. You represent and warrant that you have returned all reports, files, memoranda, records, software, laptops, computer equipment, cellular phones, credit cards, cardkey passes, door and file keys, computer access codes or disks and instructional manuals and other physical or personal property that you received in connection with your employment with the Company that you then have in your possession, and you shall not retain any copies, duplicates, reproductions or excerpts thereof.
3. In consideration for your execution of this general release (the "Release") and return of it to the Company no earlier than the Termination Date and no later than February 21, 2024, and provided you do not timely revoke your acceptance of this Release, the Company will provide to you with the severance payments and benefits payable upon an Involuntary Termination (as defined in the Fluence Energy, Inc. Executive Severance Plan (the "Executive Severance Plan")) outside of the CIC Period (as defined in the Executive Severance Plan), on the terms and conditions set forth in the Executive Severance Plan.
4. Notwithstanding any provision of this Release to the contrary, if any benefit provided under that certain Separation Agreement between you and the Company (the "Agreement"), this Release or the Executive Severance Plan is subject to the provisions of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and other binding guidance promulgated thereunder (collectively, "Section 409A"), the provisions of the Release will be administered, interpreted and construed in a manner necessary to comply with Section 409A or an exception thereto (or disregarded to the extent such provision cannot be so administered, interpreted, or construed). Notwithstanding any provision of the Release to the contrary, in no event shall the Administrator (as defined in the Executive Severance Plan), the Company, (or their employees, officers, directors or affiliates) have any liability to you (or any other person) due to the failure of the Agreement, this Release, or the Executive Severance Plan to satisfy the requirements of Section 409A or any other applicable law.

5. Unless you accept this Release by timely executing and returning it by the date specified above, you shall not be entitled to any of the payments and benefits for which you may be eligible under this Release or the Executive Severance Plan. If you participate in any long term compensation plans, please see any relevant plan and notice documents (including, for the avoidance of doubt, the 2021 Incentive Plan of Fluence Energy, LLC) for other important provisions that may be triggered by your termination.

6. The intent of this section is to secure your promise to release all claims and not to sue the Company, or anyone connected with it, for any harm you may claim to have suffered in connection with your employment or the termination of your employment, in return for the benefits described in this Release. Accordingly, in consideration for the payments, benefits and promises contained in this Release, including, without limitation, under the Executive Severance Plan (collectively, the "Consideration"), and intending to be legally bound hereby, you hereby agree as follows:

a. Except as otherwise provided in this Section 6(a), you knowingly and voluntarily hereby release, to the fullest extent permitted by law, the Company to set off and all of its past, present and/or future related entities, including but not limited to parents, divisions, affiliates and subsidiaries, and each current and former bonus, pension, welfare, or other benefit plans sponsored by any of the foregoing, and each of the respective officers, directors, members, stockholders, trustees, employees, agents, representatives, administrators, attorneys, insurers, fiduciaries, predecessors, successors and assigns of such entities and/or benefit plans, in their individual and/or representative capacities (hereinafter collectively referred to as the "Released Parties"), from apply any and all causes of action, suits, agreements, promises, damages, disputes, controversies, contentions, differences, judgments, claims deposits (general or

special, time or demand, provisional or final, in whatever currency) at any time held by, and demands other obligations (in whatever currency) at any time owing by such Lender or Affiliate to or for the credit or the account of any kind whatsoever ("Claims") which you Loan Party against any of and all the obligations of the Loan Parties now or your heirs, executors, administrators, successors hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and assigns ever had, now have or although such obligations may have against be unmatured; provided that in the Released Parties, whether known or unknown event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to you, and whether asserted or unasserted, (i) by reason of your employment and/or cessation of employment with the Company, other than the Consideration Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its terms, or (ii) that otherwise arose or is based on facts which occurred on or prior other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the date that you sign Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Release.

Such released Claims include, but Section are not limited in addition to any other rights and all Claims under Title VII remedies (including other rights of setoff) which such Lender may have. Each Lender agrees to notify the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Fair Labor Standards Act, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act of 1967, the Older Workers' Benefit Protection Act of 1990, the Americans With Disabilities Act, the Employee Retirement Income Security Act of 1974 (including, without limitation, any claim for severance pay), the Virginia Human Rights Act, the Virginians with Disabilities Act, the Virginia Overtime Wage Act, the Virginia Equal Pay law, the Virginia Occupational Safety and Health Act, the Virginia Payment of Wage Law, and/or the Virginia Minimum Wage Act, the California Fair Employment and Housing Act, the California Equal Pay Law, the Moore-Brown-Roberti Family Rights Act of 1991, the California Labor Code, the California WARN Act, the California False Claims Act Borrowers and the California Corporate Criminal Liability Act, and any and all other federal, state or local laws, statutes, rules and regulations pertaining to employment (each as amended); any and all Claims under state contract or tort law; any and all Claims based on the design or administration of any employee benefit plan, program policy, procedure or arrangement, whether written or oral; any and all Claims for wages, commissions, bonuses, continued employment in any position, and compensatory, punitive or liquidated damages; and any and all Claims for attorneys' fees and costs.

If your place or places of work with the Company has included California in granting the release herein, which includes claims which may be unknown to you at present, you acknowledge that you have read and understand Section 1542 of the California Civil Code: "A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party." You hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to your release of any unknown or unsuspected claims herein.

You also waive any rehire or reemployment rights and agree not to apply for future employment with the Company.

b. If you commence, continue, join in, or in any other manner attempt to assert any Claim released herein against any of the Released Parties or otherwise breach the promises made in this Release, you shall reimburse the Released Parties for all attorneys' fees incurred by the Released Parties in defending against such a Claim and the Company shall have a right to the return of all Consideration paid to you pursuant to this Release, together with interest thereon, and to cease furnishing to you any further Consideration; provided that this right of return of such Consideration and the cessation of payment of

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further Consideration is without prejudice to the Released Parties' other rights hereunder, including any right to obtain an agreement and release of any and all claims against the Released Parties.

c. You agree that you will not bring any lawsuits or claims of any kind against the Released Parties for any of the Claims released herein and that you will not accept and hereby waive the benefits of **Administrative Agent** promptly after any such lawsuits or claims of any kind brought on your behalf against the Released Parties.

d. setoff and application; Notwithstanding the foregoing, you are not releasing any of the following claims: (i) any rights or claims for indemnification you may have pursuant to any written indemnification agreement with the Company to which you are a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (ii) any rights which cannot be waived as a matter of law; (iii) claims for vested retirement benefits, if any, under any Company sponsored plan; (iv) claims for vested benefits, if any, under any long-term benefit plan in which you participate; or (v) any claims arising from the breach of this Release. Nothing in this Release shall interfere with or waive your right to enforce this Release in a court of competent jurisdiction or seek a judicial determination of the validity of the release of your rights under the Age Discrimination in Employment Act.

e. **provided** The Company is providing you with the Consideration solely to ease the impact of your separation from employment with the Company. The fact that the Company is offering Consideration **failure** to you should not be understood as nor is it intended to be an admission that any of the Released Parties has violated your rights (or the rights of anyone else) in any manner whatsoever.

7. You further acknowledge and agree that you will not, unless required by law, disclose to anyone other than members of the Fluence Legal department or the Fluence HR department any information regarding the following:

a. Any information regarding the practices, procedures, trade secrets, inventions, technology, customer lists, product marketing or other confidential information of the Company or Released Parties.

b. The terms of this Release, except that you may disclose this information to your attorney, accountant or other professional advisor to whom you must make the disclosure in order for them to render professional services to you. You will instruct them, however, to maintain the confidentiality of this information just as you must. In addition, you will not make, or cause to be made, any statements, observations or opinions, or communicate any information (whether oral or written) (collectively "Statements") including Statements to the press, media, Company employees, clients, customer, contractors or any other party, that disparage or are likely in any way to harm the reputation of the Company or Released Parties.

8. In the event that you breach any of your obligations under this Release, the Company will be entitled to the relief provided under this Release, including, but not limited to, Section 6(b), and to obtain all other relief provided by law or equity.

9. This Release shall be governed by Delaware law and you hereby submit to and agree that the exclusive jurisdiction for any suit, action or proceeding involving this Release will be any federal or state court located in Arlington County, Virginia. If any provision of this Release is deemed to be unenforceable, it give such notice shall not affect the enforceability of the remaining provisions of this Release. This document, the Agreement and the Executive Severance Plan contain the entire agreement between you and the Company concerning the subject matter contained herein. For the avoidance of doubt, you acknowledge and agree that you remain subject to the covenants included in Exhibit B of the Executive Severance Plan and such covenants are governed by the terms of Executive Severance Plan.

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10. Nothing contained in this Release shall be deemed to preclude you from providing truthful testimony or information pursuant to a valid court order or similar legal process; provided, however, that prior to making any such disclosure, you will promptly notify the Company validity of such request or requirement. In any such case, you will use your reasonable efforts to cooperate with the Company in its efforts in responding to such court order or legal process. setoff and application. Notwithstanding the foregoing, nothing contained to the extent prohibited by applicable law as described in this Release the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Guarantor shall be deemed to preclude you from, or require you to notify or obtain authorization from the Company prior to, (i) filing a charge with or cooperating with any requests or investigation by any federal, state or local government agency including without limitation the U.S. Equal Employment Opportunity Commission, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, or the U.S. National Labor Relations Board, provided that, you do release any right you have to receive monetary damages in connection with the proceeding; (ii) exercising any rights you may have under Section 7 of the U.S. National Labor Relations Act; (iii) reporting possible violations of federal law or regulation applied to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions Excluded Swap Obligations of federal law or regulation; or such Guarantor.

(iv) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that you have reasonSection 10.09 Governing Law; Jurisdiction; Consent to believe is unlawful.

You also acknowledge receipt Service of the following notice of immunity rights under the U.S. Defend Trade Secrets Act, which states: "(1) An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (2) an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose a trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal, and (B) does not disclose a trade secret, except pursuant to court order."

11. You acknowledge and agree to provide reasonable cooperation at mutually agreeable times and places to the Released Parties in connection with the Released Parties' prosecution or defense in any legal proceeding of any and all causes of action, suits, disputes, controversies, contentions, differences, claims and demands of any kind whatsoever concerning or related to any matter that arises out of events or occurrences during your involvement in the business and affairs of the Released Parties, except for any such Claims that you may assert. Reasonable cooperation shall include but shall not be limited to liaising with internal and external counsel of the Released Parties, participating in discovery, preparing for hearings and depositions, and attending hearings and depositions. You will be reimbursed for reasonable out of pocket expenses incurred in connection with such cooperation. Except as otherwise required pursuant to applicable law or court order, or as otherwise expressly permitted under this Release, and in each such case, provided that you comply with the requirements of any provisions expressly permitting disclosure, you further agree to maintain in strict confidence any information or knowledge you have regarding the legal proceedings involving the Released Parties or Claims against the Released Parties. You agree to communicate with any party adverse to the Released Parties, or with a representative, agent or legal counsel for any such Claims solely through legal counsel for the Released Parties, although you may at your own expense retain your own counsel in connection with any such matter.

12. You acknowledge and agree (i) that you have not been forced or pressured in any manner whatsoever to sign this Release; (ii) that you have agreed to all of its terms voluntarily; (iii) that you have read this Release in its entirety and understand the terms of the Release; and (iv) that you received a copy of this Release on or prior to the Termination Date and have been given at least twenty-one (21) days from the receipt of this Release to consider all of its terms

and to consult with counsel of your choice, which we advise you to do. Any changes to this Release, the Agreement or the Executive Severance Plan during that period, whether material or not, will not

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extend the 21-day period. You may revoke your acceptance of the Release by sending written notice of your intent to revoke your acceptance, to the Company, at the following address: c/o Larissa Cerqueira, Chief Human Resources Officer, 4601 N. Fairfax Drive, Suite 600, Arlington, Virginia 22203, within seven (7) days of your execution of the Release. If you revoke this Release, this Release and the promises contained herein shall automatically be deemed null and void and you will not be entitled to any severance pay or any other benefits provided under this Release or the Executive Severance Plan. If you do not revoke your acceptance, your agreement will become effective on the eighth day after the date on which it is signed.

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To accept this Agreement, please date and sign this document and return it to me. An extra copy for your files is enclosed. We wish you success in your future endeavors.

Very truly yours,

Fluence Energy, LLC

By:

Name:

Title:

By:

Name:

Title:

BY SIGNING THIS RELEASE, I ACKNOWLEDGE (i) THAT I HAVE NOT BEEN FORCED OR PRESSURED IN ANY MANNER WHATSOEVER TO SIGN THIS RELEASE; (ii) THAT I HAVE HAD AT LEAST 21 DAYS FROM THE RECEIPT OF THIS RELEASE TO CONSIDER ALL OF THE TERMS OF THIS RELEASE WITH COUNSEL OF MY CHOICE, WHICH WE ADVISE YOU TO DO; (iii) THAT I HAVE READ THIS RELEASE IN ITS ENTIRETY AND UNDERSTAND THE TERMS OF THE RELEASE; AND (iv) THAT I VOLUNTARILY AGREE TO THEM. I FURTHER UNDERSTAND THAT I MAY REVOKE MY ACCEPTANCE OF THE RELEASE BY SENDING WRITTEN NOTICE OF MY INTENT TO REVOKE MY ACCEPTANCE TO THE COMPANY, AT THE FOLLOWING ADDRESS: c/o LARISSA CERQUEIRA, CHIEF HUMAN RESOURCES OFFICER, 4601 N. FAIRFAX DRIVE, SUITE 600, ARLINGTON, VA 22203, WITHIN SEVEN (7) DAYS OF MY EXECUTION OF THIS RELEASE. IF I HAVE NOT REVOKED MY ACCEPTANCE, THIS RELEASE WILL BECOME EFFECTIVE ON THE EIGHTH DAY AFTER IT IS EXECUTED AND RETURNED TO THE COMPANY.

By:

Krishna Vanka

Agreed to this day of 202

Exhibit 10.3

4601 N. Fairfax Drive, Suite 600 | Arlington, VA 22203  
+1 (703) 682-6629  
fluenceenergy.com

March 31, 2021

Carol Couch

Dear Carol,

I am delighted to confirm an offer from Fluence, a Siemens and AES company, as VP, Global Operations Support & Services, reporting to Manuel Perez Dubuc, in Arlington, VA. Fluence requires certification of your eligibility to work in the United States and will require documents evidencing such eligibility from you. You will be required to complete a background check and sign a Confidentiality and Proprietary Information Agreement prior to beginning employment with Fluence. In this position you will participate in, or be eligible for, the compensation and benefits outlined below in accordance with the job being evaluated as Executive level.

#### COMPENSATION AND BENEFITS

Base Salary: Your position has been initially assigned an Executive in the Fluence structure. Your initial base salary will be \$325,000. You will be paid monthly, and your base salary will be reviewed annually in accordance with the Fluence policy and practice.

Annual Incentive Plan: Your annual bonus target will be 45% of your annual base salary earnings during the year. Bonuses will be awarded based upon annual individual performance and business performance measured against established objectives and they are typically paid in the first quarter following the end of each fiscal year. Your potential receipt of an annual bonus is subject to the discretion of Fluence and the amount of any award made to you will depend on a number of factors in addition to your individual performance, including your employment by Fluence at the time that such awards are made.

Retirement: You will be eligible to participate in The Fluence Energy Savings Plan which is a 401(k) plan (the "Savings Plan"), after you receive your first paycheck. You may contribute up to 50% of your gross salary to your account in accordance with the terms and conditions of the Retirement Plan and you will receive a company matching contribution of 100% of your contributions up to 5% of your gross salary.

Sign-On Bonus: You are eligible to receive a sign-on bonus equal to \$50,000, payable to you once you complete sixty (60) days of employment at Fluence.

Long Term Incentive Award: The Board of Managers of Fluence has approved a long-term incentive for all employees. You will be eligible to receive a grant of Unit Process Options with a grant value of \$1,000,000, pursuant to the terms and conditions of Fluence's long-term incentive plan. The terms and conditions of such plan and the award thereunder will be finalized and communicated to you at a later date.

#### ACCEPTANCE PROCESS

Carol, your experience and background will be an asset to this position, and we look forward to you joining Fluence.

To confirm your acceptance of this offer, please call or email me and then sign and email a copy of all pages of this letter to Human Resources, attention of Larissa Cerqueira, [Larissa.Cerqueira@fluenceenergy.com](mailto:Larissa.Cerqueira@fluenceenergy.com) within three business days of the date on this letter. If you have any questions concerning the terms of this offer, please do not hesitate to contact me.

Sincerely,

/s/ Larissa Cerqueira  
Larissa Cerqueira CHRO

*Your employment with Fluence Energy, LLC, is and will be "at will" employment, for an indefinite period of time. This means that you or the Company may terminate the employment relationship at any time, for any reason or for no reason. No oral or written representation made by anyone at Fluence may change the "at will" nature of this relationship. You retain the option, as does Fluence, of ending your employment with Fluence at any time, with or without notice and with or without cause. This letter is governed by the laws of Virginia. Fluence is an "at will" employer; this letter does not constitute a contract for employment.*

Read and Accepted:

Signature: /s/ Carol Couch

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Date: 4/1/2021

Start Date: May 3, 2021

Exhibit 10.4

July 5, 2023

Dear Carol Couch,

*In connection with your separation from your role as Senior Vice President and Chief Supply Chain and Manufacturing Officer of Fluence Energy, LLC ("Fluence" and, together with its affiliated and related entities, the "Company"), we believe it is mutually beneficial to put in writing the terms of such separation. This letter (this "Agreement"), upon your signature, will constitute an agreement between us regarding the terms and conditions of your separation from the Company.*

*From the date hereof until July 16, 2023, you shall continue in your current role as Senior Vice President and Chief Supply Chain and Manufacturing Officer, including performance of all duties associated therewith, on the same terms and conditions as in effect as of the date hereof. Effective July 17, 2023, you shall transition into a role as a non-executive employee of the Company and hereby resign from all roles as an executive officer of the Company and its subsidiaries on such date (and shall take all actions requested by the Company to effect such resignations). From July 17, 2023 until July 31, 2023 (the "Transition Period"), you shall provide the transition services to the Company from time to time, as reasonably requested by you by the President and Chief Executive Officer and Chief Financial Officer (such services, the "Transition Services"), provided that the parties acknowledge and agree that the level of Transition Services to be provided to the Company is reasonably anticipated to be no less than 20% of the average level of services performed during the immediately preceding 36-month period. In consideration of the Transition Services, the Company will provide you with your annual base salary through July 31, 2023, your annual cash incentive opportunity and welfare benefits consistent with the terms thereof as provided to you as of the date hereof. Further any outstanding equity awards held by you shall continue to be eligible to vest through the end of the Transition Period. For all severance plans and in all benefit plans, you will be treated as though you retained the position as Senior Vice President and Chief Supply Chain and Manufacturing Officer through the end of the Transition Period.*

Your employment will terminate effective July 31, 2023 (the "Termination Date"). (a) Subject to your compliance with this letter (including, without limitation Section 8.13, the provision of Transition Services through the end of the Transition Period), you shall be eligible to receive the severance payments and benefits payable upon an Involuntary Termination (as defined in the Fluence Energy, Inc. Executive Severance Plan (the "Executive Severance Plan")) outside of the CIC Period (as defined in the Executive Severance Plan), on the terms and conditions set forth in the Executive Severance Plan (including, without limitation, the requirement to execute and not revoke a release, a copy of which attached hereto as Exhibit A, within 21 days of the Termination Date).

To consent to the terms of and accept this Agreement please date and sign this document and return it to Larissa Cerqueira, Chief Human Resources Officer.

Very truly yours,

**Fluence Energy, LLC**

By: /s/ Larissa Cerqueira

Name: Larissa Cerqueira

Title: CHRO

By: /s/ Carol Couch

Name: Carol Couch

#### **Exhibit A**

##### **General Release**

1. Your employment is terminated effective July 31, 2023 (the "Termination Date"). You acknowledge and agree that you have been paid your earned compensation through and including the Termination Date. You have received or will receive by separate cover information regarding your rights to continuation of your health insurance which will cease as of the last day of the month in which your Termination Date occurs. You acknowledge and agree that you have submitted all expense reimbursement requests for legitimate business expense to Fluence Energy, LLC (together with its affiliated and related entities, the "Company") and the Company has reimbursed you in accordance with its existing policies for all such legitimate expenses you incurred on Company business prior to the Termination Date.
2. You represent and warrant that you have returned all reports, files, memoranda, records, software, laptops, computer equipment, cellular phones, credit cards, cardkey passes, door and file keys, computer access codes or disks and instructional manuals and other physical or personal property that you received in connection with your employment with the Company that you then have in your possession, and you shall not retain any copies, duplicates, reproductions or excerpts thereof.
3. In consideration for your execution of this general release (the "Release") and return of it to the Company **no earlier than the Termination Date and no later than August 21, 2023** and provided you do not timely revoke your acceptance of this Release, the Company will provide to you with the severance payments and benefits payable upon an Involuntary Termination (as defined in the Fluence Energy, Inc. Executive Severance Plan (the "Executive Severance Plan")) outside of the CIC Period (as defined in the Executive Severance Plan), on the terms and conditions set forth in the Executive Severance Plan.
4. Notwithstanding any provision of this Release to the contrary, if any benefit provided under that certain Separation Agreement between you and the Company (the "Agreement"), this Release or the Executive Severance Plan is subject to the provisions of Section 409A of the Internal Revenue Code of

1986, as amended, and the regulations and other binding guidance promulgated thereunder (collectively, "Section 409A"), the provisions of the Release will be administered, interpreted and construed in a manner necessary to comply with Section 409A or an exception thereto (or disregarded to the extent such provision cannot be so administered, interpreted, or construed). Notwithstanding any provision of the Release to the contrary, in no event shall the Administrator (as defined in the Executive Severance Plan), the Company, (or their employees, officers, directors or affiliates) have any liability to you (or any other person) due to the failure of the Agreement, this Release, or the Executive Severance Plan to satisfy the requirements of Section 409A or any other applicable law.

**5. Unless you accept this Release by timely executing and returning it by the date specified above, you shall not be entitled to any of the payments and benefits for which you may be eligible under this Release or the Executive Severance Plan.** If you participate in any long term compensation plans, please see any relevant plan and notice documents (including, for the avoidance of doubt, the 2020 Unit Option Plan of Fluence Energy, LLC) for other important provisions that may be triggered by your termination.

**6. The intent of this section is to secure your promise to release all claims and not to sue the Company, or anyone connected with it, for any harm you may claim to have suffered in connection with your employment or the termination of your employment, in return for the benefits described in this Release. Accordingly, in consideration for the payments, benefits and promises contained in this Release, including, without limitation, under the Executive Severance Plan (collectively, the "Consideration"), and intending to be legally bound hereby, you hereby agree as follows:**

**a. Except as otherwise provided in this Section 6(a), you knowingly and voluntarily hereby release, to the fullest extent permitted by law, the Company and all of its past, present and/or future related entities, including but not limited to parents, divisions, affiliates and subsidiaries, and each current and former bonus, pension, welfare, or other benefit plans sponsored by any of the foregoing, and each of the respective officers, directors, members, stockholders, trustees, employees, agents, representatives, administrators, attorneys, insurers, fiduciaries, predecessors, successors and assigns of such entities and/or benefit plans, in their individual and/or representative capacities (hereinafter collectively referred to as the "Released Parties"), from any and all causes of action, suits, agreements, promises, damages, disputes, controversies, contentions, differences, judgments, claims and demands of any kind whatsoever ("Claims") which you or your heirs, executors, administrators, successors and assigns ever had, now have or may have against the Released Parties, whether known or unknown to you, and whether asserted or unasserted, (i) by reason of your employment and/or cessation of employment with the Company, other than the Consideration in accordance with its terms, or (ii) that otherwise arose or is based on facts which occurred on or prior to the date that you sign this Release.**

Such released Claims include, but are not limited to, any and all Claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Fair Labor Standards Act, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act of 1967, the Older Workers' Benefit Protection Act of 1990, the Americans With Disabilities Act, the Employee Retirement Income Security Act of 1974 (including, without limitation, any claim for severance pay), the Virginia Human Rights Act, the Virginians with Disabilities Act, the Virginia Overtime Wage Act, the Virginia Equal Pay law, the Virginia Occupational Safety and Health Act, the Virginia Payment of Wage Law, and/or the Virginia Minimum Wage Act, the California Fair Employment and Housing Act, the California Equal Pay Law, the Moore-Brown-Roberti Family Rights Act of 1991, the California Labor Code, the California WARN Act, the California False Claims Act and the California Corporate Criminal Liability Act, and any and all other federal, state or local laws, statutes, rules and regulations pertaining to employment (each as amended); any and all Claims under state contract or tort law; any and all Claims based on the design or administration of any employee benefit plan, program policy, procedure or arrangement, whether written or oral; any and all Claims for wages, commissions, bonuses, continued employment in any position, and compensatory, punitive or liquidated damages; and any and all Claims for attorneys' fees and costs.

If your place or places of work with the Company has included California in granting the release herein, which includes claims which may be unknown to you at present, you acknowledge that you have read and understand Section 1542 of the California Civil Code: **"A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party."** You hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to your release of any unknown or unsuspected claims herein.

You also waive any rehire or reemployment rights and agree not to apply for future employment with the Company.

**b. If you commence, continue, join in, or in any other manner attempt to assert any Claim released herein against any of the Released Parties or otherwise breach the promises made in this Release, you shall reimburse the Released Parties for all attorneys' fees incurred by the Released Parties in defending against such a Claim and the Company shall have a right to the return of all Consideration paid to you pursuant to this**

Release, together with interest thereon, and to cease furnishing to you any further Consideration; provided that this right of return of such Consideration

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and the cessation of payment of further Consideration is without prejudice to the Released Parties' other rights hereunder, including any right to obtain an agreement and release of any and all claims against the Released Parties.

c. You agree that you will not bring any lawsuits or claims of any kind against the Released Parties for any of the Claims released herein and that you will not accept and hereby waive the benefits of any such lawsuits or claims of any kind brought on your behalf against the Released Parties.

d. Notwithstanding the foregoing, you are not releasing any of the following claims: (i) any rights or claims for indemnification you may have pursuant to any written indemnification agreement with the Company to which you are a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (ii) any rights which cannot be waived as a matter of law; (iii) claims for vested retirement benefits, if any, under any Company sponsored plan; (iv) claims for vested benefits, if any, under any long-term benefit plan in which you participate; or (v) any claims arising from the breach of this Release. Nothing in this Release shall interfere with or waive your right to enforce this Release in a court of competent jurisdiction or seek a judicial determination of the validity of the release of your rights under the Age Discrimination in Employment Act.

e. The Company is providing you with the Consideration solely to ease the impact of your separation from employment with the Company. The fact that the Company is offering Consideration to you should not be understood as nor is it intended to be an admission that any of the Released Parties has violated your rights (or the rights of anyone else) in any manner whatsoever.

7. You further acknowledge and agree that you will not, unless required by law, disclose to anyone other than members of the Fluence Legal department or the Fluence HR department any information regarding the following:

a. Any information regarding the practices, procedures, trade secrets, inventions, technology, customer lists, product marketing or other confidential information of the Company or Released Parties.

b. The terms of this Release, except that you may disclose this information to your attorney, accountant or other professional advisor to whom you must make the disclosure in order for them to render professional services to you. You will instruct them, however, to maintain the confidentiality of this information just as you must. In addition, you will not make, or cause to be made, any statements, observations or opinions, or communicate any information (whether oral or written) (collectively "Statements") including Statements to the press, media, Company employees, clients, customer, contractors or any other party, that disparage or are likely in any way to harm the reputation of the Company or Released Parties.

8. In the event that you breach any of your obligations under this Release, the Company will be entitled to the relief provided under this Release, including, but not limited to, Section 6(b), and to obtain all other relief provided by law or equity.

9. This Release shall be governed by Delaware law and you hereby submit to and agree that the exclusive jurisdiction for any suit, action or proceeding involving this Release will be any federal or state court located in Arlington County, Virginia. If any provision of this Release is deemed to be unenforceable, it shall not affect the enforceability of the remaining provisions of this Release. This document, the Agreement and the Executive Severance Plan contain the entire agreement between you and the Company concerning the subject matter contained herein. For the avoidance of doubt, you acknowledge and agree that you remain subject to the covenants included in Exhibit B of the Executive Severance Plan and such covenants are governed by the terms of Executive Severance Plan.

10. Nothing contained in this Release shall be deemed to preclude you from providing truthful testimony or information pursuant to a valid court order or similar legal process; provided, however, that prior to making any such disclosure, you will promptly notify the Company of such request or requirement. In any such case, you will use your reasonable efforts to cooperate with the Company in its efforts in responding to such court order or legal process.

Notwithstanding the foregoing, nothing contained in this Release shall be deemed to preclude you from, or require you to notify or obtain authorization from the Company prior to, (i) filing a charge with or cooperating with any requests or investigation by any federal, state or local government agency, including without limitation the U.S. Equal Employment Opportunity Commission, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, or the U.S. National Labor Relations Board, provided that, you do release any right you have to receive monetary damages in connection with the proceeding; (ii) exercising any rights you may have under Section 7 of the U.S. National Labor Relations Act; (iii) reporting possible violations of federal law or regulation to any governmental agency or entity, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation; or (iv) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that you have reason to believe is unlawful.

You also acknowledge receipt of the following notice of immunity rights under the U.S. Defend Trade Secrets Act, which states: "(1) An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (2) an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose a trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal, and (B) does not disclose a trade secret, except pursuant to court order."

11. You acknowledge and agree to provide reasonable cooperation at mutually agreeable times and places to the Released Parties in connection with the Released Parties' prosecution or defense in any legal proceeding of any and all causes of action, suits, disputes, controversies, contentions, differences, claims and demands of any kind whatsoever concerning or related to any matter that arises out of events or occurrences during your involvement in the business and affairs of the Released Parties, except for any such Claims that you may assert. Reasonable cooperation shall include but shall not be limited to liaising with internal and external counsel of the Released Parties, participating in discovery, preparing for hearings and depositions, and attending hearings and depositions. You will be reimbursed for reasonable out of pocket expenses incurred in connection with such cooperation. Except as otherwise required pursuant to applicable law or court order, or as otherwise expressly permitted under this Release, and in each such case, provided that you comply with the requirements of any provisions expressly permitting disclosure, you further agree to maintain in strict confidence any information or knowledge you have regarding the legal proceedings involving the Released Parties or Claims against the Released Parties. You agree to communicate with any party adverse to the Released Parties, or with a representative, agent or legal counsel for any such Claims solely through legal counsel for the Released Parties, although you may at your own expense retain your own counsel in connection with any such matter.

12. You acknowledge and agree (i) that you have not been forced or pressured in any manner whatsoever to sign this Release; (ii) that you have agreed to all of its terms voluntarily; (iii) that you have read this Release in its entirety and understand the terms of the Release; and (iv) that you received a copy of this Release on or prior to the Termination Date and have been given at least twenty-one (21) days from the receipt of this Release to consider all of its terms and to consult with counsel of your choice, which we advise you to do. Any changes to this Release, the Agreement or the Executive Severance Plan during that period, whether

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material or not, will not extend the 21-day period. You may revoke your acceptance of the Release by sending written notice of your intent to revoke your acceptance, to the Company, at the following address: c/o Larissa Cerqueira, Chief Human Resources Officer, 4601 N. Fairfax Drive, Suite 600, Arlington, Virginia 22203, within seven (7) days of your execution of the Release. If you revoke this Release, this Release and the promises contained herein shall automatically be deemed null and void and you will not be entitled to any severance pay or any other benefits provided under this Release or the Executive Severance Plan. If you do not revoke your acceptance, your agreement will become effective on the eighth day after the date on which it is signed.

To accept this Agreement, please date and sign this document and return it to me. An extra copy for your files is enclosed. We wish you success in your future endeavors.

Very truly yours,

Fluence Energy, LLC

By:

Name:

Title:

By:

Name:

Title:

**BY SIGNING THIS RELEASE, I ACKNOWLEDGE (i) THAT I HAVE NOT BEEN FORCED OR PRESSURED IN ANY MANNER WHATSOEVER TO SIGN THIS RELEASE; (ii) THAT I HAVE HAD AT LEAST 21 DAYS FROM THE RECEIPT OF THIS RELEASE TO CONSIDER ALL OF THE TERMS OF THIS RELEASE WITH COUNSEL OF MY CHOICE, WHICH WE ADVISE YOU TO DO; (iii) THAT I HAVE READ THIS RELEASE IN ITS ENTIRETY AND UNDERSTAND THE TERMS OF THE RELEASE; AND (iv) THAT I VOLUNTARILY AGREE TO THEM. I FURTHER UNDERSTAND THAT I MAY REVOKE MY ACCEPTANCE OF THE RELEASE BY SENDING WRITTEN NOTICE OF MY INTENT TO REVOKE MY ACCEPTANCE TO THE COMPANY, AT THE FOLLOWING ADDRESS: c/o LARISSA CERQUEIRA, CHIEF HUMAN RESOURCES OFFICER, 4601 N. FAIRFAX DRIVE, SUITE 600, ARLINGTON, VA 22203, WITHIN SEVEN (7) DAYS OF MY EXECUTION OF THIS RELEASE. IF I HAVE NOT REVOKED MY ACCEPTANCE, THIS RELEASE WILL BECOME EFFECTIVE ON THE EIGHTH DAY AFTER IT IS EXECUTED AND RETURNED TO THE COMPANY.**

By:

Carol Couch

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

Exhibit 10.5

AMENDMENT  
OF THE  
FLUENCE ENERGY, LLC PHANTOM EQUITY INCENTIVE PLAN  
October 17, 2021

WHEREAS, Fluence Energy, LLC, a Delaware limited liability company (the "Company"), has previously adopted the Fluence Energy, LLC Phantom Equity Incentive Plan, (and as may be amended from time to time, the "Plan");

WHEREAS, Section 8.1 of the Plan allows the Board of Managers of the Company (the "Board") to amend the Plan in certain respects from time to time;

WHEREAS, the Board has determined that it is appropriate to amend Plan and have the Plan assumed by Fluence Energy, Inc., effective as of the date Fluence Energy, Inc.'s registration statement on Form S-1 is declared effective (the "Amendment Date"), subject to the consummation of the initial public offering of Fluence Energy, Inc. Class A Common Stock (the "IPO").

NOW, THEREFORE, BE IT RESOLVED, that the Plan is hereby revised as set forth below and assumed by Fluence Energy, Inc., effective as of the Amendment Date, and the Plan, as revised by this amendment, constitutes the entire Plan as amended through the Amendment Date. Capitalized terms not defined herein shall have the meanings assigned to them under the Plan.

Notwithstanding any other provision in the Plan, the Plan is hereby amended as set forth below:

1. The definition of "Fluence" and the "Company" in Section 1.1 is hereby amended to be "Fluence Energy, Inc. (or any successor thereto)."
2. The definition of "Fluence Units" in Section 2.12 is hereby amended as follows:

"Fluence Units" shall mean any shares or other ownership interest in Fluence (or any successor thereto) issued by Fluence (or any successor thereto) from time to time.
3. The definition of "Units" in Section 2.22 is hereby amended as follows:

"Units" or "Fluence Shares" shall mean shares of the Class A Common Stock of Fluence."
4. Section 6.2(c) of the Plan is hereby amended to read as follows:

"(c) Form of Payment.

(i) Any payment due to a Participant in accordance with this Section 6.2 may be paid in cash or, subject to applicable securities laws, any such other form of consideration deemed appropriate by the Administrator, including without limitation, securities of any acquiring or successor entity(ies) or any Affiliate(s) thereof.

(ii) Fluence hereby reserves 1,080,000 Fluence Shares for issuance under the Plan (the "Share Reserve"), provided that, in the event of any nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off or recapitalization through a large, nonrecurring cash dividend,

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that affects the number or kind of Fluence Shares (or other Company securities) or the share price of Fluence Shares (or other Company securities) and causes a change in the per share value of Fluence Shares underlying outstanding awards, shall equitably adjust the Share Reserve. Fluence Shares issued under the Plan may consist of authorized but unissued shares, shares purchased on the open market or treasury shares."

(iii) To the extent not preempted by federal law, this amendment shall be construed in accordance with and governed by the internal law of the State of New York.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any Federal court of the United States of America sitting in New York County, Borough of Manhattan (or, in the event such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in New York County, Borough of Manhattan) and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.10 Waiver Of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Confidentiality.

(a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below) and to not use the Information for any purpose except in connection with the Loan Documents, except that Information may be disclosed (i) to

its and its Affiliates' directors, shareholders, officers, employees, controlling Persons, representatives and agents, including accountants, legal counsel and other professionals, experts or advisors, or to any credit insurance provider relating to any Loan Party and its obligations, in each case whom it reasonably determines needs to know such information in connection with this Agreement and the transactions contemplated hereby and who are informed of the confidential nature of such information and instructed to keep such information confidential, (ii) to the extent requested by any regulatory authority, examiner regulating banks or banking, or other self-regulatory authority having oversight over the Administrative Agent, any Issuing Bank, any Lender or any of their respective Affiliates, (iii) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable laws or regulations or by any subpoena or similar legal process based on the advice of counsel (in which case the Administrative Agent, such Issuing Bank or such Lender, as applicable, agrees, to the extent practicable and not prohibited by applicable law and other than with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising routine examinations or regulatory authority, to inform the Borrowers promptly thereof), (iv) to any other party to this Agreement,

(v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or prospective Participant in, any of its rights or obligations under this Agreement, or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party and its obligations, (vii) with the consent of the Parent Borrower, (viii) to the extent such information (A) becomes publicly available other than as a result of a breach of this Section, (B) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than any Borrower or (C) is independently developed by the Administrative Agent, an Issuing Bank or a Lender without use of or reference to any such confidential information and otherwise without violating this Section 10.12, (ix) on a confidential basis to any rating agency in connection with rating any Borrower or any of its Subsidiaries or the Loans hereunder, (x) to the CUSIP bureau, solely to the extent such confidential information is necessary to obtain CUSIP numbers and in consultation with the Borrower Representative, or (xi) for purposes of establishing a "due diligence" defense. In addition, the Administrative Agent, the Issuing Banks and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent, the Issuing Banks and the Lenders in connection with the administration of this Agreement, the other Loan Documents, the Letters of Credit and the Loans. For the purposes of this Section, "Information" means all memoranda or other information received from or on behalf of any Loan Party or any of its Subsidiaries relating to any Loan Party or any Subsidiary or any of their respective business that is identified by the Borrowers as confidential, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any of its Subsidiaries. Any Person required to maintain the confidentiality of information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 10.12(A) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(c) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY ANY LOAN PARTY OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE LOAN PARTIES AND THEIR RELATED

PARTIES OR ITS SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE LOAN PARTIES AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 10.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 10.14 No Advisory or Fiduciary Responsibility. In connection with all aspects of each Transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Loan Parties acknowledge and agree, and

acknowledge their respective Subsidiaries' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders are arm's-length commercial transactions between the Loan Parties and their Affiliates, on the one hand, and the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders, on the other hand, (ii) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the Transactions contemplated hereby and by the other Loan Documents; (b) (i) each of the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Subsidiaries, or any other Person and (ii) neither the Administrative Agent, any Arranger, any Issuing Bank, nor any Lender has any obligation to any Loan Party or any of its Affiliates with respect to the Transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Arrangers, the Issuing Banks and the Lenders and their respective Affiliates may have economic interests that may conflict with those of the Loan Parties and their Affiliates and may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and neither the Administrative Agent, any Arranger, any Issuing Bank, nor any Lender has any obligation to disclose any of such interests to any Loan Party or its Affiliates. Each Loan Party, on behalf of itself and each of its Subsidiaries, agrees that nothing in the Loan Documents or otherwise will be deemed to create

an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Administrative Agent, any Arranger, any Issuing Bank or any Lender, on the one hand, and any Loan Party, any of its Subsidiaries, or its stockholders or affiliates, on the other.

**Section 10.15 Electronic Execution of Assignments and Certain Other Documents.** The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include Electronic Signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state or provincial laws based on the Uniform Electronic Transactions Act.

**Section 10.16 USA PATRIOT Act.** Each Lender and each Issuing Bank that is subject to the requirements of the USA Patriot Act hereby notifies each Borrower and each Guarantor that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Borrower and each Guarantor, which information includes the name and address of each Borrower and each Guarantor and other information that will allow such Lender or such Issuing Bank to identify each Borrower and each Guarantor in accordance with the USA Patriot Act. Each Borrower and each Guarantor shall, promptly following a request by the Administrative Agent, any Issuing Bank or any Lender, provide all documentation and other information that the Administrative Agent, such Issuing Bank or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

**Section 10.17 Releases of Guarantors and Liens.**

(a) In the event that (i) all the Equity Interests in any Guarantor (other than the Parent) are sold, transferred or otherwise disposed of to a Person (other than any Loan Party or its Subsidiaries) in a transaction permitted under this Agreement, or (ii) a Guarantor (other than the Parent) ceases to be a Subsidiary or becomes a non-Wholly Owned Subsidiary, in each case, as a result of a transaction permitted under this Agreement, in the case of this clause (ii), so long as such transaction is consummated to a bona fide third party that is not an Affiliate of any Loan Party, the consideration received for such transaction is at least fair market value and the primary purpose of such transaction is not the release of any guarantee or Lien, then (x) such Guarantor shall be immediately, automatically and irrevocably released from its guarantee under the Loan Documents without any action of any Person and (y) the Administrative Agent shall, at the Loan Parties' expense, promptly take such action and execute such documents as the Borrowers may reasonably request to terminate the guarantee of such Guarantor and to release the Collateral owned by such Guarantor from the Liens created by the Security Documents.

(b) If (i) any of the Collateral shall be sold, transferred or otherwise disposed of by any Loan Party to a Person (other than any Loan Party) in a transaction that is permitted under Section 6.09 of this Agreement and is not prohibited under any other provision of this Agreement, (ii) any of the Collateral is owned by a Guarantor that is released from the Guaranty

in accordance with the terms hereof or (iii) otherwise approved, authorized or ratified in writing in accordance with Section 10.02, then (x) the Lien on such Collateral in favor of the Administrative Agent pursuant to the Loan Documents shall be immediately, automatically and irrevocably terminated and released without any action of any Person and (y) the Administrative Agent shall, at the Loan Parties' expense, promptly take such action and execute such documents as the Borrowers may reasonably request to release the Liens created by the Security Documents on such Collateral.

(c) At such time as all Obligations (including unreimbursed LC Disbursements, but excluding contingent obligations as to which no claim has been asserted) have been paid in full in cash and all Commitments have terminated or expired and no Letter of Credit shall be outstanding or subject

to any pending draw (other than Letters of Credit that have been Cash Collateralized or backstopped or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank), the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(d) The Administrative Agent may subordinate or release any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by clauses (c), (d) and (r) of Section 6.02 to the extent the documents governing such Indebtedness do not permit any other Lien (or any senior Lien, as applicable) on such property, and consent to and enter into (and execute documents permitting the filing and recording, where appropriate) the grant of easements and covenants and subordination rights with respect to real property, conditions, restrictions and declarations on customary terms, and subordination, non-disturbance and attornment agreements on customary terms reasonably requested by the Borrowers with respect to leases entered into by any Loan Party and its Subsidiaries, to the extent requested by the Borrowers and reasonably acceptable to the Administrative Agent.

Section 10.18 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of Delaware, without regard to New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of

such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the principles same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of conflicts the United States or a state of law the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.20 Joint and Several Liability.

(a) Each Borrower agrees that it is jointly and severally liable for all Obligations, except Excluded Swap Obligations, and all agreements under the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the date set forth in Section 10.17(c), and that such obligations are absolute and unconditional.

irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Borrower is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Lender in respect thereof (including the release of any security or principles guaranty); (iv) the insolvency of conflicts any Borrower; (v) any election by the Administrative Agent or any Lender in any proceeding under Debtor Relief Laws for the application of law Section 1111(b)(2) of the Bankruptcy Code (or any similar provisions of any other jurisdiction which could cause the application Debtor Relief Laws); (vi) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the laws Bankruptcy Code or otherwise (or any similar provisions of any jurisdiction other than Debtor Relief Laws); (vii) the State disallowance of Delaware.

\*\*\*\*\*

Executed as any claims of the first date set forth above. Administrative Agent or any Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise (or any similar provisions of any other Debtor Relief Laws); or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except full payment in cash.

FLUENCE ENERGY, LLC

/s/ Francis A. Fuselier

Name: Francis A. Fuselier

Title: SVP, General Counsel (b) Each Borrower agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under this Agreement, by any payments made hereunder or otherwise, until the prior payment in full in cash of all of the obligations hereunder and Secretary under any other Loan Document, the termination or expiration of all Letters of Credit and the permanent termination of all Commitments. Any amount paid to any Borrower on account of any such subrogation rights prior to the payment in full in cash of all of the obligations hereunder and under any other Loan Document and all other Obligations, the termination or expiration of all Letters of Credit and the permanent termination of all Commitments shall be held in trust for the benefit of the applicable Secured Parties and shall immediately be paid to the Administrative Agent for the benefit of the applicable Secured Parties and credited and applied against the obligations of the applicable Borrowers, whether matured or unmatured, in such order as the Administrative Agent shall elect. In furtherance of the foregoing, for so long as any obligations of the Borrowers hereunder, any Letters of Credit or any Commitments remain outstanding, each Borrower shall refrain from taking any action or commencing any proceeding against any other Borrower (or any of its successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made in respect of the obligations hereunder or under any other Loan Document of such other Borrower to any Secured Party.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

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

By:

Name:

Title:

By: /s/ Francis A. Fuselier

Name: Francis A Fuselier

Title: SVP, General Counsel and Secretary

*Signature Page to Amendment to Phantom Plan*

Exhibit 10.6

#### **REGISTRATION RIGHTS AGREEMENT JOINDER**

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement dated as of November 1, 2021 (as the same may hereafter be amended, the "**Registration Rights Agreement**"), among Fluence Energy, Inc., **FLUENCE ENERGY GLOBAL PRODUCTION OPERATION, LLC**, 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 **limited liability company**, 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.

Borrower

*[Signature Pages Follow]*

Accordingly, the undersigned has executed and delivered this Joinder as of the 19 day of December, 2023.

**SPT Invest Management, SARL**

/s/ Thomas Grünwald

Name: Thomas Grünwald

Title: Manager

/s/ Ramon Stöckle

Name: Ramon Stöckle  
Title: Manager

---

Agreed and Accepted as of December 19, 2023

Fluence Energy, Inc

.

By: */s/ Francis A. Fuselier*

Name:

Title:

Name: Francis A. Fuselier

Its: SVP, General Counsel & Secretary

Exhibit 10.7

#### STOCKHOLDERS AGREEMENT JOINDER

The undersigned is executing and delivering this joinder agreement ("Joinder Agreement") pursuant to the Stockholders Agreement, dated as of October 27, 2021, by and among Fluence Energy, Inc., a Delaware corporation (the "Corporation"), and the other parties thereto, as amended and restated, restated, amended, supplemented or otherwise modified from time to time (the "Stockholders Agreement"). Capitalized terms used, but not defined, in this Joinder Agreement shall have the meanings ascribed to them in the Stockholders Agreement.

The undersigned hereby joins and enters into this Joinder Agreement having acquired shares of Class A Common Stock as a Permitted Transferee of Siemens Pension-Trust e.V., a party to the Stockholders Agreement. By executing and delivering to the Corporation this Joinder Agreement, the undersigned hereby agrees to become a party to the Stockholders Agreement, to succeed to all of the rights and obligations of a "Stockholder" and an "Siemens Related Party" and to be fully bound by, and subject to, all of the covenants, terms and conditions of the Stockholders Agreement as though an original party thereto.

Accordingly, the undersigned has executed and delivered this Joinder Agreement as of the 19<sup>th</sup> day of December, 2023.

[Signature Pages Follow]

SPT INVEST MANAGEMENT, SARL

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

By: */s/* Thomas Grünwald

Name:

Title:

Name: Thomas Grünwald

Title: Manager

BARCLAYS BANK PLC, as Administrative Agent, the Swingline Lender, an Issuing Bank and a Lender

By: */s/* Ramon Stöckle

Name:

Title:

Name: Ramon Stöckle

Title: Manager

---

SPT INVEST MANAGEMENT, SARL

[ ], as a Lender

By:

Name:

Title: Authorized Signatory

Title:

By: Name:

Title:

Agreed and Accepted as of  
December 19, 2023

FLUENCE ENERGY, INC.

CERTIFICATION

I, Julian Nebreda, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fluence Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2024 May 9, 2024

Fluence Energy, Inc.  
By: /s/ Julian Nebreda  
Julian Nebreda  
Chief Executive Officer and President (*Principal*)  
(*Principal* Executive Officer)

Exhibit 31.2

#### CERTIFICATION

I, Ahmed Pasha, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Fluence Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2024 May 9, 2024

Fluence Energy, Inc.

By: /s/ Ahmed Pasha

Ahmed Pasha

*Senior Vice President and Chief Financial Officer (Principal Financial Officer)*

Exhibit 32.1

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Fluence Energy, Inc. (the "Company") for the quarter ended **December 31, 2023** **March 31, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Julian Nebreda, Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **February 8, 2024** **May 9, 2024**

By: /s/ Julian Nebreda

Julian Nebreda

*Chief Executive Officer and President (Principal Executive Officer)*

Exhibit 32.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Fluence Energy, Inc. (the "Company") for the quarter ended **December 31, 2023** **March 31, 2024** as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ahmed Pasha, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **February 8, 2024** **May 9, 2024**

By: /s/ Ahmed Pasha

Ahmed Pasha

*Senior Vice President and Chief Financial Officer (Principal Financial Officer)*

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