FORM 8-K

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): November 26, 2024

EOS ENERGY ENTERPRISES, INC.
(Exact name of registrant as specified in its charter)

Delaware	**001-39291**	**84-4290188**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

3920 Park Avenue
Edison, New Jersey 08820
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: **(732) 225-8400**

N/A
(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common stock, par value $0.0001 per share	EOSE	The Nasdaq Stock Market LLC
Warrants, each exercisable for one share of common stock	EOSEW	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

DOE Loan Guarantee Agreement, FFB Note Purchase Agreement and FFB Promissory Note

As previously disclosed, on August 31, 2023, the U.S. Department of Energy (the "DOE") issued a conditional commitment letter to Eos Energy Enterprises, Inc. (the "Company") for a loan facility of an aggregate principal amount of up to $398.6 million through the DOE's Clean Energy Financing Program (the "DOE Loan Program") to be arranged by the DOE and extended by the Federal Financing Bank (the "FFB"). On November 26, 2024, (i) the Company, the DOE, and the FFB entered into a Note Purchase Agreement (the "FFB Note Purchase Agreement") pursuant to which, among other things, the DOE provided a guarantee (the "DOE Guarantee") of the Company's (x) obligations to repay the term loan borrowings (such loans, collectively, the "Guaranteed Loan") provided by the FFB to the Company and evidenced by a future advance promissory note (the "FFB Promissory Note") and (y) the Company's other obligations owing to FFB in respect of the Guaranteed Loan and (ii) in connection and concurrently therewith, the Company entered into a Loan Guarantee Agreement (the "DOE Loan Guarantee Agreement", and together with the FFB Note Purchase Agreement, the FFB Promissory Note, the DOE Guarantee and the other documents executed and delivered in connection therewith, the "DOE Transaction Documents") with the DOE. The FFB Promissory Note provides for the extension of the Guaranteed Loan in an aggregate maximum principal amount of up to $277,497,000 and an aggregate maximum amount of capitalized interest of up to $25,953,000.

The DOE Transaction Documents provide for a multi draw term loan facility (the "DOE Loan Facility") under a series of at least two and, if the Company elects, up to four tranches of the Guaranteed Loan (each, a "Tranche"), subject to the achievement of certain milestone conditions, with each Tranche corresponding to the production, maintenance and development and operation of a given production line to be funded using the proceeds of such Tranche and the principal amount of each Tranche consisting of an amount not to exceed the lesser of: (i) the maximum principal amount designated for such Tranche in the DOE Loan Guarantee Agreement; and (ii) eighty percent (80%) of the Eligible Project Costs (as defined in the DOE Loan Guarantee Agreement) associated with the corresponding production line, subject to reallocation in accordance with the Loan Guarantee Agreement. Proceeds from the Guaranteed Loan will be used to reimburse the Company for Eligible Project Costs and fund certain required reserve amounts under the DOE Transaction Documents.

The final scheduled maturity date for the DOE Loan Facility is June 15, 2034. Interest and scheduled principal amortization payments on the Guaranteed Loan are payable quarterly, commencing on March 15, 2028. The Guaranteed Loans bear interest at the applicable U.S. Treasury rate plus a spread equal to 0.375%.

In connection with the closing of the DOE Loan Facility, as required by the DOE Loan Documents, the Company paid on November 22, 2024, certain fees and reimbursements expenses to DOE, its advisors and consultants, including fees and expenses in an aggregate amount of $3,865,017.37.

The Company is obligated to reimburse the DOE for any payments the DOE is required to make to the FFB in connection with the Guaranteed Loan. The Company's reimbursement obligations to the DOE under the DOE Loan Guarantee Agreement, together with all other obligations of the Company owing to DOE, FFB and other secured parties thereunder, are full recourse and secured by a lien on all real and personal property and all intellectual property collateral of the Company and its subsidiaries, including its Turtle Creek manufacturing site pursuant to, among other security agreements and similar instruments, a Security Agreement (the "Security Agreement") with Citibank, N.A., (the "DOE Collateral Agent"), as collateral agent for the benefit of DOE, FFB and the other secured parties under the DOE Loan Facility, entered into on November 26, 2024, and one or more leasehold mortgages and similar instruments to be entered into as a condition precedent to funding under the DOE Loan Facility, in each case, subject to an intercreditor arrangement with Cerberus (as defined below) governed by that certain Intercreditor Agreement, dated as of November 26, 2024, among the Company, its subsidiaries, Cerberus and the DOE Collateral Agent (the "Intercreditor Agreement"), which sets forth, among other things, the relative rights and remedies in respect of the Company's and its subsidiaries' assets (substantially all of which secure the obligations under both the DOE Loan Facility and the Cerberus Credit Agreement (as defined below)) and the sharing of payments and collections.

The approval and funding of any disbursements of the Guaranteed Loan will be subject to the satisfaction of conditions precedent, including, but not limited to, evidence of satisfaction of certain technical and performance-related conditions precedent, adequate project funding, reports from certain technical consultants and advisors, and the receipt of certain financial models demonstrating compliance with the financial covenants set forth in the DOE Loan Guarantee Agreement. The Company has submitted an initial advance request preliminarily, pending satisfaction of conditions precedent to funding, and anticipates receiving an initial funding under the DOE Loan Facility within the next 45 days. There can be no assurances that the Company will be able to meet the conditions and approvals needed to receive this initial funding or any subsequent funding under the DOE Loan Facility.

Under the DOE Loan Guarantee Agreement, the Company is subject to certain borrower and other affirmative and negative covenants customary for loan facilities extended under the DOE Loan Program including, among other things, covenants regarding (i) financial testing compliance, (ii) restrictions on operations and use, (iii) change of control, (iv) project-related reporting and information requirements and (v) compliance with the requirements of applicable law and the DOE Loan Program.

In addition, the DOE Loan Guarantee Agreement contains certain representations and warranties customary for loan facilities extended under the DOE Loan Program including, among other things, representations and warranties regarding: (i) the organization and existence of the Company, (ii) authority and the absence of any conflicts, (iii) capitalization, (iv) solvency and (v) compliance with applicable law and the DOE Loan Program. Capitalized terms used but not defined herein shall have the meanings given to them in the DOE Loan Guarantee Agreement.

Amendment to Cerberus Credit Agreement

As previously disclosed, on June 21, 2024, the Company entered into a credit and guaranty agreement (the "Credit Agreement"), by and among the Company, certain of the Company's subsidiaries as guarantors party thereto, CCM Denali Debt Holdings, LP, acting through Cerberus Capital Management II, L.P. ("Cerberus"), as administrative agent and collateral agent and the lenders party thereto from time to time (the "Lenders"), pursuant to which the Lenders have provided a $210.5 million secured multi-draw facility (the "Delayed Draw Term Loan") to be made in four installments ($170 million which has already been funded by the Lenders), and a $105 million revolving credit facility, to be made available at the Lenders' sole discretion and only if the Delayed Draw Term Loan is fully funded, on terms and subject to conditions set forth in the Credit Agreement. For additional terms of the Credit Agreement and the Delayed Draw Term Loan, please see the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 24, 2024.

On November 26, 2024, the Company entered into that certain Omnibus Amendment to Credit Documents (the "CCM Amendment"), by and among the Company, certain of the Company's subsidiaries as guarantors party thereto and the Lenders, pursuant to which among other things, the applicability of the Consolidated Revenue and EBITDA financial covenants were deferred until December 31, 2025 and certain provisions have been modified to conform with comparable provisions in the DOE Loan Guarantee Agreement and with the terms of the Intercreditor Agreement.

The foregoing descriptions of the FFB Note Purchase Agreement, FFB Promissory Note, Loan Guarantee Agreement and CCM Amendment are qualified in their entirety by reference to the FFB Note Purchase Agreement, FFB Promissory Note, Loan Guarantee Agreement and Cerberus Amendment, copies of which are filed as Exhibit 10.1, 10.2, 10.3 and 10.4 to this Current Report on Form 8-K (this "Report") and are incorporated into this Item 1.01 by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information contained in Item 1.01 of this Report on Form 8-K regarding the FFB Note Purchase Agreement, FFB Promissory Note, Loan Guarantee Agreement, and Security Agreement are incorporated into this Item 2.03.

Item 7.01 Regulation FD Disclosure.

On December 3, 2024, the Company issued a press release announcing the entry into the FFB Note Purchase Agreement, FFB Promissory Note, Loan Guarantee Agreement and Cerberus Amendment. A copy of this press release is attached hereto as Exhibit 99.1 to this Report and is incorporated herein by reference.

The information in Item 7.01 of this Report, including Exhibit 99.1, is being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities under that section. Further, the information in Item 7.01 of this Report, including Exhibit 99.1, shall not be deemed to be incorporated by reference into the filings of the Company under the Securities Act of 1933, as amended (the "Securities Act") or the Exchange Act, whether made before or after the date hereof and regardless of any general incorporation language in such filing.

Forward-Looking Statements

Except for the historical information contained herein, the matters set forth in this Report are forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, the FFB Credit Facility and statements regarding the receipt of funds under the FFB Credit Facility and the anticipated use of proceeds therefrom, obtaining the requisite approvals from the DOE to receive guarantees under the Loan Guarantee Agreement, our ability to meet the applicable conditions precedent under the Loan Guarantee Agreement, statements that refer to outlook, projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are based on our management's beliefs, as well as assumptions made by, and information currently available to, them. Because such statements are based on expectations as to future financial and operating results and are not statements of fact, actual results may differ materially from those projected.

Factors which may cause actual results to differ materially from current expectations include, but are not limited to: changes adversely affecting the business in which we are engaged; our ability to forecast trends accurately; our ability to generate cash, service indebtedness and incur additional indebtedness; our ability to achieve the operational milestones on the Delayed Draw Term Loan; our ability to raise financing in the future, including the discretionary revolving facility from Cerberus; our customers' ability to secure project financing; the amount of final tax credits available to our customers or to the Company pursuant to the Inflation Reduction Act, and uncertainties around our ability to meet the applicable conditions precedent to any funding under the DOE Loan Facility; our ability to continue to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately; fluctuations in our revenue and operating results; competition from existing or new competitors; our ability to convert firm order backlog and pipeline to revenue; risks associated with security breaches in our information technology systems; risks related to legal proceedings or claims; risks associated with evolving energy policies in the United States and other countries and the potential costs of regulatory compliance; risks associated with changes to the U.S. trade environment; risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19; our ability to maintain the listing of our shares of common stock on NASDAQ; our ability to grow our business and manage growth profitably, maintain relationships with customers and suppliers and retain our management and key employees; risks related to the adverse changes in general economic conditions, including inflationary pressures and increased interest rates; risk from supply chain disruptions and other impacts of geopolitical conflict; changes in applicable laws or regulations; the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors; other factors beyond our control; risks related to adverse changes in general economic conditions; and other risks and uncertainties.

The forward-looking statements contained in this Report are also subject to additional risks, uncertainties, and factors, including those more fully described in the Company's most recent filings with the SEC, including the Company's most recent Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K. Further information on potential risks that could affect actual results will be included in the subsequent periodic and current reports and other filings that the Company makes with the SEC from time to time. Moreover, the Company operates in a very competitive and rapidly changing environment, and new risks and uncertainties may emerge that could have an impact on the forward-looking statements contained in this Report.

Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Note Purchase Agreement, dated November 26, 2024, by and among Eos Energy Enterprises, Inc., the U.S. Department of Energy and the Federal Financing Bank.
10.2	Future Advance Promissory Note of Eos Energy Enterprises, Inc., dated November 26, 2024.
10.3*#	Loan Guarantee Agreement, dated November 26, 2024, by and between Eos Energy Enterprises, Inc. and the U.S. Department of Energy.
10.4*#	Amendment to Credit Agreement, dated June 21, 2024, by and between Eos Energy Enterprises, Inc. and Cerberus Capital Management L.P.
99.1	Press release, dated December 3, 2024, issued by Eos Energy Enterprises, Inc. (furnished pursuant to Item 7.01).
104	Cover Page Interactive Date File (embedded with the Inline XBRL document).

* Portions of these exhibits have been omitted pursuant to Item 601(b)(10) of Regulation S-K because they are both (i) not material and (ii) contain the type of information that the Company customarily and actually treats as private and confidential.

\# Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplementally a copy of any omitted exhibit or schedule upon request by the Securities and Exchange Commission.

SIGNATURE

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

EOS ENERGY ENTERPRISES, INC.

Dated: December 3, 2024

By: /s/ Nathan Kroeker
Name: Nathan Kroeker
Title: Chief Financial Officer

NOTE PURCHASE AGREEMENT made as of November 26, 2024, by and among the **FEDERAL FINANCING BANK** ("FFB"), a body corporate and instrumentality of the United States of America, **EOS ENERGY ENTERPRISES, INC.** (the "Borrower"), a corporation duly organized and existing under the laws of the State of Delaware, and the **SECRETARY OF ENERGY, acting through the Department of Energy** (the "Secretary").

WHEREAS, the Secretary is authorized, pursuant to the Guarantee Act (as hereinafter defined), to guarantee loans that meet the requirements of the Guarantee Act; and

WHEREAS, FFB is authorized, under section 6(a) of the FFB Act (as hereinafter defined), to make commitments to purchase, and to purchase on terms and conditions determined by FFB, any obligation that is issued, sold, or guaranteed by an agency of the United States of America; and

WHEREAS, pursuant to the FFB Act, FFB has entered into the Program Financing Agreement (as hereinafter defined) with the Secretary setting forth the commitment of FFB to enter into agreements to purchase notes issued by entities designated by the Secretary when those notes have been guaranteed by the Secretary, and the commitment of the Secretary to guarantee those notes; and

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

WHEREAS, FFB is entering into this Note Purchase Agreement, as authorized by section 6(a) of the FFB Act and in fulfillment of its commitment under the Program Financing Agreement, setting out, among other things, FFB's agreement to purchase, pursuant to the FFB Act, the Note (as hereinafter defined) to be issued by the Borrower, when the terms and conditions specified herein have been satisfied, as hereinafter provided.

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

ARTICLE 1

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

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

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

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

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

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

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

"Borrower State" shall have the meaning specified in Schedule I to this Agreement.

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

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

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

"Department" shall mean the Department of Energy.

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

"FFB Act" shall mean the Federal Financing Bank Act of 1973 (Pub. L. No. 93-224, 87 Stat. 937, codified at 12 U.S.C. § 2281 et seq.), as amended.

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

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

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

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

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

"Guarantee Act" shall mean Title XVII of the Energy Policy Act of 2005 (Pub. L. No. 109-58, 119 Stat. 594, 1117, codified at 42 U.S.C. § 16511 et seq.), as amended.

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

"Loan Commitment Amount" shall have the meaning specified in Schedule I to this Agreement.

"Loan Guarantee Agreement" shall have the meaning specified in Schedule I to this Agreement.

"Loan Servicer" shall mean the Department, acting through the Loan Programs Office.

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

"Note" shall mean each future advance promissory note payable to FFB, in the form of notes that are attached as Exhibit C to this Agreement, as such Notes may be amended, supplemented, and restated from time to time in accordance with its terms.

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

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

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

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

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

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

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

"Program Financing Agreement" shall mean the Program Financing Agreement dated as of September 2, 2009, between FFB and the Secretary, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

"Project State" shall have the meaning specified in Schedule I to this Agreement.

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

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

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

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

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

"Security Instruments" shall have the meaning specified in Schedule I to this Agreement.

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

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

Section 1.2 Rules of Interpretation.

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

Agreement as a whole. All references to "the Secretary" herein shall mean the Secretary in his or her official, and not individual, capacity, and shall include designates thereof that may be duly authorized from time to time.

ARTICLE 2

FFB COMMITMENT TO PURCHASE THE NOTE

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

ARTICLE 3

COMMITMENT CONDITIONS

FFB shall be under no obligation to purchase the Note under this Agreement, and the Secretary shall be under no obligation to issue the Secretary's Guarantee guaranteeing such Note, unless and until each of the conditions specified in this article 3 has been satisfied.

Section 3.1 Commitment Amount Limits.

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

3.1.2 Program Financing Commitment Amount. At the time that the Note is offered to FFB for purchase under this Agreement, the aggregate maximum principal amount of the Note, when added to the aggregate maximum principal amount of all other notes that have been issued by entities that have been designated by the Secretary in Designation Notices to be "Borrowers" for purposes of the Program Financing Agreement and which notes have been guaranteed by the Secretary pursuant to the Guarantee Act, shall not exceed the Program Financing Commitment Amount.

Section 3.2 Borrower Instruments.

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

(a) an original counterpart of this Agreement, duly executed by the Borrower; and

(b) the original Note, with all of the blanks on page 1 of the Note filled in with information consistent with the information set out in the respective Designation Notice, and duly executed by the Borrower.

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

3.2.3 Certificate Specifying Authorized Borrower Signatories. FFB shall have received a completed and signed Certificate Specifying Authorized Borrower Signatories.

Section 3.3 Secretary's Instruments.

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

(a) an original counterpart of this Agreement, duly executed by or on behalf of the Secretary;

(b) the original Secretary's Guarantee, duly executed by or on behalf of the Secretary; and

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

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

Section 3.4 Conditions Specified in Other Agreements.

Each of the conditions specified in the Program Financing Agreement as being conditions to purchasing the Note shall have been satisfied, or waived by FFB or the Secretary, as the case may be.

ARTICLE 4

OFFER OF THE NOTE FOR PURCHASE

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

Section 4.1 Delivery of Borrower Instruments to the Secretary.

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

(a) all of the Borrower Instruments, each duly executed by the Borrower;

(b) an Opinion of Borrower's Counsel re: Borrower Instruments; and

(c) a completed and signed Certificate Specifying Authorized Borrower Signatories.

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

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

(a) all of the instruments described in section 4.1;

(b) all of the Secretary's Instruments, each duly executed by the Secretary; and

(c) an Opinion of Secretary's Counsel re: Secretary's Guarantee.

ARTICLE 5

PURCHASE OF THE NOTE BY FFB

Section 5.1 Acceptance or Rejection of Principal Instruments.

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

(a) an acceptance notice, which notice shall:

(1) state that the Principal Instruments meet the terms and conditions detailed in article 3 of this Agreement, or are otherwise acceptable to FFB; and

(2) assign a Note Identifier to the Note for use by the Borrower and the Department in all communications to FFB making reference to the Note; or

(b) a rejection notice, which notice shall state that one or more of the Principal Instruments does not meet the terms and conditions of this Agreement and specify how such instrument or instruments does not meet the terms and conditions of this Agreement.

Section 5.2 Purchase.

FFB shall not be deemed to have accepted the Note offered for purchase under this Agreement until such time as FFB shall have delivered an acceptance notice accepting the Principal Instruments relating to the Note; provided, however, that in the event that FFB shall make an Advance under the Note, then FFB shall be deemed to have accepted the Note offered for purchase.

ARTICLE 6

CUSTODY OF NOTE; LOSS OF NOTE, ETC.

Section 6.1 Custody.

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

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

In the event that the Note purchased under this Agreement shall become lost, stolen, destroyed, or mutilated, the Borrower shall, upon a written request made by FFB to the Borrower, with a copy to the Secretary, execute and deliver to FFB, in replacement thereof, a new Note of like tenor, dated and bearing interest from the date to which interest has been paid on such lost, stolen, destroyed, or mutilated Note or, if no interest has been paid thereon, dated the same date as such lost, stolen, destroyed, or mutilated Note. Upon delivery of such replacement Note to FFB, the Borrower shall be released and discharged from any further liability on account of the lost, stolen, or destroyed Note. If the Note being replaced has been mutilated, such mutilated Note shall be surrendered to the Borrower for cancellation. The Secretary shall deliver to FFB a confirmation that the Secretary's Guarantee related to the lost, stolen, destroyed, or mutilated Note remains in full force and effect with respect to the replacement Note.

ARTICLE 7

ADVANCES

Section 7.1 Commitment.

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

Section 7.2 Treasury Policies Applicable to Advances.

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

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

(b) each Advance will be requested to be disbursed directly to the Borrower;

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

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

Section 7.3 Conditions to Making Advances.

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

7.3.1 Advance Requests. For each Advance under the Note, the Borrower shall have delivered to the Secretary, for review and approval before being forwarded to FFB, an Advance Request, which Advance Request:

(a) shall specify, among other things:

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

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

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

(A) must be a Business Day; and

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

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

(5) the Maturity Date; and

(b) shall have been duly executed by an individual whose name and signature appear on the Certificate Specifying Authorized Borrower Signatories delivered by the Borrower to FFB pursuant to section 4.1(c) or section 11.4 of this Agreement; and

(c) shall have been received by FFB not later than the specified number of Business Days in section 7.4(b) hereof before the Requested Advance Date specified in such Advance Request.

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

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

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

7.3.3 Telephonic Confirmation of Authenticity of Advance Request Approval Notices. For each Advance, FFB shall have obtained electronic or telephonic confirmation of the authenticity of the related Advance Request Approval Notice from an official of the Department:

(a) whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement; and

(b) who is not the same official of the Department who executed the Advance Request Approval Notice on behalf of the Secretary.

7.3.4 Note Maximum Principal Amount Limit. At the time of making any Advance under the Note, the amount of such Advance, when added to the aggregate amount of all Advances previously made under such Note, shall not exceed the "Maximum Principal Amount" of the Note, as that term is defined in the Note.

7.3.5 Conditions Specified in Other Agreements. Each of the conditions specified in the Program Financing Agreement as being conditions to making Advances under the Note, shall have been satisfied, or waived by FFB or the Secretary, as the case may be.

7.3.6 No Prohibition Against Funding by FFB. At the time of making any Advance under the Note, there shall be no Governmental Rule or Governmental Judgement that prohibits FFB from distributing funds provided for in such Advance.

7.3.7. Notification of Stop Notices. Promptly upon the Borrower obtaining knowledge of any action taken against FFB by any contractor, subcontractor, material supplier, or laborer working on any construction project financed in whole or in part with any Advance or Advances made under the Note, including, without limitation, any mechanics lien, bonded stop notice, or similar contractor mechanism under applicable law (a "Stop Notice"), the Borrower shall (1) provide notice thereof to FFB and the Secretary and (2) certify that it has used or is using commercially reasonable efforts to fully resolve, have the FFB dismissed from, or obtain a bond for the release of any Stop Notice.

Section 7.4 Amount and Timing of Advances.

FFB shall make each Advance in the Requested Advance Amount specified in the respective Advance Request and on the Requested Advance Date specified in the respective Advance Request, subject to satisfaction of the conditions specified in section 7.3 of this Agreement and subject to the following additional limitations:

(a) in the event that the Requested Advance Date specified in the respective Advance Request is not a Business Day, FFB shall make the respective Advance on the first day thereafter that is a Business Day;

(b) in the event that FFB receives the respective Advance Request and the related Advance Request Approval Notice later than:

(i) the third Business Day before the Requested Advance Date specified in such Advance Request if the Requested Advance Amount specified in the respective Advance Request is less than $500,000,000, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the third Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date;

(ii) the fifth Business Day before the Requested Advance Date specified in such Advance Request if the Requested Advance Amount specified in the respective Advance Request is equal to or greater than $500,000,000 but less than $2,000,000,000, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the fifth Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date;

(iii) the tenth Business Day before the Requested Advance Date specified in such Advance Request if the Requested Advance Amount specified in the respective Advance Request is equal to or greater than $2,000,000,000, FFB shall make the respective Advance as soon as practicable thereafter, but in any event not later than the tenth Business Day after FFB receives such Advance Request, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date;

(c) in the event that an Uncontrollable Cause prevents FFB from making the respective Advance on the Requested Advance Date specified in the respective Advance Request, FFB shall make such Advance as soon as such Uncontrollable Cause ceases to prevent FFB from making such Advance, unless the Borrower delivers to FFB and the Secretary a written cancellation of such Advance Request or a replacement Advance Request specifying a later Requested Advance Date; and

(d) in the event that FFB receives, not later than 3:30 p.m. (Washington, DC, time) on the Business Day immediately before the Requested Advance Date specified in an Advance Request, a written notice delivered by electronic or facsimile transmission of withdrawal or cancellation of the Advance Request Approval Notice, and telephonic confirmation of the withdrawal or cancellation, from an official of the Department whose name, title, and telephone number appear on the Certificate Specifying Authorized Department Officials that has been delivered by the Secretary to FFB pursuant to section 3.1.3 or section 6.1 of the Program Financing Agreement, FFB shall not make the respective Advance.

Section 7.5 Type of Funds and Means of Advance.

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

Section 7.6 Interest Rate Applicable to Advances.

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

Section 7.7 Interest Rate Confirmation Notices.

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

(a) state the date on which such Advance was made;

(b) state the interest rate applicable to such Advance; and

(c) assign an Advance Identifier to such Advance for use by the Borrower and the Secretary in all communications to FFB making reference to such Advance.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES BY THE BORROWER

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

Section 8.1 Organization.

The Borrower is a corporation duly organized, validly existing and in good standing under the laws of the Borrower State and is qualified to do business in the Project State.

Section 8.2 Authority.

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

Section 8.3 Due Authorization.

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

Section 8.4 Due Execution.

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

Section 8.5 Validity and Enforceability.

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

Section 8.6 No Governmental Actions Required.

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

Section 8.7 No Conflicts or Violations.

The execution and delivery by the Borrower of this Agreement or any of the other Borrower Instruments, the consummation by the Borrower of the transactions contemplated hereby or thereby, and the performance by the Borrower of its obligations hereunder or thereunder do not and will not conflict with or violate, result in a breach of, or constitute a default under (a) any term or provision of the charter documents or bylaws of the Borrower; (b) any of the covenants, conditions or agreements contained in any Other Debt Obligation of the Borrower; (c) any Governmental Approval or Governmental Registration obtained or made, as the case may be, by the Borrower; or (d) any Governmental Judgment or Governmental Rule currently applicable to the Borrower.

Section 8.8 All Necessary Governmental Actions.

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

Section 8.9 No Material Litigation.

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

(b) Except as disclosed in writing to FFB and the Secretary in Schedule II to this Agreement, there is no litigation or other proceeding pending, or threatened in writing, against the Borrower in any court or before any Governmental Authority which challenges the validity as to the Borrower or the enforceability against the Borrower of any of the Borrower's Instruments, or seeks to enjoin the performance by the Borrower of, the Borrower's Instruments.

ARTICLE 9

BILLING BY FFB

Section 9.1 Billing Statements to the Borrower, the Department, and the Loan Servicer.

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

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

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

Section 9.3 FFB Billing Determinations Conclusive.

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

(a) the rounding methodology employed by FFB in calculating the amount of accrued interest owed at any time on the Note; and

(b) the methodology employed by FFB in calculating the payment schedule for the installments of principal due and payable on the Note;

and the Borrower consents to these methodologies.

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

(a) the amount of accrued interest owed on the Note determined using this rounding methodology; and

(b) the amount of any scheduled installment payment of principal due and payable on the Note determined using this methodology.

ARTICLE 10

PAYMENTS TO FFB

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

ARTICLE 11

RIGHTS AND AGREEMENTS OF THE SECRETARY AND FFB

Section 11.1 Rights and Agreements related to Enforcement.

11.1.1 Secretary's Authority. In consideration of the Secretary's Guarantee relating to the Note that has been purchased by FFB under this Agreement, the Secretary shall have the sole authority (vis-à-vis FFB), in the case of a default by the Borrower under the Note or the occurrence of an Event of Default under the Security Instruments, in respect of acceleration of such Note, the exercise of other available remedies, and the disposition of sums or property recovered.

11.1.2 Acknowledgment of Security Interest. FFB acknowledges that the Borrower has, through the execution of the Security Instruments, pledged and granted a security interest to the "Collateral Agent," for the benefit of the "Secured Parties" (as those terms are defined in the Loan Guarantee Agreement) and FFB in certain property of the Borrower to secure the payment and performance of, *inter alia*, certain obligations owed to FFB under the Note.

11.1.3 FFB Cooperation. FFB shall cooperate with the Secretary to enable the Secretary to exercise and enforce the Secretary's rights and remedies under this Agreement, the Program Financing Agreement, the Note, and the Security Instruments, including, when reasonably requested by the Secretary, executing and delivering to the Secretary instruments, agreements, and other documents prepared by or for the Department for FFB's execution.

Section 11.2 Secretary's Right to Purchase Advances or the Note.

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

Section 11.3 Secretary's Confirmation Relating to the Secretary's Guarantee.

The Secretary confirms to FFB that the obligation of the United States of America to pay amounts due and payable under the Secretary's Guarantee when such amounts become due and payable in accordance with its terms, constitutes the absolute obligation of the United States of America, against which no offset may be made by the United States of America in discharge of its obligation to make these payments and for which, in accordance with section 1702(j) of the Guarantee Act, the full faith and credit of the United States of America are pledged, provided, however, that the United States will be entitled to offset payments under the Secretary's Guarantee against any financial asset or obligation of any Holder of the Secretary's Guarantee other than FFB.

Section 11.4 Delivery of Replacement Certificates Specifying Authorized Borrower Signatories.

The Borrower may, at any time and from time to time, deliver to FFB a revised Certificate Specifying Authorized Borrower Signatories, updated and completed as appropriate, in replacement of the original such certificate delivered pursuant to section 4.1(c) of this Agreement.

Section 11.5 Secretary's Notice Obligation For Stop Notices.

If the Secretary shall receive any notice of any Stop Notice against the Borrower, FFB or the Department, which action has not been dismissed against each such applicable party, or has not been bonded in full compliance with, and in satisfaction of all requirements of, applicable law, and in accordance with the terms of the Loan Guarantee Agreement, the Secretary shall provide FFB with notice of such Stop Notice.

ARTICLE 12

EFFECTIVE DATE, TERM, SURVIVAL

Section 12.1 Effective Date.

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

Section 12.2 Term of Commitment to Make Advances.

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

Section 12.3 Survival.

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

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

ARTICLE 13

MISCELLANEOUS

Section 13.1 Notices.

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

To FFB:

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

Attention: Chief Financial Officer

Telephone No. [xxx]
Facsimile No. [xxx]
Email Address: [xxx]

To the Borrower:

Eos Energy Enterprises, Inc.
3920 Park Avenue
Edison, NJ 08820

Telephone No.: [xxx]

Email Address: [xxx]
[xxx]
[xxx]

To the Secretary (or the Department):

United States Department of Energy
Loan Programs Office
Loan Guarantee Program
1000 Independence Avenue, SW
Washington, DC 20585

Attention:	Director, Portfolio Management
Telephone No.	[xxx]
Facsimile No.	[xxx]
Email Address	[xxx]

To the Loan Servicer:

United States Department of Energy
Loan Programs Office
Loan Guarantee Program
1000 Independence Avenue, SW
Washington, DC 20585

Attention:	Director, Portfolio Management
Telephone No.	[xxx]
Facsimile No.	[xxx]
Email Address	[xxx]

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

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

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

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

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

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

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

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

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

Section 13.2 Amendments.

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

Section 13.3 Successors and Assigns.

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

Section 13.4 Sale or Assignment of Note.

13.4.1 Sale or Assignment Permitted. Subject to the requirements of 10 C.F.R. § 609.10(g)(1) and Office of Management and Budget Circular A-129 revised (September 2024), FFB may sell, assign, or otherwise transfer all or any part of the Note or any participation share thereof.

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

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

13.4.4 Replacement Note. The Borrower agrees:

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

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

Section 13.5 Forbearance Not a Waiver.

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

Section 13.6 Rights Confined to Parties.

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

Section 13.7 Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

Section 13.8 Severability.

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

Section 13.9 Headings.

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

Section 13.10 Counterparts.

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

[The remainder of this page is intentionally left blank.]

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

FEDERAL FINANCING BANK
("FFB")

Signature: /s/ Christopher L. Tuttle

Signature: /s/ Gary E. Grippo
Name: Gary Grippo
Title: Vice President and Treasurer

EOS ENERGY ENTERPRISES, INC. (the "Borrower")

Signature: /s/ Nathan Kroeker
Name: Nathan Kroeker
Title: CFO

THE SECRETARY OF ENERGY
(the "Secretary")

Signature: /s/ Hernan Cortes
Name: Hernan T. Cortes
Title: Director
Origination Division
Loan Programs Office

SCHEDULE I
to
NOTE PURCHASE AGREEMENT
by and among
the Federal Financing Bank,
Eos Energy Enterprises, Inc.,
and the Secretary of Energy

1. **"Borrower State"** means the State of Delaware.

2. **"Loan Guarantee Agreement"** means the Loan Guarantee Agreement dated as of November 26, 2024, among Eos Energy Enterprises, Inc., as Borrower and the U.S. Department of Energy, as guarantor, as such agreement may be amended, supplemented, and restated from time to time in accordance with its terms.

3. **"Loan Commitment Amount"** means $303,450,000 for the Note, as attached to Exhibit C to this Agreement.

4. **"Project State"** means the Commonwealth of Pennsylvania.

5. **"Security Instruments"** means, collectively, (i) the Loan Guarantee Agreement, and (ii) the "Security Documents" (as that term is defined in the Loan Guarantee Agreement), as such agreements and documents may be amended, supplemented, and restated from time to time in accordance with their respective terms.

DOE (Title XVII) **EOS ENERGY ENTERPRISES, INC.**

SCHEDULE II
to
NOTE PURCHASE AGREEMENT
by and among
the Federal Financing Bank,
Eos Energy Enterprises, Inc.,
and the Secretary of Energy

None.

FOR FFB USE ONLY Note Identifier: EOSENERG 0001 Purchase Date: November 26, 2024	
Note Date	November 26, 2024
Place of Issue	East Pittsburgh, PA
Last Day for an Advance (3)	December 31, 2027
Maximum Principal Amount (4)	$277,497,000

Maturity Date (5)	June 15, 2034		
Payment Dates (7)	March 15, June 15, September 15 & December 15 of each year	First Interest Payment Date (7)	March 15, 2028
Maximum Capitalized Interest Amount (7)	$25,953,000	First Principal Payment Date (8)	March 15, 2028
Loan Guarantee Agreement (21)	Loan Guarantee Agreement, dated as of the Note Date, between Eos Energy Enterprises, Inc., as Borrower, and U.S. Department of Energy, as Guarantor and Loan Servicer		

DOE (Title XVII) **EOS ENERGY ENTERPRISES, INC.**

FUTURE ADVANCE PROMISSORY NOTE

1. Promise to Pay.

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

2. Reference to Certain Agreements.

(a) Program Financing Agreement. This Note is one of the "Notes" referred to in, and entitled to the benefits of, the Program Financing Agreement dated as of September 2, 2009, made by and between FFB and the Secretary of Energy, acting through the Department of Energy (the "Secretary") (such agreement, as it may be amended, supplemented, and restated from time to time in accordance with its terms, being the "Program Financing Agreement").

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

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

(a) Subject to the terms and conditions of the Note Purchase Agreement, FFB shall make Advances under this Note in the amounts, at the times, and to the accounts requested by the Borrower from time to time, in each case upon delivery to FFB of a written

request by the Borrower for an Advance under this Note, in the form of request attached to the Note Purchase Agreement as Exhibit A thereto (each such request being an "Advance Request"), completed as prescribed in the Note Purchase Agreement; provided, however, that no Advance may be made under this Note after the particular date specified on page 1 of this Note as being the "Last Day for an Advance."

(b) To be effective, an Advance Request must first be delivered to the Secretary for approval and be approved by or on behalf of the Secretary in writing, and such Advance Request, together with written notification of the Secretary's approval thereof, must be received by FFB on or before (i) the third Business Day, for an Advance Request less than $500,000,000, (ii) the fifth Business Day, for an Advance Request equal to or greater than $500,000,000 but less than $2,000,000,000, or (iii) the tenth Business Day, for an Advance Request equal to or greater than $2,000,000,000 before the particular calendar date specified in such Advance Request that the Borrower requests to be the date on which the respective Advance is to be made.

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

(d) The Borrower hereby agrees that each Advance made by FFB in accordance with a Secretary-approved Advance Request delivered to FFB shall reduce, by the amount of the respective Advance made, FFB's remaining commitment to make Advances under this Note.

4. Principal Amount of Advances; Maximum Principal Amount.

The principal amount of each Advance shall be the amount specified in the respective Advance Request; provided, however, that the aggregate principal amount of all Advances made under this Note may not exceed the particular amount specified on page 1 of this Note as the "Maximum Principal Amount" (such amount being the "Maximum Principal Amount"). The Maximum Principal Amount shall be separate and distinct from, and shall not include, capitalized interest, which shall be determined as provided in, and subject to its own limitation in, paragraph 7 of this Note.

5. Maturity Date.

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

6. Computation of Interest on Each Advance.

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

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

(c) The interest rate applicable to each Advance shall be established by FFB at the time that the respective Advance is made on the basis of the determination made by the Secretary of the Treasury pursuant to section 6(b) (12 U.S.C. § 2285(b)) of the Federal Financing Bank Act of 1973 (Pub. L. No. 93-224, 87 Stat. 937, codified at 12 U.S.C. § 2281 et seq.), as amended (the "FFB Act"), and

shall be equal to three-eighths of 1 percent per annum (0.375%) over the current average yield on outstanding marketable obligations of the United States of comparable maturity, as determined by the Secretary of the Treasury; provided, however, that the shortest maturity used as the basis for any interest rate determination shall be the remaining maturity of the most recently auctioned United States Treasury bills having the shortest maturity of all United States Treasury bills then being regularly auctioned.

7. Payment of Interest; Payment Dates; First Interest Payment Date; Capitalized Interest; Maximum Capitalized Interest Amount.

(a) Except as provided in subparagraph (b) of this paragraph 7, interest accrued on the outstanding principal balance of each Advance shall be due and payable on each of the particular dates specified on page 1 of this Note as "Payment Dates" (each such date being a "Payment Date"), beginning on the first Payment Date to occur after the date on which such Advance is made, up through and including the Maturity Date.

(b) For each Advance made before the particular date specified as the "First Interest Payment Date" on page 1 of this Note (such date being the "First Interest Payment Date"), the amount of accrued interest that would otherwise be due and payable on each Payment Date to occur before the First Interest Payment Date shall be capitalized on the respective Payment Date, and interest shall thereafter accrue on the sum of the outstanding principal and such capitalized interest at the rate established for such Advance in accordance with paragraph 6 of this Note; provided, however, that the aggregate amount of accrued interest that may be capitalized under this Note may not exceed the particular amount specified on page 1 of this Note as the "Maximum Capitalized Interest Amount" (such amount being the "Maximum Capitalized Interest Amount"). The amount of interest that will be capitalized on each Advance will be determined on the date on which the respective Advance is made. At such time, if ever, that an Advance is made and the amount of interest to be capitalized on such Advance would, when added to the aggregate amount of interest to be capitalized on all prior Advances, cause the resulting sum to exceed the Maximum Capitalized Interest Amount, only the portion of the accrued interest that may be capitalized without causing the sum to exceed the Maximum Capitalized Interest Amount shall be capitalized for that Advance, and all additional interest that accrues on that Advance and all interest that accrues on any future Advances shall be due and payable on each Payment Date and made as provided in paragraph 10 of this Note.

8. Payment of Principal and Capitalized Interest.

(a) The principal amount of, or capitalized interest on, or combination of both, as the case may be, each Advance shall be payable in installments, which payments shall be due beginning on the particular date specified as the "First Principal Payment Date" on page 1 of this Note (such date being the "First Principal Payment Date"), and shall be due on each Payment Date to occur thereafter until the principal of, and capitalized interest on, the respective Advance is repaid in full on or before the Maturity Date.

(b) With respect to each Advance, the amount of principal, or capitalized interest, or combination of both, as the case may be, due on the First Principal Payment Date, on each Payment Date to occur thereafter, and on the Maturity Date shall be, in each case, an installment that is equal to the product of:

(1) the sum of the outstanding principal amount of the respective Advance and all capitalized interest thereon, determined as of the day immediately preceding the First Principal Payment Date;

times

(2) the particular percentage specified for the respective date on the payment schedule attached as Schedule A to this Note,

and shall be sufficient, when added to all other such installments of principal, or capitalized interest, or combination of both, as the case may be, to repay the principal amount of, and capitalized interest on, the respective Advance in full on the Maturity Date.

(c) In the event that an Advance is made after the First Principal Payment Date, the amount of principal due with respect to such Advance on the first Payment Date to occur after the date on which Advance is made shall be an amount that is equal to the product of:

(1) the principal amount of the Advance on the day the Advance is made;

times

(2) the sum of:

(A) the particular percentage specified for such Payment Date on the payment schedule attached as Schedule A to this Note; and

(B) the respective percentage or percentages, if any, specified for each date on the payment schedule that occurred before such Payment Date;

and shall be sufficient, when added to all other such installments of principal to repay the principal amount of the respective Advance in full on the Final Maturity Date.

9. Business Days.

(a) Whenever any Payment Date or the Maturity Date shall fall on a day on which either FFB or the Federal Reserve Bank of New York is not open for business, the payment which would otherwise be due on such Payment Date or the Maturity Date shall be due on the first day thereafter on which FFB and the Federal Reserve Bank of New York are both open for business (any such day being a "Business Day").

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

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

10. Manner of Making Payments.

(a) For so long as FFB is the Holder of this Note, each payment under this Note (except for accrued interest on each Advance made before the First Interest Payment Date that is subject to capitalization as provided in paragraph 7(b) of this Note) shall be paid in immediately available funds by electronic funds transfer to the account of the United States Treasury (for credit to the subaccount of the Secretary) maintained at the Federal Reserve Bank of New York in the manner described below:

U.S. Treasury Department
ABA No. 0210-3000-4
TREAS NYC/CTR/BNF=89000001
OBI=LGPO Eos Energy Enterprises, Inc. Loan #1424

provided, however, that a payment made in the manner described above shall not discharge any portion of a payment obligation under this Note, or be applied as provided in paragraph 13 of this Note, until the payment has been received and credited to the subaccount of FFB (within the account of the United States Treasury maintained at the Federal Reserve Bank of New York) specified by FFB in a written notice to the Secretary, or to such other account as may be specified from time to time by FFB in a written notice to the Secretary.

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

11. Late Payments.

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

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

(2) The Late Charge shall be computed on the basis of (A) actual days elapsed from (but not including) the scheduled date of payment for such Overdue Amount (taking into account paragraph 9 of this Note) to (and including) the date on which payment is made, and (B) a year of 365 days.

(3) The Late Charge shall accrue at a rate (the "Late Charge Rate") equal to (i) the interest rate applied to the principal related to any Overdue Amount that was previously determined by the Secretary of the Treasury pursuant to section 6(c) of this Note plus (ii) one and one-half times the rate to be determined by the Secretary of the Treasury taking into consideration the current market-bid coupon-equivalent yield on the remaining maturity of the most recently auctioned 13-week United States Treasury bills, such determination of the rate referenced in this subclause (ii) being made as of the scheduled date of payment for such Overdue Amount (taking into consideration paragraph 9 of this Note) using data as of the Close of Market (as that term is defined in the immediately following sentence) on the Business Day immediately before such date reported by the Federal Reserve Bank of New York to the Secretary of the Treasury. For purposes of this Note, "Close of Market" shall mean, for any day, 3:30 p.m. (Washington, D.C., time) or such earlier time as the Federal Reserve Bank of New York may announce as being the close of the United States Treasury securities market for such day.

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

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

12. Final Due Date.

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

13. Application of Payments.

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

14. Prepayments.

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

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

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

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

(3) the amount of principal of, and capitalized interest (if any) on, the respective Advance that the Borrower intends to prepay, which amount may be either:

(A) the total outstanding principal amount of, and capitalized interest (if any) on, such Advance; or

(B) an amount less than the total outstanding principal amount of, and capitalized interest (if any) on, such Advance (any such amount being a "Portion").

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

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

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

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

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

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

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

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

(f) Each prepayment of a Portion shall, as to the principal amount of such Portion, be subject to a minimum amount equal to $100,000.00 of principal; except that the minimum principal amount limitation shall not apply to a prepayment of a Portion if:

(1) the prepayment is made to satisfy the Borrower's obligation to make a mandatory prepayment under the "Security Instruments" (as that term is defined in paragraph 20 of this Note); and

(2) the Borrower has certified to that fact in the respective Prepayment Election Notice.

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

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

(1) The amounts of the scheduled installments of principal, or capitalized interest, or combination of both, as the case may be, that will be due after such partial prepayment shall be equal to the amounts of the scheduled installments of principal, or capitalized interest, or combination of both, as the case may be, that were due in accordance with the payment schedule that applied to such Advance immediately before such partial prepayment.

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

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

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

(b) The Borrower shall deliver to FFB, with a copy to the Secretary, written notification of each rescission of a Prepayment Election (each such notification being an "Election Rescission Notice") specifying the particular Advance for which the Borrower wishes to rescind such Prepayment Election, which specification must make reference to the particular "Advance Identifier" (as that term is defined in the Note Purchase Agreement) that FFB assigned to such Advance (as provided in the Note Purchase Agreement). The Election Rescission Notice may be delivered by facsimile transmission to FFB at (202) 622-0707 or at such other facsimile number or numbers as FFB may from time to time communicate to the Borrower.

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

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

16. Amendments to Note.

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

17. Certain Waivers.

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

18. Effective Until Paid.

Subject to section 6.2 of the Note Purchase Agreement, this Note shall continue in full force and effect until all amounts due and payable hereunder have been paid in full.

19. Secretary's Guarantee of Note.

Upon execution of the guarantee in the form of the Secretary's Guarantee attached as Exhibit G to the Note Purchase Agreement (the "Guarantee"), the payment by the Borrower of all amounts due and payable under this Note, when and as due, shall be guaranteed by the United States of America, acting through the Secretary, pursuant to Title XVII of the Energy Policy Act of 2005, as amended (42 U.S.C. § 16511 et seq.). In consideration of the Guarantee, the Borrower promises to the Secretary to make all payments due under this Note when and as due.

20. Security Instruments.

This Note is to be executed and delivered by, and is entitled to the benefits and security of, the "Security Instruments" (as defined in the Note Purchase Agreement), whereby the Borrower pledged and granted a security interest in certain property of the Borrower, described therein, to secure the payment of and performance of certain obligations owed to the Secretary, as set forth in the Security Instruments. For purposes of the Security Instruments, in consideration of the undertakings by the Secretary set forth in the Program Financing Agreement, the Note Purchase Agreement, and the Guarantee, the Secretary shall be considered to be, and shall have the rights, powers, privileges, and remedies of, the Holder of this Note.

21. Guarantee Payments; Reimbursement.

If the Secretary makes any payment, pursuant to the Guarantee, of any amount due and payable under this Note, each and every such payment so made shall be deemed to be a payment hereunder; provided, however, that no payment by the Secretary pursuant to the Guarantee shall be considered a payment for purposes of determining the existence of a failure by the Borrower to perform its obligation to the Secretary to make all payments under this Note when and as due. The Secretary shall have any rights by way of subrogation, agreement or otherwise which arise as a result of such payment pursuant to the Guarantee and as provided in the particular agreement specified on page 1 of this Note as the "Loan Guarantee Agreement" between the Borrower and the United States of America, acting through the Secretary, to evidence the Borrower's obligation to reimburse the Secretary for payment made by the Secretary pursuant to the Guarantee.

22. Default and Enforcement.

(a) In case of a default by the Borrower under this Note or the occurrence of an "Event of Default" (as defined in the Security Instruments), then, in consideration of the obligation of the Secretary under the Guarantee, the Secretary, in the name of the Secretary or the United States of America, shall have all rights, powers, privileges, and remedies of the Holder of this Note, in accordance with

the terms of this Note and the Security Instruments, including, without limitation, the right to (i) enforce or collect all or any part of the obligation of the Borrower under this Note or arising as a result of the Guarantee; (ii) accelerate (as provided in paragraph 23); (iii) compromise or otherwise negotiate with the Borrower (but not affecting amounts due and payable to the Holder under this Note and the Guarantee); (iv) bring suit against or foreclose upon any or all of the security interests granted by the Borrower; and (v) to file proofs of claim or any other document in any bankruptcy, insolvency, or other judicial proceeding, and to vote such proofs of claim.

(b) The Borrower acknowledges that FFB has agreed in the Note Purchase Agreement that, in consideration of the Guarantee, the Secretary shall have the sole authority (vis-à-vis FFB), in the case of a default by the Borrower under this Note or the occurrence of an Event of Default under the Security Instruments, in respect of acceleration (as provided in paragraph 23), the exercise of other remedies available hereunder or under the Note Purchase Agreement, and the disposition of sums or property recovered.

23. Acceleration.

Upon the occurrence and continuation of a default by the Borrower under this Note or an Event of Default under the Security Instruments, the Secretary, under the circumstances described, and in the manner and with the effect provided, in the Security Instruments, may declare the entire unpaid principal amount of this Note, all interest thereon, and all other amounts payable under this Note, and upon such declaration such amounts shall become, due and payable to the Secretary.

24. Governing Law.

This Note shall be governed by, and construed and interpreted in accordance with, the Federal law and not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties hereto that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

25. Schedule A Incorporated.

Schedule A is an integral part of this Note and is incorporated herein by reference.

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

EOS ENERGY ENTERPRISES, INC.

By:

Signature: /s/ Nathan Kroeker
Print Name: Nathan Kroeker
Title: CFO

Attest:

Signature: /s/ Michael Silberman
Print Name: Michael Silberman
Title: Secretary

SCHEDULE A

PAYMENT SCHEDULE FOR
PRINCIPAL OF, AND CAPITALIZED INTEREST ON,
EACH OUTSTANDING ADVANCE

Date	Amortization (%)
3/15/2028	3.846%
6/15/2028	3.846%
9/15/2028	3.846%
12/15/2028	3.846%
3/15/2029	3.846%
6/15/2029	3.846%
9/15/2029	3.846%
12/15/2029	3.846%
3/15/2030	3.846%
6/15/2030	3.846%
9/15/2030	3.846%
12/15/2030	3.846%
3/15/2031	3.846%
6/15/2031	3.846%
9/15/2031	3.846%
12/15/2031	3.846%
3/15/2032	3.846%
6/15/2032	3.846%
9/15/2032	3.846%
12/15/2032	3.846%
3/15/2033	3.846%
6/15/2033	3.846%
9/15/2033	3.846%
12/15/2033	3.846%
3/15/2034	3.846%
6/15/2034	3.850%

Exhibit 10.3

Execution Version

CERTAIN INFORMATION IN THIS EXHIBIT MARKED [*] HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (A) NOT MATERIAL AND (B) THE TYPE OF INFORMATION THAT THE COMPANY CUSTOMARILY AND ACTUALLY TREATS AS PRIVATE AND CONFIDENTIAL.

LOAN GUARANTEE AGREEMENT

dated as of November 26, 2024

among

EOS ENERGY ENTERPRISES, INC.,

as Borrower,

and

U.S. DEPARTMENT OF ENERGY,

as Guarantor and Loan Servicer

EOS PROJECT
TURTLE CREEK, PENNSYLVANIA

Loan No. 1424

DRAFT—CONFIDENTIAL—ATTORNEY-CLIENT PRIVILEGE—PRE-DECISIONAL

CONTENTS

ANNEXES, SCHEDULES AND EXHIBITS

Annex

Schedules

LOAN GUARANTEE AGREEMENT, dated November 26, 2024 (this "**Agreement**"), between the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America, acting in its capacity as guarantor and loan servicer of the Guaranteed Loan ("**DOE**") and EOS ENERGY ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Delaware and registered to do business in the Commonwealth of Pennsylvania (the "**Borrower**").

PRELIMINARY STATEMENTS

(A) DOE has been authorized to issue a guarantee for FFB to make loans for the deployment of a battery automation line manufacturing facility pursuant to Title XVII of the Energy Policy Act of 2005, Pub. L. 109 58, as amended by Section 406 of Div. A of Title IV of Pub. L. 111 5, and as further amended from time to time ("**Title XVII**").

(B) The Borrower has undertaken the development, design, engineering, procurement, construction, startup and commissioning, testing, repair, management, maintenance and operation of a manufacturing facility for the Eos Znyth 3 battery units comprised of up to four (4) large-scale production lines.

(C) The Borrower submitted a Part II application for the issuance by DOE of a guarantee of a multi-draw term loan facility to be authorized and approved by DOE under Title XVII, subject to the requirements of Section 1703 and the Applicable Regulations (the "**Application**").

(D) The Borrower and DOE entered into a Conditional Commitment Letter dated August 31, 2023, pursuant to which DOE agreed to arrange for FFB to purchase the FFB Note from the Borrower and to make Advances from time to time thereunder, in each case, upon the terms and subject to the conditions of this Agreement and the other Financing Documents.

(E) Subject to the terms and conditions hereof, DOE will, in connection with arranging financing for the Borrower from FFB, issue and deliver to FFB the DOE Guarantee pursuant to which it will guarantee the Borrower's repayment of principal and interest on the Advances as and when required pursuant to the FFB Note and any other liabilities, losses, costs or expenses incurred by FFB from time to time with respect to the FFB Note or the related FFB Note Purchase Agreement.

(F) The execution of this Agreement is a condition precedent to DOE's issuance of the DOE Guarantee, and FFB's receipt of the DOE Guarantee is a condition precedent to FFB's execution of the FFB Documents.

(G) The Borrower's obligations to DOE and FFB will be secured by the Liens granted under the Security Documents, to the extent provided therein.

(H) The parties hereto desire: (a) to specify, among other things, the terms and conditions for: (i) the delivery by DOE of the DOE Guarantee and other FFB Secretary's Instruments required for FFB to purchase the FFB Note pursuant to the FFB Note Purchase Agreement; (ii) the delivery by DOE of Advance Request Approval Notices; and (iii) certain indemnity and reimbursement obligations of the Borrower to DOE; and (b) to provide for certain other matters related thereto.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND OTHER RULES OF CONSTRUCTION

Section 1.01 Terms Generally. Capitalized terms used herein, including in the preliminary statements, without definition shall have the respective meanings assigned to such terms in Annex A (*Definitions*) hereto.

Section 1.02 Other Rules of Construction. Unless the contrary is expressly stated herein:

(a) words in this Agreement denoting one gender only shall be construed to include the other gender;

(b) when used in this Agreement, the words "including," "includes" and "include" shall be deemed to be followed in each instance by the words "without limitation";

(c) when used in this Agreement, the word "or" is not exclusive;

(d) when used in this Agreement, the words "herein," "hereby," "hereunder," "hereof," "hereto," "hereinbefore," and "hereinafter," and words of similar import, unless otherwise specified, shall refer to this Agreement in its entirety and not to any particular section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(e) each reference in this Agreement to any article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix shall mean, unless otherwise specified, the respective article, section, subsection, paragraph, clause or other subdivision, exhibit, schedule or appendix of this Agreement;

(f) capitalized terms in this Agreement referring to any Person or party to any Financing Document or to any other agreement, instrument, deed or other document shall refer to such Person or party together with its successors and permitted assigns, and in the case of any Governmental Authority, any Person succeeding to its functions and capacities;

(g) each reference in this Agreement to any Financing Document or to any other agreement, instrument, deed or other document, shall be deemed to be a reference to such Financing Document or such other agreement, instrument, deed or document, as the case may be, as the same may be amended, supplemented, novated or otherwise modified from time to time in accordance with the terms hereof and thereof;

(h) each reference in this Agreement to any Applicable Law or Environmental Law shall be construed as a reference to such Applicable Law or Environmental Law, as applied, amended, modified, extended or re-enacted from time to time, and includes any rules or regulations promulgated thereunder;

(i) each reference in this Agreement to any provision of any other Financing Document will include reference to any definition or provision incorporated by reference within that provision;

(j) except where expressly provided otherwise, whenever any matter is required to be satisfactory to, or determined or approved by, DOE or FFB, or DOE or FFB is required or permitted to exercise any discretion (including any discretion to waive, select, require, deem appropriate, deem necessary, permit, determine or approve any matter), the satisfaction, determination or approval of DOE or FFB, or the exercise by DOE or FFB of such discretion, shall be in its respective sole and absolute discretion, as applicable, and further DOE shall be entitled to consult with the Independent Engineer or any other of its Secured Party Advisors in making such determination or exercising such discretion;

(k) except where expressly provided otherwise, the words "days", "weeks", "months" and "years" shall mean calendar days, weeks, months and years, respectively, and each reference to a time of day shall mean such time in Washington, D.C.;

(l) the table of contents and article and section headings and other captions have been inserted as a matter of convenience for the purpose of reference only and do not limit or affect the meaning of the terms and provisions thereof;

(m) the expression "reasonable efforts" and expressions of like import, when used in connection with an obligation of the Borrower, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no fewer steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances, where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrue solely to that person's own benefit;

(n) the words "asset" and "property," unless otherwise defined herein, 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, Equity Interests, securities, revenues, accounts, leasehold interests, Intellectual Property and contract rights;

(o) the word "will" shall be construed as having the same meaning and effect as the word "shall;" and

(p) the definitions of the terms herein shall apply equally to the singular and plural forms of the terms defined.

Section 1.03 Definitions in Other Written Communications. Unless the contrary intention appears, any capitalized term used without definition in any notice or other written communication given under or pursuant to this Agreement shall have the same meaning in that notice or other written communication as in this Agreement.

Section 1.04 Conflict with FFB Documents. In the case of any conflict between the terms of this Agreement and the terms of any FFB Document, as (a) between the Borrower and DOE, the terms of this Agreement shall control, unless expressly stated to the contrary herein, and (b) as (i) between the Borrower and FFB or (ii) DOE and FFB, the terms of such FFB Document shall control.

Section 1.05 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms used herein and in the other Financing Documents, and in any certificate or other document made or delivered pursuant hereto or thereto, but not otherwise defined in Annex A (*Definitions*) hereto shall have the respective meanings assigned to them in conformity with GAAP.

ARTICLE II

FUNDING

Section 2.01 Guaranteed Loan Purchase of the FFB Note.

(a) Purchase of the FFB Note. Subject to the terms and conditions hereof and of the FFB Documents, on the Execution Date, DOE shall deliver to FFB the FFB Secretary's Instruments required, in accordance with Section 3.3 of the FFB Note Purchase Agreement, in connection with the offer to FFB to purchase on the Execution Date, the FFB Note contemplated thereunder in an aggregate maximum principal amount not to exceed two hundred seventy-seven million four hundred ninety-seven thousand Dollars ($277,497,000) (the "**Maximum Principal Amount**") and an aggregate maximum amount of capitalized interest in accordance with Section 3.04(a) (*Interest Amount and Interest Computations*) not to exceed twenty-five million nine hundred fifty-three thousand Dollars ($25,953,000) (the "**Maximum Capitalized Interest Amount**" and together with the Maximum Principal Amount, the "**Maximum Guaranteed Loan Amount**", and the loan extended under the FFB Note, the "**Guaranteed Loan**").

(b) Loan Tranches. The Guaranteed Loan shall be disbursed in a series of four (4) tranches (each, a "**Tranche**"), each in an amount not to exceed the lesser of: (i) the maximum principal amount set out below for such Tranche; and (ii) eighty percent (80%) of the Eligible Project Costs associated with the corresponding production line (each, a "**Line**") funded under such Tranche (such amount, the "**Maximum Tranche Commitment Amount**"), in each case as set out below and as subject to reallocation in accordance with Section 2.06(b) (*Determination of Advance Amounts*):

(i) the first Tranche in a Maximum Tranche Commitment Amount not to exceed one hundred one million nine hundred seventy-nine thousand Dollars ($101,979,000) ("**Tranche 1**"), which Tranche shall be allocated solely to Eligible Project Costs in connection with the design, construction, installation, startup and shakedown of a battery automation line and related tools, with a projected annual production capacity of approximately 1.25 Gwh ("**Line 1**");

(ii) a second Tranche in a Maximum Tranche Commitment Amount not to exceed one hundred seventeen million three hundred twenty-six thousand Dollars ($117,326,000) ("**Tranche 2**"), which Tranche shall be allocated solely to Eligible Project Costs in connection with the design, construction, installation, startup and shakedown of a battery automation line and related tools, site improvements and inventory supply improvements (felt), with a projected annual production capacity of approximately 2.25 Gwh ("**Line 2**");

(iii) a third Tranche in a Maximum Tranche Commitment Amount not to exceed seventy-one million eight hundred thirty-six thousand Dollars ($71,836,000) ("**Tranche 3**"), which Tranche shall be allocated solely to Eligible Project Costs in connection with the design, construction, installation, startup and shakedown of a battery automation line and related tools, with a projected annual production capacity of approximately 2.25 Gwh ("**Line 3**"); and

(iv) a fourth Tranche in a Maximum Tranche Commitment Amount not to exceed twelve million three hundred nine thousand Dollars ($12,309,000) ("**Tranche 4**"), which Tranche shall be allocated solely to Eligible Project Costs in connection with the design, construction, installation, startup and shakedown of a battery automation line and related tools, with a projected annual production capacity of approximately 2.25 Gwh ("**Line 4**").

Section 2.02 Availability and Reductions.

(a) Maximum Guaranteed Loan Amount; Availability Period. Subject to the terms and conditions hereof and of the FFB Documents, DOE shall, during the applicable Availability Period, deliver to FFB an Advance Request Approval Notice authorizing FFB to make Advances under any Tranche in accordance with Section 2.03(c)(ii) (*Advance Request Approval Notice*); *provided* that after giving effect to any Advances and the use of proceeds thereof and subject to Section 2.06 (*Determination of Advance Amounts*): (A) the aggregate amount of all Advances made to the Borrower under the FFB Note for such Tranche shall not exceed the applicable Maximum Tranche Commitment Amount; (B) the aggregate amount of all Advances made to the Borrower under the FFB Note then-outstanding shall not exceed the Maximum Guaranteed Loan Amount and shall otherwise comply with the Debt Sizing Parameters; and (C) the aggregate amount of capitalized interest shall not exceed the Maximum Capitalized Interest Amount.

(b) Loan Commitment Amount Reductions. The Borrower may, on not less than thirty (30) days' prior written notice to DOE and upon the satisfaction of any consent requirement or other applicable provisions of this Agreement and each other Financing Document, permanently reduce the Guaranteed Loan Commitment Amount for one (1) or more Tranches, in whole or in part, but only if:

(i) the Borrower demonstrates to DOE's satisfaction that the total funding committed and available to the Project is sufficient to pay all remaining Scheduled Pre-Completion Costs in accordance with the then-applicable Construction Budget, Project Milestone Schedule and Base Case Financial Model;

(ii) DOE is satisfied that the proposed reduction or cancellation would not reasonably be expected to cause a Default or an Event of Default;

(iii) the Borrower shall have delivered to DOE by an Acceptable Delivery Method, a certificate, in form and substance satisfactory to DOE, with respect to the matters set forth in clauses (i) and (ii) above; and

(iv) upon such cancellation or reduction, the Borrower shall pay all expenses and other amounts then due with respect to, or as a result of, such cancellation or reduction under this Agreement.

Once reduced or cancelled pursuant to this Section, the Guaranteed Loan Commitment Amount may not be increased.

(c) DOE Termination. If the Tranche 1 First Advance Date has not occurred by the First Advance Longstop Date for Tranche 1, DOE may terminate this Agreement upon no less than ten (10) Business Days' prior written notice to the Borrower; provided, such notice may not be delivered prior to the First Advance Longstop Date. Once terminated, this Agreement may not be reinstated.

Section 2.03 Mechanics for Requesting Advances.

(a) Advance Requests. Subject to the FFB Documents, from time to time during the applicable Availability Period, the Borrower may request Advances under the FFB Documents by delivering, by an Acceptable Delivery Method, to DOE, an appropriately completed request with respect to such Advance or Advances (each, an "**Advance Request**"), in the form attached as Exhibit M (*Form of Advance Request*) (as such form may be amended, supplemented or modified from time to time by DOE, the "**Form of Advance Request**"), and otherwise in form and substance satisfactory to DOE, not less than twelve (12) Business Days and not more than fifteen (15) Business Days prior to the Requested Advance Date.

(b) Frequency. The Borrower may request Advances in accordance with clause (a) above no earlier than thirty (30) days from the date of the immediately preceding Advance Request; *provided* that: (i) the Borrower shall not deliver Advance Requests more frequently than six (6) times in any twelve (12)-month period without the prior written consent of DOE; and (ii) in no event shall any Requested Advance Date be: (A) the last three (3) Business Days of any calendar month; (B) the last seven (7) Business Days of March, June, September or December; or (C) the period from September 15 to and including the third (3rd) Business Day in October.

(c) Advance Funding

(i) Satisfaction of Conditions. Promptly after receipt of an Advance Request complying with Section 2.03(a) (*Advance Requests*), DOE shall review such Advance Request to determine whether all certificates and documentation required to be attached thereto have been delivered to it.

(ii) Advance Request Approval Notice. With respect to any Advance under the FFB Documents, if DOE determines that: (A) the Advance Request has been satisfactorily completed pursuant to this Section 2.03 *Mechanics for Requesting Advances*); and (B) all conditions precedent set forth in Section 5.04 (*Advance Approval Conditions Precedent*) in respect of the requested Advance have been satisfied (or waived in writing), then DOE shall issue to FFB an Advance Request Approval Notice no later than three (3) Business Days prior to the Requested Advance Date.

(iii) Funding. For any requested Advance for which an Advance Request Approval Notice has been issued pursuant to this Section 2.03(c) (*Advance Funding*) and for which no Drawstop Notice has been issued pursuant to Section 2.03(d) (*Drawstop Notices*), FFB shall fund such Advance on the Requested Advance Date in accordance with the FFB Note

Purchase Agreement and the FFB Note. Such funds shall be applied as specified in the FFB Documents and in accordance with Section 2.03(f) (*Disbursement of Proceeds*) hereof; *provided* that if any Drawstop Notice has been issued and is in effect on the Requested Advance Date with respect to any funds received by the Borrower, such funds (together with any additional amounts due thereon or arising therefrom) shall be returned by the Borrower to FFB pursuant to clause (d) below.

(d) Drawstop Notices

(i) Issuance. Following the issuance of any Advance Request Approval Notice by DOE pursuant to clause (a) above and on or prior to the Requested Advance Date, DOE or FFB may, from time to time, issue a notice substantially in the form attached hereto as Exhibit R (*Form of Drawstop Notice*) (a "**Drawstop Notice**") to the Borrower and to DOE or FFB, as the case may be, if and only if DOE or FFB, as the case may be, determines that:

(A) any condition set forth in Sections 5.04 (*Advance Approval Conditions Precedent*) and 5.05 (*Conditions Precedent to FFB Advance*), as applicable, with respect to such Advance is not met, or, having been met, is no longer met; or

(B) to the extent the Advance Request Approval Notice has been issued for any Advance under the FFB Note and the FFB Note Purchase Agreement, the conditions precedent to such Advance contained in the FFB Note and the FFB Note Purchase Agreement are not met, or, having been met, are no longer met.

(ii) Consequences. If a Drawstop Notice is issued, FFB shall not be obligated to make the requested Advance set forth on such Drawstop Notice; *provided* that if FFB makes any such Advance to the Borrower following the issuance of a Drawstop Notice, the Borrower shall return such Advance to FFB within one (1) Business Day following receipt thereof; and, *provided further,* that any amount required to be returned by the Borrower pursuant to this clause (ii) shall accrue interest at the Late Charge Rate from the date such Advance is made until such Advance is returned and be subject to payment of a make-whole amount in accordance with the FFB Note. Following the return of such Advance, FFB shall deliver an invoice to the Borrower setting forth the interest and other applicable make-whole amount due and payable with respect to such returned amount. The Borrower shall pay promptly, but in no event later than five (5) Business Days following delivery of such invoice, such interest and other applicable make-whole amounts as directed by FFB, and the Borrower shall pay all costs and expenses incurred by DOE, FFB, or the Collateral Agent as a result of such Advance withdrawal.

(e) No Liability

(i) The Borrower acknowledges and agrees that DOE shall only be required to use its reasonable efforts to provide FFB with the necessary Advance Request Approval Notices within the time frames specified in clauses (c)(i) and (c)(ii) above, but DOE shall in any event ensure that FFB receives all such Advance Requests and Advance Request Approval Notices as soon as reasonably practicable following receipt from the Borrower of the applicable Advance Requests and certificates and other documentation specified above (subject to the Borrower satisfying all conditions precedent specified in this Agreement, Sections 5.04 (*Advance Approval Conditions Precedent*) and 5.05 (*Conditions Precedent to FFB Advance*), as applicable and, prior to the Execution Date, Sections 5.01 (*Conditions Precedent to the Execution Date*) and 5.02 (*Conditions Precedent to FFB Purchase of the FFB Note*), respectively).

(ii) Neither DOE nor FFB shall have any liability for any action taken (including the delivery of a Drawstop Notice) or omitted to be taken (including the refusal to fund any Advance or Advances following the issuance of a Drawstop Notice) or for any loss or injury resulting from its actions or inaction or its performance or lack of performance of any of its other obligations hereunder unless and solely to the extent such liability arises from the gross negligence or willful misconduct of DOE or FFB as determined by a court of competent jurisdiction in a final, non-appealable judgement. In no event shall DOE, FFB or any subsequent holder of the FFB Note be liable, and each such Person shall be exempt from liability in accordance with Section 11.08 (*Limitation on Liability*), in each case: (A) for acting in accordance with, or relying upon, any entitlement order, instruction, notice, demand, certificate or document from the Borrower or any entity acting on behalf of the Borrower; or (B) in the case of FFB or any subsequent holder of the FFB Note, for acting in accordance with, or relying upon, any Drawstop Notice issued by DOE.

(iii) Notwithstanding anything contained in this Agreement to the contrary, neither DOE nor FFB shall incur any liability to the Borrower, any Affiliate thereof or to any other Secured Party for not performing any act or fulfilling any duty, obligation or responsibility hereunder or under any other Financing Document by reason of any Lender Force Majeure Event; it being understood that DOE or FFB, as the case may be, shall resume performance hereunder as soon as reasonably practicable after the effects of such Lender Force Majeure Event cease to prevent or otherwise hinder DOE or FFB, as applicable, from performing hereunder or thereunder.

(f) Disbursement of Proceeds.

(i) The Borrower shall apply the proceeds of any Advance under a Tranche solely to:

(A) reimburse the Borrower in an amount equal to Eligible Project Cost Reimbursement Amounts corresponding to the Relevant Line under such Tranche;

(B) pay for Eligible Project Costs corresponding to the Relevant Line that have been invoiced and are then due and payable, as evidenced by acceptable invoices;

(C) solely with respect to the final Advance under Tranche 4, pay for Eligible Project Costs related to Line 4 and reasonably expected to be due and payable by the Borrower in the next ninety (90) day period following the relevant Advance Date (it being understood that at the time of submission of the relevant Advance Request the Borrower shall be in possession of all the invoices, or other documentation reasonably acceptable to DOE, necessary to evidence the incurrence of such Eligible Project Costs); and

(D) fund the Debt Service Reserve Required Balance in accordance with the Accounts Agreement.

(ii) In no event shall the proceeds of the Advances be:

(A) applied towards any portion of Pre-Completion Costs incurred prior to the Eligibility Effective Date;

(B) used to pay interest payments on the Guaranteed Loan or programmatic fees charged by or paid to DOE relating to the Guaranteed Loan;

(C) disbursed to fund or reimburse the Borrower or any other Borrower Entity for any contribution made under the Base Funding Amount, except to the extent of proceeds constituting Eligible Project Cost Reimbursement Amounts; or

(D) used to pay any portion of the Pre-Completion Costs that are not Eligible Project Costs.

Section 2.04 Advance Requirements under the FFB Documents. Notwithstanding anything to the contrary contained in this Article II (*Funding*), the Borrower shall comply with each disbursement requirement set forth in the FFB Documents. Unless otherwise specified in the FFB Documents, all determinations to be made with respect to the FFB Documents shall be made by DOE.

Section 2.05 No Approval of Work. The making of any Advance or Advances under the Financing Documents shall not be deemed an approval or acceptance by any Secured Party of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Project.

Section 2.06 Determination of Advance Amounts.

(a) As of any date of any requested Advance, after giving effect to the Advance:

(i) the sum of:

(A) the aggregate outstanding principal amount of all Advances made to the Borrower under the FFB Note outstanding (including, for the avoidance of doubt, the principal amount of such requested Advance), and,

(B) the Aggregate Capitalized Interest, shall not exceed eighty percent (80%) of the sum of:

(C) the amount of Eligible Project Costs (excluding all interest for such purposes) incurred and paid on or prior to the relevant Requested Advance Date (or with respect to the final Advance, reasonably anticipated to be paid within ninety (90) days after such Requested Advance Date), and

(D) the Aggregate Capitalized Interest;

(ii) the outstanding principal amount of all Advances shall not exceed the Maximum Principal Amount;

(iii) the aggregate amount of capitalized interest shall not exceed the Maximum Capitalized Interest Amount; and

(iv) the outstanding principal amount under each Tranche shall not exceed the Maximum Tranche Commitment Amount for such Tranche.

(collectively, the "**Debt Sizing Parameters**")

(b) The Borrower may request that any portion of the Maximum Tranche Commitment Amount for any Tranche be allocated to another Tranche, subject to the prior written consent of DOE, which request shall include the demonstration of any Additional Equity Contributions required to be made by the Borrower for such Tranche. Upon DOE's consent, the Maximum Tranche Commitment Amount for the applicable Tranches shall be automatically adjusted to reflect such re-allocation.

ARTICLE III

PAYMENTS; PREPAYMENTS

Section 3.01 Place and Manner of Payments.

(a) All payments due under the FFB Note shall be made by the Borrower to FFB pursuant to the terms of the FFB Documents.

(b) All payments to be made to DOE under this Agreement shall be sent by the Borrower in Dollars in immediately available funds before 1:00 p.m. (District of Columbia time) on the date when due to the account set forth in Section 4.01(i) (Reimbursement and Other Payment Obligations), or to any other account as DOE shall direct by written notice to the Borrower not less than five (5) Business Days prior to the date when due.

(c) In the event that the date of any payment to DOE or the expiration of any time period hereunder occurs on a day that is not a Business Day, then such payment or expiration of time period shall be made or occur on the next succeeding Business Day, and such extension of time shall in such cases be included in computing interest or fees, if any, in connection with such payment.

(d) The Borrower understands and agrees that DOE and FFB are agencies or instrumentalities of the United States and that all payments hereunder or under the Financing Documents are payable, and shall in all cases be paid, free and clear of all Taxes.

Section 3.02 Maturity and Amortization.

(a) Maturity Date. The Borrower shall repay the outstanding Guaranteed Loan in full on the Maturity Date.

(b) Payments. The FFB Note shall: (i) be stated to mature in consecutive quarterly installments of principal (each, a "**FFB Note Installment**") payable on each Payment Date, commencing on the First Principal Payment Date of the FFB Note (or, if not a Business Day, the next Business Day), in the amounts set forth in the amortization schedule set out in Schedule A (*Amortization Schedule*); and (ii) provide for the capitalization and payment of interest in accordance with Section 3.04 (*Interest Provisions Relating to All Advances*) and the FFB Documents.

Section 3.03 Evidence of Debt. The entries made in the internal records maintained by or on behalf of DOE evidencing the amounts from time to time: (i) advanced by FFB under the FFB Note Purchase Agreement and the FFB Note; or (ii) paid by or on behalf of the Borrower from time to time in respect thereof, shall constitute, absent manifest error, evidence of the existence and amount of the FFB Note Obligations of the Borrower as therein recorded.

Section 3.04 Interest Provisions Relating to All Advances.

(a) Interest Amount and Interest Computations.

(i) Interest shall accrue on the outstanding principal amount of each Advance from the date such Advance is disbursed to the Borrower pursuant to the FFB Note Purchase Agreement and the FFB Note, to the date such Advance is due, in each case, at a rate *per annum* as specified in the FFB Note Purchase Agreement. Except as provided in clause (ii) below, interest accrued on the outstanding principal balance of each Advance shall be due and payable to FFB on each Payment Date beginning on the First Interest Payment Date to occur after the date on which such Advance is made, through and including the Maturity Date.

(ii) For each Advance made prior to the First Principal Payment Date, the amount of accrued interest on the FFB Note that would otherwise be due and payable on each Payment Date to occur until the date immediately prior to the First Principal Payment Date shall be capitalized in arrears on the respective Payment Date and be added to the principal amount due under the FFB Note, and interest shall accrue on the sum of the outstanding principal (including such capitalized interest) at the rate established for such Advance in accordance with paragraph 6 of the FFB Note; *provided* that the aggregate amount of accrued interest that may be capitalized shall not cause the outstanding aggregate amount under the FFB Note to exceed the Maximum Guaranteed Loan Amount. The amount of interest that shall be capitalized on each Advance shall be determined as set forth in the FFB Note.

(iii) Without limiting the foregoing, all Overdue Amounts on the Guaranteed Loan shall: (A) accrue interest at the Late Charge Rate; and (B) be payable by the Borrower in accordance with the FFB Documents.

(iv) Any interest accrued on the FFB Note in excess of the Maximum Capitalized Interest Amount shall be payable by the Borrower in cash in arrears on each applicable Payment Date as provided in the FFB Note.

(v) The Borrower hereby authorizes FFB to record in an account or accounts maintained by FFB on its books: (A) the interest rates applicable to all Advances; (B) the date and amount of each principal and interest payment on each Advance outstanding; and (C) such other information as FFB may determine is necessary for the computation of interest and the Prepayment Price payable by the Borrower under the FFB Note. The Borrower acknowledges and agrees that all computations of interest and the Prepayment Price by FFB pursuant to this Section 3.04 (*Interest Provisions Relating to All Advances*) and the FFB Note shall, in the absence of manifest error, be evidence of the amount thereof. All computations of interest shall be made as set forth in the relevant FFB Document.

(b) Interest Payment Dates. Subject to the terms of the FFB Note Purchase Agreement and the FFB Note, the Borrower shall pay accrued interest on the outstanding principal amount of each Advance: (i) on each Payment Date, as and to the extent specified in clause (a) above; (ii) on each prepayment date (to the extent thereof); and (iii) at maturity (whether by acceleration or otherwise).

Section 3.05 Prepayments.

(a) Terms of All Prepayments.

(i) With respect to any prepayment of any Advance, whether such prepayment is voluntary or mandatory, including a prepayment upon acceleration, the Borrower shall comply with all applicable terms and provisions of this Agreement and the FFB Documents. All prepayment amounts shall be applied solely to the Guaranteed Loan or, where applicable as specified herein, to the Guaranteed Loan and the Cerberus Loan, Ratably, and may not be applied to prepayments of any other Permitted Indebtedness.

(ii) The Borrower may not re-borrow the principal amount of any Advance that is prepaid, nor shall any such prepayment create availability for further borrowings during the Availability Period.

(iii) Simultaneously with all prepayments of the Advances under the Guaranteed Loan, whether voluntary or mandatory, the Borrower shall pay all accrued interest and other fees, costs, expenses and other Secured Obligations then outstanding under the Financing Documents. Any prepayments of the Advances under the Guaranteed Loan in full shall require payment in full of all other Secured Obligations.

(iv) If the Borrower fails to make a prepayment to FFB on any Intended Prepayment Date in accordance with this Agreement and the FFB Note, the Borrower shall pay FFB a Late Charge on any Overdue Amount from such Intended Prepayment Date to the date on which payment is made, computed in accordance with the provisions of the FFB Note.

(v) Any prepayment made pursuant to this Section 3.05 (*Prepayments*) shall be : (A) applied on a *pro rata* basis to each Tranche (except as otherwise agreed by DOE and the Borrower); *provided* that prepayment proceeds received in connection with a specific Line pursuant to clause (B), (D), (E), (I), (J), (K), or (M) of Section 3.05(c)(i) (*Mandatory Prepayments*) shall be applied solely to the Relevant Tranche; (B) applied to the specific Advances identified by the Borrower in accordance with the FFB Documents and specified in the relevant Prepayment Election Notice, which notice shall specify if the prepayment is voluntary or mandatory; (C) applied in the inverse order of maturity among the outstanding principal amounts of such Advances; and (D) due in an amount equal to the Prepayment Price calculated by FFB in accordance with the terms of the FFB Note.

(vi) Any prepayment pursuant to this Section 3.05 (*Prepayments*) shall be due in an amount equal to the Prepayment Price determined in accordance with the terms of the FFB Note and on the Intended Prepayment Date specified in the relevant Prepayment Election Notice (it being understood that FFB's calculation of the Prepayment Price of the FFB Note and/or any components thereof shall, in the absence of manifest error, be determinative and binding).

(vii) In the event of any prepayment in full of all outstanding Advances under a Tranche pursuant to this Section 3.05 (*Prepayments*), on or prior to the last day of the Availability Period, the remaining Guaranteed Loan Commitment Amount for such Tranche shall be deemed to be reduced to zero Dollars ($0), unless otherwise agreed to by DOE.

(b) Voluntary Prepayments.

(i) Subject to clause (ii) below, the Borrower may at any time, and from time to time, prepay all or any portion of the outstanding principal amount of any Advance under the FFB Note, upon prior submission of a Prepayment Election Notice by the Borrower to DOE and FFB (with a copy to the Collateral Agent) not less than ten (10) Business Days or, for a prepayment in full, thirteen (13) Business Days prior to the Intended Prepayment Date in accordance with the terms hereof and the FFB Note.

(ii) The Advances may only be prepaid under clause (i) above if either such prepayment includes prepayment in full of all outstanding Advances and all other Secured Obligations under all Tranches, or if in part as follows:

(A) to the extent that such prepayment is made prior to the expiration of the Availability Period for the Relevant Tranche, (1) such prepayment includes prepayment in full of all outstanding Advances and all other FFB

Note Obligations with respect to such Tranche, or (2) such prepayment includes a partial prepayment of the outstanding Advances and other FFB Note Obligations with respect to such Tranche; *provided* that DOE has provided its prior written consent and the remaining Guaranteed Loan Commitment Amount is reduced to zero (0); or

(B) to the extent such prepayment is made after the expiration of the Availability Period for the Relevant Tranche, the Borrower has demonstrated to the satisfaction of DOE that, immediately following such prepayment:

(1) each Reserve Account has been fully funded to its required balance in accordance with the Accounts Agreement;

(2) if the Line Commercial Operation Date of the Relevant Line has not yet occurred, the Line Commercial Operation Date of such Relevant Line is expected to occur on or before the corresponding Line Commercial Operation Longstop Date, and the total funding committed and available to the Borrower for such Line is sufficient to pay all remaining Pre-Completion Costs related to construction of such Line in accordance with the then-applicable Project Budgets and Plans and Base Case Financial Model; and

(3) the total funding available to the Project is sufficient to pay all O&M Expenses in accordance with the then-applicable Annual Plan and Base Case Financial Model, in each case, no Default or Event of Default has occurred, is continuing or could reasonably be expected to occur as a result of such prepayment.

(c) Mandatory Prepayments.

(i) Subject to Section 3.05(d) (*Reduction of Commitments in Lieu of Mandatory Prepayments*) below, the Borrower shall prepay the Advances upon the occurrence of any of the following events (each, a "**Mandatory Prepayment Event**") and in the prepayment amounts set forth below (such amounts, the "**Mandatory Prepayment Amounts**"):

(A) on the ninety-first (91st) day prior to the Convertible Note Maturity Date, if on such date any Convertible Notes remain outstanding, a sum equal to all outstanding Advances and all other Secured Obligations under the Financing Documents;

(B) upon receipt by the Borrower of any amount constituting the Net Amount of the type described in clause (b) of the definition thereof, to the extent (and promptly following determination that) prepayment is required in accordance with Section 7.04 (*Event of Loss*), the Borrower shall apply such required amount to prepay the Guaranteed Loan and the Cerberus Loan, Ratably; *provided* that (1) the proceeds from any business interruption, delay in start-up or liability insurance shall be excluded for prepayment pursuant to this clause; and (2) upon written notice by the Borrower to the Collateral Agent and not more than two (2) Business Days following receipt of such Net Amount, such Net Amount shall be excluded from the prepayment requirements of this sub-clause (B) if (i) the Borrower shall deliver to the Collateral Agent a certificate to the effect that the Borrower intends to apply the Net Amount (or a portion thereof specified in such notice) to reinvest such Net Amount to restore or replace any assets affected by the related casualty event, within three hundred sixty-five (365) days after receipt of such Net Amount (any such event, an "**Insurance/Condemnation Reinvestment**"), and certifying therein that no Default or Event of Default exists prior to giving such notice and prior to or after giving effect to such Insurance/Condemnation Reinvestment, and (ii) within three hundred sixty-five (365) days from the date of receipt of such Net Amount, such Net Amount shall be applied to such Insurance/Condemnation Reinvestment; provided, however, that the amount of such Net Amount (x) that the Borrower or the applicable Borrower Entity or Subsidiary of any Borrower Entity shall have determined not to, or shall have otherwise ceased to, or is not able to, by operation of contract or law or otherwise (including not being able to make the certifications required pursuant to sub-clauses (B)(i) and (ii) above), apply toward an Insurance/Condemnation Reinvestment or (y) that have not been so applied toward an Insurance/Condemnation Reinvestment by the end of such three hundred sixty-five (365)-day period, in each case shall be applied to a mandatory prepayment pursuant to this sub-clause (B);

(C) [Reserved];

(D) upon receipt by the Borrower of any amount as a result of a breach of any Project Document (other than termination or repudiation) that exceeds the amount reasonably necessary to remedy the breach (including proceeds received from breach of any Sales Agreements, but excluding proceeds received from breach of any Sales Agreement as compensation for loss of projected revenues or constituting customary termination payments or non-refundable deposits), the Borrower shall prepay the Guaranteed Loan and the Cerberus Loan, Ratably, with such excess amount, but solely to the extent such excess amount is greater than two hundred and fifty thousand Dollars ($250,000), individually or five hundred thousand Dollars ($500,000) in the aggregate in any Fiscal Year;

(E) upon receipt by the Borrower, in respect of any Asset Sale in a single transaction or a series of related transactions, of that portion of the Net Amount of the proceeds of such Asset Sale that is not applied (or reasonably expected to be applied) to the acquisition of replacement assets, but solely to the extent such excess amount is greater than three million Dollars ($3,000,000) in any Fiscal Year, the Borrower shall (subject to an Asset Sale Reinvestment) apply such amount to prepay the Guaranteed Loan and the Cerberus Loan, Ratably; provided, that, upon written notice by the Borrower to the Collateral Agent, not more than two (2) Business Days following receipt of such Net Amount of proceeds, such Net Amount of proceeds shall be excluded from the prepayment requirements of this sub-clause (E) if (x) the Borrower shall deliver to the Collateral Agent a certificate to the effect that the Borrower intends to apply the Net Amount (or a portion thereof specified in such notice) to reinvest such Net Amount in long term assets used or useful in the business of the Borrower within one hundred eighty (180) days after receipt of such Net Amount (any such event, an "**Asset Sale Reinvestment**"), and certifying therein that no Event of Default exists prior to giving such notice and prior to or after giving effect to such Asset Sale Reinvestment, and (y) within one hundred eighty (180) days from the date of receipt of such Net Amount, such Net Amount shall be applied to such Asset Sale Reinvestment; provided, further, however, that the amount of such Net Amount (i) that the Borrower, Borrower Entity or its Subsidiary shall have determined not to, or shall have otherwise ceased to, or is not able to, by operation of contract or law or otherwise (including not being able to make the certifications required pursuant to this sub-clause (E)), apply toward an Asset Sale Reinvestment or (ii) that have not been so applied toward an Asset Sale Reinvestment by the end of such one hundred eighty (180)-day period, in each case shall be applied to a mandatory prepayment of the Guaranteed Loan and the Cerberus Loan pursuant to this clause (E); provided, further, that no prepayment under this sub-clause (E) shall be required for (i) any sale of inventory in the Ordinary Course of Business or (ii) any Permitted Tax Credit Transaction consisting solely of an outright sale of such Section 45X Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction (it being understood, for the avoidance of doubt, that Net Amount from any Permitted Tax Credit Transaction that is a securitization or other financing transaction shall be subject to prepayment pursuant to this clause (c));

(F) within twelve (12) Business Days of the date of delivery of the audited financial statements pursuant to Section 8.01(a)(i) (*Annual Financial Statements*) (or, if not delivered, the date on which such audited financial statements were required to have been delivered pursuant to Section 8.01(a)(i) (*Annual Financial Statements*)), commencing on the Fiscal Year ending on December 31, 2027, the Borrower shall prepay the Guaranteed Loans and the Cerberus Loans, Ratably, in an aggregate amount equal to Excess Cash Flow for such Fiscal Year (plus in the case of the Fiscal Year ending on December 31, 2027, Excess Cash Flow for each of the two preceding Fiscal Years, if any; *provided* that, Excess Cash Flow for the two preceding Fiscal Years shall be determined on an individual basis for each such Fiscal Year) multiplied by the ECF Percentage(s) applicable to such Excess Cash Flow for such Fiscal Year; *provided* that such amount shall be reduced by the aggregate amount of: (i) voluntary prepayments of principal amounts of any Advance under the FFB Note and any Cerberus Loan under the Cerberus Credit Agreement (to the extent otherwise permitted hereunder) during such Fiscal Year; (ii) Capital Expenditures made in cash during such period to the extent in accordance with the Annual Plan (other than Capital Expenditures that were financed with the proceeds of Indebtedness or issuances of Equity Interests of the Borrower) and (iii) the aggregate amount required to be deposited into any Specified Account pursuant to any Financing Document during such Fiscal Year; provided, further, that such amount shall be subject to further reduction as necessary to ensure that, (i) in the case of the first occurrence of a prepayment required under this sub-clause (F) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year, immediately after giving effect to such payment the aggregate amount of cash and Cash Equivalents held by the Borrower and its Subsidiaries is not less than Thirty Million Dollars ($30,000,000), (ii) in the case of the second

occurrence of a prepayment required under this sub-clause (F) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year, immediately after giving effect to such payment the aggregate amount of cash and Cash Equivalents held by the Borrower and its Subsidiaries is not less than Forty Million Dollars ($40,000,000) and (iii) in the case of the each subsequent occurrence of a prepayment required under this clause (c) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year, immediately after giving effect to such payment the aggregate amount of cash and Cash Equivalents held by the Borrower and its Subsidiaries is not less than Fifty Million Dollars ($50,000,000). The Borrower shall include reasonably detailed calculations of Excess Cash Flow and the prepayment amount (including any component thereof) in the Compliance Certificate required to be delivered in accordance with Section 8.01(a)(ii) (*Annual Financial Statements*). If such audited financials are not available or not delivered as required, DOE may elect to calculate Excess Cash Flow with reference to the December 31 quarterly financials or monthly financials, as determined by DOE in its sole discretion.

(G) [Reserved];

(H) with respect to any Reserve Account funded, in part or full, with the proceeds of any Advance, an amount equal to any Acceptable Letter of Credit that is credited to such account in lieu of such proceeds to the extent the aggregate amount credited to and on deposit in such Reserve Account then exceeds the applicable requirement;

(I) on any Quarterly Reporting Date, a sum equal to any Excess Advance Amount as of such Quarterly Reporting Date;

(J) on any date, a sum equal to any Excess Guaranteed Loan Amount as of such date;

(K) upon receipt by the Borrower of any Issuance Proceeds, the Borrower shall apply a sum equal to such Issuance Proceeds to prepay the Guaranteed Loan and the Cerberus Loan, Ratably;

(L) within sixty (60) days following the determination by DOE that any Applicable Law has made it unlawful or impossible for FFB to maintain the Guaranteed Loan or any portion thereof, or DOE to guarantee the amount of any Advance or to reimburse FFB pursuant to the FFB Documents, or otherwise renders unlawful the performance by DOE or FFB of their respective obligations under the Financing Documents, a sum equal to all outstanding Advances and all other Secured Obligations under the Financing Documents; and

(M) upon receipt by the Borrower of any Extraordinary Amount in excess of five million Dollars ($5,000,000) during any Fiscal Year, the Borrower shall apply a sum equal to such Extraordinary Amount to prepay the Guaranteed Loan and the Cerberus Loan, Ratably; provided that no prepayment under this sub-clause (M) shall be required for any Permitted Tax Credit Transaction consisting solely of an outright sale of such Section 45X Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction (it being understood, for the avoidance of doubt, that Net Amount from any Permitted Tax Credit Transaction that is a securitization or other financing transaction shall be subject to prepayment pursuant to this sub-clause (M)).

(ii) Subject to clause (d) below, upon the occurrence of a Mandatory Prepayment Event, the Borrower shall promptly, and in no event later than five (5) Business Days upon the occurrence thereof, provide a Prepayment Election Notice to DOE and FFB (with a copy to the Collateral Agent) not less than thirteen (13) Business Days prior to the Intended Prepayment Date in accordance with the terms hereof and of the FFB Note.

(iii) If DOE's calculation of the anticipated Mandatory Prepayment Amount differs from that of the Borrower, DOE and the Borrower shall attempt to promptly resolve any discrepancies; *provided*, that any delay in the payment of any amounts due hereunder during such period shall not be an Event of Default.

(iv) For any prepayment of the Guaranteed Loan in whole or in part pursuant to this Section 3.05(c) (*Mandatory Prepayments*), after DOE has notified the Borrower that the anticipated Mandatory Prepayment Amount is acceptable to DOE, the Borrower shall deliver an Prepayment Election Notice to FFB certifying the amount of the Mandatory Prepayment Amount pursuant to Section 14 of the FFB Note, with a copy to DOE. If the Borrower fails to deliver a Prepayment Election Notice to FFB within three (3) Business Days of DOE's approval of the Mandatory Prepayment Amount set forth in the Prepayment Election Notice, the Borrower hereby unconditionally and irrevocably authorizes and empowers DOE to deliver such Prepayment Election Notice to FFB on the Borrower's behalf.

(v) Any Mandatory Prepayments of Advances made under the FFB Note shall be made on the Intended Prepayment Date set forth in the relevant Prepayment Election Notice delivered pursuant to this Section 3.05 (*Prepayments*), which Intended Prepayment Dates shall occur within the applicable time frames provided in this Section 3.05(c) (*Mandatory Prepayments*).

(vi) Nothing contained in this Section 3.05(c) (*Mandatory Prepayments*) shall permit any Borrower Entity or any of its Subsidiaries to take any actions that is otherwise prohibited by the terms and conditions of this Agreement.

(d) Reduction of Commitments in Lieu of Mandatory Prepayments. Notwithstanding clause (c) above, the Borrower may, subject to delivery of prior written notice to DOE within the period set forth in clause (c)(ii) above, apply the proceeds of any Mandatory Prepayments that would have otherwise been applied pursuant to clause (c) above to prepay the Advances made under the FFB Note (the "**Mandatory Prepayment Proceeds**") to fund Eligible Project Costs, and the Guaranteed Loan Commitment Amount shall be reduced Dollar for Dollar (but not less than zero Dollars ($0)) by the aggregate amount of Mandatory Prepayment Proceeds that have been used to fund such Eligible Project Costs in accordance with this clause (d).

ARTICLE IV

PAYMENT OBLIGATIONS; REIMBURSEMENT

Section 4.01 Reimbursement and Other Payment Obligations.

(a) The Borrower shall pay to DOE the Facility Fee on or before the Execution Date.

(b) The Borrower shall pay to DOE the Maintenance Fee, with payments to occur as described below:

(i) the Borrower shall pay the initial Maintenance Fee before the Execution Date, which fee shall be pro-rated on a daily basis for the number of days starting with the Execution Date and ending on December 31, 2024; and

(ii) the Borrower shall pay each subsequent Maintenance Fee on or before January 1 (or if not a Business Day, the first Business Day thereafter) of each calendar year after the Execution Date until the date on which the Guaranteed Loan is paid in full.

(c) The Borrower shall pay to DOE (or, to the extent applicable, reimburse DOE) or such other Person as DOE shall direct in writing, as follows:

(i) a sum, in Dollars, equal to the total of all amounts payable by DOE to FFB pursuant to the DOE Guarantee (a "**DOE Guarantee Payment**") which relate to, or arise out of, the FFB Documents or FFB providing or having provided financing under the FFB Note (such amounts, "**Reimbursement Amounts**"), which Reimbursement Amounts shall be due and payable to DOE by the Borrower as of the date on which DOE makes the DOE Guarantee Payment to which they relate;

(ii) all documented Secured Party Expenses paid or incurred in connection with:

(A) whether or not the transactions contemplated by this Agreement, or the Financing Documents are consummated, the due diligence of the Borrower, the other Borrower Entities and the Project, and the preparation,

negotiation, execution and recording of this Agreement, the other Transaction Documents and any other documents and instruments related to this Agreement or thereto (including legal opinions);

(B) any amendment or modification to, or the protection or preservation of any right or claim under, or consent or waiver in connection with, this Agreement or any other Transaction Document, any such other document or instrument related to this Agreement, such other Transaction Document or any Collateral;

(C) the administration, preservation in full force and effect and enforcement of this Agreement, the other Transaction Documents and any other documents and instruments referred to herein or therein (including the fees and disbursements of counsel for DOE and travel costs);

(D) the servicing, administration and monitoring of the Project and the Financing Documents throughout the term of the Guaranteed Loan, including in connection with any difficulty experienced by the Project relating to technical, commercial, financial or legal matters or other events; and

(E) any foreclosure against, sale or other Disposition of any Collateral securing the Secured Obligations from time to time, or pursuit of any other remedies under any of the Financing Documents, to the extent such costs and expenses are not recovered from such foreclosure, sale or other Disposition; and

(iii) to the extent permitted by Applicable Law, interest on any and all amounts described in this Article IV (*Payment Obligations; Reimbursement*) (other than Financing Document Amounts, interest on which shall accrue and be payable only to the extent (including subject to any conditions provided for therein and any defenses of the Borrower thereunder or in respect thereof), at the times, in the manner and in the amounts provided for in the Financing Documents (excluding this Section 4.01 (*Reimbursement and Other Payment Obligations*))) from the date payable by DOE under the FFB Program Financing Agreement until payment thereof in full by the Borrower, which amount shall accrue and be payable at the Late Charge Rate.

(d) Upon any Event of Default and written notice from DOE to the Borrower, the Borrower shall pay to DOE an amount up to two percent (2%) per annum on the outstanding principal amount of the Guaranteed Loan (such amount being in addition to any interest payable pursuant to the FFB Note, including at the Late Charge Rate) (the "**DOE Default Interest Rate**"), payable on each Payment Date during the period commencing on the date of such Event of Default until the date such Event of Default is cured or waived in writing and is no longer continuing. Upon written notice by DOE demanding payment of the DOE Default Interest Rate, and subject to Section 4.05 (*Payment of Financing Document Amounts*), the Borrower shall pay the DOE Default Interest Rate upon each immediately succeeding Payment Date following such written demand.

(e) Any amendment, modification, consent, waiver or change to or in respect of any provision of this Agreement or any other Financing Document that constitutes a "modification" (as defined in Section 502(9) of FCRA) that increases the amount of the Credit Subsidy Cost (as calculated in accordance with FCRA and OMB Circular A-11, and as determined by OMB in its sole discretion), shall be subject to the availability to DOE of funds appropriated by Congress, or to the extent permitted by Applicable Law, payment by the Borrower, to meet, any increase in the Credit Subsidy Cost prior to such amendment or waiver to the extent required pursuant to Section 11.01 (*Waiver and Amendment*).

(f) In accordance with Section 609.13(a) of the Title XVII Regulations, the Borrower shall not: (i) request that any Guaranteed Loan or any portion or proceeds derived thereof be used; or (ii) use any other funds obtained from the U.S. federal government or from a loan or other instrument guaranteed by the U.S. federal government, in either case for the payment of any costs, fees or expenses payable under this Section 4.01 (*Reimbursement and Other Payment Obligations*), except to the extent explicitly authorized by the U.S. Congress.

(g) The Borrower shall pay to DOE any fees that DOE may assess or incur from time to time in connection with any amendment, consent or waiver in connection with this Agreement or any other Financing Document.

(h) All fees payable to DOE hereunder shall be paid on the dates due, in immediately available funds in Dollars to DOE and shall be non-refundable upon payment.

(i) All amounts payable to DOE hereunder, including Reimbursement Amounts, shall be paid without counterclaim or set-off by wire transfer to the following account, or to such other account as may be specified by DOE from time to time:

U.S. Treasury Department

ABA No. 0210-3000-4 TREASNYC/CTR/BNF = 89000001

OBI = LGPO Loan No. 1424

Section 4.02 Subrogation. In furtherance of, and not in limitation of, DOE's right of subrogation, the Borrower acknowledges that, to the extent of any payment made by DOE of Reimbursement Amounts, DOE shall be fully subrogated to the extent of any such payment, and any additional interest due on any late payment, to the rights of FFB under the FFB Note, the FFB Note Purchase Agreement and any other Financing Documents. The Borrower acknowledges and agrees to such subrogation and shall execute such instruments and to take such actions as DOE may reasonably request to evidence such subrogation and to perfect the right of DOE to receive any amounts paid or payable thereunder. If and to the extent that DOE shall be fully and indefeasibly reimbursed in cash or immediately available funds by the Borrower pursuant to Section 4.01(*Reimbursement and Other Payment Obligations*) in respect of any payment made by DOE of Reimbursement Amounts, such reimbursement shall be deemed to constitute an equal and corresponding payment in respect of DOE's rights of subrogation hereunder in respect of such payment of Reimbursement Amounts.

Section 4.03 Obligations Absolute.

(a) The obligations of the Borrower under this Article IV (*Payment Obligations; Reimbursement*) shall be absolute and unconditional, and shall be paid or performed strictly in accordance with this Agreement under all circumstances irrespective of:

(i) any lack of validity or enforceability of, or any amendment or other modifications of, or waiver with respect to the FFB Note, this Agreement or any other Financing Document;

(ii) any exchange or release of any other obligations hereunder;

(iii) the existence of any claim, setoff, defense (other than a defense of payment or performance), reduction, abatement or other right that the Borrower Entity may have at any time against DOE or any other Person;

(iv) any document presented in connection with any Financing Document proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) any payment by DOE pursuant to the terms of the FFB Program Financing Agreement against presentation of a certificate or other document which does not strictly comply with terms of such Program Financing Agreement;

(vi) any breach by the Borrower Entity of any representation, warranty or covenant contained in any of the Financing Documents;

(vii) except to the extent prohibited by mandatory provisions of Applicable Law, status as, and any other rights of, a "debtor" under the UCC as in effect from time to time in the State of New York or under the Applicable Law of any other relevant jurisdiction;

(viii) any duty on the part of DOE to disclose any matter, fact or thing relating to the business, operations or financial or other condition of the Borrower Entity now known or hereafter known by DOE;

(ix) any disability or other defense (other than a defense of payment or performance) of the Borrower Entity or any other Person;

(x) any act or omission by DOE that directly or indirectly results in or aids the discharge of the Borrower Entity or any other Person, by operation of law or otherwise;

(xi) any change in the time, manner or place of payment of, or in any other term of, all or any of its obligations or liabilities hereunder or any compromise, renewal, extension, acceleration or release (other than a release of such obligations of the Borrower under this Article IV) with respect thereto, any change in the collateral securing its obligations or liabilities hereunder or any other Financing Document or any amendment or waiver of or any consent to departure from any other guarantee for all or any of its obligations or liabilities hereunder or any other Financing Document;

(xii) any change in the corporate structure or existence of the Borrower Entity;

(xiii) any exchange, taking or release of Collateral;

(xiv) any application of Collateral to the Secured Obligations; or

(xv) any other circumstances or conditions, foreseen or unforeseen, now existing or hereafter occurring, which might otherwise constitute a defense available to, or discharge of, the Borrower Entity in respect of any Financing Document (other than a defense of payment or performance).

(b) The Borrower and all others who may become liable for all or part of the obligations of the Borrower under this Agreement agree to be bound by this Article IV and, to the extent permitted by Applicable Law:

(i) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisement privileges against the indebtedness and obligations evidenced by any Financing Documents or by any extension or renewal thereof;

(ii) waive presentment and demand for payment, notices of non-payment and of dishonor, protest of dishonor and notice of protest, except as expressly provided otherwise in this Agreement;

(iii) waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default or enforcement of any payment hereunder except as required hereby or by the other Financing Documents;

(iv) waive all rights of abatement, diminution, postponement or deduction, and any defense (other than a defense of payment or performance), that any party to any Financing Document or any beneficiary thereof may have at any time against DOE or any other Person, or out of any obligation at any time owing to DOE or FFB;

(v) agree that its liabilities hereunder shall be unconditional and without regard to any setoff, counterclaim or the liability of any other Person for the payment hereof;

(vi) agree that any consent, waiver or forbearance hereunder with respect to an event shall operate only for such event and not for any subsequent event;

(vii) consent to any and all extensions of time that may be granted by DOE or FFB with respect to any payment hereunder or other provisions hereof and to the release of any security at any time given for any payment hereunder, or any part thereof, with or without substitution, and to the release of any Person or entity liable for any such payment;

(viii) waive all defenses and allegations based on or arising out of any contradiction or incompatibility among its obligations or liabilities hereunder and any of its other obligations;

(ix) waive, unless and until its obligations or liabilities hereunder have been performed, paid, satisfied or discharged in full, any right to enforce any remedy that DOE or FFB now has or may in the future have against the Borrower Entity or any other Person;

(x) waive any benefit of, or any right to participate in, any guarantee or insurance whatsoever now or in the future held by DOE or FFB;

(xi) waive the benefit of any statute of limitations affecting its liability hereunder; and

(xii) consent to the addition or release of any and all other makers, endorsers, guarantors and other obligors for any payment hereunder, and to the acceptance or release of any and all other security for any payment hereunder, and agree that the addition or release of any such obligors or security shall not affect the liability of the parties hereto for any payment hereunder.

(c) The Borrower shall remain liable for its reimbursement and other payment obligations under this Agreement and the other Financing Documents until such obligations have been irrevocably paid or otherwise satisfied and discharged in full in accordance with this Agreement and the other Financing Documents, and nothing except irrevocable payment, satisfaction or discharge in full thereof in accordance with this Agreement and the other Financing Documents shall release the Borrower from such obligations.

(d) Except as expressly provided herein, the obligations and liabilities of the Borrower under this Agreement or the other Financing Documents shall not be conditioned or contingent upon the pursuit or exercise by DOE, FFB or any other Person at any time of any right or remedy (nor shall such obligations and liabilities be affected, released or modified by any action, failure, delay or omission by DOE, FFB or any other Person in the enforcement or exercise of any right or remedy under Applicable Law) against any Person that may be or become liable in respect of all or any part of the obligations and liabilities of the Borrower under this Agreement or the other Financing Documents.

Section 4.04 Evidence of Payment. In the event of any payment by DOE that is required to be reimbursed or indemnified by the Borrower, the Borrower shall accept written evidence of billing and payment by DOE as evidence, absent manifest error, of the existence and amount thereof.

Section 4.05 Payment of Financing Document Amounts.

(a) Anything in this Article IV (*Payment Obligations; Reimbursement*) to the contrary notwithstanding, including Section 4.04 (*Evidence of Payment*):

(i) amounts payable by the Borrower pursuant to Section 4.01 (*Reimbursement and Other Payment Obligations*) in respect of payments made or required to be made by DOE to FFB on account of Financing Document Amounts shall be payable by the Borrower only to the extent (including subject to any conditions provided for in the Financing Documents and any defenses of the Borrower under the Financing Documents), at the times, in the manner and in the amounts that such Financing Document Amounts would otherwise have been payable by the Borrower under the Financing Documents (including, for the avoidance of doubt, on an accelerated basis following the occurrence of an Event of Default);

(ii) amounts payable by the Borrower under Section 4.01 (*Reimbursement and Other Payment Obligations*) shall be without duplication of any amounts payable by the Borrower pursuant to: (A) this Agreement; (B) the FFB Note; (C) the FFB Note Purchase Agreement; (D) the subrogation rights referred to in Section 4.02 (*Subrogation*); or (E) the provisions of Section 11.07 (*Indemnification*); and

(iii) no amount shall be payable by the Borrower under Section 4.01 (*Reimbursement and Other Payment Obligations*) in respect of payments made or required to be made by DOE to FFB in respect of any liability, loss, cost or expense

relating to or arising out of any sale, assignment or other transfer of the FFB Note or portion thereof by FFB to DOE, except during the continuance of an Event of Default.

(b) If an event permitting the acceleration of any Advance and/or the FFB Note shall at any time have occurred and be continuing, and such acceleration of any Advance and/or the FFB Note shall at such time be prevented by reason of the pendency against the Borrower Entity or any other Person of a case or proceeding under a bankruptcy or insolvency law, the Borrower acknowledges and agrees that, for purposes of this Agreement and its obligations hereunder, in respect of any payment made by DOE to FFB, such Advance and/or the FFB Note shall be deemed to have been accelerated with the same effect as if such Advance and/or the FFB Note had been accelerated in accordance with the terms of the FFB Documents.

ARTICLE V

CONDITIONS PRECEDENT

Section 5.01 Conditions Precedent to the Execution Date. The obligation of DOE to execute this Agreement and deliver to FFB the FFB Secretary's Instruments in accordance with Section 3.3 of the FFB Note Purchase Agreement required for FFB to purchase the FFB Note on the Execution Date, and the obligation of FFB to thereupon deliver an acceptance notice pursuant to Section 5.1 (*Acceptance or Rejection of Principal Instruments*) of the FFB Note Purchase Agreement shall be subject to the prior satisfaction (or waiver in writing) of each of the following conditions precedent as of the Execution Date (the "**Execution Date Conditions Precedent**") as determined by: (x) in all cases, DOE (in consultation with the Secured Party Advisors, at DOE's discretion); and (y) with respect to any documents or instruments addressed to FFB or to which FFB is a party, FFB:

(a) Due Diligence Review. Completion by DOE of its due diligence review of the Borrower Entities, the Project and all other matters related thereto.

(b) KYC Requirements. Receipt by DOE of:

(i) evidence that the Borrower Entities have established proper operating and credit policies and procedures (including, "know your customer" and anti-money laundering policies) to ensure, *inter alia*, proper credit, risk and conflicts of interest management;

(ii) all documentation (including taxpayer identification documents) and other information in respect of: (A) any Borrower Entity; (B) any Person holding, directly or indirectly, ten percent (10%) or more of the Equity Interests of the Borrower (other than a Qualified Transferee) or any other Major Project Participant (the "**KYC Parties**") to the extent required by any Secured Party to enable it to be satisfied with the results of all "know your customer" and other requirements (including, the Anti-Money Laundering Laws); and

(iii) confirmation by each Secured Party of the completion of its respective "know your customer" diligence in respect of each KYC Party.

(c) Consultant Reports. Receipt by DOE of a report addressed to DOE (the date of which has been brought forward to the Execution Date (if applicable)), from each of:

(i) the Independent Engineer;

(ii) the Market Consultant;

(iii) the Financial Advisor; and

(iv) the Insurance Consultant.

(d) Transaction Documents. Receipt by DOE of:

(i) fully executed originals (in sufficient counterparts for each of DOE, FFB and the Collateral Agent), or copies thereof if permitted by DOE, of each Financing Document (other than Direct Agreements and the Borrower Project Accounts Control Agreement); and

(ii) fully executed copies of each Major Project Document, each Permitted Creditor Document and each other Project Document that is in effect at such time, together with a certificate of a Responsible Officer of the Borrower, certifying that:

(A) the copies submitted are true, correct and complete (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(B) no term or condition thereof has been amended in a manner prohibited by Section 9.01(c) (*Amendment of and Notices under Transaction Documents*) from that delivered pursuant to this clause (ii);

(C) each such Project Document is in full force and effect; and

(D) all conditions precedent to the effectiveness of each such Project Document (if any) have been satisfied.

(e) Intercreditor Arrangements. Receipt by DOE of:

(i) fully executed originals (in sufficient counterparts for each of DOE, FFB and the Collateral Agent), or copies thereof if permitted by DOE, of the Intercreditor Agreement and each other document required to be delivered in connection therewith, including any security documents in favor of Cerberus permitted pursuant to the Intercreditor Agreement; and

(ii) fully executed copies of each then-required Cerberus Financing Document, each in form and substance satisfactory to DOE, together with a certificate of a Responsible Officer of the Borrower, certifying that:

(A) the copies submitted are true, correct and complete (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(B) no term or condition thereof has been amended in a manner prohibited by Section 9.01(c) (*Amendment of and Notices under Transaction Documents*) from that delivered pursuant to this clause (ii);

(C) each such Cerberus Financing Document is in full force and effect; and

(D) all conditions precedent to the effectiveness of each such Cerberus Financing Document (if any) have been satisfied.

(f) CFIUS. To the extent any Borrower Entity has notified any transaction to CFIUS (a "**CFIUS Notified Transaction**") receipt by DOE of evidence satisfactory to DOE (in its reasonable discretion) that the Borrower has received written notification from CFIUS stating that: (a) CFIUS lacks jurisdiction over any such CFIUS Notified Transaction; (b) CFIUS has concluded all action pursuant to Section 721 of the DPA, and has determined that there are no unresolved national security concerns with respect to any such CFIUS Notified Transaction; or (c) following an investigation, CFIUS has sent a report to the President requesting the President's decision and either (i) the President has announced a decision not to take any action to suspend or prohibit any such CFIUS Notified Transaction; or (ii) the President has not taken any action within fifteen (15) days from the date the President received the report from CFIUS.

(g) Borrower FFB Documents. Receipt by DOE of each of the documents, including the Borrower's Instruments, the Certificate Specifying Authorized Borrower Officials and the Opinion of Borrower's Counsel re: Borrower's Instruments that are required to be delivered by the Borrower to FFB pursuant to Section 3.2 (*Borrower's Instruments*) of the FFB Note Purchase Agreement, each of which shall be in full force and effect in accordance with its terms.

(h) Organizational Documents. Receipt by DOE of the Organizational Documents of each Borrower Entity, accompanied in each case by an Officer's Certificate (substantially in the form attached as Exhibit P (*Form of Officer's Certificate*)) hereto of such Borrower Entity, certified by a Responsible Officer thereof, attaching: true, correct and complete copies of good standing certificates, incumbency certificates, resolutions and any other documents as DOE shall reasonably request, with respect to, *inter alia*, approval of:

(i) each such Borrower Entity's participation in the Project;

(ii) the financing therefor (including the Guaranteed Loan and this Agreement) and the granting of Liens to secure the Secured Obligations;

(iii) the execution, delivery and performance by such Borrower Entity of the Transaction Documents to which it is party;

(iv) a current corporate chart, including the Borrower Entities and the Borrower's direct equity investors;

(v) a capitalization table of the Borrower setting out each direct and indirect beneficial owner of the Borrower of more than ten percent (10%); and

(vi) an organizational chart demonstrating the management and governance structure of the Borrower Entities and identifying key persons of each Borrower Entity.

(i) Execution Date Certificates. Receipt by DOE of:

(i) a closing certificate from a Responsible Officer of each Borrower Entity, dated as of the Execution Date, substantially in the form of Exhibit S (*Form of Closing Certificate*) (the "**Closing Certificate**"); and

(ii) a certificate from a Responsible Officer of each Borrower Entity, dated as of the Execution Date, substantially in the form of Exhibit T (*Form of Tax Certificate*) (the "**Tax Certificate**").

(j) Eligible Project Costs. Receipt by DOE of all material information with respect to the Eligible Project Costs incurred and paid by the Borrower prior to the Execution Date for which the Borrower expects to be reimbursed, including such breakdowns or other information as DOE may request, all certified by a Responsible Officer of the Borrower as being true, correct and complete.

(k) Base Case Financial Model. Receipt by DOE of a certified Base Case Financial Model (the "**Execution Date Base Case Financial Model**"), demonstrating compliance with the Debt Sizing Parameters and the financial covenants set out in Section 7.23 (*Financial Covenants*).

(l) Milestone Schedules. Receipt by DOE of:

(i) an agreed schedule of construction and other milestones, including payment milestones, for the construction of each Line and the Project overall, in accordance with the Construction Contracts and meeting the criteria set out in Schedule B (*Project Milestone Schedule*) (collectively, as such milestones may be modified from time to time as provided hereunder, the "**Project Milestones**" and such schedule as may be modified from time to time as provided hereunder, the "**Project Milestone Schedule**"), in scheduled chronological order, that the Borrower will need to satisfy in order to achieve each Line Commercial Operation Date and the Project Completion Date, together with the anticipated completion dates for each of the Project Milestones and the anticipated costs and expenses that the Borrower expects to incur in connection with, and upon the completion of, each of the Project Milestones; and

(ii) a Primavera P6 Level 3 schedule, including access to the raw P6 datafile (or such other compatible schedule with a sufficient level of detail as agreed in writing by DOE in consultation with the Independent Engineer) and spending plan for the development and construction of the Project (the "**Integrated Schedule and Spending Plan**").

(m) Construction Budget. Receipt by DOE of a construction budget, in the form of Exhibit A (*Form of Construction Budget*) hereto, that:

(i) sets forth, on a monthly basis in acceptable level of detail, for each Line all projected Pre-Completion Costs necessary to design, develop, construct and start-up such Line through Project Completion of such Line (including the amount of any Pre-Completion Costs paid through the date of the Construction Budget); and

(ii) specifies on a line item and aggregate basis for all construction-related Pre-Completion Costs for each Line, including: (A) the portions of any Pre-Completion Costs for such Line that constitute Eligible Project Costs; and (B) the amount of any Budgeted Contingencies.

(n) Business Continuity Plan. Receipt by DOE of the Business Continuity Plan.

(o) Insurance; Insurance Consultant Report. Receipt by DOE of:

(i) true, correct and complete copies of each policy of Required Insurance then required to be in effect from the Borrower Entities and each Major Project Participant in accordance with Section 7.03 (*Insurance*) and Schedule C (*Insurance*), each in full force and effect and compliant with such other requirements regarding Acceptable Insurers, coverage, deductibles, exceptions and premiums as set out in Schedule C (*Insurance*);

(ii) a Broker's Letter of Undertaking acceptable to DOE in respect of the Required Insurance; and

(iii) a report from the Insurance Consultant (the date of which has been brought forward to the Execution Date (if applicable)) in respect of the Project and the Required Insurance, the adequacy of insurance coverage to be maintained and such other insurance related matters as DOE may request.

(p) [Reserved].

(q) Environmental Reports. Receipt by DOE of: (A) a current Phase I Environmental Site Assessment for each Project Site and Building 270, covering the Real Property within each such Project Site and Building 270; and (B) any and all Phase I Environmental Site Assessments relating to the Real Property within the Project Sites and Building 270 when prepared for the Borrower or any third party (so long as the Borrower has the right to obtain any such Phase I Environmental Site Assessment prepared for a third party).

(r) Sales Arrangements. Receipt by DOE of: (i) the then-current Sales Plan, in form and substance acceptable to DOE; and (ii) copies of all binding and prospective Sales Agreements.

(s) Intellectual Property; Source Code. Receipt by DOE of:

(i) a fully executed original (to the extent required) or copy of each Project IP Agreement and confirmation that the licenses included therein remain in full force and effect; and

(ii) evidence that:

(A) the Borrower or another Borrower Entity exclusively owns all Project IP, or has rights to use all Project IP pursuant to the Project IP Agreements; and

(B) the Borrower and, to the extent applicable, each other Borrower Entity has caused each licensor of rights to Project IP under a Project IP Agreement existing at such time to grant, or otherwise permit to grant to, Secured Parties a Secured Parties' License and confirmation that such license remains in full force and effect.

(t) Litigation. Receipt by DOE of an Officer's Certificate of the Borrower and each Borrower Entity, as applicable, certifying that, other than Disclosed Adverse Proceedings, there is no pending or, to the Borrower's or such Borrower Entity's Knowledge, as applicable, threatened (in writing) Adverse Proceeding, that relates to: (x) the legality, validity or enforceability of any of the Transaction Documents or the ability of any Secured Party to exercise any of its rights under any of the Financing Documents or the remedies in respect of the Collateral pursuant to the Security Documents; and (y) any transaction contemplated by any such Transaction Document; or (z) the Project or any Borrower Entity.

(u) Legal Opinions. Receipt by DOE and the other Secured Parties of executed versions of the following legal opinions (including originals thereof, as required) in respect of each Borrower Entity, dated as of the Execution Date and addressed to the Secured Parties:

(i) the legal opinion of Haynes and Boone, LLP, as New York counsel to the Borrower Entities; and

(ii) the legal opinion of Blank Rome LLP, as Pennsylvania counsel to the Borrower Entities.

(v) Financial Statements. Receipt by DOE of the Historical Financial Statements, in each case, from the Borrower Entities, and certified by a Responsible Officer thereof, as applicable, that such Historical Financial Statements fairly present, in all material respects, the financial condition of such Borrower Entities, as applicable, as at the dates indicated and the results of its operations and their cash flows for the relevant periods, in each case, in accordance with the Designated Standard applied on a basis consistent with prior years, subject, in the case of unaudited Financial Statements, to changes resulting from the absence of notes and normal audit and year-end adjustments, as applicable.

(w) Required Approvals. Receipt by DOE of:

(i) the Required Approvals Schedule, together with a certificate of a Responsible Officer of the Borrower with respect thereto; and

(ii) fully executed copies of each Required Approval listed on Part A of the Required Approvals Schedule, together with a certificate of a Responsible Officer of the Borrower, certifying that:

(A) the copies submitted are true, correct and complete (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(B) no term or condition thereof has been amended from that delivered pursuant to this clause (w);

(C) each such Required Approval has been validly issued, is in full force and effect and Non-Appealable; and

(D) all conditions precedent to the effectiveness of each such Required Approval has been satisfied.

(x) Fees and Expenses. Receipt by DOE of:

(i) payment of the Facility Fee and Maintenance Fee due and owing as of the Execution Date;

(ii) payment in full or reimbursement of all fees required to be paid on or prior to the Execution Date and all Secured Party Expenses and other fees or expenses (if any) then due and payable in accordance with Section 4.01 (*Reimbursement and Other Payment Obligations*); and

(iii) (A) reimbursement of all fees and Secured Party Expenses of any Secured Party Advisors incurred in connection with the Project and invoiced on or prior to the Execution Date; or (B) confirmation that such fees and Secured Party Expenses have been paid directly, in each case from funds other than the proceeds of the Guaranteed Loan.

(y) Authorization to Independent Auditor. Receipt by DOE of:

(i) evidence that the Borrower, on behalf of itself and each other Borrower Entity, has appointed the Independent Auditor;

(ii) verbal assurances from the Independent Auditor as to the adequacy of the Borrower's accounting and information systems; and

(iii) evidence that the Borrower has irrevocably instructed the Independent Auditor to communicate directly with DOE, FFB and the U.S. Comptroller General regarding the accounts, operations and all other matters set forth in Section 7.11 (*Books, Records and Inspections*) with respect to the Borrower and each other Borrower Entity.

(z) Accounting Controls. Receipt by DOE of evidence that:

(i) the Borrower has appointed and maintains one (1) or more independent consultants acceptable to DOE to advise and implement, as required, remediation of any qualifications or non-compliance of the Borrower's internal accounting systems and controls identified in the Accounting Compliance Plan (the "**Compliance Consultants**");

(ii) the Borrower's board of directors has, in consultation with the Independent Auditor and Compliance Consultants, developed and approved a compliance plan, in form and substance acceptable to DOE, setting out processes, policies and procedures to address any identified weaknesses in the internal accounting and controls of the Borrower Entities, together with a detailed implementation timeline (the "**Accounting Compliance Plan**");

(iii) the Borrower is implementing the Accounting Compliance Plan in accordance with the timeline set out therein; and

(iv) no additional qualification or potential non-compliance with internal accounting controls has been identified by the Borrower, Independent Auditor, Compliance Consultants or DOE.

(aa) Reserved].

(bb) Representations and Warranties. Each of the representations and warranties made (or deemed to be made) by any Borrower Entity or Major Project Participant in any Financing Document are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "material adverse effect" or a similar qualifier, in which case it is true and correct in all respects) as of such date, except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty is true and correct as of such date or time).

(cc) Material Adverse Effect. No event (including a change in law) shall have occurred that has or could reasonably be expected to have a Material Adverse Effect.

(dd) Certain Events. No Default, Event of Default, Event of Force Majeure or Event of Loss has occurred and is continuing or would reasonably be expected to occur as of the Execution Date.

(ee) SAM Registration. Receipt by DOE of evidence of the registration by the Borrower in SAM.

(ff) Davis-Bacon Act. Receipt by DOE of a certificate from the Borrower certifying that (A) the clauses set forth in Exhibit B (*Davis-Bacon Act Contract Provisions*) and the appropriate wage determination(s) of the Secretary of Labor have been included in each Davis-Bacon Act Covered Contract existing as of the Execution Date; and (B) the Borrower and each DBA Contract Party under each Davis-Bacon Act Covered Contract existing on or prior to the Execution Date have taken all necessary steps to comply with and are in compliance (including retroactive compliance) with the Davis-Bacon Act Requirements.

(gg) Credit Rating Requirement. At least fifteen (15) days prior to the Execution Date and no earlier than forty-five (45) days prior to such date, DOE shall have received a final credit rating for the Project based upon the most recent annual and quarterly

financial data and projections, at least equal to the initial credit rating for the Project in connection with the Application (or equivalent rating), issued by a nationally recognized statistical rating organization.

(hh) Lobbying Certification. Receipt by DOE of each Borrower Entity's completed "**Disclosure Form to Report Lobbying**" (Standard Form LLL).

(ii) Compliance with NEPA. DOE shall have:

(i) completed its review and related consultations under NEPA with respect to the Guaranteed Loan and the Turtle Creek Project Site; and

(ii) issued and published a Categorical Exclusion review of the portion of the Project located at the Turtle Creek Project Site pursuant to 10 CFR 1021.410 (b) with respect to the Guaranteed Loan.

(jj) Program Requirements. Receipt by DOE of evidence that all Program Requirements required to have been satisfied as of the Execution Date have been satisfied.

(kk) OMB Certification. Receipt by DOE of a certification from the Director of OMB that the DOE Guarantee and the Project comply with the provisions of Section 50141(d) of the Inflation Reduction Act of 2022, Public Law No. 117-169.

(ll) Action Memoranda. Receipt by DOE of one (1) or more action memoranda executed by the Secretary of Energy approving and authorizing:

(i) the execution by DOE of the Financing Documents to which it is a party and the transactions contemplated thereby;

(ii) any provisions in the Transaction Documents that constitute material changes to the terms and conditions set forth in the Term Sheet; and

(iii) the apportionment of the Credit Subsidy Cost.

(mm) Credit Subsidy Cost. Receipt by DOE of evidence that:

(i) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost;

(ii) OMB has approved the Apportionment and Reapportionment Schedule (Standard Form 132) with respect to the Credit Subsidy Cost; and

(iii) the apportionment of the Credit Subsidy Cost has occurred.

(nn) Inter-Agency Consultations and Approvals. DOE shall have engaged in all required consultations, obtained all required approvals, and satisfied all applicable legal requirements in connection with execution and performance by DOE of the Transaction Documents to which it is a party.

(oo) Employment Projections. Receipt by DOE of projections for temporary and permanent jobs created or maintained in the U.S. as a result of the Project for each Fiscal Year occurring during the term of the Guaranteed Loan.

(pp) Community Benefits Plan. Receipt by DOE of the Community Benefits Plan for the Project.

(qq) CapEx Budget; 13-Week Forecast. Receipt by DOE of the CapEx Budget, the 13-Week Forecast, in form and substance satisfactory to DOE in its sole discretion.

(rr) Additional Items. Receipt by DOE of such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents as it may reasonably request.

Section 5.02 Conditions Precedent to FFB Purchase of the FFB Note. The obligation of FFB to deliver an acceptance notice pursuant to Section 5.1 (*Acceptance or Rejection of Principal Instruments*) of the FFB Note Purchase Agreement to purchase the FFB Note is subject to the prior satisfaction (or waiver in writing) as determined by FFB of each of the following conditions precedent as of the Execution Date and as of each First Advance Date:

(a) Conditions Precedent in the FFB Documents. Each condition precedent under the FFB Documents to the purchase of the FFB Note by FFB shall have been satisfied in the sole determination of FFB.

(b) Receipt of Instruments. FFB shall have received from DOE each of the FFB Secretary's Instruments and FFB Borrower's Instruments.

(c) Representations and Warranties. Each of the representations and warranties made by the Borrower in or pursuant to the Financing Documents shall be true and correct in all respects on and as of such date as if made on and as of such date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date).

Section 5.03 Conditions Precedent to Each First Advance Date. The obligation of DOE to deliver an Advance Request Approval Notice pursuant to Section 2.03(c)(ii) (*Advance Request Approval Notice*) directing FFB to make the First Advance under each Tranche in accordance with the FFB Note Purchase Agreement and the FFB Note shall be subject to the prior satisfaction (or waiver in writing) of each of the following conditions precedent as of the date of the Advance Request with respect to such Tranche and to their continued satisfaction on the Requested Advance Date for such Advance, in each case, as determined by: (a) in all cases, DOE (in consultation with the Secured Party Advisors, at DOE's discretion); and (b) with respect to any documents or instruments addressed to FFB or to which FFB is party, FFB:

(a) Execution Date Conditions Precedent. The Execution Date shall have occurred, and each of the Execution Date Conditions Precedent shall continue to be satisfied as of the relevant First Advance Date.

(b) Technical Conditions Precedent. Receipt by DOE of evidence that applicable technical conditions precedent as set out in Schedule D (*Technical Conditions Precedent*) for such First Advance have been satisfied.

(c) First Advance Longstop Date. The First Advance Date for such Tranche shall occur no later than the First Advance Longstop Date for such Tranche.

(d) Adequate Project Funding. Receipt by DOE of evidence that:

(i) as of the Tranche 1 First Advance Date, the Borrower shall have (x) achieved compliance with each of the First Milestone and the Second Milestone, each, under and as defined in the Cerberus Credit Agreement and (y) received the proceeds of disbursement of the Tranche 1 Term Loan and the Tranche 2 Term Loan under and as defined in the Cerberus Credit Agreement (in each case, irrespective of whether such compliance was achieved on any applicable milestone test date or otherwise);

(ii) as of the Tranche 1 First Advance Date, the Borrower shall have on deposit in the Borrower Operating Accounts an amount equal to or in excess of the Base Funding Amount; and

(iii) as of each First Advance Date for each Line, each of the Borrower and the Independent Engineer has provided a certification and supporting information that:

(A) the Maximum Tranche Commitment Amount for the Relevant Tranche plus amounts on deposit in the Borrower Operating Accounts, taken together, are sufficient to pay all remaining Pre-Completion Costs (including Eligible Project Costs) for the Relevant Tranche; and

(B) the corresponding Line funded by the Relevant Tranche is expected to achieve Line Commercial Operation by the corresponding Line Commercial Operation Longstop Date.

(e) First Advance Date Certificates. For each First Advance Date, receipt by DOE of a Borrower Advance Date Certificate of each Borrower Entity, dated as of the relevant First Advance Date.

(f) Consultant Reports. Receipt by DOE of a certificate from the following Secured Party Advisors, dated as of the date of the Advance Request, substantially in the form of Exhibit C (*Form of Secured Party Advisor Report Bring-Down Certificate*) and addressing such other matters as DOE may request and, to the extent required, an updated copy of the report delivered as of the Execution Date:

(i) the Independent Engineer;

(ii) the Market Consultant;

(iii) the Financial Advisor;

(iv) the Insurance Consultant; and

(v) any other Secured Party Advisor required by DOE.

(g) Base Case Financial Model(i). Receipt by DOE of a certified updated Base Case Financial Model demonstrating compliance with the Debt Sizing Parameters are met, accompanied by a certificate from the chief financial officer or similar officer of the Borrower that includes a written explanation from the Borrower of all variances from the Execution Date Base Case Financial Model.

(h) Sales Program; Logistics. Receipt by DOE of:

(i) evidence demonstrating (A) combined Booked Orders and Pipeline equal to at least twelve (12) months of actual production based on production of then-current Lines. including (B) at least 6 months of Booked Orders, in each case with Qualifying Customers and consistent with the sales volume assumptions set forth in the Base Case Financial Model;

(ii) copies of all binding and prospective Sales Agreements to the extent not previously delivered, including any modification or supplement to prior Sales Agreements;

(iii) an updated Sales Plan;

(iv) [Reserved]; and

(v) evidence of satisfactory infrastructure and logistics for distribution of Products under the corresponding Line in order to satisfy production contemplated under the Sales Plan.

(i) Real Estate. Receipt by DOE of:

(i) with respect to the Turtle Creek Project Site:

(A) a Mortgage over the tenant's leasehold interest in the Turtle Creek Project Site, executed and delivered by the applicable tenant and in appropriate form for recording in Official Records of Allegheny County Division of Real Estate Office, Pennsylvania;

(B) (1) evidence of a valid leasehold interest in the Turtle Creek Project Site, (2) a fully executed amendment to the Mortgaged Leases for the Turtle Creek Project Site, authorizing the Mortgage on the tenant's leasehold interest and otherwise in form acceptable to DOE, (3) a memorandum of each lease of the Turtle Creek Project Site in appropriate recordable form and (4) an estoppel certificate from the lessor counterparty to each lease of the Turtle Creek Project Site disclosing no defaults by the tenant thereunder and otherwise in form acceptable to DOE;

(C) evidence that all easements, rights-of-way, zoning compliances, and other land rights necessary for the Turtle Creek Project Site shall have been obtained and are not subject to any contest, dispute or appeal, including, all easements, rights-of-way, zoning compliances, occupancy permits and other land rights required to be obtained by any Major Project Participant pursuant to the Transaction Documents to which such Major Project Participant is a party or that are necessary for the performance of its obligations under such Transaction Documents (including, if required by DOE, zoning reports or zoning letters from applicable Governmental Authorities);

(D) evidence that: (A) no part of the improvements shall have suffered any significant damage by fire or other casualty which has not been repaired; (B) no condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against any of the Real Property of the Turtle Creek Project Site; (C) no part of the improvements shall be located beyond the boundaries of the area subject to the environmental review under NEPA;

(E) with respect to the tenant's leasehold interest in the Turtle Creek Project Site, a pro forma policy of title insurance, dated as of the Execution Date (with gap coverage through the recording date of the Mortgage in the Official Records of Allegheny County Division of Real Estate Office, Pennsylvania (if occurring after the Execution Date)) together with the endorsements identified in this clause (v), in an amount equal to six million Dollars ($6,000,000) in the aggregate, issued by the Title Company, in form and substance reasonably acceptable to the Secured Parties (such title proforma, the "**Title Pro Forma**"), and an irrevocable commitment from the Title Company (such commitment to be in a closing instruction letter in form and substance acceptable to the Secured Parties) to issue an ALTA Mortgage Loan Policy of Title Insurance (Form No. 1056.06 dated 6-17-06) together with all endorsements and affirmative coverages required by DOE, including an ALTA 32.2 or equivalent endorsement for the Project as modified by an ALTA 33 endorsement for the Project, ensuring that the Mortgage creates a legal, valid and enforceable First Priority Lien on the tenant's leasehold interest in the Turtle Creek Project Site, easements and other interests in Real Property created under the Real Property Documents and other interests in real property (including improvements) described in the Mortgage subject only to Permitted Liens; and

(F) true, correct and complete copies of any related material documents requested by DOE;

(ii) as of the Tranche 3 First Advance Date, with respect to the Duquesne Project Site:

(A) a Mortgage over the tenant's leasehold interest in the Duquesne Project Site, executed and delivered by the applicable tenant and in appropriate form for recording in Official Records of Allegheny County Division of Real Estate Office, Pennsylvania;

(B) (1) evidence of a valid leasehold interest in the Duquesne Project Site, (2) a memorandum of each lease of the Duquesne Project Site in appropriate recordable form, and (3) an estoppel certificate from the lessor counterparty to each lease of the Duquesne Project Site disclosing no defaults by the tenant thereunder and otherwise in form acceptable to DOE;

(C) evidence that all easements, rights-of-way, zoning compliances, and other land rights necessary for the Duquesne Project Site shall have been obtained and are not subject to any contest, dispute or appeal, including, all easements, rights-of-way, zoning compliances, occupancy permits and other land rights required to be obtained by any Major Project Participant pursuant to the Transaction Documents to which such Major Project Participant is a party or that are necessary for the performance of its obligations under such Transaction Documents (including, if required by DOE, zoning reports or zoning letters from applicable Governmental Authorities);

(D) evidence that: (A) no part of the improvements shall have suffered any significant damage by fire or other casualty which has not been repaired; (B) no condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against any of the Real Property of the Duquesne Project Site; (C) no part of the improvements shall be located beyond the boundaries of the area subject to the environmental review under NEPA;

(E) true, correct and complete copies of any related material documents requested by DOE; and

(F) evidence that the Mortgaged Lease for the Duquesne Project Site authorizes the leasehold mortgage, subordinates the landlord's interests in the Collateral, if any, to those of DOE and provides for any required approval from landlord's lender.

(iii) [Reserved];

(iv) with respect to the tenant's leasehold interest in the Duquesne Project Site, a pro forma policy of title insurance (with gap coverage through the recording date of the Mortgage in the Official Records of Allegheny County Division of Real Estate Office, Pennsylvania) together with the endorsements identified in this clause (v), in an amount equal to six million Dollars ($6,000,000) in the aggregate, issued by the Title Company, in form and substance reasonably acceptable to the Secured Parties (such title proforma, the "**Title Pro Forma**"), and an irrevocable commitment from the Title Company (such commitment to be in a closing instruction letter in form and substance acceptable to the Secured Parties) to issue an ALTA Mortgage Loan Policy of Title Insurance (Form No. 1056.06 dated 6-17-06) together with all endorsements and affirmative coverages required by DOE, including an ALTA 32.2 or equivalent endorsement for the Project as modified by an ALTA 33 endorsement for the Project, ensuring that the Mortgage creates a legal, valid and enforceable First Priority Lien on the tenant's leasehold interest in the Duquesne Project Site, easements and other interests in Real Property created under the Real Property Documents and other interests in real property (including improvements) described in the Mortgage subject only to Permitted Liens;

(v) [Reserved];

(vi) evidence that the Borrower: (i) has in place all power, water, wastewater, transportation, communications and other utilities and infrastructure necessary for construction and operation of the Project at the applicable Project Site in accordance with the relevant Project Documents and all Required Approvals related to the foregoing utilities and infrastructure have been obtained and are final and Non-Appealable; and (ii) has secured for each utility the capacity necessary to sustain operations for the Project; and

(vii) true, correct and complete copies of any related material documents requested by DOE.

(j) Accounts. Receipt by DOE of evidence that:

(i) prior to the Tranche 1 First Advance Date, each Project Account has been established in accordance with the provisions of the Accounts Agreement and other Financing Documents;

(ii) prior to each First Advance Date, each Project Account and, to the extent applicable, Borrower Operating Account has been funded to the extent of any amounts required to have been deposited prior to such First Advance Date in accordance with the Financing Documents.

(k) Permitted Indebtedness(i). Prior to the Tranche 1 First Advance Date, receipt by DOE of evidence that all existing Indebtedness other than Permitted Indebtedness has been repaid.

(l) Security Interests. Receipt by DOE of evidence that:

(i) all Security Documents are in full force and effect and shall have been duly filed and registered or recorded in any jurisdiction and with any Governmental Authority in which such filing and registration or recording is necessary or

advisable to make valid and effective and to perfect the Liens intended to be created thereby and the rights of the Secured Parties thereunder;

(ii) such Liens constitute valid, enforceable and perfected, First Priority Liens over the Collateral, in each case in favor of the Secured Parties, subject only to Permitted Liens;

(iii) all Liens encumbering the Collateral have been finally and unconditionally waived and released, subject only to Permitted Liens, and such waivers and releases have been recorded with the relevant Governmental Authorities, as necessary or advisable, with Lien waivers in form and substance prescribed by Applicable Law; and

(iv) all fees and duties in connection with such filing, registration or recording have been paid in full, together with a completed Perfection Certificate dated as of the applicable First Advance Date and executed by a Responsible Officer of each Borrower Entity, together with all attachments contemplated thereby, including (A) the results of a recent search, by a Person satisfactory to the Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Borrower Entity in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search or otherwise in existence (other than any such financing statements in respect of Permitted Liens), and (C) evidence satisfactory to the Collateral Agent of the termination and release of all Liens (other than Permitted Liens) or that arrangements for such terminations and release have been made.

(m) Transaction Documents; Intercreditor Arrangements. Receipt by DOE of, as of the Tranche 1 First Advance Date:

(i) fully executed originals (in sufficient counterparts for each of DOE, FFB and the Collateral Agent), or copies thereof if permitted by DOE, of the Intercreditor Agreement and each other document required to be delivered in connection therewith, including any security documents in favor of Cerberus permitted pursuant to the Intercreditor Agreement; and

(ii) fully executed copies of each then-required Permitted Creditor Document, each in form and substance satisfactory to DOE, together with a certificate of a Responsible Officer of the Borrower, certifying that:

(A) the copies submitted are true, correct and complete (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(B) no term or condition thereof has been amended in a manner prohibited by Section 9.01(c) (*Amendment of and Notices under Transaction Documents*) from that delivered pursuant to this clause (ii) above;

(C) each such Permitted Creditor Document is in full force and effect;

(D) all conditions precedent to the effectiveness of each such Permitted Creditor Document (if any) have been satisfied; and

(iii) to the extent not previously delivered, fully executed originals (in sufficient counterparts for each of DOE, FFB and the Collateral Agent), or copies thereof if permitted by DOE, of each Direct Agreement and the Borrower Project Accounts Control Agreement.

(n) Intellectual Property. Receipt by DOE of:

(i) a fully executed original (to the extent required) or copy of each further or amended Project IP Agreement and confirmation that the licenses included in all Project IP Agreements remain in full force and effect; and

(ii) evidence that:

(A) the Borrower exclusively owns all Project IP, or has valid and enforceable rights to use all Project IP pursuant to a Project IP Agreement (other than any Project IP Agreement contemplated in clause (i) above, and confirmation that the licenses included in such Project IP Agreement remain in full force and effect;

(B) the Borrower and, to the extent applicable, each Borrower Entity has caused each licensor of rights to Project IP under a Project IP Agreement existing at such time to grant, or otherwise permit to grant to, Secured Parties a Secured Parties' License and confirmation that such license remains in full force and effect; and

(C) with respect to Project Source Code existing at such time, the Borrower has complied and, to the extent applicable, has caused each Borrower Entity to, comply with Section 7.02(g) (*Source Code Escrow*).

(o) Legal Opinions. Receipt by DOE and the other Secured Parties of executed versions of the following legal opinions (including originals thereof, as required) in respect of each Borrower Entity and each Major Project Participant, dated as of the First Advance Date and addressed to the Secured Parties:

(i) the legal opinion of Haynes and Boone, LLP, as New York counsel to the Borrower Entities;

(ii) the legal opinion of Blank Rome LLP, as Pennsylvania counsel to the Borrower Entities; and

(iii) the legal opinions of each Major Project Participant regarding the due authorization, execution and delivery and valid, binding and enforceable nature of the Transaction Documents to which each such Person in a party.

(p) Appointment of Process Agent. Receipt by DOE of evidence that:

(i) each Borrower Entity shall have irrevocably appointed an agent for service of process as required pursuant to the relevant Financing Documents to which it is a party;

(ii) each Major Project Participant that has executed a Direct Agreement and which is not a United States Person shall have irrevocably appointed an agent for service of process as required pursuant to the relevant Financing Documents to which it is a party;

(iii) each such agent has been duly appointed and holds such appointment without reservation until six (6) months after the Maturity Date (or such earlier date as may be agreed by DOE); and

(iv) all fees of such agent have been paid in full through the term of the engagement.

(q) Accounting Compliance Plan(i). Prior to the Tranche 1 First Advance Date receipt by DOE of a report and supporting evidence demonstrating that each of the following elements of the Accounting Compliance Plan shall have been completed:

(i) remediation of material weakness in segregation of duties and journal entry review;

(ii) completion of a control gap analysis and implementation of a best practice plan;

(iii) completion of process documentation of designed and remediated controls as outlined in the COSO framework;

(iv) commencement of operating effectiveness testing of internal controls by the Independent Auditor; and

(v) such other elements as required by DOE.

(r) Additional Items. Receipt by DOE of such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents as it may reasonably request in writing not fewer than than ten (10) Business Days prior to the Requested Advance Date.

(s) Representations and Warranties. Each of the representations and warranties made (or deemed to be made) by any Borrower Entity or Major Project Participant in any Financing Document are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "material adverse effect" or a similar qualifier, in which case it is true and correct in all respects) as of such date, except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty is true and correct as of such date or time).

(t) Compliance with NEPA. With respect to the First Advance of Tranche 3, DOE shall have completed its review and related consultations under NEPA with respect to the Guaranteed Loan and the Duquesne Project Site.

(u) Environmental Reports. With respect to the First Advance of Tranche 3, receipt by DOE of: (A) an updated Phase I Environmental Site Assessment for the Duquesne Project Site, covering the Real Property within such Project Site; and (B) any and all updated Phase I Environmental Site Assessments relating to the Real Property within the Duquesne Project Site when prepared for the Borrower or any third party (so long as the Borrower has the right to obtain any such Phase I Environmental Site Assessment prepared for a third party).

(v) CapEx Budget. DOE shall have received evidence demonstrating that there has been no adverse deviation from the CapEx Budget or 13-Week Forecast then in effect in any material respect, as determined by DOE in their sole discretion.

(w) Insurance. Receipt by DOE of true, correct and complete copies of each policy of Required Insurance then required to be in effect from the Borrower Entities and each Major Project Participant in accordance with Section 7.03 (*Insurance*) and Schedule C (*Insurance*), each in full force and effect and endorsed with the form of Secured Parties' endorsement and applicable loss payee in Schedule C (*Insurance*) and compliant with such other requirements regarding Acceptable Insurers, coverage, deductibles, exceptions and premiums as set out in Schedule C (*Insurance*).

Section 5.04 Advance Approval Conditions Precedent. The obligation of DOE to deliver an Advance Request Approval Notice pursuant to Section 2.03(c)(ii) (*Advance Request Approval Notice*) directing FFB to make each Advance (including each First Advance) in accordance with the FFB Note Purchase Agreement and the FFB Note shall be subject to the prior satisfaction (or waiver in writing) of each of the following conditions precedent and to their continued satisfaction on the Requested Advance Date for such Advance, in each case, as determined by (a) in all cases, DOE (in consultation with the Secured Party Advisors, at DOE's discretion); and (b) with respect to any documents or instruments addressed to FFB or to which FFB is party, FFB:

(a) Advance Request. Receipt by DOE from the Borrower of an Advance Request and a Borrower Advance Date Certificate pursuant to Section 2.03(a) (*Advance Requests*).

(b) Conditions Precedent in the FFB Documents. Each of the conditions precedent (other than delivery of the Advance Request Approval Notice by DOE) to such Advance under the FFB Note in accordance with the FFB Note Purchase Agreement and the FFB Note have been satisfied.

(c) Representations and Warranties. Each of the representations and warranties made by any Borrower Entity or Major Project Participant in or pursuant to any Transaction Document shall be true and correct in all material respects (except: (i) such representations and warranties that by their terms are qualified by materiality or Material Adverse Effect; and (ii) the representations and warranties set forth in Sections 6.23 (*Anti-Corruption Laws*); 6.24 (*Environmental Laws*); 6.26 (*Davis-Bacon Act*); 6.29 (*Sanctions and Anti-Money Laundering Laws*); 6.30 (*Cargo Preference Act*); 6.31 *Lobbying Restriction*); 6.32 (*Federal Funding*); 6.33 (*No Federal Debt Delinquency*); 6.34 (*No Tax-Exempt Indebtedness*); 6.36 (*Use of Proceeds*); 6.37 (*No Immunity*) and 6.38 (*No Fraudulent Intent*), which representations and warranties shall, in each case, be true and correct in all respects) on and as of such date as if made on and as of such

date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), before and after giving effect to the extensions of credit requested to be made on such date.

(d) Adequate Project Funding. Receipt by DOE of:

(i) a certification and supporting information from the Borrower that the following funds available to the Borrower (after giving effect to any Eligible Project Cost Reimbursement Amounts from such Advance) are sufficient to pay all remaining Pre-Completion Costs (including any reasonably expected Cost Overruns) for the Line funded by the Relevant Tranche and to achieve Line Commercial Operation for each such Line by the corresponding Line Commercial Operation Longstop Date and Project Completion by the Project Completion Longstop Date: (A) the amount of the requested Advance; (B) the undisbursed amount of the Guaranteed Loan available under the Relevant Tranche after giving effect to the requested Advance; and (C) amounts on deposit in the Borrower Operating Accounts, together with pre-completion net revenue projected to be used to fund Pre-Completion Costs in the then-current Base Case Financial Model; and

(ii) with respect to Tranche 2 through Tranche 4, evidence that the Borrower shall have funded in cash Cost Overrun Equity Contributions in an amount sufficient to pay all Cost Overruns that have been incurred or are reasonably be expected to be incurred as of the Requested Advance Date (whether or not in connection with the Line being funded by such Advance) and such Cost Overrun Equity Contributions shall have been deployed toward payment of applicable Pre-Completion Costs or deposited into the Borrower Operating Accounts.

(e) Debt Sizing Parameters. Receipt by DOE of evidence that the Borrower shall be in compliance with the Debt Sizing Parameters, both before and after giving effect to the Advances to be made on such Requested Advance Date.

(f) [Reserved].

(g) Technical Conditions Precedent. Receipt by DOE of evidence that applicable technical conditions precedent as set out in Schedule D (*Technical Conditions Precedent*) for such Advance have been satisfied.

(h) Construction Budget. Receipt by DOE of a certification from the Borrower and the Independent Engineer that:

(i) there have been no changes to the Construction Budget with respect to any Line (whether or not funded under the relevant Advance) with respect to amounts reflected therein or the timing of the payments, since the last Advance, except for those changes previously approved in writing by DOE;

(ii) the Project has not incurred, and is not reasonably expected to incur, any Cost Overruns, except for Cost Overruns previously identified, agreed in writing by DOE, and reflected in the then-current Construction Budget;

(iii) the aggregate amounts to be expended for each category of Pre-Completion Costs (including Eligible Project Costs in connection with the Relevant Line) do not exceed the aggregate amounts budgeted for such costs (after giving effect to available Budgeted Contingency) in the then-approved Construction Budget;

(iv) Cost Overruns in any category of Pre-Completion Costs have been previously funded by the Borrower from Cost Overrun Equity Contributions or are sufficiently covered by available Budgeted Contingency in the Construction Budget; and

(v) the proceeds of such Advance shall be used solely for payment or reimbursement of Eligible Project Costs for the Relevant Line being funded by such Advance.

(i) Project Milestone Schedule. Receipt by DOE of a certification from the Borrower and Independent Engineer that there have been no changes to the Project Milestone Schedule, except for those changes previously approved in writing by DOE.

(j) Sales Agreements. Receipt by DOE of evidence demonstrating Booked Orders with Qualifying Customers for a period of not less than three (3) months of then-current production under the Project.

(k) Use of Proceeds. Receipt by DOE of: (i) evidence that the proceeds of the requested Advance will be applied in accordance with Section 2.03(f) (*Disbursement of Proceeds*); and (ii) invoices or other documentation evidencing the incurrence of Eligible Project Costs payable or reimbursable with such proceeds.

(l) Independent Engineers Certificate. Receipt by DOE of certifications from the Independent Engineer, dated as of the date of the Advance Request, that:

(i) the following funds available to the Borrower are projected to be sufficient to pay all projected Pre-Completion Costs (after giving effect to any Eligible Project Cost Reimbursement Amounts from such Advance) for the Line funded by the Relevant Tranche: (A) the amount of the requested Advance; (B) the undisbursed amount of the Maximum Tranche Commitment Amount after giving effect to such Advance; and (C) amounts available in the Borrower Operating Accounts, together with pre-completion net revenue projected to be used to fund Pre-Completion Costs in the then-current Base Case Financial Model;

(ii) the Line corresponding to the Relevant Tranche is on schedule to achieve Line Commercial Operation by the corresponding Line Commercial Operation Longstop Date, and the Project is on schedule to achieve Project Completion by the Project Completion Longstop Date; and

(iii) such other matters as DOE may reasonably request.

(m) [Reserved].

(n) Lien Waivers; Release of Liens. Receipt by DOE of a certificate duly executed by a Responsible Officer of the Borrower with supporting details and information satisfactory to DOE and certifying:

(i) any unpaid balances then due or unsettled claims with any contractor or supplier under any Construction Contract, or their subcontractors, have been paid in full (unless otherwise provided by the relevant Construction Contract), except for balances or claims that the Borrower is actively contesting in accordance with the Permitted Contest Conditions; and

(ii) each contractor or supplier under any Construction Contract, or their subcontractors, to be paid with the proceeds of such Advance and the Equity Contributions or funds of the Borrower, has conditionally (or if applicable, finally and unconditionally) waived on terms satisfactory to DOE and released all Liens, statutory or otherwise, that it or any of its subcontractors may have or acquire on the Collateral or the Project with respect to work completed prior to its last submission for payment, such Lien waivers to be in form and substance prescribed by Applicable Law in the Commonwealth of Pennsylvania.

(o) Judgment Liens. Receipt by DOE of evidence that no judgment Lien exists against any property of any Borrower Entity for Indebtedness owed to the United States of America or any delinquent federal, state or local Indebtedness, including tax liabilities, except for balances or claims in the normal course of business that the Borrower is actively contesting in accordance with the Permitted Contest Conditions.

(p) Real Estate. Receipt by DOE of:

(i) evidence of continued title to or leasehold interest in any Real Property or fixture interests (including easements) constituting part of the Collateral and continued right to all easements, rights of way, zoning compliance, occupancy permits and other land rights necessary for the Project;

(ii) an ALTA 33-06 endorsement to the ALTA extended coverage loan policy of title insurance for the Turtle Creek Project Site issued on the Tranche 1 First Advance Date bringing down the date of coverage to the relevant Advance Date, increasing the coverage amount to the then-current amount of all Advances outstanding under the Guaranteed Loan and ensuring the Mortgage continues to maintain a legal, valid and enforceable First Priority Lien on the Turtle Creek Project Site, easements and other interests in Real Property created under the Real Property Documents and other interests in real property (including improvements) described in the Mortgage subject only to Permitted Liens;

(iii) for each Advance after the Tranche 3 First Advance Date, an ALTA 33-06 endorsement to the ALTA extended coverage loan policy of title insurance for the Duquesne Project Site issued on the Tranche 3 First Advance Date bringing down the date of coverage to the relevant Advance Date, increasing the coverage amount to the then-current amount of all Advances outstanding under the Guaranteed Loan and ensuring the Mortgage continues to maintain a legal, valid and enforceable First Priority Lien on the Duquesne Project Site, easements and other interests in Real Property created under the Real Property Documents and other interests in real property (including improvements) described in the Mortgage subject only to Permitted Liens; and

(iv) evidence that: (A) no part of the Project Sites or improvements shall have suffered any significant damage by fire or other casualty which has not been repaired; and (B) no condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against any of the Real Property that could materially impair the development, construction, operation, access to or use by (or for the benefit of) the Borrower of the Project Sites for the Project.

(q) Program Requirements. Receipt by DOE of evidence that the Borrower is in compliance with or shall have satisfied, as applicable, all requirements and approvals pursuant to the Program Requirements.

(r) Required Approvals. Receipt by DOE of fully executed copies of all applicable Required Approvals set forth in Part B of the Required Approvals Schedule and all such other Required Approvals required to be obtained in each case, as of such date and in connection with the Relevant Line and not yet previously provided to DOE, together with: (i) if necessary, an updated Required Approvals Schedule; and (ii) a certificate of a Responsible Officer of the Borrower, certifying that:

(i) the copies of such Required Approvals are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(ii) no term or condition of any of such Required Approvals has been amended from the form thereof delivered pursuant to this Section 5.04(r) (*Required Approvals*);

(iii) each such Required Approval has been validly issued, is in full force and effect and Non-Appealable; and

(iv) all conditions precedent to the effectiveness of such Required Approvals have been satisfied.

(s) Davis-Bacon Act. Receipt by DOE of a certificate from the Borrower certifying that (A) the clauses set forth in Exhibit B (*Davis-Bacon Act Contract Provisions*) and the appropriate wage determination(s) of the Secretary of Labor have been included in each Davis-Bacon Act Covered Contract existing as of such Advance Date; and (B) the Borrower and each DBA Contract Party under each Davis-Bacon Act Covered Contract existing on or prior to such Advance Date have taken all necessary steps to comply with and are in compliance (including retroactive compliance) with the Davis-Bacon Act Requirements.

(t) Payment of Fees. Receipt by DOE of:

(i) payment in full of all fees required under the Financing Documents to be paid on or prior to the Requested Advance Date, and all Secured Party Expenses and reimbursement of all fees and Secured Party Expenses of any Secured Party Advisors, incurred and invoiced prior to the Requested Advance Date; or

(ii) confirmation that all such fees and Secured Party Expenses have been paid directly to the relevant Secured Party Advisors.

(u) Environmental Compliance. Receipt by DOE of a written certification by the Borrower that the Borrower is and has been in compliance, in all material respects, with all applicable Environmental Laws and all Required Approvals thereunder, and has and maintains in full force and effect all Required Approvals applicable to the development, construction and operation of the Project as of the date of such Advance under any applicable Environmental Law.

(v) Legal Opinions. To the extent requested by DOE, receipt by DOE of:

(i) legal opinions in respect of any amendment, modification, termination or entry into any new Transaction Document that has been executed and delivered after the prior Advance Date, in each case, dated as of the Requested Advance Date, addressed to each Secured Party and from legal counsel satisfactory to DOE;

(ii) to the extent that, since the date of any legal opinion furnished pursuant to this clause (v), there has been a material change in circumstances on any matter covered by such legal opinion, supplemental legal opinions with respect to the possible legal consequences of such changed circumstances, dated as of the Requested Advance Date, addressed to each Secured Party, and from legal counsel satisfactory to DOE; and

(iii) a legal opinion (which may be in the form of a bring-down of a prior opinion) from tax counsel to the Borrower that the Borrower's proposed sale of the Products by the Project "will" qualify for the Section 45X Tax Credits.

(w) Security. All Security Documents continue to be in full force and effect, properly perfected, filed and registered or recorded in any jurisdiction and with any Governmental Authority where perfection, filing and registration or recordation is required, as applicable, and all liens or pledges in favor of the Secured Parties continue to be properly registered or recorded in favor of such Secured Parties

(x) Cargo Preference Act. To the extent requested by DOE, receipt by DOE of evidence of the Borrower's delivery of each of the documents listed in Section 7.20 (*Cargo Preference Act*) with respect to CPA Goods the cost of which has been or is to be paid or reimbursed with proceeds of the Advances made on or prior to the Requested Advance Date and that have been delivered to a carrier and loaded for shipment to any Borrower Entity or any of its contractors or their subcontractors.

(y) CFIUS. To the extent any CFIUS Notified Transaction arises prior to the delivery of any Advance Request Approval Notice, receipt by DOE of evidence satisfactory to DOE (in its reasonable discretion) that the Borrower has received written notification from CFIUS stating that: (a) CFIUS lacks jurisdiction over any such CFIUS Notified Transaction; (b) CFIUS has concluded all action pursuant to Section 721 of the DPA, and has determined that there are no unresolved national security concerns with respect to any such CFIUS Notified Transaction; or (c) following an investigation, CFIUS has sent a report to the President requesting the President's decision and either (i) the President has announced a decision not to take any action to suspend or prohibit any such CFIUS Notified Transaction; or (ii) the President has not taken any action within fifteen (15) days from the date the President received the report from CFIUS.

(z) No Violation. The making of the requested Advance shall not result in a violation of any Applicable Law, Transaction Document, Governmental Approval, or any other agreement or consent to which any Borrower Entity is a party, or any judgment or approval to which any Borrower Entity is subject, and the Borrower shall have certified to DOE as to such compliance.

(aa) Transaction Documents. Receipt by DOE on or prior to the date of such Advance of (i) fully executed originals (to the extent required) or copies of all Transaction Documents (including all (x) then-required Sales Agreements; and (y) with respect to each First Advance under any Tranche, all Construction Contracts related to the corresponding Line funded by such Tranche) required to be executed as of the date of such Advance (to the extent such documents have not already been provided), in each case, in the name of the Borrower as counterparty thereto, unless otherwise agreed, and (ii) a certificate from a Responsible Officer of the Borrower certifying that (A) all Transaction Documents remain in full force and effect and no default or event that with the passage of time, the giving of notice or both would constitute a default has occurred and is continuing thereunder, and (B) copies of each Transaction Document submitted pursuant to clause (i) above are true, correct and complete (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters).

(bb) Litigation. Receipt by DOE of an Officer's Certificate of the Borrower certifying that, other than Disclosed Adverse Proceedings, there is no pending or, to the Borrower's Knowledge,threatened, Adverse Proceeding, that relates to: (i) the legality, validity or enforceability of any of the Transaction Documents or the ability of any Secured Party to exercise any of its rights under any of the Financing Documents or the remedies in respect of the Collateral pursuant to the Security Documents; (ii) any transaction contemplated by any such Transaction Document; or (iii) the Project or any Borrower Entity.

(cc) Project Accounts. After giving effect to all Eligible Project Cost Reimbursement Amounts from such Advance, all Project Accounts (including the Debt Service Reserve Account) and, to the extent applicable, Borrower Operating Accounts shall have been funded in full to the then-applicable funding requirement as of the date of such Advance pursuant to this Agreement and the Accounts Agreement.

(dd) Certain Events. No Default, Event of Default, Event of Force Majeure or Event of Loss has occurred and is continuing as of the Advance Date or is reasonably expected to occur after the Advance Date.

(ee) No Material Adverse Effect. No event (including any legal, arbitral or other dispute review proceeding or any change in law) has occurred and is continuing, or could reasonably be expected to occur, that shall have had, or could reasonably be expected to have, a Material Adverse Effect.

(ff) CapEx Budget. The Collateral Agent and DOE shall have received evidence demonstrating that there has been no adverse deviation from the CapEx Budget or 13-Week Forecast then in effect in any material respect, as determined by Collateral Agent and the Lenders in their sole discretion.

(gg) Additional Items. Receipt by DOE of such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents as it may reasonably request.

Section 5.05 Conditions Precedent to FFB Advance. The obligation of FFB to make each Advance (including the First Advance) under the FFB Note Purchase Agreement and the FFB Note is subject to the prior satisfaction (or waiver in writing) as determined by FFB of each of the following conditions precedent as of the date of the relevant Advance Request and as of the Advance Date:

(a) Receipt of Advance Request Approval Notice. FFB shall have received from DOE an Advance Request Approval Notice.

(b) Absence of Drawstop Notice. No Drawstop Notice shall have been delivered to DOE or FFB.

Section 5.06 Advance Deductions. Unless the Borrower shall have prepaid the applicable Advance in the amount of any excess as provided in Section 3.05(c) (*Mandatory Prepayments*) prior to each Requested Advance Date immediately following the parties' determination of the existence of an Excess Advance Amount (whether pursuant to the Quarterly Certificate or otherwise), the Borrower shall:

(a) in the relevant Advance Request, deduct from the total amount of the Advance or Advances to be made on such Requested Advance Date an amount equal to the amount that would otherwise have been prepayable by the Borrower pursuant to Section 3.05(c) (*Mandatory Prepayments*); and

(b) in the relevant Advance Request, include a certification by a Responsible Officer, substantially in the form set forth in the Form of Advance Request, certifying as to the amount of such deduction,

provided that if the amount of the Advance requested to be made on such Requested Advance Date is less than the total amount to be deducted on such Requested Advance Date, the Borrower shall deduct an amount equal to the total amount of the Advance requested to be made on such date, and the remaining shortfall shall be deducted by the Borrower from Advances requested in future Advance Requests made on future Requested Advance Dates until such amount has been deducted in full.

Section 5.07 Satisfaction of Conditions Precedent. Each of the Borrower and DOE hereby acknowledges and agrees that:

(a) by delivering the FFB Secretary's Instruments on the Execution Date, DOE shall be deemed to have approved of or consented to, or to be satisfied with, each of the Execution Date Conditions Precedent that must be approved or consented to by, or be satisfactory to, DOE; and

(b) FFB, by delivering an acceptance notice under Section 5.1 of the FFB Note Purchase Agreement or making any Advance under the FFB Note, shall be deemed to have approved of or consented to, or to be satisfied with, each of the matters set forth in Sections 5.01 (*Conditions Precedent to the Execution Date*) and 5.02 (*Conditions Precedent to FFB Purchase of the FFB Note*) that must be approved or consented to by, or satisfactory to, FFB.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

To induce DOE to enter into this Agreement and to arrange for FFB to purchase the FFB Note and offer extensions of credit thereunder, the Borrower, on behalf of itself and each other Borrower Entity, makes each of the following representations and warranties to and in favor of DOE and FFB as of: (a) the Execution Date; (b) each Advance Date (both immediately before and immediately after giving effect to the Advances, if any, being made on such date); (c) each Line Commercial Operation Date; and (d) the Project Completion Date, except as such representations and warranties are expressly made as to an earlier date, in which case such representations and warranties will be true as of such earlier date:

Section 6.01 Organization and Existence. Each Borrower Entity:

(a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization;

(b) is duly qualified to do business in, and in good standing in, the Commonwealth of Pennsylvania and each other jurisdiction where the failure to so qualify and be in good standing could reasonably be expected to have a Material Adverse Effect; and

(c) has all requisite power and authority to:

(i) own or hold under lease and operate the property it purports to own or hold under lease;

(ii) carry on its business as now being conducted and as proposed to be conducted in respect of the Project;

(iii) incur Indebtedness and create Liens on all and any of its properties; and

(iv) execute, deliver, perform and observe the terms and conditions of each of the Transaction Documents to which it is a party.

Section 6.02 Authorization; No Conflict. Each Borrower Entity has duly authorized, executed and delivered the Transaction Documents to which it is a party, and none of: (a) its execution and delivery thereof; (b) its consummation of the transactions contemplated hereby or thereby nor its compliance with the terms of this Agreement or thereof; and (c) the issuance of the FFB Note, the borrowings under the Financing Documents, the use of the proceeds thereof and Reimbursement Obligations hereunder, in each case, do or will: (i) contravene its Organizational Documents or any Applicable Laws; (ii) contravene or result in any breach or constitute any default under any Governmental Judgment; (iii) contravene or result in any breach or constitute any default, or result in or require the creation of any Lien upon any of its properties, in each case, under any agreement or instrument to which it is a party or by which it or any of its properties may be bound, except for any Permitted Liens; or (iv) require the consent or approval of any Person other than the Required Approvals and any other consents or approvals that have been obtained and are in full force and effect.

Section 6.03 Capitalization. All of the Equity Interests of each Borrower Entity have been duly authorized, validly issued, are fully paid and non-assessable, and are directly owned by the Borrower, or in the case of the Borrower, by the parties set out in Schedule E (*Capitalization*), free and clear of all Liens other than Liens created under the Security Documents and the Cerberus Financing Documents. Except as set forth on Schedule E (*Capitalization*), (a) no options or rights for conversion into or acquisition, purchase

or transfer of Equity Interests of the Borrower Entity or any agreements or arrangements for the issuance by the Borrower Entities of additional Equity Interests are outstanding, in each case other than the Convertible Notes and the Cerberus Equity Instruments and (b) no Borrower Entity has outstanding: (i) any securities convertible into or exchangeable for its Equity Interests; or (ii) any rights to subscribe for or to purchase, or any option for the purchase of, or any agreement, arrangement or understanding providing for the issuance (contingent or otherwise) of, or any call, loan commitment or claims of any character relating to, its Equity Interests, in each case other than the Convertible Notes and the Cerberus Equity Instruments.

Section 6.04 Solvency.

(a) As of the date of determination, the most recent Base Case Financial Model has been prepared in good faith by the Borrower and on assumptions made in the reasonable judgment of the Borrower at the time delivered hereunder; and, except as advised in writing by the Borrower to DOE, the Borrower is not aware of any fact or circumstance that would materially adversely change (i) the projected financial condition of the Borrower (on a consolidated basis) or (ii) the Borrower's ability to pay its liabilities as such liabilities mature. As of the date of determination, each Borrower Entity is able to pay all of its liabilities as such liabilities mature and does not have an unreasonably small capital.

(b) None of the Borrower Entities is the subject of any pending or, to the Borrower's Knowledge, threatened Insolvency Proceedings.

(c) No corporate action, legal proceedings or other procedure or step is being considered or prepared by any Borrower Entity that could trigger the occurrence of any event or circumstance described in Section 10.01(k) (*Bankruptcy; Insolvency; Dissolution*).

Section 6.05 Eligibility of Borrower; Project. The Borrower has satisfied each of the conditions contained in the Program Requirements (a) to be classified as an Eligible Applicant; and (b) required to classify the Project as an Eligible Project.

Section 6.06 Transaction Documents. Each Transaction Document to which any Borrower Entity is (or will be when executed) a party is a legal, valid and binding obligation of such Borrower Entity, enforceable against such Borrower Entity in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 6.07 Required Approvals.

(a) The Required Approvals Schedules set forth all Required Approvals other than Governmental Approvals and other consents and approvals that, in each case, are of a routine nature and can be obtained in the Ordinary Course of Business.

(b) Part A of the Required Approvals Schedule sets forth all of the Required Approvals that are necessary or required to be obtained by the Execution Date under Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of its properties or, to the Borrower's Knowledge, any Major Project Participant for the purpose of fulfilling its obligations under the applicable Major Project Document. As of the Execution Date, and as of each date thereafter that this representation is to be made, each Required Approval set forth in Part A of the Required Approvals Schedule has been duly and validly issued, is in full force and effect and is Non-Appealable.

(c) Part B of the Required Approvals Schedule includes all of the Required Approvals that are not required to be obtained until after the Execution Date under Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of its properties or, to the Borrower's Knowledge, any Major Project Participant for the purpose of fulfilling its obligations under the applicable Major Project Document.

(d) Any Required Approval listed on Part B of the Required Approvals Schedule that is required to be obtained, as of any date on which this representation is made, pursuant to and in accordance with the terms of the Transaction Documents, Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of its properties or, to the Borrower's Knowledge, any Major Project Participant for the purpose of fulfilling its obligations under the applicable Major Project Document, has been duly and

validly issued, is in full force and effect and is Non-Appealable, and the Borrower has no reason to believe that any such Required Approvals already obtained will be revoked, suspended or modified.

(e) The Borrower does not have any reason to believe that it, any other Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant will be unable to obtain the Required Approvals set forth on Part B of the Required Approvals Schedule applicable to it in the Ordinary Course of Business free from conditions or requirements and at such time or times as may be necessary to avoid any material delay in, or impairment to the transactions contemplated by, the Transaction Documents.

(f) The Borrower, each Borrower Entity and, to the Borrower's Knowledge, each Major Project Participant is in compliance in all material respects with all Required Approvals that have been obtained by, or are otherwise applicable to, such Person.

Section 6.08 Litigation. Except as otherwise disclosed to and expressly waived in writing by DOE, there are no Adverse Proceedings pending or, to the Borrower's Knowledge, threatened in writing that relate to:

(a) the legality, validity or enforceability of any Financing Document or any Major Project Document;

(b) the Project or any transaction contemplated by any Financing Document or any Major Project Document; or

(c) any Borrower Entity or any Project Document other than a Major Project Document that (excluding any Adverse Proceeding contemplated under clauses (a) and (b) above) either individually or in the aggregate has, or could reasonably be expected to have, a Material Adverse Effect.

Section 6.09 Indebtedness. No Borrower Entity has any outstanding Indebtedness other than Permitted Indebtedness.

Section 6.10 Security Interests; Liens.

(a) Pursuant to the Security Documents, the Collateral Agent has a legal, valid, enforceable and perfected First Priority Lien in the Collateral subject only to Permitted Liens.

(b) Such security interest in the Collateral is and, with respect to any after-acquired property, when so subsequently acquired, will be superior and prior to the rights of all third Persons now existing or hereafter arising, whether by way of deed of trust, mortgage, Lien, security interests, encumbrance, assignment or otherwise, other than Permitted Liens.

(c) All documents and instruments, including the Real Property Documents, as required, have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable have been taken to establish and perfect the Collateral Agent's Lien in and to the Collateral (for the benefit of the Secured Parties) to the extent contemplated by the Security Documents.

(d) All Taxes (including stamp taxes) and filing fees and Secured Party Expenses that are due and payable in connection with the execution, delivery or recordation of the Mortgage or any other Transaction Document, or the mortgaging of the mortgaged property under the Mortgage, have been paid.

(e) Except for Permitted Liens, no Borrower Entity nor any other owner of any of the Collateral has created or is under any obligation to create or has entered into any transaction or agreement that would result in the imposition of, any Lien upon any of the Collateral.

Section 6.11 Taxes.

(a) Each Borrower Entity has filed all tax returns required by Applicable Laws to be filed by it and has paid: (i) all income Taxes that have become due pursuant to such tax returns; and (ii) all other material Taxes and assessments payable by it that have become due (other than those Taxes that it is contesting in accordance with the Permitted Contest Conditions).

(b) Assuming that each Secured Party, to the extent applicable, provides a properly completed IRS Form W-9 to establish its status as a United States Person and to certify that such Secured Party is exempt from U.S. federal backup withholding tax (or, in the case of any Secured Party that is not a United States Person, a properly completed applicable Form W-8 or other certificate, form or documentation establishing an exemption from U.S. federal withholding Taxes), no withholding Taxes are payable by any Borrower Entity to any Governmental Authority in connection with any amounts payable by such Borrower Entity under or in respect of the Financing Documents.

(c) Each Borrower Entity acknowledges and agrees that DOE's execution and delivery of this Agreement, including the determination by DOE as to whether Project Costs are Eligible Project Costs, (i) does not prejudice or otherwise have any binding effect with regard to any determination by the Internal Revenue Service, the U.S. Department of the Treasury, or a court of law as to the tax basis of the Project or any part thereof under the Code and under Section 1603 of the Recovery Act, and (ii) does not constitute a determination regarding, and is unrelated to whether such Borrower Entity or the Project has complied or will comply with, Federal tax law. Each Borrower Entity agrees that it will not use the DOE's execution or delivery of this Agreement, or documents generated by the DOE during its consideration of the loan guarantee application, to demonstrate or prove it complied with the requirements to claim a tax credit or other amount under the Internal Revenue Code in an administrative or judicial proceeding.

(d) Any Product that is an "eligible component" within the meaning of Section 45X (c) of the Code is or will be (i) produced by the Borrower in the United States or a possession thereof, within the meaning of Section 45X(d)(2) of the Code, and (ii) sold to an unrelated person, within the meaning of Sections 45X(a)(3) and 45X(d)(1) of the Code, in each case as part of the Borrower's trade or business.

(e) Each Borrower Entity has agreed that (i) DOE's execution and delivery of this Agreement, including the determination by DOE as to whether Pre-Completion Costs are Eligible Project Costs, (A) do not prejudice or otherwise have any binding effect with regard to any determination by the Internal Revenue Service, the U.S. Department of the Treasury, or a court of law as to the tax basis of the Project or any part thereof under the Code, and (B) do not constitute a determination regarding, and is unrelated to whether any Borrower Entity or the Project has complied or will comply with, Federal tax law, and (ii) it will not use the DOE's execution and delivery of this Agreement, or documents generated by the DOE during its consideration of the Application, to demonstrate or prove it complied with the requirements to claim a Section 45X Tax Credit, any other form of tax credit or other amount under the Code in an administrative or judicial proceeding.

Section 6.12 Financial Statements.

(a) Each of the Historical Financial Statements and each Financial Statement of the Borrower and each other Borrower Entity delivered to DOE pursuant to Section 8.01 (*Financial Statements*) is complete and correct, has been prepared in accordance with the Designated Standard and presents fairly, in all material respects, the financial condition of the Borrower or such Borrower Entity, as applicable, as of the respective dates of the Financial Statements for the respective periods covered therein.

(b) Such Financial Statements reflect all liabilities or obligations of the Borrower or such other Borrower Entity of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with the Designated Standard.

(c) As of the Execution Date or the date of delivery of such Financial Statements pursuant to Section 8.01 (*Financial Statements*), as applicable, or the respective date of such Financial Statements, whichever is earlier, no Borrower Entity has incurred or assumed any liabilities or obligations that would be required to be disclosed in accordance with the Designated Standard and which are not reflected in such Financial Statements or the FFB Note thereto.

Section 6.13 Business; Other Transactions.

(a) No Borrower Entity has conducted any business other than the business contemplated by the Transaction Documents and such other business as may be related to the Project.

(b) No Borrower Entity is a party to, or bound by, any contract other than those contracts permitted under the Financing Documents.

(c) Except as provided in the Financing Documents, and in agreements governing transactions that are Permitted Indebtedness or Permitted Liens, no Borrower Entity has executed and delivered any powers of attorney or similar documents.

(d) No Borrower Entity has paid or become obligated to pay: (i) any fee or commission to any broker, finder or intermediary for or on account of arranging the financing of the transactions contemplated by the Transaction Documents; or (ii) any contingency fee (computed as a percentage of any amount of the Guaranteed Loan) to any financial or other professional advisors of the Borrower in connection with the financing of the transactions contemplated by the Transaction Documents.

(e) Except as set forth on Schedule F (*Affiliate Transactions*) or as otherwise permitted pursuant to Section 9.21, no Borrower Entity is a party to any contract or agreement with, nor has any other loan commitment to, any Affiliate.

(f) No Borrower Entity has: entered into any transaction or series of related transactions (including any payment of fees or commissions) (i) with any Person (including any Affiliate) other than in the Ordinary Course of Business and on an arm's length basis; or (ii) whereby such Borrower Entity might pay more than the fair market value for products of others.

(g) No Borrower Entity has made any Investments other than Permitted Investments.

(h) No Borrower Entity has any Subsidiaries or legally or beneficially owns any Equity Interests of any other Person except as contemplated in Schedule E (*Capitalization*).

(i) The Borrower has instituted and maintained adequate internal controls, reporting systems and cost control systems that are designed to ensure that the Borrower satisfies its obligations under the Financing Documents, including all such controls necessary or desirable in accordance with the Accounting Compliance Plan.

Section 6.14 Accounts. The Borrower does not own or maintain any accounts with a bank or financial institution other than the Project Accounts and the Borrower Operating Accounts

Section 6.15 Property.

(a) Title to Collateral

(i) Schedule G (*Project Sites*) identifies the Borrower's Real Property interests in the Project Sites.

(ii) The Borrower owns and has valid legal and beneficial title to, or has a valid leasehold interest in, such Real Property interests in the Project Sites free and clear of any Lien of any kind, except for Permitted Liens, and no contracts or arrangements, conditional or unconditional, exist for the creation by the Borrower of any Lien (other than Permitted Liens) on any Real Property, other than the Security Documents and the Cerberus Financing Documents; and none of the Permitted Liens, individually or in the aggregate, would materially impair the development, construction, operation, or use by (or for the benefit of) the Borrower of the Project Sites for the Project.

(iii) All easements, leasehold and other Real Property interests and utility and other services, means of transportation, facilities, other materials and rights that can reasonably be expected to be necessary for the construction, completion and operation of the Project in accordance with Applicable Laws and the Transaction Documents have been procured under the Major Project Documents or are commercially available to the Project at the Project Sites on terms consistent with the Construction Budget and the Base Case Financial Model and, to the extent appropriate, arrangements have been made on terms consistent with the Construction Budget and the Base Case Financial Model for such easements, interests, services, means of transportation, facilities, materials and rights.

(b) Leases. Any Leases material to the Project in existence on the date of this representation and under which the Borrower is a lessee, sublessee or licensee, including the Mortgaged Leases, are valid and subsisting, the Borrower is not in default under any of such Leases, the Borrower enjoys peaceful and undisturbed possession of the Real Property subject to such Leases, and the Borrower has the right to continue to enjoy such possession during the time when such Real Property is necessary for the Project.

(c) Project Sites. The Project Sites are sufficient and appropriate in all respects for the development, siting, design, engineering, construction, ownership, operation, maintenance and use of the Project as contemplated by the Transaction Documents.

(d) Boundaries. Except as shown on each ALTA survey delivered pursuant to 5.03(i)(i)(A) (*Real Estate*), all of the improvements on the Project Sites lie wholly within the boundaries and building restriction lines of the Project Sites, and no improvements on adjoining properties encroach upon the Project Sites, and no improvements on the Project Sites encroach upon or violate any easements or other encumbrances upon the Project Sites, in each case, so as to materially impair the development, construction, operation, or use by (or for the benefit of) the Borrower of the Project Sites for the Project, except those which are insured against by title insurance. All of the improvements on the Project Sites lie wholly within the area subject to the environmental review under NEPA. To the Borrower's Knowledge, the ALTA surveys delivered pursuant to Section 5.03(i)(i)(A) (*Real Estate*) does not fail to reflect any material matter affecting the Project Sites or the title thereto.

(e) Condemnation. No condemnation or adverse zoning or usage change proceeding has occurred or been threatened against any of the Real Property that could materially impair the development, construction, operation, access to or use by (or for the benefit of) the Borrower of the Project Sites for the Project.

Section 6.16 Project Milestone Schedule, Project Budgets and Plans.

(a) The Project Budgets and Plans:

(i) are complete and based on reasonable assumptions;

(ii) are consistent with the provisions of the Project Documents;

(iii) have been prepared in good faith and with due care; and

(iv) fairly represent the Borrower's expectation as to the matters covered thereby as of any date on which this representation is made or deemed made.

(b) The Project Milestone Schedule accurately specifies in summary form the work that each Construction Contractor and Equipment supplier proposes to complete on or before the deadlines specified therein.

(c) The Construction Budget represents the Borrower's best estimate of Pre-Completion Costs anticipated to be incurred to achieve each Line Commercial Operation Date by no later than the corresponding Line Commercial Operation Longstop Date. The Construction Budget has not been amended or changed in any material respect other than to reflect changes resulting from Approved Construction Changes.

(d) The Borrower represents and warrants that the Base Case Financial Model:

(i) is complete and based on reasonable assumptions;

(ii) is substantially consistent with the material provisions of the Project Documents;

(iii) has been prepared in good faith and with due care;

(iv) fairly represents the Borrower's expectation as to the matters covered thereby; and

(v) the Borrower does not believe that an update of the Base Case Financial Model to reflect reasonable projections and assumptions based on current facts and circumstances would not meet the Debt Sizing Parameters and/or the financial covenants set out in Section 7.23 (*Financial Covenants*).

(e) The Borrower's good faith estimate and belief is that each Line Commercial Operation Date will occur no later than the Scheduled Line Commercial Operation Date for such Line.

(f) The Borrower believes that it is technically feasible for the Project to be constructed, completed, operated and maintained so as to fulfill in all material respects the design specifications and requirements contained in the Major Project Documents.

Section 6.17 Intellectual Property.

(a) The Borrower exclusively owns, or has a valid and enforceable license or right to use, all Project IP.

(b) Neither the Borrower nor any other Borrower Entity is in breach of or default under any Project IP Agreement then in effect. There are no facts or circumstances to any Borrower Entity's Knowledge that would be reasonably expected (after the giving of notice, the lapse of time, or both) to give rise to any revocation or termination of any Project IP Agreement, or the Borrower's or any other Borrower Entity's rights or licenses to Project IP thereunder.

(c) Each Borrower Entity's right, title and interest in and to the Project IP owned by such Borrower Entity is free and clear of all Liens, except for Permitted Liens.

(d) No government funding or facilities were used in the development of any Project IP in a manner that has affected or would reasonably be expected to affect (i) any Borrower Entity's or to the Borrower's Knowledge, any Major Project Participant's rights in any Project IP, or (ii) DOE's rights in or to any Project IP.

Section 6.18 Infringement; No Adverse Proceedings.

(a) No Borrower Entity, nor its respective businesses, nor the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation, use or maintenance of the Project, to Borrower's Knowledge, infringe upon, misappropriate or otherwise violate the Intellectual Property of any Person.

(b) There is no objection to, challenge to the validity of, or any Adverse Proceeding past, present, pending or to the Borrower's Knowledge, threatened, to which the Borrower or any other Borrower Entity is a party, and no written objection (including any demand to take a license to Intellectual Property) against the Borrower or any other Borrower Entity: (i) alleging any infringement, misappropriation or other violation of the Intellectual Property of any Person: (A) by any Borrower Entity; or (B) with respect to the development, design, engineering, procurement, construction, starting up, commissioning, ownership, use or maintenance of the Project; or (ii) challenging the validity, enforceability, ownership or use of any Project IP owned by any Borrower Entity. There are no facts or circumstances that would be reasonably expected to give rise to any such Adverse Proceeding.

(c) To the Borrower's Knowledge, no Person is infringing, misappropriating or otherwise violating any Project IP owned by the Borrower or any other Borrower Entity. There is no Adverse Proceeding pending to which any Borrower Entity is a party or, to the Borrower's Knowledge, threatened, alleging any of the foregoing.

Section 6.19 No Amendments to Transaction Documents. None of the Transaction Documents to which any Borrower Entity is a party has been amended, modified or terminated, except in accordance with or as permitted by this Agreement or as disclosed to DOE and consented to in writing by DOE.

Section 6.20 Compliance with Laws; Program Requirements. Each Borrower Entity is in compliance with, and has conducted and is conducting its business in compliance with, its Organizational Documents and internal controls, and is in compliance in all material respects with, and has conducted and is conducting its business in compliance with, all Applicable Law (including all Program Requirements with respect to the Project) and Required Approvals.

Section 6.21 Investment Company Act. No Borrower Entity is an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act, or subject to regulation thereunder.

Section 6.22 Margin Stock. No part of the proceeds of any Advance, and no other extensions of credit under the FFB Documents, will be used, directly or indirectly, to purchase or carry any margin stock within the meaning of Regulation T, U or X of the Board, or any regulations, interpretations or rulings thereunder, or for any purpose that violates any regulation of the Board.

Section 6.23 Anti-Corruption Laws.

(a) Each Borrower Entity and its directors, officers, employees and, to the Borrower's Knowledge, agents, are, and have been, in compliance with all Anti-Corruption Laws.

(b) There are no Adverse Proceedings pending or, to the Borrower's Knowledge, threatened against or affecting any Borrower Entity or their respective directors, officers or employees regarding any actual or alleged non-compliance with any Anti-Corruption Laws.

(c) No Borrower Entity, nor its directors, officers, employees nor, to the Borrower's Knowledge, agents, has made, offered or promised to make, provided or paid any unlawful contributions, entertainment or anything of value to any local or foreign official, foreign political party or party official or any candidate for foreign political office:

(i) in order to influence any act or decision of any foreign official, foreign political party, party official or candidate for foreign political office in his or her official capacity, including a decision to fail to perform his or her official functions;

(ii) to secure an unlawful or improper advantage; or

(iii) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to any Borrower Entity or any of its Affiliates or to any other Person, in violation of any applicable Anti-Corruption Law.

Section 6.24 Environmental Laws.

(a) All Required Approvals for the Project relating to: (i) air emissions; (ii) discharges to land, surface water or ground water; (iii) noise emissions; (iv) solid or liquid waste disposal; (v) the use, generation, storage, transportation or disposal of toxic or Hazardous Substances or wastes; or (vi) otherwise required under applicable Environmental Law have been obtained, are final and Non-Appealable, and are in full force and effect.

(b) The Borrower has not received notice of, and the Borrower does not have Knowledge of any facts, circumstances, conditions, actions, activities or events that have resulted or could reasonably be expected to result in any Environmental Claim against or affecting the Project or the Project Sites or Building 270 that is, or could be expected to become, material.

(c) There is not and has not been any condition, circumstance, action, activity or event with respect to the Project, the Borrower, the Project Sites or Building 270 that could reasonably form the basis of any violation of any Environmental Law or that could reasonably be expected to have a Material Adverse Effect or result in material harm to environmental, health or safety matters (including worker safety). The Borrower is and has been in compliance with all applicable Environmental Law.

(d) None of the Borrower, any Borrower Entity nor, to the Borrower's Knowledge, any other Person, has used, generated, manufactured, produced, stored, transported or Released, on, from, under or about the Project Sites or Building 270 or transported thereto or therefrom, any Hazardous Substances in any manner that violates Applicable Law or violates the terms and conditions of a Required Approval and could reasonably be expected to: (i) form the basis of an Environmental Claim; (ii) cause the Project to be subject to any restrictions arising under Environmental Laws that would prohibit its use for the intended purpose; (iii) have a Material Adverse Effect; or (iv) result in material harm to the environment, health or safety.

Section 6.25 Employment and Labor Contracts.

(a) Except as set forth on Schedule M (*Employment and Labor Contracts*), as of the Execution Date:

(i) with respect to the Project, no Borrower Entity is or has been within the past two (2) years: (A) a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent; or (B) subject to any labor disputes, strikes or work stoppages, requests for arbitration, grievance proceedings or union negotiations or organizational efforts; and

(ii) to the Borrower's Knowledge, with respect to the Project, there has not been in the past three (3) years any organized effort or demand for recognition or certification or attempt to organize employees of any Borrower Entity by any labor organization.

(b) There are no strikes, slowdowns or work stoppages ongoing or threatened in writing by the employees of the Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant that have caused or could reasonably be expected to cause a Material Adverse Effect.

Section 6.26 Davis-Bacon Act.

(a) The Borrower and each DBA Contract Party under each Davis-Bacon Act Covered Contract have taken all necessary steps to comply with and are in compliance (including retroactive compliance) with the Davis-Bacon Act Requirements.

(b) As of the Execution Date, there are no Davis-Bacon Act Covered Contracts except for those listed in Schedule H (*Davis-Bacon Act Covered Contracts*).

(c) If and to the extent construction, alteration or repair (within the meaning of 29 C.F.R. §5.5(a)) of the Project began prior to the Execution Date, the Borrower has prior to the Execution Date, retroactively adjusted, and caused each DBA Contract Party to retroactively adjust, the wages of each affected laborer and mechanic employed in the construction, alteration or repair of the Project prior to the Execution Date, and paid or caused to be paid to each such laborer or mechanic such additional wages, if any, as were necessary for such laborers and mechanics to have been paid at rates not less than those prevailing on similar work in the relevant locality during the period such work was performed, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act wage determinations attached to Exhibit B (*Davis-Bacon Act Contract Provisions*).

Section 6.27 ERISA.

(a) The Borrower and each of its ERISA Affiliates have operated the Employee Benefit Plans in compliance with their terms and with all applicable provisions and requirements of the Code, ERISA and all other Applicable Laws and have performed all their respective obligations under such plan.

(b) Each Employee Benefit Plan has been determined by the IRS to be so qualified or is in the process of being submitted to the IRS for approval or will be so submitted during the applicable remedial amendment period, and nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, nothing has occurred that would materially adversely affect such qualification).

(c) There exists no Unfunded Pension Liabilities with respect to Employee Benefit Plans in the aggregate, taking into account only Employee Benefit Plans with positive Unfunded Pension Liabilities.

(d) There are no Adverse Proceedings pending against or threatened involving an Employee Benefit Plan (other than routine claims for benefits) or any Borrower Entity or any ERISA Affiliate which would reasonably be expected to be asserted successfully against any Employee Benefit Plan and, if so asserted successfully, would reasonably be expected, either singly or in the aggregate, to have a Material Adverse Effect.

(e) No ERISA Event has occurred or is reasonably expected to occur.

(f) Except to the extent required under Section 4980B of the Code or comparable state law, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any ERISA Affiliate.

(g) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder (or the exercise by DOE of its rights under this Agreement) will not involve any non-exempt transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to Section 4975(c)(1)(A)-(D) of the Code.

(h) (i) The assets of the Borrower do not and will not constitute: (A) "plan assets" within the meaning of Section 3(42) of ERISA and DOL Regulations set forth in 29 C.F.R. 2510.3-101; or (B) the assets of any governmental, church, non-U.S. or other plan (a "**Similar Law Plan**"); and (ii) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to any Similar Law Plan.

(i) Neither any Borrower Entity nor any ERISA Affiliate has ceased operations at a facility so as to become subject to the provisions of Section 4068(a) 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 Employee Benefit Plan subject to Section 4064(a) of ERISA to which it made contributions.

(j) Neither any Borrower Entity nor any ERISA Affiliate has incurred or reasonably expects to incur any liability to PBGC save for any liability for premiums due in the ordinary course or other liability which would not reasonably be expected to have, either singly or in the aggregate, a Material Adverse Effect.

Section 6.28 Powers of Attorney. No Borrower Entity has granted any power of attorney or similar power to any Person other than in agreements governing transactions that are Permitted Indebtedness or Permitted Liens.

Section 6.29 Sanctions and Anti-Money Laundering Laws.

(a) None of (i) the Borrower Entities or any of their Affiliates, or (ii) to the Borrower's Knowledge, any major Project Participant, is or is Controlled by a Prohibited Person, and each Borrower Entity and their respective directors, officers, employees and, to the Borrower's Knowledge, agents, are and have been in compliance with all Sanctions.

(b) No Borrower Entity or any of its respective members, directors, officers, employees or, to the Borrower's Knowledge, agents, is a Prohibited Person.

(c) None of the Collateral is owned, traded or used, directly or, to the Borrower's Knowledge, indirectly by a Prohibited Person or is located or organized in a Prohibited Jurisdiction.

(d) Each Borrower Entity, and its respective directors, officers, employees and, to the Borrower's Knowledge, agents, are and have been in compliance with all applicable Anti-Money Laundering Laws.

(e) There are no Adverse Proceedings pending or, to the Borrower's Knowledge, threatened, against or affecting any Borrower Entity or their respective directors, officers, or employees regarding any actual or alleged non-compliance with any Sanctions or Anti-Money Laundering Laws.

(f) The Borrower has implemented, maintained, and at all times complied with policies and procedures reasonably designed to ensure compliance by all Borrower Entities with all applicable International Compliance Directives and Anti-Money Laundering Laws.

Section 6.30 Cargo Preference Act. Each of the Borrower Entities is in compliance with the Cargo Preference Act of 1954, as amended, and all related implementing regulations with respect to all CPA Goods, or has otherwise reached an agreement with the United States Maritime Administration with respect to such compliance.

Section 6.31 Lobbying Restriction. Each Borrower Entity is in compliance with all requirements of 31 U.S.C. § 1352, as amended, including the requirement that no proceeds of the Advances be expended by the Borrower or any of its Affiliates to pay any Person for influencing or attempting to influence an officer or employee of any federal agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of Congress in connection with the making of the Guaranteed Loan or any other action described in 31 U.S.C. § 1352(a)(2).

Section 6.32 Federal Funding. No application has been delivered by the Borrower to, and no application is pending review or approval by, any Governmental Authority for allocation of Federal Funding to the Project.

Section 6.33 No Federal Debt Delinquency. No Borrower Entity has:

(a) any judgment Lien against any of its Property for a debt owed to the United States or any other creditor; or

(b) any Indebtedness (other than a debt under the Code) owed to the United States or any Governmental Authority thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R. 285.13(d), including any Tax liabilities (other than those Tax liabilities contested in accordance with the Permitted Contest Conditions), except to the extent such delinquency has been resolved with the appropriate Governmental Authority in accordance with Applicable Law.

Section 6.34 No Tax-Exempt Indebtedness. Neither the Guaranteed Loan nor the Reimbursement Obligations finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of Section 149(b) of the Code.

Section 6.35 Sufficient Funds. The remaining Guaranteed Loan Commitment Amount, the remaining Equity Contributions, and the remaining Cerberus Term Loans and "Commitment" (under and as defined in the Cerberus Credit Agreement) and, with respect to any date on which this representation is made which is an Advance Date, the amount of the requested Advance are, collectively, sufficient to pay all remaining Pre-Completion Costs (including any reasonably expected Cost Overruns) in accordance with the then-applicable Project Budgets and Plans and to achieve each Line Commercial Operation by the corresponding Line Commercial Operation Longstop Date and Project Completion by the Project Completion Longstop Date.

Section 6.36 Use of Proceeds. The Borrower has used the proceeds of each Advance in accordance with Section 2.03(f) (*Disbursement of Proceeds*) and the other terms and conditions of all applicable Financing Documents.

Section 6.37 No Immunity. No Borrower Entity nor any of its assets is entitled to immunity in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Agreement or any other Transaction Document.

Section 6.38 No Fraudulent Intent. Neither the execution and delivery of this Agreement or any of the other Transaction Documents nor the performance of any actions required hereunder or thereunder is being undertaken by any Borrower Entity with or as a result of any actual intent by the Borrower to hinder, delay or defraud any entity to which any Borrower Entity is now or will hereafter become indebted.

Section 6.39 Disclosure.

(a) The statements and information contained in the Financing Documents, taken together with all documents, reports or other written information pertaining to the Project that have been furnished by or on behalf of the Borrower or any other Borrower Entity to DOE or any Secured Party Advisor from time to time, are true and correct in all material respects and do 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 materially misleading at the time they were made.

(b) There are no facts, documents or agreements that have not been disclosed to DOE that could reasonably be expected to be material to DOE's decision to enter into this Agreement or the transactions contemplated hereby or authorize any Advance or that could otherwise reasonably be expected to materially and adversely alter or affect the Project.

Section 6.40 Insurance. From and after the Execution Date, all Required Insurance is in full force and effect with Acceptable Insurers.

Section 6.41 Information Technology; Cyber Security.

(a) The information technology (including data communications systems, equipment and devices) used in the business of the Borrower ("**IT Systems**") operates and performs in all material respects as necessary: (i) for the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation or maintenance of the Project; (ii) to complete the activities designated to be completed in each Line, or to achieve Project Completion, as applicable; or (iii) to exercise the Borrower's rights and perform its obligations under the Major Project Documents, as applicable at the relevant time.

(b) The Borrower has implemented and maintains, and has caused each other Borrower Entity and Major Project Participant (as applicable) to implement and maintain in connection with the Project, commercially reasonable privacy, information security, cyber security, disaster recovery, business continuity, data backup and incident response plans, policies and procedures consistent with industry standards (including administrative, technical and physical safeguards) designed to protect: (i) Sensitive Information from any unauthorized, accidental, or unlawful Processing or loss; (ii) each IT System from any unauthorized or unlawful access, acquisition, use, control, disruption, destruction, or modification; and (iii) the integrity, security and availability of the Sensitive Information and IT Systems.

(c) In the past five (5) years, no Borrower Entity, nor to the Borrower's Knowledge, any Person that Processes Sensitive Information on behalf of any Borrower Entity, has suffered any data breaches or other incidents that have resulted in: (i) any unauthorized Processing of any Sensitive Information; or (ii) any unauthorized access to or acquisition, use, control or disruption of or any corruption of any of the IT Systems owned or controlled by the Borrower in any material respect.

(d) Each Borrower Entity is, and during the past five (5) years has been, in material compliance with: (i) all applicable Data Protection Laws; and (ii) all Contractual Obligations, and all privacy notices and policies, binding on such Borrower Entity and related to the Processing of Personal Information.

(e) In the past five (5) years, no Borrower Entity has received: (i) any written claims related to any unauthorized Processing (including any ransomware incident), or any loss, theft, corruption, or other misuse of any Personal Information processed by such Borrower Entity; or (ii) any written notice (including by any Governmental Authority) of any claims, investigations, or alleged violations relating to any Personal Information processed by such Borrower Entity.

Section 6.42 Certain Events. (a) No Default, Event of Default, Event of Force Majeure or Event of Loss has occurred and is continuing or is reasonably expected to occur.

Section 6.43 No Material Breach or Default. No material breach or default has occurred and is continuing under any Major Project Document or under the Cerberus Financing Documents, and no breach or default has occurred and is continuing under any other Project Document that could reasonably be expected to result in a Material Adverse Effect.

Section 6.44 No Material Adverse Effect. No event (including any legal, arbitral or other dispute review proceeding or any change in law) has occurred and is continuing that has or could reasonably be expected to have or result in a Material Adverse Effect.

Section 6.45 CapEx Budget; 13-Week Forecast. The 13-Week Forecast of the Borrower and its Subsidiaries provided to DOE on or prior to the Execution Date and any subsequent 13-Week Forecast delivered pursuant to Section 8.02(a) (*Omnibus Annual Reports*) are based on good faith estimates and assumptions that the Borrower believes are reasonable; provided that the 13-Week Forecasts are not to be viewed as facts and that actual results during the period or periods covered by the 13-Week Forecasts may differ from such 13-Week Forecasts and that the differences may be material. The CapEx Budget has been prepared in good faith, with due care and based

upon assumptions that the Borrower believes to be reasonable. To the knowledge of the Borrower, no facts exist that (either individually or in the aggregate) would result in any material change in the 13-Week Forecasts or the CapEx Budget.

ARTICLE VII

AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, until the Release Date, it shall cause that:

Section 7.01 Maintenance of Existence; Property; Etc.

(a) Each Borrower Entity shall preserve and maintain: (i) its legal existence; and (ii) all of its licenses, rights, privileges and franchise materials necessary to the conduct of its business and the Project.

(b) Each Borrower Entity shall, and shall cause each of its Subsidiaries to, keep (or cause to be kept) all its Properties and IT Systems in good repair, working order and condition and from time to time make or cause to be made all appropriate repairs, renewals and replacements, to the extent necessary to ensure that its business can be conducted properly and continuously and in compliance with all Applicable Laws, Required Approvals and its Organizational Documents at all times.

(c) Except as otherwise permitted hereunder, each Borrower Entity shall preserve and maintain good and marketable title to or leasehold interest in or rights to relevant Collateral and such rights to use the Project Sites as are necessary to construct, operate and maintain the Project in accordance with the requirements of the Transaction Documents and the Project Milestone Schedule, and shall, at such Borrower Entity's own expense, as applicable, take all actions to ensure that it has sufficient rights to the Project Sites as are necessary for the development, construction and operation of the Project as contemplated by the Transaction Documents.

Section 7.02 Intellectual Property.

(a) Maintenance of Project IP. The Borrower shall at all times: (i) acquire and maintain ownership of all Project IP owned by the Borrower; or (ii) obtain and maintain its licenses or rights to use all Intellectual Property owned by any other Person, in each case, that are then required by either of them: (A) for the relevant Line, or to achieve Project Completion; or (B) to exercise its rights and perform its obligations under the Major Project Documents, in each case, as applicable at the relevant time.

(b) Protection of Project IP. Each Borrower Entity shall take all commercially reasonable steps to: (i) protect, enforce, preserve and maintain its rights, title or interests in and to the Project IP, including maintaining and pursuing any application, registration or issuance for Project IP owned by such Borrower Entity, which it, in its reasonable business judgment, believes should be maintained and pursued; (ii) protect the secrecy and confidentiality of all confidential information and Trade Secrets included in the Project IP, or with respect to which the Borrower, has any confidentiality obligation, including by requiring all current and former employees, consultants, licensees, vendors and contractors to execute appropriate confidentiality agreements; and (iii) preserve its rights under and comply in all material respects with the terms and conditions of the Project IP Agreements and any other agreement granting a license to the Project IP. If: (A) any Project IP owned by the Borrower or, to the Borrower's Knowledge, any Project IP owned by any other Person and licensed under any Project IP Agreement to the Borrower becomes, as applicable: (I) abandoned, lapsed, dedicated to the public or placed in the public domain; (II) invalid or unenforceable; or (III) subject to any adverse action or proceeding before any intellectual property office or registrar; and (B) the foregoing, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, then, after the Borrower obtains Knowledge thereof, the Borrower shall notify DOE thereof in accordance with Section 8.03 (*Notices*).

(c) Continued Security Interest in Project IP. The Borrower shall, promptly upon the reasonable request of DOE, execute (or procure the execution of) and deliver to DOE any document and take all actions necessary to acknowledge, confirm, register,

record or perfect DOE's security interest in any part of the Project IP (including the filing of the IP Security Agreement with the United States Patent and Trademark Office, the United States Copyright Office, or the corresponding entities in any applicable jurisdiction), whether such interest is now owned or hereafter acquired (whether by application, registration, purchase or otherwise).

(d) Protection Against Infringement. In the event that the Borrower has Knowledge of any breach or violation of any of the terms or conditions of any Project IP Agreement or that any material Project IP owned by any Borrower Entity is infringed, misappropriated or otherwise violated by any Person, the Borrower shall: (a) take, or cause to be taken, actions or inactions that are, in the Borrower's reasonable judgment, appropriate under the circumstances (taking into account Applicable Law with respect to such infringement, misappropriation or other violation), and protect its rights in such Project IP; and (b) after the Borrower obtains Knowledge of such infringement, misappropriation or other violation, notify DOE in accordance with Section 8.03 (*Notices*).

(e) Notice of Borrower's Alleged Infringement. In the event that the Borrower has Knowledge of any Adverse Proceeding alleging that any Borrower Entity, its respective businesses, or the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation, use or maintenance of the Project, is infringing, misappropriating or otherwise violating any Intellectual Property of any Person, the Borrower shall: (i) take, or cause to be taken, such actions that are, in the Borrower's reasonable business judgment, appropriate under the circumstances to avoid or avert a Material Adverse Effect; and (ii) after the Borrower obtains Knowledge thereof, report such notice or communication relating thereto to DOE in accordance with Section 8.03 (*Notices*).

(f) License Grant. The Borrower hereby grants and shall cause each applicable Borrower Entity and each licensor of Project IP under a Project IP Agreement to grant or otherwise permit to grant to the Secured Parties a Secured Parties' License.

(g) Source Code Escrow. With respect to all Project Source Code, the Borrower shall, and shall cause each applicable Borrower Entity to, at a Borrower Entity's cost and expense:

(i) no later than the First Advance Date, and thereafter, upon execution of any Project IP Agreement granting the right to use or access Source Code enter into a Source Code escrow agreement for the benefit of the Secured Parties with an escrow agent approved by DOE containing:

(A) terms and conditions (including release conditions, such conditions to include an unwillingness or inability to support or maintain the Software) that are usual and customary for Source Code escrow arrangements satisfactory to DOE; and

(B) the grant to the Secured Parties by the Borrower Entity or the third party that licenses Source Code to the Borrower, as applicable (effective as of the Execution Date, or if acquired later, upon such acquisition date, but enforceable following the occurrence of any release condition specified in the Source Code escrow agreement) of an irrevocable, perpetual, non-exclusive, transferable, sublicensable, fully paid up and royalty-free right and license to Practice, compile and execute any and all Source Code and other materials placed into escrow pursuant to clause (ii) below, solely for purposes of developing, designing, engineering, procuring, constructing, starting up, commissioning, operating and maintaining the Project and achieving Project Completion, as applicable; and

(ii) no later than the First Advance Date, promptly deposit in escrow (A) a complete, reproducible copy of all Project Source Code that is relevant to the applicable Line, or Project Completion, as applicable; and (B) all revisions, modifications and enhancements to such Project Source Code (including updates, upgrades and corrections thereto, and derivative works thereof) as such revisions, modifications or enhancements are used in or otherwise made available to the Project, in each case, together with all such documentation or materials as are reasonably required to exercise the rights granted in clause (B) above.

(h) Project IP Agreement Terms. The Borrower shall ensure that each license agreement that constitutes a Project IP Agreement grants to the Borrower: (i) a direct and transferable or sublicensable license; or (ii) an irrevocable, perpetual, and transferable or sublicensable sublicense to Project IP which is owned by any other Borrower Entity or which is either critical to (or otherwise inextricably embedded in) the Project or not readily replaceable; *provided* that with respect to Borrower Entity-owned Project IP, each license and sublicense is fully paid up and royalty-free for the Borrower.

Section 7.03 Insurance.

(a) Each Borrower Entity shall obtain, maintain and comply with (or cause to be obtained, maintained and complied with) the Required Insurance at all times and in all respects, and shall keep its present and future properties insured as required by, and in accordance with the requirements of Schedule C (*Insurance*).

(b) Each Borrower Entity shall pursue any contractual remedies to cause other Persons required to provide Required Insurance, including any Major Project Participant, to obtain and maintain such Required Insurance and as otherwise required in the respective Major Project Documents.

Section 7.04 Event of Loss. If any Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall promptly deliver notice thereof to DOE and:

(a) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event;

(b) except with the prior written consent of DOE, not compromise or settle any claim with respect to such Event of Loss; provided that DOE's prior written consent shall not be required to compromise or settle any such claim that (i) involves an amount less than or equal to two million Dollars ($2,000,000) for such claim before completion of Line 3, (ii) involves an amount less than or equal to ten million Dollars ($10,000,000) for such claim after completion of Line 3; or (iii) does not relate to the production of Z3 battery modules; and

(c) pay or apply the Net Amount of all Loss Proceeds stemming from such event in accordance with Section 3.05(c)(i)(B) (*Mandatory Prepayments*).

Section 7.05 Further Assurances; Creation and Perfection of Security Interests.

(a) Each Borrower Entity shall execute and deliver, from time to time, as reasonably requested by DOE or the Collateral Agent at the Borrower's expense, such other documents as shall be necessary or advisable or that DOE and the Collateral Agent may reasonably request in connection with the rights and remedies of DOE and the Collateral Agent granted or provided for by the Transaction Documents and to consummate the transactions contemplated therein.

(b) Each Borrower Entity shall, at its own expense, take all actions that have been or shall be requested by DOE or the Collateral Agent or that the Borrower knows are necessary to establish, maintain, protect, perfect and continue the perfection of the First Priority security interests of the Secured Parties created by the Security Documents in all assets relating in any manner to the Project and shall furnish timely notice of the necessity of any such action, together with such instruments, in execution form, and such other information as may be required or reasonably requested to enable any appropriate Secured Party to effect any such action.

Section 7.06 Diligent Construction of Project; Approved Construction Changes.

(a) The Borrower shall use its commercially reasonable efforts to cause each Line Commercial Operation Date for Line 1 and Line 2 to occur on or prior to the Line Commercial Operation Longstop Date, in each case, within the Construction Budget.

(b) The Borrower shall construct and complete, or cause to be constructed and completed, the Project diligently in accordance with the Major Project Documents and the other Transaction Documents, all Required Approvals, the Project Milestone Schedule and the Construction Budget.

(c) The Borrower shall cause all Approved Construction Changes to be described in a Construction Progress Report and, where applicable, reflected in revised versions of the Project Budgets and Plans, as applicable, and delivered to DOE in accordance with the terms hereof.

Section 7.07 Contractual Remedies.

(a) Each Borrower Entity shall diligently pursue all contractual remedies available to it to cause each Major Project Participant to comply with and conduct its property, business and operations in compliance with all Applicable Laws that are applicable to the activities that such Person carries out under the Project.

(b) Each Borrower Entity shall procure, maintain and comply in all material respects with all Required Approvals that are required for each Major Project Participant to perform its obligations under the Project Documents to which it is a party.

Section 7.08 Taxes, Duties, Expenses and Liabilities.

(a) The Borrower shall pay or cause to be paid on or before the date payment is due: (i) all Taxes (including stamp taxes), Secured Party Expenses, or other fees payable on or in connection with the execution, issue, delivery, registration, or notarization, or for the legality, validity, or enforceability, of the Transaction Documents (other than those Taxes that it is contesting in accordance with the Permitted Contest Conditions and Taxes imposed with respect to an assignment by FFB); *provided* that the Borrower shall promptly pay or cause to be paid any valid, final judgment rendered upon the conclusion of any relevant Adverse Proceeding enforcing any Tax and cause it to be satisfied of record; and (ii) all claims, levies or liabilities (including claims for labor, services, materials and supplies) for sums that have become due and payable and that have or, if unpaid, could reasonably be expected to become a Lien (other than a Permitted Lien) upon the property of the Borrower (or any part thereof).

(b) The Borrower shall file all tax returns required by Applicable Laws to be filed by it or any Borrower Entity and shall pay or cause to be paid on or before the date payment is due: (i) all income Taxes required to be paid by any Borrower Entity; and (ii) all other material Taxes and assessments required to be paid by any Borrower Entity (other than those Taxes that it contests in accordance with the Permitted Contest Conditions).

(c) The Borrower acknowledges and agrees, and shall cause each of the other Borrower Entities to acknowledge and agree, that DOE's execution and delivery of this Agreement, including the determination by DOE as to whether Project Costs are Eligible Project Costs, (i) does not prejudice or otherwise have any binding effect with regard to any determination by the Internal Revenue Service, the U.S. Department of the Treasury, or a court of law as to the tax basis of the Project or any part thereof under the Code and (ii) does not constitute a determination regarding, and is unrelated to whether such Person or the Project has complied or will comply with, Federal tax law. The Borrower acknowledges and agrees, and shall cause each of the Borrower Entities to agree, that such Person shall not use the DOE's execution and delivery of this Agreement, or documents generated by the DOE during its consideration of the Application, to demonstrate or prove or complied with the requirements to claim a tax credit or other amount under the Internal Revenue Code in an administrative or judicial proceeding.

Section 7.09 Performance of Obligations.

(a) Each Borrower Entity shall perform and observe all of its covenants and obligations contained in any Financing Document, any Required Approval or any Project Document (except with respect to any Project Document that is not a Major Project Document, to the extent that the failure to do so could not reasonably be expected to have Material Adverse Effect).

(b) Each Borrower Entity shall take all commercially reasonable action to prevent the termination, suspension or cancellation of any Financing Document, any Required Approval or any Project Document (except with respect to any Project Document that is not a Major Project Document, to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect), except for: (i) the expiration of any Financing Document, any Required Approval or any Project Document in accordance with its terms and not as a result of a breach or default thereunder by the Borrower; and (ii) the termination or cancellation of any Project Document that such Borrower Entity replaces as permitted herein.

(c) Each Borrower Entity shall enforce against the relevant Project Participant in accordance with its terms each material covenant or obligation under each Project Document to which such Project Participant is a party (except with respect to any Project Document that is not a Major Project Document, to the extent that the failure to do so could not reasonably be expected to have Material Adverse Effect).

Section 7.10 Use of Proceeds. The Borrower shall use the proceeds of each Advance in accordance with Section 2.03(f) (*Disbursement of Proceeds*) and the other terms and conditions of all applicable Financing Documents and not in contravention of any Applicable Law, Transaction Document or Governmental Approval. Neither DOE nor FFB shall have any responsibility as to the use of any proceeds of any Advance.

Section 7.11 Books, Records and Inspections.

(a) The Borrower shall:

(i) keep proper records and books of account in which full, true and correct entries in accordance with the Designated Standard and all Applicable Laws are made in respect of all dealing and transactions relating to the business and activities of each Borrower Entity;

(ii) comply in all respects with the Accounting Compliance Plan and maintain adequate internal controls, reporting systems, IT Systems and cost control systems that are designed to ensure that each Borrower Entity satisfies its obligations under the Financing Documents and:

(A) for overseeing the financial operations of each Borrower Entity, including its cash management, accounting and financial reporting;

(B) for overseeing the Borrower's relationship with DOE and the Independent Auditor;

(C) for promptly identifying any Cost Overruns;

(D) for maintaining such records as are necessary to facilitate an effective and accurate audit and performance evaluation of the Project as required by the Program Requirements; and

(E) for compliance with securities, corporate and other Applicable Law regarding adoption of a code of ethics and auditor independence; and

(iii) record, store, maintain, and operate its records, systems, controls, data and information using means (including any electronic, mechanical or photographic process, whether computerized or not) that are under its exclusive ownership and direct control (including all means of access thereto and therefrom).

(b) The Borrower shall:

(i) consult and cooperate with Secured Parties and the Secured Party Advisors regarding the Project upon DOE's request;

(ii) permit officers and designated representatives of Secured Parties, any agent of any of the foregoing, and the Secured Party Advisors to visit and inspect the Project and any other facilities and properties of the Borrower Entities during normal business hours upon not less than three (3) Business Days advance notice to the Borrower;

(iii) provide to officers and designated representatives of Secured Parties, any agent of any of the foregoing, the Comptroller General and the Secured Party Advisors: (A) access to any pertinent books, documents, papers and records of any Borrower Entity for the purpose of audit, examination, inspection and monitoring upon reasonable notice and at reasonable times during normal business hours, to examine and discuss the affairs, finances and accounts of the Borrower Entities with the representatives of the Borrower Entities; and (B) such access rights as required by the Program Requirements, including access to the Project and ancillary facilities (and allowing the officers and designated representatives of the Secured Parties and the Comptroller General to discuss each Borrower Entity's and each of its subsidiaries' affairs, finances and accounts with the Borrower Entity's officers) for the purpose of monitoring the performance of the Project;

(iv) afford proper facilities for such inspections, and make copies (at the Borrower's expense) of any records that are subject to such inspection; and

(v) subject to the Borrower's protection of confidential information and Trade Secrets described in Section 7.02(b) (*Protection of Project IP*), make available all information related to the Project, including all patents, technology and proprietary rights owned or controlled by, or licensed to, the Borrower Entities and utilized in the development, design, engineering, procurement, construction, starting up, commissioning, operation or maintenance of the Project, as may be reasonably necessary in order to determine the technical progress, soundness of financial condition, management stability, adequacy of staffing levels, compliance with Environmental Law, adequacy of health and safety conditions and all other matters with respect to the Project.

(c) The Borrower shall:

(i) authorize the Independent Auditor to communicate directly with DOE, FFB and the Comptroller General at any time regarding any Agreed-Upon Procedures Report and the Borrower Entity's accounts and operations relating thereto; and

(ii) in the event that the Independent Auditor should cease to be the accountants of any Borrower Entity for any reason, promptly, but in any event no later than five (5) Business Days after the occurrence thereof, notify DOE of such change in the Independent Auditor and the reason therefor, and the Borrower shall appoint and maintain another firm of independent public accountants that satisfy the conditions set forth herein to qualify as the Independent Auditor.

(d) The Borrower shall disclose in writing to its outside auditors and audit committee and shall promptly, but in any event no later than five (5) Business Days, provide copies thereof to DOE of:

(i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect its ability to record, process, summarize and report financial information; and

(ii) any fraud, whether or not material, that involves management or other employees who have a significant role in its internal controls over financial reporting.

(e) The Borrower shall promptly provide copies to DOE of any management letter or other material communication sent by the Independent Auditor (or any other accountants retained by the Borrower) to any Borrower Entity in relation to the financial, accounting, management information or other systems, policies, management or accounts of any Borrower Entity.

(f) The Borrower shall authorize the Compliance Consultants to communicate directly with DOE and the Secured Party Advisors at any time regarding implementation of the Accounting Compliance Plan.

(g) The Borrower shall retain all records relating to expenditures incurred with respect to the Project with respect to which Advances were made until the latter of: (i) the date that is five (5) years after the Advance was made with respect to such expenditure; and (ii) the Project Completion Date.

Section 7.12 Compliance with Applicable Law.

(a) Each Borrower Entity shall comply with, and conduct its business, operations, assets, equipment, property, leaseholds, and other facilities in compliance, in all material respects, with all Environmental Laws and all other Applicable Laws.

(b) Each Borrower Entity shall comply with all applicable requirements of all Anti-Money Laundering Law and maintain proper operating and credit policies and procedures (including "know your customer" and anti-money laundering policies) to ensure, *inter alia*, proper credit, risk and conflicts of interest management in connection therewith.

(c) Each Borrower Entity shall:

(i) at all times comply with all obligations arising under Section 721 of the DPA and its implementing regulations and rules, and any other obligations requirements imposed on any Borrower Entity by CFIUS in accordance with Section 5.01(d) (*Transaction Documents*); and

(ii) if and when requested by CFIUS, promptly prepare and file, or cause the prompt preparation and filing of, a declaration in accordance with the provisions of 31 CFR Subpart C or a notice in accordance with 31 CFR Subpart D.

(d) Each Borrower Entity shall procure all relevant Required Approvals at or prior to such time as they are required or necessary, maintain such Required Approvals, and comply with all Required Approvals.

(e) Each Borrower Entity shall ensure that the Project is operated in compliance with all applicable Environmental Laws and in a manner that would not pose a material hazard to public health or safety (including worker safety) or to the environment.

Section 7.13 Compliance with Program Requirements. The Borrower shall comply with all Program Requirements in connection with the Project.

Section 7.14 Tax Credit Requirements. The Borrower shall comply and cause each other Borrower Entity and Major Project Participant, as applicable, to take all necessary actions to comply with the requirements set out in Section 45X of the Code and to maximize the amount of Section 45X Tax Credits thereunder with respect to the Project.

Section 7.15 Accounts; Cash Deposits.

(a) The Borrower shall maintain, or cause to be maintained, in full force and effect each of the Project Accounts and Borrower Operating Accounts and amounts on deposit therein in accordance with the terms of the Accounts Agreement and relevant Financing Documents.

(b) The Borrower shall instruct each Person remitting cash to or for the account of the Borrower or any Borrower Entity to deposit such cash in accordance with the terms of the Accounts Agreement.

(c) The Borrower shall remit any amounts received by any Borrower Entity or received by third parties on behalf of any Borrower Entity to the Collateral Agent for deposit in accordance with the terms of the Accounts Agreement.

Section 7.16 Sales Agreements.

(a) The Borrower shall enter into Sales Agreements in accordance with Sales Plan or otherwise with DOE prior written consent.

(a) The Borrower shall maintain until the Maturity Date: combined Booked Orders and Pipeline equal to at least six (6) months of production based on production of then-current Lines, including at least three (3) months of Booked Orders, in each case with Qualifying Customers and consistent with the sales volume assumptions set forth in Base Case Financial Model.

Section 7.17 Know Your Customer Information. Each Borrower Entity shall provide DOE any information reasonably requested by DOE under or in connection with International Compliance Directives and Anti-Money Laundering Laws, including in connection with entry into any Additional Project Documents after the Execution Date.

Section 7.18 Davis-Bacon Act.

(a) The Borrower shall comply (and shall ensure that each DBA Contract Party complies) with the Davis-Bacon Act Requirements.

(b) The Borrower shall maintain an Electronic Certified Payroll System accessible to DOE and the Borrower shall systematically review the certified weekly payroll records that the Borrower maintains for its own laborers and mechanics and those that it receives for the laborers and mechanics of any Borrower Entity and DBA Contract Party.

(c) The Borrower shall designate and identify to DOE a point of contact who will be responsible for ensuring compliance with the Davis-Bacon Act Requirements. This person will provide to DOE any information reasonably requested in support of DOE's Davis-Bacon Act compliance monitoring efforts. The Borrower shall notify DOE in writing regarding a change to this contact person.

(d) The Borrower shall promptly notify DOE in writing when it receives any complaint related to non-compliance with the Davis-Bacon Act, or discovers in the course of its systematic review of the certified payroll records an incident that the Borrower reasonably believes to be a case of such non-compliance and which, in each case, the Borrower cannot resolve on its own, and shall forward to DOE (i) the complaint or a written summary of the non-compliant incident; (ii) a summary of the Borrower's investigation into such complaint or such incident; and (iii) the relevant certified payroll records.

(e) Certified payroll records maintained by the Borrower shall be preserved for three (3) years after completion of work. The Borrower shall make such records available to DOE and DOL when necessary, and upon request, for purposes of an investigation or audit of compliance with prevailing wage requirements. Certified payroll records maintained by the Borrower shall be considered federal government records for the purposes of the Freedom of Information Act, 5 U.S.C. § 552. The Borrower shall provide such records to DOE within five (5) Business Days of receipt of any request for such records from DOE.

(f) The Borrower shall use commercially reasonable efforts to cause each DBA Compliance Matter Contractor to cure each applicable DBA Compliance Matter. Such efforts may be suspended while a DBA Compliance Matter Contractor is, in good faith, appealing a DOL determination of non-compliance.

(g) Within ten (10) Business Days after the end of each month prior to the resolution of any DBA Compliance Matter that has been fully cured to the satisfaction of DOL or otherwise finally resolved favorably to the Borrower or DBA Contract Party, the Borrower shall either:

(A) notify DOE of the specific details of each DBA Compliance Matter that has not been so cured or finally resolved, and describe the commercially reasonable efforts that it and the applicable DBA Compliance Matter Contractor have taken to cause the DBA Compliance Matter Contractor to comply with the Davis-Bacon Act Requirements that are the subject of such dispute, or

(B) notify DOE that the applicable DBA Compliance Matter Contractor has appealed, and is diligently prosecuting such appeal, in good faith DOL's determination that the DBA Compliance Matter Contractor has failed to comply with the Davis-Bacon Act Requirements giving rise to such DBA Compliance Matter.

Section 7.19 Lobbying Restriction. The Borrower shall comply with all requirements of 31 U.S.C. § 1352, as amended, including the requirement that no proceeds of any Advance be expended by the Borrower or any of its Affiliates to pay any Person for influencing or attempting to influence an officer or employee of any federal agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of Congress in connection with the making of the Guaranteed Loan or any other action described in 31 U.S.C. § 1352(a)(2).

Section 7.20 Cargo Preference Act.

(a) The Borrower shall comply and shall cause each Borrower Entity, as applicable, to comply with the Cargo Preference Act of 1954, as amended, and all related implementing regulations with respect to CPA Goods, unless it has reached an

agreement with the United States Maritime Administration with respect to such compliance, in which case it shall comply with such agreement.

(b) Without limiting the generality of the foregoing, and unless the Borrower has reached an agreement with the United States Maritime Administration excusing it from the following obligations or otherwise providing for its compliance with the Cargo Preference Act of 1954, as amended, the Borrower shall:

(i) deliver to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 (x) in the case of shipments originating outside of the United States, within thirty (30) working days (as such term is used in 46 C.F.R. 381.7) or (y) in the case of shipments originating within the United States, within twenty (20) days, in each case, following the date of loading any CPA Goods, a legible copy of a rated, 'on-board' commercial ocean bill of lading in English for each shipment of CPA Goods; and

(ii) ensure all agreements whereby the Borrower procures, contracts for, or otherwise obtains CPA Goods provide for: (x) compliance with the Cargo Preference Act of 1954, as amended, and all related implementing regulations with respect to CPA Goods/the utilization of privately owned United States-flag commercial vessels to ship at least 50 percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; and (y) delivery of the necessary shipment information as set forth in clause (i) above, as applicable.

Section 7.21 SAM Registration. The Borrower shall maintain its SAM database registration at all times.

Section 7.22 ERISA.

(a) The Borrower shall, and shall cause its ERISA Affiliates to, maintain all Employee Benefit Plans that are presently in existence or may, from time to time, come into existence, in compliance with terms of any such Employee Benefit Plan, ERISA, the Code and all other Applicable Laws; and

(b) The Borrower shall, and shall cause its ERISA Affiliates to, make or cause to be made contributions to all Employee Benefit Plans in a timely manner and, with respect to Pension Plans and Multiemployer Plans, in a sufficient amount to comply with the requirements of Sections 302 and 303 of ERISA and Sections 412 and 430 of the Code.

Section 7.23 Financial Covenants.

(a) **Minimum Consolidated EBITDA**. The Borrower shall not permit Consolidated EBITDA, as of the last day of any Fiscal Quarter for the four (4) Fiscal Quarter period then ended, beginning with the Fiscal Quarter ending December 31, 2025, to be less than: (i) for each such four Fiscal Quarter period ended on or prior to the Lines 3 and 4 Commencement Date, the "Minimum Consolidated EBITDA" amount specified on Schedule Q Part A-1; and (ii) for each such four Fiscal Quarter period ended thereafter, the " Minimum Consolidated EBITDA" amount specified for such four Fiscal Quarter period on Schedule Q Part A-2; provided, that the "Minimum Consolidated EBITDA" amount for the Fiscal Quarters ending December 31, 2025, March 31, 2026, and June 30, 2026, shall be tested on the basis of the one Fiscal Quarter period then ended, the two Fiscal Quarter period then ended and the three Fiscal Quarter period then ended, respectively.

(b) **Minimum Consolidated Revenue** The Borrower shall not permit Consolidated Revenue, as of the last day of any Fiscal Quarter for the four Fiscal Quarter period then ended, beginning with the Fiscal Quarter ending December 31, 2025, to be less than: (x) for each such four Fiscal Quarter period ended on or prior to the Lines 3 and 4 Commencement Date, the "Minimum Consolidated Revenue" amount specified for such four Fiscal Quarter period on Schedule Q Part B-1 hereto and (y) for each such four Fiscal Quarter period ended thereafter, the "Minimum Consolidated Revenue" amount specified for such four Fiscal Quarter period on Schedule Q Part B-2 hereto; provided, that the "Minimum Consolidated Revenue" amount for the Fiscal Quarters ending December 31, 2025, March 31, 2026, and June 30, 2026, shall be tested on the basis of one Fiscal Quarter period then ended, the two Fiscal Quarter period then ended and the three Fiscal Quarter period then ended, respectively.

(c) **Minimum Liquidity**. The Borrower shall not permit Liquidity at any time on or after the First Advance Date (after giving effect to the making of the Advance on such date) to be less than fifteen million Dollars ($15,000,000).

Section 7.24 Public Announcements. The Borrower shall coordinate with DOE with respect to:

(a) any subsequent public announcements by any Borrower Entity in connection with material developments in respect of the Project (including the ground-breaking ceremony, the Project going into operation, etc.); and

(b) the public announcement of satisfaction of any Project Milestones, *provided* that this Section 7.24 shall not apply to (i) advertisements, (ii) public filings required by Applicable Law, and (iii) shall not restrict announcements by the Borrower regarding the Products or the component parts thereof that:

(x) do not involve the Project or the financing thereof by DOE;

(y) are required by Applicable Law or national stock exchange rules; or

(z) are routinely made to Governmental Authorities.

Section 7.25 [Reserved].

Section 7.26 Prohibited Persons. If any Principal Person of any Borrower Entity becomes (whether through a Transfer or otherwise) a Prohibited Person, such Borrower Entity shall remove or replace such Principal Person with a person or entity reasonably acceptable to DOE within thirty (30) days from the date that such Borrower Entity knew or should have known that such Principal Person became a Prohibited Person.

(a) If any Major Project Participant or any of their respective Principal Persons becomes (whether through a transfer or otherwise) a Prohibited Person, within thirty (30) days of obtaining actual knowledge that such Person has become a Prohibited Person, the Borrower shall engage and continue to engage in good faith discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation measures acceptable to DOE.

(b) The internal management and accounting practices and controls of each Borrower Entity shall at all times be adequate to ensure that such Borrower Entity and each Principal Person thereof: (i) does not become a Prohibited Person; and (ii) complies with all applicable International Compliance Directives.

Section 7.27 International Compliance Directives.

(a) Each Borrower Entity shall comply with all International Compliance Directives.

(b) If any Principal Person of any Borrower Entity fails to comply with any International Compliance Directive, such Borrower Entity shall remove or replace such Principal Person with a person or entity reasonably acceptable to DOE within thirty (30) days from the date that such Borrower Entity knew or should have known of such violation; *provided* that, in the case where a Principal Person fails to comply with any International Compliance Directive, such removal or replacement by such Borrower Entity pursuant to this Section 7.27(b) (*International Compliance Directives*) shall occur only to the extent permitted by applicable Sanctions or otherwise authorized by OFAC.

(c) If any Major Project Participant or any of their respective Principal Persons fails to comply with any applicable International Compliance Directive, the Borrower shall, within thirty (30) days of obtaining actual knowledge that such Person has so failed to comply, engage and continue to engage in good faith discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation measures acceptable to DOE.

Section 7.28 Operating Plan; Operations.

(a) The Borrower shall cause the Project, or such portions of the Project that have begun commercial operations, to operate in all material respects pursuant to the Operating Plan then in effect. The Borrower shall conduct the operations of the Project in accordance, in all material respects, with the Financing Documents and the Major Project Documents, the Operating Plan, the Business Continuity Plan, the Annual Plan, Applicable Law, any applicable Required Approvals, and Prudent Industry Practice.

(b) The Borrower shall own, maintain, repair and replace (or cause to be owned, maintained, repaired and replaced) all equipment, spare parts, and inventory reasonably necessary for the operation and maintenance of the Project in all material respects in accordance with the Financing Documents and the Major Project Documents, the Operating Plan, the Business Continuity Plan, Applicable Law, any other applicable Required Approvals and Prudent Industry Practice.

(c) The Borrower shall maintain, or cause to be maintained, at the Project Sites a complete set of plans and specifications for the Project.

Section 7.29 Acceptance and Start-up Testing.

(a) The Borrower shall consult with and provide, or cause to be provided, reasonable notice to DOE and the Independent Engineer regarding provisions related to start-up and testing of any Line and equipment pursuant to the Construction Contracts and the Operating Contracts.

(b) The Borrower shall provide the Independent Engineer with the opportunity to observe the start-up and testing of the Project.

(c) The Borrower shall at the request of DOE, promptly, but in any event within five (5) Business Days, provide DOE and the Independent Engineer with any data or reports received by the Borrower in connection with any of the start-up testing of the Project.

Section 7.30 Lender Meetings. If and to the extent any meeting, whether it be virtual or in person, between Cerberus and the Borrower is scheduled pursuant to the first sentence of Section 5.7(a) of the Cerberus Credit Agreement, the Borrower shall provide DOE with seven (7) Business Days' prior written notice of such meeting, and DOE shall have the right to have one or more DOE Representative(s) attend and participate (virtually or in person, as the case may be) in such meeting. The Borrower agrees that any out-of-pocket expenses incurred by DOE in connection with such meetings shall be reimbursable.

Section 7.31 Subsidiaries. (i) In the event that any Person becomes a Domestic Subsidiary of the Borrower, such Person shall be deemed a Borrower Entity hereunder and the existing Borrower Entities shall (A) concurrently with such Person becoming a Domestic Subsidiary (or such later date as DOE may agree in writing in its sole discretion, which writing may be by email) cause such Subsidiary to become a Grantor under and as defined in the Security Agreement by executing and delivering to DOE and the Collateral Agent a security agreement supplement or accession agreement, in form and substance acceptable to DOE, and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, opinions, agreements, and certificates reasonably required by the Collateral Agent; and (ii) in the event that any Person becomes a Foreign Subsidiary of the Borrower, such Person shall be deemed a Borrower Entity hereunder and the existing Borrower Entities shall (A) concurrently with such Person becoming a Foreign Subsidiary (or such later date as DOE may agree in writing in its sole discretion, which writing may be by email), cause such Subsidiary to become a Grantor under and as defined in the Security Agreement by executing and delivering to DOE and the Collateral Agent a security agreement supplement or accession agreement, in form and substance acceptable to DOE, and in the case of a Foreign Subsidiary, execute and deliver, or cause such Subsidiary to execute and deliver, to DOE and/or the Collateral Agent, as applicable, such Foreign Collateral Documents with respect to the Equity Interests of such Subsidiary and/or the Collateral owned by such Subsidiary, in each case, as requested by DOE, and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, opinions, agreements, and certificates as are reasonably required by DOE; provided that no Foreign Subsidiary shall have any Domestic Subsidiaries. With respect to each such Subsidiary, the Borrower Entities shall promptly send to DOE written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of the Borrower, and (ii) all of the data required to be set forth with respect to all Subsidiaries of the Borrower in the schedules to the Security Agreement; provided, further, that such written notice shall be deemed to supplement such schedules to the Security Agreement for all purposes thereof.

Section 7.32 Real Property Assets.

(a) The Borrower shall use commercially reasonable efforts to, (i) no later than the date that is ninety (90) days of the Execution Date, (A) enter into one or more subordination, non-disturbance and attornment agreements or similar agreements, in form and substance acceptable to DOE ("**SNDA**"), with respect to the Turtle Creek Project Site, with the Turtle Creek Landlord and each applicable fee mortgagee to the Turtle Creek Landlord and (B) in relation to such SNDA deliver a customary legal opinion addressed to the Secured Parties from counsel qualified in the applicable jurisdiction in form and substance satisfactory to DOE; and (ii) on or prior to the date the Borrower exercises the second Renewal Option (as defined under each Mortgage Lease of the Turtle Creek Project Site), amend each Mortgaged Lease of the Turtle Creek Project Site to extend the term of such Mortgaged Lease to provide for one or more additional options that, together, if exercised, would renew each Mortgage Lease of the Turtle Creek Project Site for a term that extends to a date that is not earlier than the date that is one (1) year following the Maturity Date.

(b) In the event that any Borrower Entity acquires any Real Property and such interest has not otherwise been made subject to the First Priority Lien of the Security Documents in favor of the Collateral Agent, for the benefit of DOE, then such Borrower Entity, within ninety (90) days (or such later date as may be agreed by DOE in its sole discretion) of the request or acquisition of any Real Property, as applicable, shall take all such actions and execute and deliver, or cause to be executed and delivered, the applicable Real Property Documents with respect to each such owned Real Property or applicable leasehold mortgage, subordination, pledge and/or estoppel with respect to each such leased Real Property, in each case that the Collateral Agent may request to create in favor of the Collateral Agent, for the benefit of DOE, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Real Property. In addition to the foregoing, the Borrower shall, at the request of DOE, deliver, from time to time, to DOE such appraisals as are required by law or regulation of Real Property owned by a Borrower Entity with respect to which the Collateral Agent has been granted a Lien.

Section 7.33 Privacy and Data Security. Each Borrower Entity will (a) comply with all Data Protection Laws; (b) employ commercially reasonable security measures that comply in all material respects with all Data Protection Laws to protect Personal Data within its custody or control and require the same of all vendors that process Personal Data on its behalf; and (c) promptly, but in any event within five (5) Business Days, notify DOE in writing if any Responsible Officer obtains knowledge of (i) any claim of violation by any Borrower Entity or its Subsidiaries of Data Protection Laws or (ii) any reportable incidents of data security breaches, intrusions, or unauthorized access, use, or compromise of Personal Data within its custody or control.

Section 7.34 Interest on Proceeds and Reserve Account. The Borrower shall remit, or cause to be remitted, to FFB all interest earned on any investment of proceeds of Advances in any Project Account and any applicable Reserve Account in excess of the interest accrued on such proceeds of Advances pursuant to the FFB Documents.

Section 7.35 Phase II Environmental Site Assessment.

(a) To the extent necessary or advisable, as determined by DOE, the Borrower shall deliver, within sixty (60) days of request by DOE, a current Phase II Environmental Site Assessment, in form and substance satisfactory to DOE, covering the Real Property within each such Project Site and Building 270 (as applicable).

(b) Without limiting Section 11.07 (*Indemnification*), the Borrower agrees to take all actions necessary or advisable pursuant to any Phase II Environmental Site Assessment.

ARTICLE VIII

INFORMATION COVENANTS

The Borrower hereby agrees that until the Release Date:

Section 8.01 Financial Statements. At its own expense, the Borrower shall furnish or cause to be furnished to DOE (and to FFB, if requested by FFB or DOE on behalf of FFB) by an Acceptable Delivery Method (unless otherwise noted), with a reproduction of the signatures where required, the following items:

(a) Annual Financial Statements. As soon as available, but in any event within one hundred and twenty (120) days following the Borrower's Fiscal Year end:

(i) audited Financial Statements of the Borrower for such Fiscal Year and including each Borrower Entity on a consolidated basis;

(ii) a Compliance Certificate required by Section 8.01(c) (*Compliance Certificates*);

(iii) a report on such Financial Statements of the Independent Auditor which report shall:

(A) be unqualified as to going concern and scope of audit;

(B) subject to changes in professional auditing standards from time to time, contain a statement to the effect that such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and each Borrower Entity (on a consolidated basis), as applicable, as at the dates indicated and the results of their operations and their cash flows for the period indicated in conformity with the Designated Standard applied on a basis consistent with prior years (except as otherwise disclosed in such Financial Statements);

(C) state that the examination by the Independent Auditor in connection with such Financial Statements has been made in accordance with generally accepted auditing standards; and

(D) An updated asset register listing and describing the net book values of all tangible assets related to the Project and any other asset constituting Collateral, including inventory, plant, property and equipment as derived from the Borrower's accountant worksheet to the audited Financial Statements of the Borrower.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days following the end of each Fiscal Quarter of the Borrower's Fiscal Year:

(i) unaudited Financial Statements of the Borrower for such Fiscal Quarter and including each Borrower Entity on a consolidated basis and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Annual Plan and CapEx Budget for the current Fiscal Year covered by such financial statements, all in reasonable detail;

(ii) each Compliance Certificate required by Section 8.01(c) (*Compliance Certificates*); and

(iii) such other evidence as may be required by DOE to demonstrate the Borrower's compliance with Section 7.23 (*Financial Covenants*).

(c) Compliance Certificates. Concurrently with any delivery of Financial Statements or other information pursuant to any of Sections 8.01(a) (*Annual Financial Statements*) through (d) (*Major Project Participant Financial Statements*), a certificate (a "**Compliance Certificate**") of a Financial Officer of the Borrower (on behalf of itself and each Borrower Entity) substantially in the form of the document attached as Exhibit D (*Form of Compliance Certificate*) hereto, which certificate shall:

(i) certify that no Default or Event of Default has occurred, or, if such certification cannot be made, the nature and period of existence of such Default or Event of Default and what corrective action the Borrower has taken or proposes to take with respect thereto;

(ii) except as set forth in a schedule attached to such Compliance Certificate, certify that the representations and warranties of the Borrower and its Subsidiaries set forth in this Agreement and the other Financing Documents are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

(iii) certify that the Borrower is in compliance with the minimum Consolidated EBITDA and Consolidated Revenue covenants contained in Section 7.23(a) (*Minimum Consolidated EBITDA*) and Section 7.23(b) (*Minimum Consolidated Revenue*) of this Agreement as of the last day of the applicable Fiscal Quarter, for the trailing four (4) Fiscal Quarter period;

(iv) certify that the Borrower complied with the Liquidity covenant contained in Section 7.23(c) (*Minimum Liquidity*) of this Agreement at all times on and after the First Advance Date (after giving effect to the making of the Advance on such date) during the accounting period covered by the financial statements attached to the Compliance Certificate;

(v) certify the amount of Excess Cash Flow for the applicable Fiscal Year and the amount of the applicable prepayment, by providing reasonably detailed calculations of Excess Cash Flow and the prepayment amount (including any component thereof) as of and for the applicable Fiscal Year; and

(vi) in the case of each Compliance Certificate delivered concurrently with annual Financial Statements pursuant to Section 8.01(a) (*Annual Financial Statements*):

(A) certify that such Financial Statements fairly present, in all material respects, the financial condition of the Borrower and each Borrower Entity as at the dates indicated and the results of its operations and its cash flows for the periods indicated, in each case in conformity with the Designated Standard applied on a basis consistent with prior years;

(B) either confirm that there has been no material change in the information set forth in the Schedules attached hereto since the date thereof or the date of the most recent certificate delivered pursuant to this Section 8.01 (*Financial Statements*) or, if such confirmation cannot be made, identify such changes; and

(C) contain a written statement stating any material changes, if any, within the Designated Standard used to prepare the applicable Financial Statements or in the application thereof since the date of the previous certification and describing the effect of any such changes on such Financial Statements accompanying such certificate.

(d) Major Project Participant Financial Statements. With respect to each Major Project Participant, to the extent the Borrower is entitled to receive such information pursuant to the applicable Major Project Document or Direct Agreement entered into with such Major Project Participant, as soon as available, but in any event within the specified time period after such Major Project Participant's Fiscal Year end, as provided in the relevant Major Project Document or Direct Agreement, audited Financial Statements of such Major Project Participant for such Fiscal Year.

(e) Statements of Reconciliation After Change in Accounting Policies. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 8.01(a) (*Annual Financial Statements*), Section 8.01(b) (*Quarterly Financial Statements*) and Section 8.01(c) (*Compliance Certificates*) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subsections had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form satisfactory to DOE in its sole discretion.

Section 8.02 Reports. At its own expense, the Borrower shall furnish or cause to be furnished to DOE (and to FFB, if requested by FFB or DOE on behalf of FFB) by an Acceptable Delivery Method with a reproduction of the signatures where required, the following items, in each case, in form and substance satisfactory to DOE:

(a) Omnibus Annual Reports. With respect to each Fiscal Year of the Borrower, as soon as available, but in any event no later than January 31st of each Fiscal Year (such date, an "**Annual Reporting Date**"), an annual certificate (each, an "**Annual Certificate**") of a Responsible Officer of the Borrower, substantially in the form attached as Exhibit E (*Form of Annual Certificate*) hereto, setting forth the following and including all material calculations and assumptions used to generate the information provided therein:

(i) a proposed CapEx Budget, Construction Budget, Operating Plan and Maintenance Plan for the immediately subsequent four (4) Fiscal Quarters, accompanied by a report on the past twelve (12) months of production of the Lines;

(ii) (I) a certificate from the chief financial officer or similar officer of the Borrower that there have been no changes to the Base Case Financial Model or the assumptions therein from the Base Case Financial Model then in effect; or (II) a proposed update to the Base Case Financial Model, together with a certificate from the chief financial officer or similar officer of the Borrower that includes a written explanation from the Borrower of all variances from the Base Case Financial Model then in effect;

(iii) the Safety Report with respect to the Safety Audit for such Fiscal Year;

(iv) an updated Sales Plan and Business Continuity Plan, in each case, together with a report setting out changes as compared to the contents of the then-approved plans, each of which will be in form and substance reasonably satisfactory to DOE;

(v) such other information as DOE may reasonably request; and

(vi) (A) a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Guaranteed Loan (an "**Annual Plan**"), including a forecasted consolidated balance sheet cash flows of the Borrower and its Subsidiaries for the end of each calendar month of such Fiscal Year and (B) forecasted consolidated statements of income and cash flows of Borrower and its Subsidiaries for each calendar month of each such Fiscal Year, together, in each case, with an explanation of the assumptions on which such forecasts are based, all in form satisfactory to DOE in its sole discretion.

(b) Quarterly Certificate and Collateral Verification.

(i) Quarterly Certificate. With respect to each Fiscal Quarter of the Borrower, no later than the date on which the quarterly unaudited Financial Statements are delivered pursuant to Section 8.01(b) (*Quarterly Financial Statements*) (such date, a "**Quarterly Reporting Date**"), a quarterly certificate (each, a "**Quarterly Certificate**") of a Responsible Officer of the Borrower, substantially in the form attached as Exhibit F (*Form of Quarterly Certificate*) hereto and in form and substance satisfactory to DOE, setting forth the following and including all material calculations and assumptions used to generate the information provided therein:

(A) a progress report as against the Sales Plan delivered under the Omnibus Annual Report, including the current backlog-to-sale ratio;

(B) a progress report, certified by the Compliance Consultant, regarding the implementation of the Accounting Compliance Plan, including compliance steps taken since the prior report, staffing approach, and status of progress against the metrics and timing milestones set forth therein;

(C) with respect to any Quarterly Certificate required to be delivered in respect of any Fiscal Quarter beginning prior to any Line Commercial Operation Date, each:

(1) certification by the Borrower of the achievement of any Project Milestones with respect to the Project during the immediately preceding Fiscal Quarter, together with evidence, satisfactory to DOE, that such Project Milestones have been achieved (unless such information was subject to an Advance Request); it being understood that, in the event that the Borrower anticipates, for whatever reason, the failure to achieve any projected Project Milestones, a description of the reasons for such anticipated failure shall also be disclosed; and

(2) certification that the proceeds of the Advances for such Fiscal Quarter were used to reimburse the Borrower for Eligible Project Costs incurred and paid or were used by the Borrower to pay for such Eligible Project Costs incurred and invoiced;

(D) after each Line Commercial Operation Date, operating reports, in form and substance satisfactory to DOE, regarding the operating performance and maintenance of the relevant Line and the Project generally (including description of operating performance and maintenance of the Project and updates to key personnel), governmental and environmental compliance reports; and

(E) the aggregate amount of Cost of Goods Sold in the twelve (12) month period ended on the last day of such Fiscal Quarter.

(ii) Quarterly Collateral Verification. At the time of delivery of quarterly financial statements with respect to the preceding fiscal quarter pursuant to this Section 8.02(b) (*Quarterly Certificate and Collateral Verification*), each Borrower Entity shall deliver to the Collateral Agent and DOE, a certificate of an authorized officer (i) either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the applicable First Advance Date or the date of the most recent certificate delivered pursuant to this Section 8.02(b) (*Quarterly Certificate and Collateral Verification*) or identifying such changes that have occurred during the prior fiscal quarter, and (ii) certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Perfection Certificate or pursuant to Section 8.02(g) (*Intellectual Property Notice*) to the extent necessary to protect and perfect the security interests under the Security Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

(c) Labor Reporting; Community Benefits Plan and Justice40 Initiative Reporting Requirements. The Borrower shall deliver to DOE:

(i) no later than on each Quarterly Reporting Date occurring on or prior to the Project Completion Date and on the Project Completion Date, a construction workforce report in the form of Exhibit H (*Form of Construction Workforce Report*);

(ii) no later than: (A) on or prior to the Commercial Operations Date, on each of: (1) the Substantial Completion Date; (2) each Quarterly Reporting Date occurring on or after the Substantial Completion Date and on or prior to the Commercial Operations Date; and (3) the Commercial Operations Date; and (y) after the Commercial Operations Date, not later than ninety (90) days after the end of each Fiscal Quarter of the Borrower, an operations and maintenance workforce report in the form of Exhibit I (*Form of Operations and Maintenance Workforce Report*);

(iii) no later than ninety (90) days after the end of each Fiscal Year of the Borrower, a Community Benefits Plan and Justice40 Annual Report in the form of Exhibit J (*Form of Community Benefits Plan and Justice40 Annual Report*) (each, a "**Community Benefits Plan and Justice40 Annual Report**"); and

(iv) such other information as DOE may request.

(d) Monthly Certificate. After the end of each month:

(i) within fifteen (15) Business Days, a monthly report, accompanied by an Officer's Certificate of the Borrower substantially in the form of Exhibit G (*Form of Monthly Certificate*), which report shall include (A) reporting on the operating performance and maintenance of the Project and (B) calculations of application of prepayments, if any, to the Guaranteed Loan and the Cerberus Loan, Ratably, in accordance with the form therein;

(ii) within five (5) Business Days, prior to the Project Completion Date, a Construction Progress Report, accompanied by an Officer's Certificate of the Borrower substantially in the form of Exhibit K (*Form of Monthly Construction Progress Report*), setting forth updates to the Project Milestone Schedule, Integrated Schedule and Spending Plan and key personnel;

(iii) within thirty (30) days, the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures from the Annual Plan and CapEx Budget for the current Fiscal Year, all in reasonable detail and in form and substance satisfactory to DOE in its sole discretion, together with a certificate from the applicable Responsible Officer with respect thereto, provided, however, that such monthly financial statements (i) required by this Section 8.02(d) (*Monthly Certificate*) for any month ended prior to October 31, 2024 shall not be required to be prepared in accordance with GAAP and (ii) for any month-end that is also the end of a Fiscal Quarter, shall be delivered together with such Fiscal Quarter reporting under clause (b) above; and

(iv) addressing such other matters as DOE may request.

(e) Weekly Report. The Borrower shall deliver to DOE, on or prior to each Wednesday of each calendar week following the Execution Date:

(1) a variance report (I) showing actual cash receipts and disbursements for the four (4) week period ending the week prior to the reporting date and (II) providing an explanation for all material variances to the 13-Week Forecast;

(2) an updated 13-Week Forecast for the current week and the immediately following consecutive twelve (12) weeks, set forth on a monthly basis, in form acceptable to DOE in its sole and absolute discretion;

(3) a report showing the amount of cash payments by the Borrower to third parties during the one (1) calendar month period prior to the reporting date; and

(4) a report in respect of such week setting out in reasonable detail progress made with respect to the 13-Week Forecast and (if applicable) the reason for any delays or cost overruns, and expenditure under the 13-Week Forecast, together with an explanation for any deviations therefrom.

(f) Environmental Report.

(i) Prior to the Project Completion Date, within twenty (20) Business Days after each Fiscal Quarter of each of such each Fiscal Year; and from and after the Project Completion Date, within twenty (20) Business Days after each of June 30 and December 31 of each Fiscal Year, the Borrower shall deliver to DOE a report on the Project's compliance with all applicable Environmental Laws during the applicable reporting period in form and substance satisfactory to DOE acting reasonably, which report shall: (A) summarize: the Project's compliance with applicable Environmental Laws and the environmental requirements set forth in this Agreement during such Fiscal Year including, for the avoidance of doubt, a document that lists all Required Approvals required under applicable Environmental Laws, identifies any changes to such Required Approvals, and tracks the associated reporting requirements under applicable Environmental Laws for construction and operation of the Project, any changes to such Required Approvals, any changes to the status of the information confirmed by the Borrower pursuant to the representations set forth in Section 6.24 (*Environmental Laws*) or project changes that are beyond the scope of the Categorical Exclusion set forth in Section 5.01(ii) (*Compliance with NEPA*) or the NEPA review set forth in Section 5.03(t) (*Compliance with*

NEPA; Environmental Reports), any Environmental Claims or notices delivered to DOE by the Borrower during the applicable reporting period, and information reasonably requested by DOE; and (B) contain, or be supplemented with, any information reasonably requested by DOE. The reports completed for the reporting period ending on December 31 of each Fiscal Year shall include a section specific to the reporting period, including an annual summary of all the reports completed for the Fiscal Year.

(ii) Not less frequently than once each Fiscal Year, the Borrower shall conduct, or cause the Operator to conduct, a Safety Audit. Each such Safety Audit shall result in the preparation of a Safety Report with respect thereto which shall be delivered to DOE within twenty (20) Business Days following December 31 of each Fiscal Year following the Execution Date. The Borrower shall provide for the prompt correction of any deficiencies identified in such safety audit and for the operation and maintenance of the Project in accordance with any recommendations set forth therein.

(iii) An environmental report, including: (A) a current Phase I Environmental Site Assessment or Phase II Environmental Site Assessment (if applicable), in form and substance satisfactory to DOE, covering the Real Property within each Project Site and Building 270, whenever required under the Financing Documents; and (B) any and all Phase I Environmental Site Assessment or Phase II Environmental Site Assessments relating to the Real Property within each Project Site and Building 270 when prepared for the Borrower or any third party (so long as the Borrower has the right to obtain any such Phase I Environmental Site Assessment or Phase II Environmental Site Assessment prepared for a third party).

(g) Intellectual Property Notice. Together with each Compliance Certificate required to be delivered under Section 8.01(c) (*Compliance Certificates*), written notice of (i) the registration of any copyright, patent or trademark, or the filing of any application for any of the foregoing, including any subsequent ownership right of any Borrower Entity or any of its Subsidiaries in or to any registered copyright, patent or registered trademark or application for any of the foregoing not shown in the Financing Documents, and (ii) any Borrower Entity's knowledge of an event that could reasonably be expected to materially and adversely affect the value of any Borrower Entity's or any of its Subsidiaries' Intellectual Property.

(h) Annual Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, (i) a report outlining all material insurance coverage maintained as of the date of such report by the Borrower and its Subsidiaries and (ii) a summary from a Responsible Officer of the Borrower (which may be delivered via electronic mail) of all material insurance coverage planned to be maintained by the Borrower and its Subsidiaries in the immediately succeeding Fiscal Year, each report in form and substance satisfactory to DOE in its sole discretion. Progress Report. On or before the fifth (5th) Business Day of each calendar month, a report in respect of such month setting out in reasonable detail progress made with respect to the transactions contemplated by the CapEx Budget and (if applicable) the reason for any delays or cost overruns, and expenditure under the CapEx Budget, together with an explanation for any deviations therefrom.

(i) Tax Returns. Upon DOE's request, copies of each U.S. federal income tax return and any other material tax return filed by or on behalf of any Borrower entity.

(j) Permitted Tax Credit Transaction. (i) Not less than ten (10) Business Days (or such shorter period as may be agreed by DOE) prior to the entry into any Permitted Tax Credit Transaction, notice of any such contemplated Permitted Tax Credit Transaction, together with all term sheets, presentations, draft documents, diligence materials and project documents as and when provided or otherwise made available to such Borrower Entity or Subsidiary, together with pro forma financial statements and forecasts (including calculations verifying compliance with the covenants hereunder after giving effect to any such Permitted Tax Credit Transaction), and (ii) promptly upon the occurrence thereof, copies of any reports and material notices relating to any Permitted Tax Credit Transaction.

Section 8.03 Notices.

(a) Promptly, but in any event within three (3) Business Days, after any Borrower Entity obtains Knowledge thereof or information pertaining thereto, the Borrower shall furnish or cause to be furnished to DOE and (and FFB, if requested by FFB or DOE on behalf of FFB), at the Borrower's expense, by an Acceptable Delivery Method, with a reproduction of the signatures where required, written notice of the following items:

(i) any event that constitutes a Default or Event of Default, specifying the nature thereof, together with a certificate of a Responsible Officer of the Borrower indicating the steps the Borrower has taken or proposes to take to remedy the same;

(ii) the occurrence of any Mandatory Prepayment Event;

(iii) any management letter or other material communications received by any Borrower Entity from the Independent Auditor in relation to its financial, accounting and other systems, management or accounts or the Project; provided that the three (3) Business Day time period set forth in the lead-in to this Section 8.03 (*Notices*) shall not apply to this clause (iii) and such letter or communications shall be provided promptly to DOE (and FFB, if requested by FFB or DOE on behalf of FFB);

(iv) any letters, notices or other communication (including email) under or in connection with the Cerberus Loan, the Convertible Notes, the Project IP Agreements or any other Major Project Document, except as are purely administrative in nature;

(v) any event or change in circumstance that impacts in any material respect or reasonably could impact, the then-current Base Case Financial Model or Annual Plan, including any calculation or assumption set out therein, together with a proposed update to such Base Case Financial Model; *provided* that such proposed update shall be agreed and approved by DOE in accordance with Section 5.01(k) (*Base Case Financial Model*);

(vi) any change to the board of directors of any Borrower Entity;

(vii) any change in the information provided prior to the Execution Date that would result in a change to the list of KYC Parties;

(viii) any rejected shipment of or warranty or liquidated damages claims for Products from the Project;

(ix) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including to the extent that it could result in a Material Adverse Effect:

(A) breach or non-performance of, or any default under, a contractual Obligation of any Borrower Entity;

(B) any dispute, litigation, investigation, proceeding or suspension between any Borrower Entity and any Governmental Authority;

(C) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower Entity, including pursuant to any applicable Environmental Laws; or

(D) any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment, supplement, modification, waiver or indulgence or breach of any Project Document, Governmental Approval or Required Approval that could reasonably be expected to have a Material Adverse Effect;

(x) the occurrence of any ERISA Event; provided that the three (3) day time period set forth in the lead-in to this Section 8.03 (*Notices*) shall not apply to this clause (x) and DOE (and FFB, if requested by FFB or DOE on behalf of FFB) shall be promptly notified of such event;

(xi) any written formal or informal environmental notices, orders, decisions, directives or determinations submitted by any Governmental Authority to any Borrower Entity, including any violations of Environmental Law identified in writing by such Governmental Authority together with a report setting out remedial action or proposed remedial action taken with respect thereto;

(xii) any accident related to the Project having a material and adverse impact on the environment or on human health (including any such accident resulting in serious injury or loss of life), including any discovery of the presence of Hazardous Substances at the Project Sites or Building 270, or Release or threatened Release or threatened Release on, under, at or through the Project Sites or Building 270 required to be reported to any federal, state or local Governmental Authority under any applicable Environmental Law;

(xiii) any Adverse Proceeding pending or threatened against or affecting any Borrower Entity, any of their respective property or any other third party that could reasonably be expected to impact the Project:

(A) that could be expected to have a Material Adverse Effect;

(B) that seeks damages in excess of two million five hundred thousand Dollars ($2,500,000);

(C) that seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

(D) that arises in respect of any Indebtedness that, in each case, has an aggregate principal amount of at least two million five hundred thousand Dollars ($2,500,000);

(E) where any Governmental Authority alleges substantial criminal misconduct by any Borrower Entity or its Affiliates; or

(F) if related to the Project, where any Governmental Authority alleges any criminal misconduct by any of them, and any material developments with respect to any of the foregoing;

(xiv) any actual or proposed termination, revocation, rescission, cancellation, withdrawal, suspension, discharge (otherwise than by performance), amendment, supplement, modification, waiver or breach of:

(A) any Major Project Document or Required Approval; or

(B) any other Project Document or other Governmental Approval if such action in respect of such other Project Document or other Governmental Approval could reasonably be expected to materially and adversely affect the Borrower or the Project;

(xv) any information that representations made with respect to Debarment Regulations were erroneous when made or have become erroneous by reason of changed circumstances;

(xvi) the occurrence of any Emergency; and

(xvii) any Disposition of Collateral (not including the liquidation of obsolete inventory to third parties on an arm's-length basis) that is the subject of any Security Document, or the incurrence of any contractual obligations with respect to any Disposition of Collateral the subject of any Security Document permitted under this Agreement if the aggregate cash and non-cash consideration (including assumption of Indebtedness) in connection with such Disposition is (or could reasonably be expected to become) one million Dollars ($1,000,000) or more, which notice shall identify the related purchaser(s), the anticipated closing date of such Disposition and the aggregate cash and non-cash consideration (including assumption of Indebtedness) to be paid in connection with such Disposition.

Section 8.04 Notice Regarding Corporate Structure. The Borrower will furnish to the Collateral Agent and DOE, at least thirty (30) days prior to such change (or such shorter period as agreed in writing by DOE in its sole discretion), written notice of any change in any (i) Borrower Entity's corporate name, (ii) Borrower Entity's jurisdiction of organization, (iii) Borrower Entity's identity or corporate structure, or (iv) Borrower Entity's Federal Taxpayer Identification Number or state organizational identification number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless it has made (or caused to be made) all filings under the UCC or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for the Collateral Agent at all times following such change to have a valid, legal and perfected security interest as contemplated in the Security Documents. Each Borrower Entity also agrees promptly to notify the Collateral Agent and DOE if any material portion of the Collateral is damaged or destroyed.

Section 8.05 Other Information. At its own expense, the Borrower shall furnish or cause to be furnished to DOE (and to FFB, if requested by FFB or DOE on behalf of FFB) by an Acceptable Delivery Method with a reproduction of the signatures where required, the following items:

(a) Project Documents. Without limiting Article IX (*Negative Covenants*), as soon as available, but in no event later than ten (10) Business Days after the execution thereof the Borrower shall furnish copies of any Project Document obtained or entered into by the Borrower after the Execution Date, and with respect to any Major Project Document, unless otherwise instructed by DOE, the Borrower shall deliver to DOE, concurrently with delivery of such copy:

(i) To the extent requested by DOE, a customary legal opinion (addressed to the Secured Parties) from counsel qualified in the jurisdiction of organization of each counterparty thereto, and, if different, in the jurisdiction whose law governs such Major Project Document, in form and substance satisfactory to DOE; and

(ii) a fully executed Direct Agreement with the Major Project Participant thereunder, in form and substance satisfactory to DOE and the Collateral Agent, and subject only to countersignature by the Collateral Agent.

(b) Additional Audit Reports. As soon as available, but, in any event, within thirty (30) Business Days after the receipt thereof by any Borrower Entity, copies of all other material annual or interim reports submitted to such Borrower Entity by the Independent Auditor.

(c) Information Pertaining to Banks Providing Acceptable Letters of Credit. As soon as available, but, in any event, no later than one (1) Business Day after the Borrower obtains Knowledge of any adverse change in the credit rating of any bank issuing any Acceptable Letter of Credit delivered pursuant to any Financing Document.

(d) Other Information.

(i) Within five (5) Business Days after their becoming available or being requested, as applicable, (A) copies of (i) all financial statements, reports, notices and proxy statements sent or made available generally by any Borrower Entity to its security holders acting in such capacity or by any Subsidiary of a Borrower Entity to its security holders other than such Borrower Entity, (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by any Borrower Entity or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (iii) all press releases and other statements made available generally by any Borrower Entity or any of its Subsidiaries to the public concerning material developments in the business of such Borrower Entity or any of its Subsidiaries, and (B) such other information, documents and data with respect to any Borrower Entity or any of its Subsidiaries as from time to time may be reasonably requested by DOE.

(ii) Within ninety (90) days of Project Completion, an appraisal of the orderly liquidation value of the Collateral by an appraiser acceptable to DOE.

(e) Convertible Notes Refinancing Plan. No later than January 31, 2026, the Borrower shall provide DOE the Convertible Notes Refinancing Plan.

Section 8.06 Adverse Proceedings; Defense of Claims. The Borrower shall provide DOE with rights to review, with appropriate restrictions to protect waiver of any relevant privileges, including any attorney-client privilege, controlled by the Borrower, drafts of any submissions that any Borrower Entity has prepared for filing in any court or with any regulatory body in connection with proceedings to which any Borrower Entity is or is seeking to become a party.

Section 8.07 Remediation Plan. In the event that any of the following should occur:

(a) any failure of the Borrower to meet the Project Milestone Schedule;

(b) any draw on the Debt Service Reserve Account by the Borrower that is not replenished within thirty (30) days;

(c) any failure of the Project to satisfy mechanical, technical and operational specifications resulting in material, chronic underperformance of the Project as against production assumptions set out in the Base Case Financial Model;

(d) any failure to comply with the financial covenants set out in Section 7.23 (*Financial Covenants*); or

(e) any failure to meet or maintain the required balance in the Guaranteed Loan Accrual Account,

then, in each case, the Borrower shall:

(i) deliver a remediation plan within thirty (30) days from the occurrence of such event, in form and substance satisfactory to DOE, setting forth proposed steps to be taken by the Borrower Entities;

(ii) to address such event in a manner acceptable to DOE and periodically thereafter, deliver reports setting out Borrower's execution of the remediation plan and compliance with the terms thereof; and

(iii) make relevant representatives and outside advisors available to meet and confer with DOE, the Independent Engineer, and its other outside advisors (including legal and financial advisors) on the contents of the remediation plan.

The delivery and/or DOE's acceptance, of any remediation plan submitted pursuant to this Section 8.07 (*Remediation Plan*) shall not constitute a waiver of any Default or Event of Default.

ARTICLE IX

NEGATIVE COVENANTS

The Borrower hereby agrees that until the Release Date, it shall cause that:

Section 9.01 Restrictions on Operations.

(a) Ordinary Course of Conduct; No Other Business. No Borrower Entity shall:

(i) engage in any business other than the acquisition, ownership, design, development, construction, financing, implementation, completion, operation and maintenance of the Project and activities directly related thereto in accordance with and as contemplated by the Transaction Documents and incidental thereto, together with pre-existing business of the Borrower Entities as of the date hereof;

(ii) undertake any action that could reasonably be expected to lead to a material alteration of the nature of its business or the nature or scope of the Project (including any expansion thereof);

(iii) change its name or take any other action that might adversely affect the Liens created by the Security Documents; or

(iv) fail to maintain its existence and its right to carry on its business.

(b) Other Transactions. No Borrower Entity shall, directly or indirectly:

(i) enter into any contracts or other agreements providing it with material rights against, or material obligations toward, any Person other than rights and obligations under the Financing Documents and Project Documents permitted hereunder and any transactions expressly contemplated hereby and thereby;

(ii) enter into any Additional Project Document (other than Cerberus Financing Documents not prohibited by the Intercreditor Agreement) that would constitute a Major Project Document without the prior written consent of DOE;

(iii) enter into any transaction or series of related transactions with any Person other than in the Ordinary Course of Business and on an arm's-length basis, except as permitted in accordance with clause (d) (*Commissions*) below and Section 9.21 (*Transactions with Affiliates*); or

(iv) establish any sole and exclusive purchasing or sales agency, or enter into any transaction, whereby the Borrower might pay more than the fair market value for products or services of others.

(c) Amendment of and Notices under Transaction Documents. No Borrower Entity shall, except with the prior written consent of DOE:

(i) agree, directly or indirectly, to any amendment, modification, termination, supplement, consent or waiver, or waive any right to consent to any material amendment, modification, termination, supplement or waiver of any right with respect to, or assign any of the respective duties or obligations under:

(A) any Major Project Document (except for, in the case of any Construction Contract, any change orders or other modifications that reflect or implement Approved Construction Changes or, in the case of the Cerberus Financing Documents or the Permitted Tax Credit Transaction Documents, as expressly provided under clauses (E) or (I) below (as applicable)), the then-applicable Project Budgets and Plans or the Sales Plan;

(B) any Project Document (other than any Major Project Document) unless such amendment, modification, termination, supplement or waiver is an Approved Construction Change or such amendment, modification, termination, supplement or waiver could not reasonably be expected to:

(1) delay the occurrence of each Line Commercial Operation Date beyond the corresponding Line Commercial Operation Longstop Date; or

(2) otherwise have a Material Adverse Effect;

(C) any Governmental Approval or other Required Approval, the effect of which could reasonably be expected to have a Material Adverse Effect;

(D) any Financing Documents;

(E) the Cerberus Financing Documents to the extent prohibited by the Intercreditor Agreement;

(F) any Convertible Notes;

(G) the Trinity Loan;

(H) the Atlas Side Letter; or

(I) Permitted Tax Credit Transaction Documents, in each case, if the effect of such amendment, restatement, supplement, consent, waiver, termination or other modification could reasonably be expected to be adverse in any material respect to the interests of DOE;

(ii) certify, consent to or otherwise permit through a Change Order or otherwise, "Final Completion" (as defined in the Construction Contracts), or any equivalent term, to occur under the Construction Contracts;

(iii) enter into any agreement other than any Financing Document or the Cerberus Financing Documents or any Permitted Indebtedness that would restrict its ability to amend or otherwise modify any of the Transaction Documents; and

(iv) give or withhold any material consent or approval, or exercise any option or take or decline to take any other material action under the provisions of the Major Project Documents other than actions permitted under clause (i) above, actions that are reasonably required to carry out the Project in accordance with the Project Milestone Schedule, and actions reasonably required to comply with the Borrower's affirmative obligations under this Agreement, including under Sections 7.06 (*Diligent Construction of Project; Approved Construction Changes*), 7.07 (*Contractual Remedies*), 7.09 (*Performance of Obligations*), 7.13 (*Compliance with Program Requirements*), 7.15 (*Accounts; Cash Deposits*); 7.17 (*Know Your Customer Information*), 7.18 (*Davis-Bacon Act*), and 7.28 (*Operating Plan; Operations*).

(d) Commissions. No Borrower Entity shall pay:

(i) any commission or fee to any other Borrower Entity for furnishing guarantees, counter-guarantees or other credit support for any Contractual Obligations undertaken by such Borrower Entity in connection with the Project (other than as set forth in the following clause (ii) below); or

(ii) any fee to any other Borrower Entity with respect to or in connection with the development, construction, financing or operation of the Project, including salaries, bonuses, commissions, management fees, consulting fees, and technical assistance fees; *provided* that this provision shall not preclude such Borrower Entity from: (A) paying salaries and bonuses to its employees or employees of any other Borrower Entity; (B) making payments to other Borrower Entity in accordance with Major Project Documents, in each case consistent with the then-applicable Project Budgets and Plans, as the case may be.

(e) Compromise or Settlement of Disputes. The Borrower shall not agree or otherwise consent to settle or compromise:

(i) any single Adverse Proceeding in excess of two million five hundred thousand Dollars ($2,500,000); or

(ii) any material dispute under any Project Document,

in each case without the prior written consent of DOE.

(f) Accounts. The Borrower shall not establish or maintain any bank accounts other than the Project Accounts and the Borrower Operating Accounts.

(g) Assignment. Other than the assignment of the Project Documents and Governmental Approvals (x) to the Collateral Agent as security for the benefit of the Secured Parties or (y) as provided in the Cerberus Financing Documents, no Borrower Entity shall assign or otherwise transfer its rights under any of the Transaction Documents or Required Approvals applicable to any Person.

(h) Powers of Attorney. No Borrower Entity shall grant any power of attorney or similar power to any Person, except:

(i) to its officers, directors or employees in the Ordinary Course of Business; or

(ii) in connection with Permitted Liens and Permitted Indebtedness.

Section 9.02 Liens. No Borrower Entity shall, nor shall it agree to, create, assume or otherwise permit to exist any Lien upon any of the Collateral or any of its other property, whether now owned or hereafter acquired, or in any proceeds or income therefrom, other than Permitted Liens.

Section 9.03 Merger; Disposition; Transfer or Abandonment. No Borrower Entity shall, nor shall it agree to:

(a) enter into any transaction of merger, consolidation, liquidation, winding up or dissolution;

(b) carry out any Disposition of all or any part of its ownership interests in the Project or any other part of its business or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now or hereafter acquired other than Permitted Dispositions;

(c) acquire by purchase or otherwise the business, property or fixed assets of any Person, other than purchases or other acquisitions of inventory, property or materials or spare parts or Capital Expenditures, either: (i) in the Ordinary Course of Business in accordance with the applicable
Construction Budget or Annual Plan; or (ii) constituting Emergency O&M Expenses as required in connection with an Emergency;

(d) transfer or release (other than as permitted by clause (b) above) the Collateral, or other similar actions; and

(e) abandon, or suspend, or agree (directly or indirectly) to abandon or suspend or make any public statements regarding its intention to abandon or suspend the development, construction or operation of the Project, or take any action that could be deemed an "abandonment" or "suspension," or transfer of the Project to any Person or notify any Major Project Participant of its intent to terminate, or agree (directly or indirectly) to the termination of, any Major Project Document (other than with respect to any Permitted Creditor Document to the extent such termination is otherwise expressly permitted hereunder) or the construction or operation of the Project.

Section 9.04 Restricted Payments.

(a) Restricted Payments. No Borrower Entity shall, nor shall it permit any of its Subsidiaries, through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that:

(i) the Borrower or any Subsidiary may make Restricted Payments (x) pursuant to the terms of the Cerberus Financing Documents to the extent permitted or required (as the case may be) under Sections 3.05(c) (*Prepayments*), 9.15(a)(i) (*Indebtedness*) or 9.23 (*Certain Payments*) and (y) in respect of the Cerberus Equity Instruments;

(ii) any Subsidiary of the Borrower may declare and pay dividends or make other distributions to the Borrower or any Guarantor, and the Borrower may declare and make dividend payments or other distributions payable solely in its Equity Interests (other than Disqualified Capital Stock);

(iii) the Borrower may convert any of its convertible securities into other securities (other than Disqualified Capital Stock) pursuant to the terms of such convertible securities or otherwise in exchange thereof; provided that no payment of any other consideration (including with limitation any cash or Cash Equivalents) is made in connection therewith;

(iv) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, the Borrower may make cash interest payments pursuant to the terms of the Koch Convertible Notes solely to the extent expressly permitted by Section 9.23 (*Certain Payments*);

(v) so long as no Event of Default shall have occurred and be continuing, the Borrower may make the Specified Deferred Payments pursuant to the Atlas Side Letter solely to the extent expressly permitted by Section 9.23 (*Certain Payments*);

(vi) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, the Borrower may refinance, extend or replace any of the Convertible Notes consistent with the terms of clause (o) of the definition of Permitted Indebtedness and any settlement or termination thereof otherwise in accordance with the Refinancing Plan; and

(vii) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, the Borrower may make Restricted Payments otherwise expressly permitted under Section 9.23 (*Certain Payments*).

(b) Return of Funds. If any Borrower Entity receives a Restricted Payment from the Borrower to which it is not entitled because such Restricted Payment was not made in accordance with clause (a) above, then such Borrower Entity shall hold such Restricted Payment (or an amount equal thereto) as depository for the benefit of the Secured Parties and deliver the same to DOE (or otherwise as DOE may direct) upon written demand therefor by DOE or the Collateral Agent acting at the instruction of DOE.

Section 9.05 Use of Proceeds. The Borrower shall not use the proceeds of any Advance for any purpose other than as specified in Section 2.03(f) (*Disbursement of Proceeds*).

Section 9.06 Organizational Documents; Fiscal Year; Account Policies; Reporting Practices. The Borrower shall not, except with the prior written consent of DOE, amend or modify or permit to be amended or modified:

(a) the Organizational Documents of any Borrower Entity, except such amendments that would not have any adverse effect on the rights of the Secured Parties;

(b) its Fiscal Year;

(c) accounting policies or reporting practices other than as required by the Designated Standard; or

(d) its, or its subsidiaries' legal form or its capital structure (including to provide for the issuance of any equity, options, warrants or other rights with respect thereto).

Section 9.07 Approved Construction Changes; Project Milestone Schedule; Budgets. The Borrower shall not:

(a) except with the prior written consent of DOE or as otherwise required or permitted hereunder, change, reallocate, amend, modify, or supplement or permit or consent, directly or indirectly, to any changes, reallocations, amendments, modifications, or supplements (including consent to any plans) (each, a "**Construction Change**") of any provisions of the then-applicable Project Budgets and Plans or the Base Case Financial Model;

(b) except as permitted under clause (a) above, make any material modifications to the then-applicable Project Milestone Schedule, except: (i) as expressly contemplated herein; or (ii) otherwise with the prior written consent of DOE; or

(c) except as expressly contemplated herein and permitted in accordance with the terms hereof (including under clause (a) above), make any modification without the prior written consent of DOE to the then-applicable Project Budgets and Plans or the Base Case Financial Model.

Section 9.08 Hedging Agreements. No Borrower Entity shall enter into any Hedging Agreements except Permitted Hedging Agreements.

Section 9.09 Margin Regulations. No Borrower Entity shall directly or indirectly apply any part of the proceeds of any Advance or other revenues to the purchasing or carrying of any margin stock within the meaning of Regulation T, U or X of the Board, or any regulations, interpretations or rulings thereunder, or for any purpose that violates any regulation of the Board.

Section 9.10 ERISA. The Borrower shall not, and shall cause its ERISA Affiliates not to:

(a) take any action that would result in the occurrence of an ERISA Event to the extent that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, the occurrence of such ERISA Event could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect;

(b) allow, or permit any of its ERISA Affiliates to allow, the aggregate amount of Unfunded Pension Liabilities among all Employee Benefit Plans (taking into account only Employee Benefit Plans with positive Unfunded Pension Liabilities) at any time to exist where such amount could have a Material Adverse Effect; or

(c) fail, or permit any of its ERISA Affiliates to fail, to comply with ERISA or the related provisions of the Code, if any such non-compliance, singly or in the aggregate, would be reasonably likely to have a Material Adverse Effect.

Section 9.11 Investment Company Act. The Borrower shall not take any action that would result in the Borrower being required to register as an "investment company" under the Investment Company Act or that would result in it being controlled by any Person that is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 9.12 OFAC. No Borrower Entity shall:

(a) (i) become a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079(2001)); (ii) engage in any dealings or transactions prohibited by Section 2 of such Executive Order, or be otherwise associated with any such person in any manner violative of Section 2; or (iii) otherwise become the subject or target of any Sanctions;

(b) directly or indirectly use the proceeds of any Advance, or lend, contribute or otherwise make available such proceeds to any Person: (i) to fund any activities, dealings, or business of or with any Prohibited Person or in any Prohibited Jurisdiction; or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Guaranteed Loan); or

(c) repay any portion of the Guaranteed Loan with any funds: (i) obtained or derived, directly or knowingly indirectly, from any business or dealings with any Prohibited Person; or (ii) constituting the proceeds of a violation of any International Compliance Directive.

Section 9.13 Debarment Regulations.

(a) Unless authorized by DOE, no Borrower Entity shall knowingly enter into any transactions in connection with the construction, operation or maintenance of the Project with any Person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in procurement or non-procurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations.

(b) No Borrower Entity shall fail to comply with any and all Debarment Regulations in a manner that results in the Borrower being debarred, suspended, declared ineligible or voluntarily excluded from participation in procurement or non-procurement transactions with any United States federal government department or agency pursuant to any of such Debarment Regulations.

Section 9.14 Prohibited Person. No Borrower Entity shall become (whether through a transfer or otherwise) a Prohibited Person.

Section 9.15 Restrictions on Indebtedness and Certain Capital Transactions.

(a) Indebtedness. No Borrower Entity shall, or shall agree to, directly or indirectly:

(i) incur, create, guarantee, assume, permit to exist or otherwise become liable for any Indebtedness, except for Permitted Indebtedness; and

(ii) without the prior written consent of DOE, incur any Indebtedness to third parties in order to sell (including pursuant to any contract) Product.

(b) Capital Expenditures. No Borrower Entity shall make any Capital Expenditure in any year except for Permitted Capital Expenditures.

(c) Investments. No Borrower Entity shall make any Investments except for Permitted Investments.

(d) Leases. No Borrower Entity shall enter into any Lease of any property or equipment of any kind (including by sale-leaseback or otherwise), except for Permitted Leases in an amount not in excess of the amount budgeted therefor in the Construction Budget or the Annual Plan, as applicable, or as permitted pursuant to Section 9.15(a)(i) (*Indebtedness*).

(e) [Reserved].

(f) Subsidiaries. No Borrower Entity shall own, acquire, form, create, or incorporate any non-wholly-owned Subsidiary, except in the case of any Foreign Subsidiary to qualify directors if required by Applicable Law.

Section 9.16 No Other Federal Funding. The Borrower shall not use any other Federal Funding to pay any Pre-Completion Costs or to repay the Guaranteed Loan after the Execution Date; *provided* that the Borrower's receipt of Section 45X Credits and application of such Section 45X Credits or any monetization thereof to repay the Guaranteed Loan or pay any other expenses of the Borrower in accordance with the terms of the Financing Documents shall not be deemed to violate this Section 9.16 (*No Other Federal Funding*).

Section 9.17 Intellectual Property.

(a) The Borrower shall not (and shall cause each Borrower Entity and each other Major Project Participant to not) assign or otherwise transfer any right, title or interest in any Project IP:

(i) except in accordance with: (A) the Intercreditor Agreement; and (B) Project IP Agreements;

(ii) to any Prohibited Person;

(iii) without providing advance written notice of such assignment or transfer to the Secured Parties;

(iv) except as permitted under Section 9.03(b) (*Merger; Disposition; Transfer or Abandonment*); and

(v) without requiring such assignee or transferee to:

(A) comply with Section 7.02(g) (*Source Code Escrow*);

(B) as applicable: (1) for all Project IP licensed to the Borrower under a Project IP Agreement, comply with the terms and conditions of such Project IP Agreement; and (2) for all Project IP owned by the Borrower, grant to the Borrower the right to freely use and sublicense, for no additional consideration, rights in the Project IP to: (x) develop, design, engineer, procure, construct, start up, commission, operate and maintain the Project; (y) complete the activities designated to be completed for each Line, or to achieve Project Completion; or (z) exercise the Borrower's rights and perform its obligations under the Major Project Documents, as applicable at the relevant time;

(C) demonstrate the technical experience and financial ability to maintain and develop the Project IP as required for the Project; and

(D) grant to the Secured Parties the Secured Parties' License, where such license shall also be enforceable upon any bankruptcy or insolvency action involving such assignee or transferee.

(b) The Borrower shall not (and shall cause each of its Affiliates not to) abandon, fail to maintain, or create, assume or otherwise permit to exist any Lien upon any Project IP, whether now owned or hereafter acquired, or in any proceeds or income therefrom, other than Permitted Liens.

Section 9.18 Program Requirements. The Borrower shall not take any action, or fail to take any action, that would:

(a) change the scope of the Project in any manner that would require any additional review under NEPA; or

(b) cause the Project not to be an Eligible Project.

Section 9.19 Restrictions on Subsidiary Distributions. Except as provided herein or in any Permitted Liens or Permitted Indebtedness, no Borrower Entity shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of the Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by the Borrower or any other Subsidiary of the Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to the Borrower or any other Subsidiary of the Borrower, (c) make loans or advances to the Borrower or any other Subsidiary of the Borrower, or (d) transfer, lease or license any of its property or assets to the Borrower or any other Subsidiary of the Borrower other than (i) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the Ordinary Course of Business, (ii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests expressly permitted under this Agreement and (iii) restrictions in any Cerberus Financing Documents or any Permitted Tax Credit Transaction Documents.

Section 9.20 Disposal of Subsidiary Interests. Except for the Liens granted to the Collateral Agent pursuant to the Security Documents, Permitted Liens or as otherwise permitted pursuant to Section 6.10 (*Security Interests; Liens*), no Borrower Entity shall, nor shall it permit any of its Subsidiaries to, directly or indirectly sell, assign, pledge or otherwise encumber or Dispose of any Equity Interests of any of its Subsidiaries, except to qualify directors if required by Applicable Law.

Section 9.21 Transactions with Affiliates. No Borrower Entity shall, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, the rendering of any service or the payment of any management, advisory or similar fees) with any Affiliate of any Borrower Entity (each such transaction, an "**Affiliate Transaction**"); provided that any Borrower Entity may enter into or permit to exist any such Affiliate Transaction if (a) the terms of such transaction are not less favorable to such Borrower Entity than those that might be obtained in a comparable arm's length transaction at the time from a Person who is not such a holder or Affiliate and such transaction is entered into in the Ordinary Course of Business, (b) such transaction is a Restricted Payment permitted by Section 9.04 (*Restricted Payments*) hereunder, or (c) such transaction is listed on Schedule F (*Affiliate Transactions*) attached hereto or (d) such transaction is between or among the Borrower Entities. The Borrower shall promptly disclose in writing each transaction with any Affiliate of any Borrower Entity to DOE.

Section 9.22 Uncertificated Securities. No Borrower Entity shall allow any Collateral consisting of uncertificated securities to be certificated without the Collateral Agent's prior written consent.

Section 9.23 Certain Payments.

(a) No Borrower Entity shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled

maturity, other than (i) the Secured Obligations (to the extent permitted hereunder), (ii) ordinary course Indebtedness consisting of credit card debt or netting, overdraft, and other cash management obligations, in each case, to the extent permitted to be incurred under Section 9.15 (*Restrictions on Indebtedness and Certain Capital Transactions*), (iii) intercompany Indebtedness permitted to be incurred under Section 9.15 (*Restrictions on Indebtedness and Certain Capital Transactions*), (iv) so long as no Event of Default shall have occurred and be continuing, the Specified Deferred Payments pursuant to the Atlas Side Letter, (v) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, and so long as the Borrower shall have Consolidated EBITDA for the most recent four (4) Fiscal Quarters for which the Borrower shall have delivered financial statements of not less than zero ($0) (as demonstrated by the Compliance Certificate delivered in connection therewith), the Borrower may elect to pay interest under the Koch Convertible Notes in cash in accordance with the terms thereof, (vi) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, on or after June 21, 2025, the Borrower may redeem, repay or repurchase the Koch Convertible Notes in an amount not to exceed 100% of the principal amount thereof plus accrued and unpaid interest in each case solely with the net cash proceeds received by the Borrower from the substantially concurrent issuance and sale of the Borrower's common stock, (vii) the Cerberus Financing Documents to the extent not prohibited by the Intercreditor Agreement and (viii) any redemption, repurchase, refinancing or prepayment (other than voluntary payment of interest or voluntary prepayment of principal (except with respect to refinancing in full)) permitted under Section 9.04 (*Restricted Payments*) or 9.15 (*Restrictions on Indebtedness and Certain Capital Transactions*) and, as applicable, in compliance with the Intercreditor Agreement or the Convertible Note Refinancing Plan; provided that the restriction set forth in this Section 9.23 (*Certain Payments*) will not apply if the Borrower Entities are in compliance with Section 7.23 (*Financial Covenants*) and Additional Equity Contributions are utilized to purchase, redeem, defease or prepay such Indebtedness.

(b) Notwithstanding the foregoing or anything to the contrary herein, no Borrower Entity shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any payment of any consent fee or payment of a similar nature to any holder (or any its Affiliates) of any Indebtedness in connection with any consent, amendment, waiver or other modification of any kind in respect of such Indebtedness (except as otherwise expressly permitted by this Agreement).

Section 9.24 Permitted Activities of Intermediate Holdco. Intermediate Holdco shall not (a) incur, directly or indirectly, any Indebtedness whatsoever other than (i) the Indebtedness under this Agreement and the other Security Documents and (ii) to the extent constituting Indebtedness, any obligations arising under any Cerberus Financing Documents or any Permitted Tax Credit Transaction Documents, (b) own or acquire any material assets (other than the Equity Interests of its Subsidiaries, any assets incidental thereto, cash and Cash Equivalents), (c) engage in any material operations or business (other than activities incidental to being a holding company or necessary to maintain its legal existence (including the ability to incur fees, costs and expenses related to such maintenance)), (d) cease to directly own all of the Equity Interests of its Subsidiaries as of the Execution Date or (e) notwithstanding anything to the contrary in this Agreement, consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any other Person.

Section 9.25 No Planned Group Employee Terminations. No Borrower Entity shall, nor shall it permit any of its Subsidiaries to implement any mass layoffs, plant closings, or any other planned group terminations of such entity's employees, regardless of whether such actions trigger any notice obligations to such employees under the federal or any state WARN Act, or otherwise under any employment agreement.

Section 9.26 Capital Expenditures. No Borrower Entity shall make Capital Expenditures in any month (taken together with all other Capital Expenditures made for the period from and including June 1, 2024 through the end of such month), in excess of the amounts set forth in (i) until the Lines 3 and 4 Commencement Date, Schedule R Part A and (ii) after the Lines 3 and 4 Commencement Date, Schedule R Part B.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default. The occurrence of any of the following events shall constitute an **Event of Default** hereunder:

(a) Borrower Failure to Make Payment Under Financing Documents. Any Borrower Entity shall fail to pay, in accordance with the terms of this Agreement, the FFB Documents or any other Financing Documents (whether at scheduled maturity, as a required prepayment, by acceleration or otherwise):

(i) any principal amount of the Advances or any interest otherwise due and payable in respect of the Guaranteed Loan or any Reimbursement Obligation on or before the date such amount is due; or

(ii) any fee, charge or other amount due under any Financing Document on or before the date such amount is due,

and, solely in the case of amounts described in this clause (ii) other than any amount due and payable in respect of the Guaranteed Loan at scheduled maturity, such failure to pay shall continue unremedied for a period of three (3) Business Days after the date on which such amount was due.

(b) Misstatements; Omissions. Any representation or warranty confirmed or made in any Transaction Document by or on behalf of any Borrower Entity or any Major Project Participant or in any certificate, Financial Statement or other document provided by or on behalf of any such Person to any Secured Party or any Secured Party Advisor in connection with the transactions contemplated by the Transaction Documents shall be found to have been incorrect, false or misleading in any respect when confirmed, made or deemed to have been made.

(c) Borrower Entity Breaches Under the Financing Documents Without Cure Period.

(i) Any Borrower Entity fails, as of any relevant date of determination, to perform or observe any of its obligations under any term, covenant or agreement set forth in Section 7.01 (*Maintenance of Existence; Property; Etc.*); 7.02 (*Intellectual Property*); 7.03 (*Insurance*); 7.10 (*Use of Proceeds*); 7.13 (*Compliance with Program Requirements*); 7.15 (*Accounts; Cash Deposits*); 7.17 (*Know Your Customer Information*); 7.18 (*Davis-Bacon Act*); 7.19 (*Lobbying Restriction*); 7.20 (*Cargo Preference Act*); 7.24 (*Public Announcements*); 7.26 (*Prohibited Persons*); or 7.27 (*International Compliance Directives*); or Article IX (*Negative Covenants*); *provided* that Borrower's failure to comply with Section 7.23 (*Financial Covenants*) shall not constitute an Event of Default unless the Borrower: (x) fails to provide the remediation plan required pursuant to Section 8.07 (*Remediation Plan*); or (y) fails at any time to comply with such remediation plan as required pursuant thereto.

(ii) Any Borrower Entity fails, as of any relevant date of determination, to perform or observe any of its obligations under any term, covenant or agreement set forth in any Security Document.

(d) Other Breaches Under Financing Documents. Any Borrower Entity or any Major Project Participant shall fail to perform or observe any covenant, or any other term or obligation under this Agreement or any other Financing Document (other than those described in clauses (a) to (c) above), in each case, where such failure to perform or observe has not been remedied within the relevant cure period, if any, specified for such covenant, term or obligation in such Financing Document, or if no cure period is specified, thirty (30) days following such failure.

(e) Breach or Default Under Major Project Documents

(i) The receipt by a Borrower Entity of written notice from a counterparty asserting a default by such Borrower Entity under any Major Project Document where such alleged default, if accurate, would permit such counterparty to terminate such Major Project Document except for any allegation subject to a good faith dispute or if any Borrower Entity shall fail to perform or observe any covenant or any other term or obligation under any Major Project Document to which it is a party, and such breach or default shall continue unremedied beyond any applicable cure period set forth therein, or if no cure period is specified, thirty (30) days following such failure.

(ii) Any Major Project Participant shall fail to perform or observe any material covenant or any other material term or obligation under any Major Project Document to which it is a party, and: (x) such breach or default shall continue unremedied beyond any applicable cure period set forth therein, or if no cure period is specified, thirty (30) days following such failure or (y) such Major Project Participant (and Project Document) is not replaced within sixty (60) days with an agreement with terms and conditions not less favorable to the applicable Borrower Entity than the existing Major Project Document in all material respects, or such other terms as are approved by DOE in its reasonable discretion, if such Borrower Entity notifies DOE of its intent to replace such Major Project Document prior to the expiration of the applicable cure period.

(f) The termination of any Major Project Document (other than upon the expiration thereof in accordance with its terms or as otherwise permitted under this Agreement) or any amendment to a Major Project Document that is prohibited by Section 9.01(c) (*Amendment of and Notices under Transaction Documents*).

(g) Borrower Entity Default Under Other Indebtedness. (i) Any Borrower Entity shall default in the payment of any principal, interest or other amount due under any agreement or instrument evidencing, or under which such Borrower Entity has outstanding at any time, any Indebtedness for Borrowed Money (including Indebtedness under any Permitted Creditor Document) of any one or more of the Borrower Entities having an outstanding principal amount of two million five hundred thousand Dollars ($2,500,000) or more ("**Material Indebtedness**") and for a period beyond any applicable grace period, or (ii) any other breach or default, by any Borrower Entity or any of its Subsidiaries, with respect to any other term of, or the occurrence of any other event under, (1) one or more items of Material Indebtedness or more or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach, default or other event is to cause, or to permit the holder or holders of that Material Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, all or any portion of such Material Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that the conversion of Convertible Notes in accordance with their terms shall not constitute an Event of Default under this clause (g)(ii) to the extent that (x) the Borrower is expressly permitted to settle such conversions solely with the issuance of its common stock and (y) any payment of cash or Cash Equivalents upon settlement thereof is expressly permitted by this Agreement.

(h) Unenforceability, Termination, Repudiation or Transfer of Any Transaction Documents. Any Financing Document, any Major Project Document (excluding any Permitted Creditor Document) or any Project Documents (to the extent it is not a Major Project Document, solely to the extent that such event results in a Material Adverse Effect) at any time and for any reason:

(i) is or becomes invalid, illegal, void or unenforceable or any party thereto has repudiated or disavowed or taken any action to challenge the validity or enforceability of such agreement;

(ii) except as otherwise expressly permitted hereunder, ceases to be in full force and effect except at the stated termination date thereof, or shall be assigned or otherwise transferred or terminated by any party thereto prior to the repayment in full of all Secured Obligations (other than with the prior written consent of DOE); or

(iii) is suspended, revoked or terminated (other than upon expiration in accordance with its terms when fully performed);

and, solely in the case of any Major Project Document or Project Document as applicable, is not replaced within sixty (60) days with an agreement with terms and conditions not less favorable to the applicable Borrower Entity than the existing Major Project Document in all material respects, or such other terms as are approved by DOE in its reasonable discretion, if such Borrower Entity notifies DOE of its intent to replace such Major Project Document prior to the expiration of the applicable cure period.

(i) Security Interests. Any of the Security Documents shall fail in any respect to provide the Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby (including the priority intended to be created thereby) or such Lien shall fail to have the priority contemplated therefor in such Security Documents, or any such Security Document or Lien shall cease to be in full force and effect, or the validity thereof or the applicability thereof to the Advances, the Secured Obligations or any other obligations purported to be secured or guaranteed thereby or any part thereof, shall be disaffirmed by or on behalf of any Borrower Entity or any other Person party thereto (other than the Secured Parties).

(j) Governmental Approvals and Required Approvals. Any Borrower Entity or any Major Project Participant shall fail to obtain, renew, maintain or comply with any Required Approval or any such Required Approval shall be rescinded, terminated, suspended, modified, withdrawn or withheld or shall be determined to be invalid or shall cease to be in full force and effect; or any proceedings shall be commenced by or before any Governmental Authority for the purpose of rescinding, terminating, suspending, modifying, withdrawing or withholding any such Required Approval.

(k) Bankruptcy; Insolvency; Dissolution

(i) Involuntary Bankruptcy; Etc. The commencement of an Insolvency Proceeding against any Borrower Entity or any Major Project Participant and such proceeding continues undismissed for sixty (60) days.

(ii) Voluntary Bankruptcy; Appointment of Receiver Etc. (A) The institution by any Borrower Entity or any Major Project Participant of any Insolvency Proceeding, or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due, or any Borrower Entity shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due or any other event has occurred that under any Applicable Law would have an effect analogous to any of those events listed above, or any action is taken by any such Person for the purpose of effecting any of the foregoing, or (B) the board of directors (or similar governing body) of any Borrower Entity (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 10.01(k) (*Bankruptcy; Insolvency; Dissolution*).

(iii) Dissolution. The dissolution of any Borrower Entity or any Major Project Participant, and such Major Project Participant is not replaced within sixty (60) days with a replacement participant approved by DOE in its discretion.

(l) Attachment. An attachment or analogous process is levied or enforced upon or issued against any of the assets of any Borrower Entity is in excess of two million five hundred thousand Dollars ($2,500,000) or has or could reasonably be expected to have a Material Adverse Effect.

(m) Judgments. One (1) or more Governmental Judgments shall be entered: (i) against any Borrower Entity and such Governmental Judgments have not been vacated, discharged or stayed or bonded pending appeal for any period of thirty (30) days, and the aggregate amount of all such Governmental Judgments outstanding at any time (except to the extent any applicable insurer(s) have acknowledged liability therefor) exceeds two million five hundred thousand Dollars ($2,500,000); or (ii) such Governmental Judgment is in the form of an injunction or similar form of relief that is not satisfied or discharged requiring suspension or abandonment of operation of the Project.

(n) Construction and Operation. Any of the following occurs:

(i) any Line Commercial Operation Date shall not have occurred by the corresponding Line Commercial Operation Longstop Date; provided that, in the case of Line 3 and Line 4, if the Borrower has delivered to DOE a Line Non-Completion Notice in respect of such Line prior to the First Advance Date of the Tranche for such Line, any failure to complete such Line and any breach of any covenant in relation to such Line shall not constitute an Event of Default hereunder;

(ii) the Project Completion Date shall not have occurred by the Project Completion Longstop Date;

(iii) the Project shall fail to satisfy certain mechanical, technical and operational specifications resulting in material, chronic underperformance of the Project as against production assumptions set out in the Base Case Financial Model;

(iv) at any time prior to the Project Completion, DOE (in consultation with the Independent Engineer) determines that the remaining Pre-Completion Costs exceed the total funding available to the Borrower under the Financing Documents, and the Borrower fails within one hundred and twenty (120) consecutive days after receiving written notice thereof from DOE to arrange for the provision of the requisite funds (through Additional Equity Contribution) on terms and conditions and from parties reasonably acceptable to DOE;

(v) the Borrower shall: (i) cease to have the right to possess or use the Project; (ii) cease to have the right to possess or use any material portion of the Project Sites or any rights granted to it under any of the Project Documents; or (iii) lose a material right of way, easement or other right of use or access to land necessary for the Project;

(vi) prior to the Project Completion Date, construction of the Project shall be suspended for a period of thirty (30) consecutive days or forty-five (45) days in the aggregate in any twelve (12) month period, in each case other than (A) in accordance with the Construction Plan, (B) as a result of scheduled holidays or other scheduled closures of labor and operations in accordance with Prudent Industry Practice, or (C) as a result of an Event of Force Majeure;

(vii) from and after the Project Completion Date, the Project ceases to operate for a period of thirty (30) consecutive days or forty-five (45) days in the aggregate in any twelve (12) month period, in each case other than (A) in accordance with the Construction Plan, Maintenance Plan or Operating Plan, as applicable, (B) as a result of scheduled holidays or other scheduled closures of labor and operations in accordance with Prudent Industry Practice, or (C) as a result of an Event of Force Majeure; or

(viii) the Borrower shall abandon, or agree in writing to abandon, or make any public statements regarding its intention to abandon, the Project, or take any action that could be deemed an "abandonment".

(o) Environmental Matters. (i) Any Adverse Proceeding finding a violation of any Environmental Law or asserting any Environmental Claim has been threatened in writing or instituted, or (ii) any Governmental Judgment imposing a penalty, monetary damages, remediation requirements or restrictions of construction or operations of the Project is issued relating to any violation of Environmental Law, violation of the terms or conditions or any Required Approval issued under any Environmental Law or restricting the use of any such Required Approval in any material respect, and such Adverse Proceeding or Governmental Judgment is not: (x) dismissed within sixty (60) days of institution, including as a result of satisfaction of any judgment or settlement of any claim that does not otherwise result in an Event of Default hereunder; or (y) diligently contested or appealed by the applicable Borrower Entity in accordance with Permitted Contest Conditions subject to a period of one hundred and eighty (180) days from commencement of any such contest or appeal; *provided* that to benefit from the cure periods described above, in either case, the Borrower shall have timely notified DOE of the Adverse Proceeding or Governmental Judgment and consulted in good faith with DOE with respect to its intended response.

(p) Event of Loss. All or any material portion of the Project is destroyed or becomes permanently inoperative as a result of a material Event of Loss, and is not covered by insurance, or not repaired or restored with Loss Proceeds within any time periods required under Section 7.04 (*Event of Loss*).

(q) Force Majeure. An Event of Force Majeure shall occur and continue for a period of at least one hundred and eighty (180) consecutive days.

(r) Changes in Ownership. Any Change of Control or Transfer other than a Permitted Equity Transfer shall have occurred.

(s) ERISA Events. (i) An ERISA Event shall have occurred that, individually or when aggregated with any other then existing ERISA Event, results in or could reasonably be expected to result in liability to any Borrower Entity or ERISA Affiliate in excess of two million five hundred thousand Dollars ($2,500,000) or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or under Section 303(k) or Title IV of ERISA.

(t) Certain Governmental Actions. Any Governmental Authority shall: (i) lawfully condemn or assume custody of all of the property or assets (or a substantial part thereof) of any Borrower Entity; or (ii) take lawful action to displace the management of any Borrower Entity.

(u) Compliance with Laws; International Compliance Directives and Anti-Money Laundering Laws.

(i) The making of any Advances or the use of the proceeds thereof shall violate or cause any Person, including any Secured Party, to violate any International Compliance Directives or Anti-Money Laundering Laws or other applicable Anti-Corruption Laws.

(ii) Any violation by any Borrower Entity or any Major Project Participant of any International Compliance Directives or Anti-Money Laundering Laws or other corporate governance, anti-bribery and Anti-Corruption Laws.

(v) Project Inputs Tax Credit Qualification. The Borrower shall fail to qualify for or receive the Section 45X Tax Credits in accordance with the Execution Date Base Case Financial Model (or if expressly approved by DOE for such purpose, the Base Case Financial Model delivered with the most recently preceding First Advance), including loss of eligibility through future publishing of any final, proposed, or temporary regulations, notices, revenue rulings, and revenue procedures by the U.S. Department of Treasury or the Internal Revenue Service in connection with the advanced manufacturing production credit.

(w) Material Adverse Effect. Any event or condition that has had or could reasonably be expected to have a Material Adverse Effect shall occur and be continuing.

(x) Subordination Agreement. At any time after the execution and delivery thereof:

(i) any subordination agreement (or subordination provisions incorporated in any Subordinated Indebtedness) or any other intercreditor agreement, or any provisions thereof, ceases to be valid and enforceable against any holder of Indebtedness intended to be subordinated to the Secured Obligations or secured by a Lien intended to be subordinated to the Lien of the Collateral Agent or any holder of such Indebtedness shall so assert in writing; and

(ii) the failure of any party thereto (other than DOE) to comply in any material respect with the terms of any subordination agreement (or subordination provisions incorporated in any Subordinated Indebtedness) or any other intercreditor agreement.

(y) Delisting. The common stock of the Borrower is no longer listed on an internationally recognized stock exchange in the United States.

For the avoidance of doubt, each clause of this Section 10.01 (*Events of Default*) shall operate independently, and the occurrence of any such event shall constitute an Event of Default.

Section 10.02 Remedies; Waivers.

(a) Upon the occurrence of and during the continuance of an Event of Default, DOE or the Collateral Agent may exercise any one (1) or more of the rights and remedies set forth below:

(i) declare all or any portion of the indebtedness and obligations of every type or description owed by any Borrower Entity to DOE and FFB under this Agreement and each other Financing Document to be immediately due and payable, and the same shall thereupon be immediately due and payable;

(ii) exercise any rights and remedies available under the Financing Documents, including DOE's right to prevent access to or prevent the operation by any Borrower Entity of the Project or any of the Collateral, subject to the terms of the Intercreditor Agreement;

(iii) take whatever action at law or in equity as may appear necessary or desirable in its judgment to collect the amounts then due and thereafter to become due under the Financing Documents or to enforce performance of any obligation of any Borrower Entity under the Financing Documents;

(iv) (A) refuse, and the Secured Parties shall not be obligated, to make any further Advances; and (B) reduce the Guaranteed Loan Commitment Amount to zero Dollars ($0);

(v) take those actions necessary to perfect and maintain the Liens of the Security Documents pursuant to which assets have been pledged as collateral for the repayment under the Financing Documents;

(vi) set off and apply such amounts to the satisfaction of the Secured Obligations under all of the Financing Documents, including any moneys of the Borrower Entities on deposit with any Secured Party;

(vii) without limiting or being limited by any of the foregoing, draw upon any Acceptable Letter of Credit issued pursuant to any Financing Document in accordance with its terms, and apply such funds to the payment of the Secured Obligations; and/or

(viii) the Collateral Agent is granted a license or right to use, license, or sublicense, without liability for royalties or any other charge, each Borrower Entity's Intellectual Property, whether owned by the Borrower Entity or licensed to the Borrower Entity in preparing for the sale, advertising for sale, and selling any Collateral and otherwise exercising all rights and remediates available to the Collateral Agent, DOE, and the other Secured Parties.

(b) Upon the occurrence of an Event of Default referred to in Section 10.01(k) (*Bankruptcy; Insolvency; Dissolution*): (i) all Guaranteed Loan Commitment Amounts shall automatically be reduced to zero Dollars ($0); and (ii) each Advance made under the FFB Note, together with interest accrued thereon and all other amounts due under the FFB Note, this Agreement and the other Financing Documents, shall immediately mature and become due and payable, without any other presentment, demand, diligence, protest, notice of acceleration, or other notice of any kind, all of which the Borrower hereby expressly waives on behalf of itself and each other Borrower Entity.

(c) Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under the Financing Documents or existing at law or in equity. No delay or failure to exercise any right or power accruing under any Financing Document upon the occurrence and during the continuance of any Event of Default or otherwise shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) In order to entitle DOE to exercise any remedy reserved to DOE in this Agreement, it shall not be necessary to give any notice, other than such notice as may be required in this Agreement, any other Financing Document or under Applicable Law.

(e) If any proceeding has been commenced to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to DOE or FFB, then in every such case, subject to any determination in such proceeding: (i) the parties hereto shall be restored to their respective former positions hereunder; and (ii) thereafter, all rights and remedies of DOE or FFB, as the case may be, shall continue as though no such proceeding had been instituted.

(f) DOE shall have the right, to be exercised (or not) in its complete discretion, to waive any covenant, Default or Event of Default by a writing setting forth the terms, conditions and extent of such waiver signed by DOE and delivered to the other parties hereto. Any such waiver may be effected only in writing duly executed by DOE, and no other course of conduct shall constitute a waiver of any provision hereof. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence so waived and not to any other similar event or occurrence that occurs subsequent to the date of such waiver.

(g) Upon the occurrence and during the continuation of any Default, the Borrower shall deliver no later than thirty (30) calendar days from the occurrence of such Default a remediation plan setting forth proposed steps to be taken by the Borrower Entities to cure such Default or otherwise address such Default in a manner acceptable to DOE and periodically thereafter, the Borrower shall deliver reports setting out the Borrower's execution of the remediation plan and compliance with the terms thereof. The Borrower Entities shall make relevant company representatives and outside advisors available to meet and confer with DOE, the Independent Engineer, and its other outside advisors (including legal and financial advisors) on the contents of the remediation plan.

(h) In the event that the Borrower fails to procure or maintain (or cause to be procured and maintained) the Required Insurance, DOE may (but shall not be obligated to) procure the Required Insurance and pay the premiums in connection therewith. All amounts so paid by DOE shall become an additional FFB Note Obligation owed by the Borrower to DOE, and the Borrower shall forthwith pay any such amounts to DOE, together with interest on such amounts at the Late Charge Rate from the date so paid.

Section 10.03 Accelerated Advances. Upon the delivery of a notice of acceleration, the accelerated amount due and payable under the FFB Note shall be the Prepayment Price (as defined in and determined pursuant to the FFB Note) under the FFB Note.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Waiver and Amendment.

(a) No failure or delay by DOE or the other Secured Parties in exercising any right, power or remedy shall operate as a waiver thereof or otherwise impair any rights, powers or remedies of the Secured Parties. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other legal right, power or remedy.

(b) The rights, powers or remedies provided for herein are cumulative and are not exclusive of any other rights, powers or remedies provided by law or in any other Transaction Document. The assertion or employment of any right, power or remedy hereunder, or otherwise, shall not prevent the concurrent assertion of any other right, power or remedy.

(c) Except as otherwise provided herein, neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing and executed by the Borrower and DOE.

(d) Any amendment to or waiver of this Agreement or any other Transaction Document or any provision hereof or thereof that constitutes a "modification" (as defined in Section 502(9) of FCRA) that increases the amount of the Credit Subsidy Cost (as calculated in accordance with FCRA and OMB Circulars A-11 and A-129) shall, at DOE's discretion, be conditioned upon: (i) payment of any increase to the Credit Subsidy Cost by the Borrower; or (ii) the availability to DOE of funds appropriated by the U.S. Congress to meet any such increase.

Section 11.02 Right of Set-Off. In addition to any rights now or hereafter granted under Applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Secured Party is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set-off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other Indebtedness at any time held or owing by such Secured Party (including by any branches and agencies of such Secured Party wherever located) to or for the credit or the account of the Borrower against and on account of the Secured Obligations and liabilities of the Borrower to such Secured Party under this Agreement or any other Financing Document. Each of DOE, FFB and each subsequent holder of the FFB Note or any portion thereof shall promptly notify the Borrower after any such set-off and application made by it; *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

Section 11.03 Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Financing Documents and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith (including any Advance Request) shall survive the execution and delivery of this Agreement and the making of the Advances under the FFB Documents.

Section 11.04 Notices. Except to the extent otherwise expressly provided herein or as required by Applicable Law, any communications, including any notices, between or among the parties to the Financing Documents shall be provided using the addresses listed in Schedule I (*Notices*), and shall be in writing and shall be considered as properly given: (a) if delivered in person; (b) if sent by overnight delivery service for domestic delivery or international courier for international delivery; (c) in the event overnight delivery service or international courier service is not readily available, if mailed by first class mail (or airmail for international delivery), postage prepaid, registered or certified with return receipt requested; (d) if sent by telecopy with transmission verified; or (e) if transmitted by electronic mail, to the electronic mail address set forth in Schedule I (*Notices*). Notice so given shall be effective upon delivery to the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the following Business Day) on which it is validly transmitted if transmitted before 5:00 p.m. (District of Columbia time), recipient's time, and if transmitted after that time, on the next

following Business Day. Any party has the right to change its address for notice under any of the Financing Documents to any other location by giving prior written notice to each of the other parties in the manner set forth hereinabove.

Section 11.05 Severability. In case any one (1) or more of the provisions contained in any Financing Document should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall engage the parties to the Financing Documents to enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

Section 11.06 Judgment Currency. The Borrower shall, to the fullest extent permitted under Applicable Law, indemnify DOE and FFB against any loss incurred by DOE or FFB, as the case may be, as a result of any judgment or order being given or made for any amount due to DOE or FFB hereunder or under any other Financing Document and such judgment or order being expressed and to be paid in a currency (the "**Judgment Currency**") other than Dollars (the "**Currency of Denomination**") and as a result of any variation between: (a) the rate of exchange at which amounts in the Currency of Denomination are converted into Judgment Currency for the purpose of such judgment or order; and (b) the rate of exchange at which DOE or FFB would have been able to purchase the Currency of Denomination with the amount of the Judgment Currency actually received by DOE or FFB, as the case may be, had DOE or FFB, as the case may be, utilized the amount of Judgment Currency so received to purchase the Currency of Denomination as promptly as practicable upon receipt thereof. The foregoing indemnity shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant Currency of Denomination that are documented and reasonable in light of market conditions at the time of such conversion.

Section 11.07 Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant to this Agreement or under law or in equity, the Borrower shall pay, and shall protect, indemnify and hold harmless DOE, FFB, each other governmental agency and instrumentality of the United States, each other holder of the FFB Note or any portion thereof, each Secured Party, and each of their respective officers, directors, employees, representatives, attorneys and agents (each, an "**Indemnified Party**"), on an after-tax basis, from and against (and shall reimburse each Indemnified Party as the same are incurred) any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements incurred by any of them (each, an "**Indemnified Liability**"), to which such Indemnified Party may become subject arising out of or relating to any or all of the following: (i) the execution or delivery of this Agreement, the Term Sheet, any Transaction Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby; (ii) the enforcement or preservation of any rights under this Agreement, any Transaction Document or any agreement or instrument prepared in connection herewith or therewith; (iii) any Guaranteed Loan or the use or proposed use of the proceeds thereof; (iv) any actual or alleged presence or Release of Hazardous Substance, on, under or originating from any property owned, occupied or operated by the Borrower or any of its Affiliates in connection with the Project, or any environmental liability related in any way to the Borrower or any of its Affiliates and their respective owned, occupied, or operated properties arising out of or relating to the Project; or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by any third party or by the Borrower or any of its Affiliates or otherwise, and regardless of whether any Indemnified Party is a party thereto, such clauses (i) through (v) above including, to the extent permitted by Applicable Law, the fees, disbursements and other charges of counsel and third-party consultants to such Indemnified Party incurred in connection with any investigation, litigation or other proceeding or in connection with enforcing the provisions of this Section 11.07 (*Indemnification*); *provided* that the Borrower shall not have any obligation under this Section 11.07 (*Indemnification*) to any Indemnified Party with respect to Indemnified Liabilities to the extent they arise from the gross negligence or willful misconduct of such Indemnified Party as determined by a court of competent jurisdiction in a final, non-appealable judgement. Any claims under this Section 11.07 (*Indemnification*) in respect of any Indemnified Liabilities are referred to herein, collectively, as "**Indemnity Claims**".

(a) All sums paid and costs incurred by any Indemnified Party with respect to any matter indemnified hereunder shall: (i) be immediately due and payable upon demand; (ii) be added to the Secured Obligations; and (iii) be secured by the Security Documents. Each such Indemnified Party shall promptly notify the Borrower in a timely manner of any such amounts payable by the Borrower hereunder, *provided* that any failure to provide such notice shall not affect the Borrower's obligations under this Section 11.07 (*Indemnification*).

(b) Each Indemnified Party within ten (10) Business Days after the receipt by it of notice of the commencement of any action for which indemnity may be sought by it, or by any Person controlling it, from the Borrower on account of the agreements contained in this Section 11.07 (*Indemnification*), shall notify the Borrower in writing of the commencement thereof, but the failure of such Indemnified Party to so notify the Borrower of any such action shall not release the Borrower from any liability that it may have to such Indemnified Party.

(c) To the extent that the undertaking in the preceding clauses of this Section 11.07 (*Indemnification*) may be unenforceable because it is violative of any law or public policy, and to provide for just and equitable contribution in the event of any such unenforceability (other than due to application of this Section 11.07 (*Indemnification*)), the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under Applicable Law to the payment and satisfaction of such undertakings.

(d) The provisions of this Section 11.07 (*Indemnification*) shall survive the Release Date, the foreclosure under the Security Documents and satisfaction or discharge of the Secured Obligations and shall be in addition to any other rights and remedies of any Indemnified Party.

(e) Any amounts payable by the Borrower pursuant to this Section 11.07 (*Indemnification*) shall be payable within the later to occur of: (i) ten (10) Business Days after the Borrower receives an invoice for such amounts from any applicable Indemnified Party; and (ii) five (5) Business Days prior to the date on which such Indemnified Party expects to pay such costs on account of which the Borrower's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Late Charge Rate from and after such applicable date until paid in full.

(f) The Borrower shall be entitled, at its expense, to participate in the defense of any Indemnity Claim; *provided* that such Indemnified Party shall have the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to the applicable Indemnified Party. Any Indemnified Party against whom any Indemnity Claim is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnified Party is advised that such Indemnity Claim is meritorious, to compromise or settle any such Indemnity Claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 11.07 (*Indemnification*).

(g) Upon payment of any Indemnity Claim by the Borrower pursuant to this Section 11.07 (*Indemnification*), the Borrower, without any further action, shall be subrogated to any and all claims that the applicable Indemnified Party may have relating thereto, and such Indemnified Party shall at the request and expense of the Borrower cooperate with the Borrower and give at the request and expense of the Borrower such further assurances as are necessary or advisable to enable the Borrower vigorously to pursue such claims.

(h) Notwithstanding any other provision of this Section 11.07 (*Indemnification*), the Borrower shall not be entitled to: (i) notice; (ii) participation in the defense of; (iii) consent rights with respect to any compromise or settlement or (iv) subrogation rights, in each case except as otherwise provided for pursuant to this Section 11.07 (*Indemnification*) with respect to any action, suit or proceeding against the Borrower any other Borrower Entity.

(i) No Indemnified Party shall be obligated to pursue first any recovery under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of the Borrower under this Agreement.

Section 11.08 Limitation on Liability. No claim shall be made by the Borrower or any of its Affiliates against any Secured Party or any of their Affiliates, directors, employees, attorneys or agents, including the Secured Party Advisors, for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Financing Documents or any act or omission or event occurring in connection therewith; and the Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 11.09 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

(a) The Borrower may not assign or otherwise transfer (whether by operation of law or otherwise) any of its rights or obligations under this Agreement or under any other Financing Document without the prior written consent of DOE and, in the case of any FFB Document, FFB.

(b) FFB may assign any or all of its rights, benefits and obligations under the Financing Documents and with respect to the Collateral in accordance with the provisions of the FFB Documents.

Section 11.10 [Reserved].

Section 11.11 Further Assurances and Corrective Instruments.

(a) The Borrower shall execute and deliver, or cause to be executed and delivered, to DOE such additional documents or other instruments and shall take or cause to be taken such additional actions as DOE may require or reasonably request in writing to: (i) cause the Financing Documents to be properly executed, binding and enforceable in all relevant jurisdictions; (ii) perfect and maintain the priority of the Secured Parties' security interest in all Collateral; (iii) enable the Secured Parties to preserve, protect, exercise and enforce all other rights, remedies or interests granted or purported to be granted under the Financing Documents; and (iv) otherwise carry out the purposes of the Transaction Documents.

(b) The Borrower may submit to DOE written requests for the parties to enter into, execute, acknowledge and deliver amendments or supplements hereto; it being understood that DOE shall be permitted to approve or reject all such requests in its discretion.

Section 11.12 Reinstatement. Where any discharge is made in whole or in part, or any arrangement is made on the faith of, any payment, security or other Disposition which is avoided or must be repaid, whether upon the insolvency or bankruptcy of the Borrower or otherwise. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Borrower's obligations hereunder, or any part thereof, is, pursuant to Applicable Laws, rescinded or reduced in amount, or must otherwise be restored or returned by any Secured Party. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 11.13 Governing Law; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE FEDERAL LAW OF THE UNITED STATES. TO THE EXTENT THAT FEDERAL LAW DOES NOT SPECIFY THE APPROPRIATE RULE OF DECISION FOR A PARTICULAR MATTER AT ISSUE, IT IS THE INTENTION AND AGREEMENT OF THE PARTIES TO THIS AGREEMENT THAT THE LAW OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES (EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW)) SHALL BE ADOPTED AS THE GOVERNING FEDERAL RULE OF DECISION.

(b) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS.

Section 11.14 Submission to Jurisdiction; Etc. By execution and delivery of this Agreement, the Borrower irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding against it arising out of or in connection with this Agreement or any other Financing Document, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of: (i) the courts of the United States for the District of Columbia; (ii) the courts of the United States in and for the Southern District of New York sitting in New York County; (iii) any other federal court of competent jurisdiction in any other jurisdiction where it or any of its property may be found; (iv) the courts of the State of New York in New York County; (v) the courts of the District of Columbia and (vi) appellate courts from any of the foregoing;

(b) consents that any such action or proceeding may be brought in or removed to such courts, and waives any objection, or right to stay or dismiss any action or proceeding, that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees to irrevocably designate and appoint an agent satisfactory to DOE for service of process in New York under this Agreement and any other Financing Document governed by the laws of the State of New York, with respect to any action or proceeding in New York, as its authorized agent to receive, accept and confirm receipt of, on its behalf, service of process in any such proceeding. The Borrower agrees that service of process, writ, judgment or other notice of legal process upon said agent shall be deemed and held in every respect to be effective personal service upon it. The Borrower shall maintain such appointment (or that of a successor satisfactory to DOE) continuously in effect at all times while the Borrower is obligated under this Agreement;

(d) agrees that nothing herein shall: (i) affect the right of any Secured Party to effect service of process in any other manner permitted by law; or (ii) limit the right of any Secured Party to commence proceedings against or otherwise sue the Borrower or any other Person in any other court of competent jurisdiction nor shall the commencement of proceedings in any one (1) or more jurisdictions preclude the commencement of proceedings in any other jurisdiction (whether concurrently or not) if, and to the extent, permitted by the Applicable Laws; and

(e) agrees that judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or outside the U.S. by suit on the judgment or otherwise as provided by law, a certified or exemplified copy of which judgment shall be conclusive evidence of the fact and amount of the Borrower's obligation.

Section 11.15 Entire Agreement. This Agreement, including any agreement, document or instrument attached to this Agreement or referred to herein, integrates all the terms and conditions mentioned herein or incidental to this Agreement and supersedes all prior oral negotiations, agreements and understandings of the parties to this Agreement in respect to the subject matter of this Agreement made prior to the date hereof.

Section 11.16 Benefits of Agreement. Nothing in this Agreement or any other Financing Document, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors and permitted assigns hereunder or thereunder, any benefit or any legal or equitable right or remedy under this Agreement. FFB is an intended third party beneficiary, with enforceable rights and remedies under this Agreement, in respect of those provisions in Article II (*Funding*), Article III (*Payments; Prepayments*), Article IV (*Payment Obligations; Reimbursement*), Article V (*Conditions Precedent*) Article VI (*Representations and Warranties*), and Article XI (*Miscellaneous*), and Section 8.01(*Financial Statements*), Section 8.02 (*Reports*), Section 8.03 (*Notices*), and Section 10.02 (*Remedies; Waivers*) that refer to rights of or payments to FFB; *provided* that in the event of any conflict between any provision of this Agreement and the FFB Note or the FFB Note Purchase Agreement, as between FFB and the Borrower, the terms of the FFB Note and the FFB Note Purchase Agreement shall govern.

Section 11.17 Headings. Paragraph headings have been inserted in the Financing Documents as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of the Financing Documents and shall not be used in the interpretation of any provision of the Financing Documents.

Section 11.18 Counterparts; Electronic Signatures.

(a) This Agreement may be executed in one (1) or more duplicate counterparts and when executed by all of the parties shall constitute a single binding agreement. Each party hereto agrees to deliver a manually executed original promptly following electronic submission.

(b) Delivery of an executed signature page of this Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart hereof. Except to the extent Applicable Law would prohibit the same, make the same unenforceable or affirmatively requires a manually executed counterpart signature: (i) the delivery of an executed counterpart of a signature page of this Agreement by fax, emailed .pdf or any other electronic means approved by DOE in writing (which may be via email) that reproduces an image of the actual executed signature page shall be as effective as the delivery of a manually executed counterpart of this Agreement; and (ii) if agreed by DOE in writing (which may be via email) with respect to this Agreement, the delivery of an executed counterpart of a signature page of this Agreement by electronic means that types in the signatory to a document as a "conformed signature" from an email address approved by DOE in writing (which may be via email) shall be as effective as the delivery of a manually executed counterpart of this Agreement. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "Electronic Signature" has the meaning assigned to it by 15 USC §7006, as it may be amended from time to time.

Section 11.19 No Partnership; Etc. The Secured Parties and the Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement or in any other Financing Document shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among the Secured Parties and the Borrower or any other Person. The Secured Parties shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Borrower or any other Person with respect to the Project or otherwise. All obligations to pay Real Property or other taxes, assessments, insurance premiums and all other fees and expenses in connection with or arising from the ownership, operation or occupancy of the Project or any other assets and to perform all obligations under the agreements and contracts relating to the Project or any other assets shall be the sole responsibility of the Borrower.

Section 11.20 Independence of Covenants. All covenants hereunder and under the other Financing Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 11.21 Marshaling. Neither DOE nor FFB nor any other Secured Party shall be under any obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the Secured Obligations.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES FOLLOW]

Signatories

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

EOS ENERGY ENTERPRISES, INC.,

a Delaware corporation,
as Borrower

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: Chief Executive Officer

[Signature Page to Loan Arrangement and Reimbursement Agreement]

U.S. DEPARTMENT OF ENERGY,

an agency of the Federal Government of the United States
of America, in its own capacity and in its capacity as Guarantor

By: */s/*
Name:
Title:

ANNEX A

DEFINITIONS

"**13-Week Forecast**" means a 13-week cash flow forecast of receipts and disbursements and Guaranteed Loans for the period from the Execution Date or such other period as required pursuant to Section 8.02(a)(i) (*Omnibus Annual Reports*), setting forth projected cash flows, Guaranteed Loans and disbursements, based upon good faith estimates and assumptions believed by the Borrower to be reasonable at the time made.

"**Acceptable Bank**" means a bank or financial institution or branch office thereof in New York, New York organized under or licensed as a branch under the laws of the United States or any state thereof, which has a rating for its long-term unsecured and unguaranteed Indebtedness of "A-"/Stable outlook or higher by S&P or Fitch or A3 or higher by Moody's, using the lowest rating of the aforementioned three (3) rating firms.

"**Acceptable Delivery Method**" means, with respect to any certificate, document or other item required to be delivered by an Acceptable Delivery Method hereunder:

(a) transmission, by an Authorized Transmitter, of such certificate, document or other item in Electronic Format, together with the Transmission Code;

(b) delivery of a manually executed original of such certificate, document or other item;

(c) for any certificate, document or other item requested by FFB or DOE on behalf of FFB, to FFB by email to [xxx] or

(d) such other delivery method as the Borrower and DOE shall mutually agree.

"**Acceptable Insurer**" means:

(a) any insurance company or international reinsurance company: (i) authorized to do business in Pennsylvania if required by law or regulation; and (ii) with a rating for its long-term unsecured and non-credit-enhanced debt obligations of: (A) A or higher by S&P or Fitch; (B) A2 or higher by Moody's; (C) A- or better by AM Best's Insurance Guide and Key Ratings and a financial size category of VII or higher; or (D) a comparable rating from an internationally recognized credit rating agency; or

(b) any other insurance company acceptable to DOE.

"**Acceptable Letter of Credit**" means an unconditional, irrevocable standby letter of credit, in form and substance satisfactory to the Collateral Agent (acting on the instructions of DOE) issued by an Acceptable Bank, payable in New York in Dollars, in form and substance satisfactory to DOE and meeting the following requirements:

(a) the initial expiration date thereof shall be at least twelve (12) months beyond the date of issuance, and shall automatically renew upon its expiration (which renewal period shall be at least twelve (12) months) unless, at least sixty (60) days prior to any such expiration, the issuer shall provide the Collateral Agent and DOE with a notice of non-renewal of such letter of credit;

(b) upon receipt of any non-renewal notice, or twenty (20) Business Days after the issuer ceases to be an Acceptable Bank, the Collateral Agent shall be entitled to draw the entire face amount of such letter of credit (unless the Collateral Agent shall have received a replacement Acceptable Letter of Credit in accordance with the terms of the relevant Financing Document(s) or amounts have been deposited in the applicable Project Account such that the amount on deposit therein, when aggregated with the face amount available to be drawn under any other applicable Acceptable Letter of Credit then outstanding is equal to or greater than the amount required to be on deposit in the relevant Project Account pursuant to the Financing Documents);

(c) the Collateral Agent shall be named sole beneficiary under such letter of credit and entitled to draw amounts thereunder pursuant to its terms;

(d) with respect to any Acceptable Letter of Credit delivered in connection with any Project Account, such letter of credit shall be drawable in all cases in which the Accounts Agreement provides for a transfer of funds from such Project Account;

(e) there shall be no conditions to any drawing thereunder other than the submission of a drawing request substantially in the form attached to such letter of credit;

(f) no agreement, instrument or document executed in connection with any Acceptable Letter of Credit shall: (i) obligate the Borrower or any Secured Party to make any reimbursement or any other payment to the issuer thereof or otherwise with respect to such Acceptable Letter of Credit; or (ii) provide the issuer thereof or any other Person with any claim, subrogation right or other right or remedy against or other recourse to the Borrower, any Secured Party or against any Collateral or other Property of any thereof, whether for costs of issuance or maintenance, reimbursement of amounts drawn under such Acceptable Letter of Credit or otherwise; and

(g) such letter of credit shall be subject to International Standby Practices 1998, International Chamber of Commerce Publication No. 590, as amended, modified or supplemented and in effect from time to time and as to any matter not governed thereby, governed by and construed in accordance with the laws of the State of New York.

"**Account Bank**" means Citibank, N.A., acting through its Agency and Trust Division in its capacity as account bank, or any successor account bank appointed from to time to time pursuant to the Accounts Agreement.

"**Accounting Compliance Plan**" has the meaning given to such term in Section 5.01(z)(ii) (*Accounting Controls*).

"**Accounts Agreement**" means the Collateral Agency and Accounts Agreement entered into as of the Execution Date by and among the Borrower, DOE, the Collateral Agent and the Account Bank.

"**Additional Equity Contributions**" means any cash proceeds received in connection with any issuance of Cerberus Equity Instruments, any Cerberus Revolving Loan and any other cash contributions received in connection with issuance of Equity Interests by the Borrower, other than Base Equity Contributions and Cost Overrun Equity Contributions.

"**Additional Project Document**" means any contract entered into by any Borrower Entity subsequent to the Execution Date that is necessary for or material to the construction and operation of the Project.

"**Advance**" means, with respect to any Tranche, an advance of funds by FFB to the Borrower under the FFB Note as may be requested by the Borrower from time to time during the applicable Availability Period.

"**Advance Date**" means the date on which FFB makes any Advance to the Borrower.

"**Advance Request**" has the meaning given to such term in Section 2.03(a) (*Advance Requests*).

"**Advance Request Approval Notice**" means the written notice from DOE located at the end of an Advance Request advising FFB that such Advance Request has been approved by or on behalf of DOE.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration at law or in equity, or before or by any Governmental Authority, domestic or foreign or other regulatory body or any arbitrator.

"**Advisory or Consulting Agreements**" means, collectively, (a) the Engagement Letter and the Master Consulting and Advisory Services Agreement, each dated as of June 21, 2024, by and among Borrower and Cerberus Operations and Advisory Company, LLC, together with any statement of work, schedules or other similar documents issued in connection therewith and (b) Master Services Agreement, dated as of June 21, 2024, by and among Borrower and Cerberus Technology Services, LLC, together with any statement of work, schedules or other similar documents issued in connection therewith, each, as amended, supplemented or otherwise modified in a manner consistent with a similar arm's length transaction.

"**Affiliate**" means, as applied to any Person: (a) any other Person directly or indirectly controlling, controlled by, or under common control with, that Person; and (b) in addition, in the case of any Person that is an individual, each member of such Person's immediate family, any trusts or other entities established for the benefit of such Person or any member of such Person's immediate family and any other Person controlled by any of the foregoing. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power: (i) to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such Person; or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything to the contrary contained herein, neither Cerberus, any Permitted Holder nor any of their respective Affiliates shall be deemed to be an Affiliate of any Borrower Entity.

"**Affiliate Transaction**" has the meaning given to such term in Section 9.21 (*Transactions with Affiliates*).

"**Agent**" has the meaning given to such term in the Accounts Agreement.

"**Agent Fees**" has the meaning given to such term in the Accounts Agreement.

"**Aggregate Capitalized Interest**" means, with respect to any requested Advance and all Advances previously made, the aggregate amount of interest that has been capitalized and will be capitalized on all Advances then made to the Borrower under the FFB Note outstanding (including, for the avoidance of doubt, such requested Advance) as determined in accordance with the FFB Note.

"**Agreed-Upon Procedures Report**" means a report, in substantially the form of the document titled "Agreed-Upon Procedures Report," prepared by the Independent Auditor, as such form may be revised from time to time by the Borrower and the Independent Auditor with the consent of DOE, which consent shall not be unreasonably withheld.

"**Agreement**" has the meaning given to such term in the preamble hereto.

"**ALTA**" means the American Land Title Association headquartered in Washington D.C.

"**Annual Certificate**" has the meaning given to such term in Section 8.02(a) (*Omnibus Annual Reports*).

"**Annual Reporting Date**" has the meaning given to such term in Section 8.02(a) (*Omnibus Annual Reports*).

"**Anti-Corruption Laws**" means all laws concerning or relating to anti-bribery, anti-corruption and anti-kickback matters in the public or private sector, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any similar laws.

"**Anti-Money Laundering Laws**" means the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act, the Anti-Money Laundering Act of 2020, the Money Laundering Control Act, the rules and regulations thereunder, applicable Executive Orders and any similar Applicable Laws relating to money laundering, terrorist financing, or financial recordkeeping and recording requirements administered or enforced by any United States of America governmental agency, or any other jurisdiction in which the Borrower operates or conducts business.

"**Applicable Law**" means, with respect to any Person, any constitution, statute, law, rule, regulation, code, ordinance, treaty, judgment, order or any published directive, guideline, requirement or other governmental rule or restriction which has the force of law, by or from a court, arbitrator or other Governmental Authority having jurisdiction over such Person or any of its properties, whether in effect as of the date of this Agreement or as of any date hereafter.

"**Applicable Regulations**" means the final regulations with respect to Title XVII, at 10 CFR Part 609, and any other applicable regulations from time to time promulgated to implement Title XVII.

"**Application**" has the meaning given to such term in the preliminary statements.

"**Approved Construction Changes**" means:

(a) any Construction Change that: (i) has been submitted in writing by the Borrower to DOE (including an explanation in reasonable detail of the reasons for such Construction Change); and (ii) has received a written approval from DOE;

(b) any allocation of Budgeted Contingencies to Project Costs set forth in the Construction Budget; and

(c) Construction Changes that are in the Ordinary Course of Business and do not exceed one million Dollars ($1,000,000) in the aggregate during any one month period.

"**Asset Sale**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license, sub-license or other Disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Borrower Entity's or any Subsidiary's businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests owned by any Borrower Entity or Subsidiary, and excluding inventory sold or leased in the Ordinary Course of Business or the Convertible Notes and the Cerberus Equity Instruments. For purposes of clarification, "Asset Sale" shall include (a) any license or sub-license (as licensor or sub-licensor) of Intellectual Property (other than non-exclusive licenses or sub-licenses granted in the Ordinary Course of Business), (b) the sale or other Disposition for value of any contracts, (c) the early termination or modification of any contract resulting in the receipt by any Borrower Entity or Subsidiary of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification), and (d) any sale of merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Borrower Entity or Subsidiary. For the avoidance of doubt, Asset Sale shall not include any sale of inventory or tax credits by any Borrower Entity or Subsidiary, including, without limitation, any batteries produced and sold in the Ordinary Course of Business.

"**Asset Sale Reinvestment**" has the meaning given to such term in Section 3.05(c)(i)(E) (*Mandatory Prepayments*).

"**Atlas Lenders**" means the lenders from time to time party to that certain Atlas Loan, together with ACP Post Oak Credit I, LLC, as administrative and collateral agent thereunder, and any successor or assignee lender.

"**Atlas Loan**" means the loan extended under that certain Senior Secured Term Loan Credit Agreement dated as of July 29, 2022, by and between the Borrower and the Atlas Lenders.

"**Atlas Side Letter**" means that certain Insurance Letter Agreement dated as of June 21, 2024 by and among the Borrower and the Atlas Lenders.

"**Authorized Transmitter**" means, with respect to delivery of documentation: (a) by any Borrower Entity to DOE, the list of individuals designated as Authorized Transmitters set forth in the relevant certificate delivered pursuant to Sections 5.01(h) (*Organizational Documents*), 5.01(d) (*Transaction Documents*) and 5.04(l) (*Independent Engineers Certificate*), as applicable, delivered by such Borrower Entity to DOE prior to the Execution Date, as updated or modified, with the consent of DOE, from time to time; and (b) to FFB, each of the individuals listed on the Certificate Specifying Authorized Borrower Officials.

"**Availability Period**" means with respect to each Tranche, the period commencing on the date all conditions precedent set forth in Section 5.03 (*Conditions Precedent to Each First Advance Date*) and Section 5.04 (*Advance Approval Conditions Precedent*) herein shall have been satisfied or waived in full with respect to such Tranche until and including the earliest of:

(a) the Availability Period End Date for such Tranche;

(b) the First Advance Longstop Date for such Tranche if the First Advance Date for such Tranche has not occurred on or before such date;

(c) the date that the Maximum Tranche Commitment Amount for such Tranche is fully disbursed;

(d) the date on which Final Construction Completion occurs for the Line funded by such Tranche;

(e) December 31, 2027; and

(f) the date of termination of obligations to disburse any undisbursed amounts of the Guaranteed Loan following the occurrence of any Event of Default.

"**Availability Period End Date**" means:

(a) with respect to Tranche 1, June 30, 2026;

(b) with respect to Tranche 2, June 30, 2027;

(c) with respect to Tranche 3, December 31, 2027; and

(d) with respect to Tranche 4, December 31, 2027.

"**Bankruptcy Code**" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq, as amended.

"**Base Case Financial Model**" means a mechanically sound financial model prepared by the Borrower in good faith, showing financial projections and underlying assumptions, in Excel form and otherwise in accordance with the Transaction Documents and Applicable Law, that are set forth on a monthly basis, to a date falling no sooner than twelve (12) months after the Maturity Date, which projections: (a) are consistent with the then-applicable Project Budgets and Plans, reflective of binding and proposed Sales Agreements in accordance with the Sales Plan and the minimum required Sales Agreement in accordance with this Agreement, and (b) reflect current and anticipated performance levels of the Project and pricing assumptions based on the then-current market environment in form and substance acceptable to DOE. References to "Base Case Financial Model" refer to the Execution Date Base Case Financial Model or any updated Base Case Financial Model approved by DOE in accordance with the Financing Documents.

"**Base Equity Contributions**" means, for any Tranche, the deposit of immediately available funds in Dollars, related to an issuance of Equity Interests in the Borrower or proceeds of the Cerberus Term Loans, in discharge of a corresponding amount of the Base Funding Amount.

"**Base Funding Amount**" means an amount equal to the "Cash Balance" as shown in the Execution Date Base Case Financial Model as of the date on which the Tranche 1 First Advance Date is to occur (adjusting the Execution Date Base Case Financial Model to account for the actual Tranche 1 First Advance Date), immediately before receipt of proceeds of such Advance.

"**Board**" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"**Booked Orders**" means legally binding purchase agreements for the purchase of Products, whether pursuant to a purchase order, master supply agreement or other legally-binding Sales Agreement, provided and to the extent that the purchase agreement includes (i) reasonable clarity as to the quantity, pricing and delivery timetable for the Products being purchased and (ii) a substantive penalty or non-refundable deposit or milestone payments in the event of any customer termination for convenience or volume commitment reduction.

"**Borrower**" has the meaning given to such term in the preamble hereto.

"**Borrower Advance Date Certificate**" means a Borrower Advance Date Certificate in the form of Exhibit V (*Form of Borrower Advance Date Certificate*).

"**Borrower Entity**" means each of:

(a) the Borrower;

(b) each party set out in Schedule L (*Borrower Entities*) and identified therein as a "Borrower Entity"; and

(c) each other Subsidiary of the Borrower (whether formed now or in the future);

provided that no Immaterial Foreign Subsidiary shall be a Borrower Entity.

"**Borrower Operating Accounts**" means the bank accounts of the Borrower Entities listed in Schedule N (*Borrower Operating Accounts*).

"**Borrower Project Accounts Control Agreement**" has the meaning given to such term in the Accounts Agreement.

"**Broker's Letter of Undertaking**" means each letter delivered or to be delivered by the Borrower's insurance broker to DOE, substantially in the form set out in Annex A (*Form of Broker's Letter of Undertaking*) to Schedule C (*Insurance*) or any other form acceptable to DOE.

"**Budgeted Contingency**" means the line item for "Budgeted Contingency" included in the Construction Budget.

"**Building 200**" means the building located at 200 Braddock Avenue at the Turtle Creek Project Site.

"**Building 270**" means the building located at 270 Braddock Avenue at the Turtle Creek Project Site.

"**Building 700**" means the building located at 700 Braddock Avenue at the Turtle Creek Project Site.

"**Business Continuity Plan**" means a detailed plan of the Borrower's systems and strategies in place to prevent or rapidly recover from a significant disruption to operations or other material events, to include such matters as: (a) succession plans for key management positions at the Borrower Entities; (b) resiliency and redundancy plans for information technology and intellectual property; and (c) emergency management plans and procedures.

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

"**CapEx Budget**" means the budget in the form of the CapEx Budget attached hereto as Exhibit U, as such budget may be replaced from time to time upon written mutual agreement by the Borrower and the Collateral Agent in their respective sole discretion.

"**Capital Expenditures**" means all expenditures that should be capitalized in accordance with the Designated Standards.

"**Capital Lease**" means, for any Person, any lease of (or other agreement conveying the right to use) any property of such Person that would be required, in accordance with the Designated Standards, to be capitalized and accounted for as a capital lease on a balance sheet of such Person.

"**Capital Lease Obligations**" means, with respect to any Person, 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 the Designated Standard, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with the Designated Standard.

"**Cash Equivalents**" means any of the following, to the extent owned by the Borrower or any Borrower Entity, as applicable, free and clear of all Liens (other than Permitted Liens):

(a) direct obligations of the United States (including obligations issued or held in book-entry form on the books of the United States Department of the Treasury) or obligations, the timely payment of principal and interest of which is fully guaranteed by the United States maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(b) obligations, debentures, notes or other evidence of Indebtedness issued or guaranteed by any agency or instrumentality of the United States maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(c) interest-bearing demand or time deposits (including certificates of deposit) that are held in banks with a general obligation rating of not less than "A-" by S&P or the equivalent rating by Moody's, or if not so rated, secured at all times, in the manner and to the extent provided by law, by Collateral described in clause (a) or (b) of this definition, of a market value of no less than the amount of moneys so invested maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(d) commercial paper rated (on the date of acquisition thereof) at least "A-1" or "P-1" or equivalent by S&P or Moody's, respectively (or an equivalent rating by another nationally recognized credit rating agency of similar standing if neither of such corporations is then in the business of rating commercial paper), maturing not more than ninety (90) days from the date of creation thereof;

(e) money market funds, so long as such funds are rated "Aaa" by Moody's and "AAA" by S&P; and

(f) any Advances, loans or extensions of credit or any stock, bonds, notes, debentures or other securities as DOE may from time to time approve.

"**Cash Flow Available for Debt Service**" means for any period, the sum determined in accordance with the Borrower's Designated Standard for such period of Project revenue (excluding non-cash items and other extraordinary revenues, but including business interruption insurance received during such period for an event that occurred during such period) received during such period, *minus* (a) cash operating and maintenance expenses; (b) taxes paid with cash; (c) Capital Expenditures; and (d) required periodic decommissioning or restoration contributions paid or payable as required under the Financing Documents.

"**Categorical Exclusion**" means an action that DOE has determined does not significantly affect the quality of the human environment, pursuant to 40 CFR 1501.4.

"**Cerberus**" means Cerberus Capital Management, L.P. and its Affiliates, and/or certain funds, accounts or clients managed, advised or sub-advised by Cerberus Capital Management, L.P. or its Affiliates (in each case, together with their respective successors and assigns, as the context may require.

"**Cerberus Collateral Agent**" means CCM Denali Debt Holdings, LP.

"**Cerberus Credit Agreement**" means the Credit and Guaranty Agreement, dated as of June 21, 2024, by and among the Borrower, Guarantors (as defined in the Cerberus Credit Agreement) and Cerberus Collateral Agent as administrative agent and the collateral agent,

as amended, restated, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the Intercreditor Agreement.

"**Cerberus Equity Instruments**" has the meaning given to the term "Equity Instruments" as defined in the Cerberus Credit Agreement.

"**Cerberus Financing Documents**" has the meaning given to the term "Credit Documents" in the Cerberus Credit Agreement, as amended, restated, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the Intercreditor Agreement.

"**Cerberus Loan**" means each Cerberus Revolving Loan and Cerberus Term Loan, collectively.

"**Cerberus Revolving Loan**" has the meaning given to the term "Revolving Loan" in the Cerberus Credit Agreement.

"**Cerberus Term Loan**" means has the meaning given to the term "Term Loan" in the Cerberus Credit Agreement.

"**Certificate Specifying Authorized Borrower Officials**" has the meaning given to such term in the FFB Note Purchase Agreement.

"**CFIUS**" means the Committee on Foreign Investment in the United States.

"**CFIUS Notified Transaction**" has the meaning given to such term in Section 5.01(f) (*CFIUS*).

"**Change of Control**" means: (a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder of beneficial ownership of more than twenty five percent (25%) of the aggregate outstanding voting or economic power of the Equity Interests of Borrower; (b) during any period of two consecutive years, individuals who at the beginning of such period constituted the board of directors of Borrower (together with any new directors whose election by such board of directors or whose nomination for election by the shareholders of Borrower (or its direct or indirect ultimate parent holding company) was approved by a vote of at least a majority of the directors of Borrower then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the board of directors of Borrower; (c) Borrower shall cease to own and control, beneficially and of record, directly or indirectly, one hundred percent (100%) of the issued and outstanding Equity Interests of each of its Subsidiaries, except where such failure occurs as a result of a transaction or circumstance expressly permitted by the Financing Documents; or (d) a "change of control", "fundamental change" or any comparable term or provision under or with respect to (i) any of the Equity Interests of any Borrower Entity or any of its Subsidiaries or (ii) Indebtedness of any Borrower Entity or any of its Subsidiaries the commitments or principal amount of which exceeds one million Dollars ($1,000,000); *provided*, that any transaction or series of transactions under the Cerberus Financing Documents that results in a "change of control", "fundamental change" or any comparable term or provision shall not give rise to a Change of Control under this clause (d) solely as a result of such transaction or series of transactions.

"**Change Order**" means any change order or variation order, amendment, supplement or modification in respect of any Construction Contract.

"**Closing Certificate**" has the meaning given to such term in Section 5.01(i) (*Execution Date Certificates*).

"**Code**" means the United States Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all real and personal property and all IP Collateral of all Borrower Entities, in each case, which is subject, from time to time, to any Lien granted, or purported or intended to have been granted, pursuant to any Security Document.

"**Collateral Agent**" means Citibank, N.A., acting through its Agency and Trust Division in its capacity as collateral agent for the benefit of the Secured Parties (or any successor collateral agent appointed from time to time) pursuant to the Accounts Agreement.

"**Commercial Operations Date**" means the date "Commercial Operations" as such term is defined under Schedule B (*Project Milestone Schedule*) is achieved.

"**Community Benefits Plan**" means a plan, in form and substance satisfactory to DOE, that consider each of the elements set forth in Section (V)(B) of the Community Benefits Plan and Justice40 Initiative Guidance and contemplates a stakeholder engagement process satisfying the terms described in Section (VI) of the Community Benefits Plan and Justice40 Initiative Guidance.

"**Community Benefits Plan and Justice40 Annual Report**" has the meaning given to such term in Section 8.02(c)(iii) (*Labor Reporting; Community Benefits Plan and* Justice40 Initiative Reporting Requirements).

"**Community Benefits Plan and Justice40 Initiative Guidance**" means the General Guidance for DOE Community Benefits Plans, including the General Guidance for Justice40 Implementation by the Department of Energy to the Justice40 Initiative established pursuant to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, issued on January 27, 2021, as amended, modified or supplemented from time to time, and such other requirements for Community Benefits Plan, as defined in such guidance, as may be published by DOE, or notified in writing by DOE to the Borrower, from time to time.

"**Compliance Certificate**" has the meaning given to such term in Section 8.01(c) (*Compliance Certificates*).

"**Compliance Consultant**" has the meaning given to such term in Section 5.01(z)(i) (*Accounting Controls*).

"**Comptroller General**" means Comptroller General of the United States.

"**Consolidated EBITDA**" means, for any period, an amount determined for the Borrower and its Subsidiaries on a consolidated basis equal to:

(a) Consolidated Net Income,

plus

(b) the sum, without duplication and to the extent included in the calculation of Consolidated Net Income for such period, of the following:

(i) Consolidated Interest Expense,

(ii) provisions for taxes based on income, profits or capital, including federal, state, franchise, excise, property and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest with respect thereto, and state taxes in lieu of business fees and payroll taxes,

(iii) total depreciation expense,

(iv) total amortization expense,

(v) non-cash expenses reducing Consolidated Net Income that do not represent a cash item in such period or any future period, including, without limitation, any non-cash expense relating to the vesting of warrants and any stock option and other equity-based compensation expenses (including restricted stock awards),

(vi) non-recurring expenses reducing Consolidated Net Income that have been approved in writing by the DOE in its reasonable discretion,

(vii) losses arising from the settlement of any Hedging Transactions entered into pursuant to a Permitted Hedging Agreement or attributable to the movement in mark-to-market valuation of the same

minus

(c) the sum, without duplication and to the extent included in the calculation of Consolidated Net Income for such period, of the following:

(i) interest income,

(ii) non-cash income or gains that do not represent a cash item in such period or any future period, and

(iii) gains arising from the settlement of any Hedging Transactions entered into pursuant to a Permitted Hedging Agreement or attributable to the movement in mark-to-market valuation of the same.

"**Consolidated Interest Expense**" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest (including any Aggregate Capitalized Interest)) of the Borrower and its wholly-owned Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit.

"**Consolidated Net Income**" means, for any period, (a) the net income (or loss) of the Borrower and its Subsidiaries (provided that for purposes of including the value of any Section 45X Tax Credits, only net cash amounts received during such period from the monetization of any such Section 45X Tax Credits pursuant to a Permitted Tax Credit Transaction shall be included in this definition of Consolidated Net Income) on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (to the extent included in net income (or loss) for such period) (b) the sum of (i) the income (or loss) of any Person (other than a wholly-owned Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest except to the extent that any such income is actually received in cash by the Borrower or such Subsidiary by reason of dividends or similar distributions during such period, plus (ii) the income of any Subsidiary of the Borrower (other than a Borrower Entity) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, plus (iii) any gains or losses attributable to Dispositions (to the extent expressly permitted hereunder) or returned surplus assets of any Pension Plan.

"**Consolidated Revenue**" means, for any period, the revenue of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"**Construction Budget**" means the initial Construction Budget, as updated, amended or supplemented from time to time pursuant to the terms hereof.

"**Construction Change**" has the meaning given to such term in Section 9.07(a) (*Approved Construction Changes; Project Milestone Schedule; Budgets*).

"**Construction Contract**" means each of:

(a) that certain construction contract between Hi-Power, LLC and Landau Building Company dated February 3, 2022;

(b) the Engineering Contracts;

(c) the Construction Management Contracts;

(d) the Equipment Supply Contracts;

(e) any other contracts, agreements and other documents, including all material sub-contracts and all related guarantees or other credit support instruments, necessary or appropriate for Project Construction;

(f) to the extent applicable, one (1) or more construction interface contracts executed by material contractors governing the interface of construction activities on the Project Sites and corresponding risk/liability allocation; and

(g) any other document designated as a Construction Contract by the Borrower and DOE.

"**Construction Contractor**" means any party to any Construction Contract, excluding the Borrower.

"**Construction Management Contract**" means a construction management agreement to be entered into between the Construction Management Contractor and the Borrower pursuant to which the Construction Management Contractor agrees to provide construction management services to the Borrower to coordinate all construction activities in accordance with the terms of the Construction Contracts, Required Approvals, Applicable Law and Prudent Industry Practice.

"**Construction Management Contractor**" means any party to any Construction Management Contract, excluding the Borrower.

"**Construction Plan**" means a plan (written and graphic) to be provided by the Borrower in form and substance satisfactory to DOE, for performance of the design, construction, installation and other work and services of the development of the Project.

"**Construction Progress Report**" means a monthly summary construction report, certified by the Borrower and the Independent Engineer as correct and not misleading in any material respect, which shall include:

(a) a detailed assessment of the Project's performance in comparison with the Construction Budget and Project Milestone Schedule, in each case, then in effect for such period, including:

(i) basic data relating to construction of the Project;

(ii) a description and explanation of any Event of Loss, Adverse Proceedings or other material disputes between the Borrower and any Person; and

(iii) any material non-compliance with any Required Approval then in effect;

(b) an updated Project Milestone Schedule and an updated Construction Budget, reflecting any Approved Construction Changes (or certification that no changes or updates are then required);

(c) a statement that each Line is on schedule to achieve: (i) the Line Commercial Operation Date by the Scheduled Line Commercial Operation Date for such Line; and (ii) the Project Completion Date by the Scheduled Project Completion Date; and

(d) a statement that the aggregate amount expended for each Punch List Item does not exceed the aggregate amount budgeted for such cost in the Construction Budget, except for Approved Construction Changes.

"**Contest Claim**" means any Tax or any Lien or other claim or payment of any nature.

"**Contingent Obligations**" means, as to any Person, any obligation of such Person with respect to any Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, as a guarantee or otherwise:

(a) for the purchase, payment or discharge of any such primary obligation;

(b) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, including the obligation to make, take or pay or similar payments;

(c) to advance or supply funds;

(d) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor;

(e) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or

(f) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof, including with respect to letter of credit obligations, swap agreements, foreign exchange contracts and other similar agreements (including agreements relating to derivative instruments),

provided that: (i) the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the Ordinary Course of Business; and (ii) the amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**" means the power, directly or indirectly, to direct or cause the direction of the management or business or policies of a Person (whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise); and the words "Controlling," "Controlled," and similar constructions shall have corresponding meanings.

"**Controlled Affiliate**" means, as applied to any Person, any Affiliate that is Controlled by such Person.

"**Convertible Note Maturity Date**" means, with respect to any Convertible Note, the earliest of the maturity date (or equivalent term) and the date on which any such Convertible Note may be redeemed, repurchased, converted, or exchanged in satisfaction of the obligations thereof, in each case, other than any such date that the Borrower (at its option) is expressly permitted to satisfy its obligations thereunder solely by the issuance of the Borrower's common stock.

"**Convertible Notes**" means: (a) the convertible promissory notes issued by the Borrower pursuant to that certain Indenture, dated as of April 7, 2022, by and between the Borrower, as issuer, and Wilmington Trust, National Association, as trustee; (b) the convertible promissory notes issued by the Borrower pursuant to that certain Indenture, dated as of May 25, 2023, by and between the Borrower, as issuer, and Wilmington Trust, National Association, as trustee; (c) the convertible promissory notes made by the Borrower in favor of Wood River Capital, LLC, and issued pursuant to the Koch Indenture, such Koch Indenture as contemplated by the terms of that certain Investment Agreement dated as of July 6, 2021 between the Borrower and Spring Creek Capital, LLC, an affiliate of Wood River Capital, LLC, both wholly-owned, indirect subsidiaries of Koch Industries, Inc., as such convertible promissory notes may be reissued, divided and increased, any increases limited to the addition of interest "paid in kind" under the terms of the Koch Indenture (as may be refinanced or replaced in accordance with this Agreement, collectively, the "**Koch Convertible Notes**"); and (d) convertible promissory notes made by the Borrower in favor of Great American Insurance Company, Denman Street LLC, John B. Barding Irrevocable Children's Trust, Ardsley Partners Renewable Energy Fund, L.P., CCI SPV III, LP and AE Convert, LLC, and issued pursuant to the AFG Indenture, such AFG Indenture as contemplated by the terms of that certain Investment Agreement dated as of January 18, 2023 between the Borrower and the purchasers party thereto, as such convertible promissory notes may be reissued, divided and increased, any increases limited to the addition of interest "paid in kind" under the AFG Indenture, in each case, refinanced or replaced in accordance with this Agreement.

"**Convertible Notes Refinancing Plan**" means a plan to be provided by the Borrower in form and substance satisfactory to DOE, which will demonstrate the Borrower's plan, assumptions and conduct, in a manner consistent with this Agreement, to refinance, extend or replace the Convertible Notes by the dates and in the manner set forth therein.

"**Copyrights**" means any and all: (a) copyright rights in any work subject to copyright laws of the United States or any other jurisdiction, whether as author, assignee, transferee or otherwise, including Mask Works (as defined under 17 U.S.C. § 901 of the U.S. Copyright Act) (in each case, whether registered or unregistered); (b) registrations and applications for registration of any such copyrights, including

registrations, extensions, renewals recordings, supplemental registrations and pending applications for registration in the United States Copyright Office or any foreign equivalent office; and (c) other Copyrights as described in any IP Security Agreement (if applicable).

"**COSO**" means the Committee of Sponsoring Organizations of the Treadway Commission.

"**Cost of Goods Sold**" has the meaning given to such term in the Accounts Agreement.

"**Cost Overrun Equity Contributions**" means, as of any Advance Date, the deposit of immediately available funds in Dollars, related to a subscription of Equity Interests in the Borrower, in an amount equal to all Cost Overruns incurred or expected to be incurred as of such Advance Date (whether or not in connection with the Line being constructed under the Relevant Tranche).

"**Cost Overrun**" means, for any period, the aggregate actual Pre-Completion Costs in excess of Scheduled Pre-Completion Costs for such period (after giving effect to reallocations of line items and Budgeted Contingencies in the Construction Budget and, solely to the extent and for such periods as set forth in the Financing Documents, application of the Debt Service Reserve Account) excluding any costs incurred and paid for prior to the start date of the Construction Budget, including: (a) any liquidated damages payable by the Borrower under any Project Document during such period; (b) all debt service and other costs and expenses under the Financing Documents for such period; (c) O&M Expense Shortfalls for such period; and (d) all other costs, expenses and liabilities incurred during such period, as a result of any delay in achieving Project Completion, in each case net of any revenues generated and received during such period in excess of the amount of revenues projected in the Base Case Financial Model for such period.

"**CPA Goods**" means any equipment, materials or commodities procured, contracted or obtained for the Project, the cost of which has been or is projected to be paid or reimbursed with proceeds of any Advance, and that may be transported by ocean vessel.

"**Credit Subsidy Cost**" means the "cost of a loan guarantee," as defined in Section 502(5)(C) of FCRA, as amended.

"**Currency of Denomination**" has the meaning given to such term in Section 11.06 (*Judgment Currency*).

"**Customer Warranty/LDs Account**" has the meaning given to such term in the Accounts Agreement.

"**Data Protection Laws**" means any and all foreign or domestic (including U.S. federal, state and local) Applicable Laws relating to the privacy, security, notification of breaches, Processing of any data or information that identifies or can be used to identify an individual, household or device, whether directly or indirectly, in each case, in any manner applicable to any Borrower Entity or any of its Subsidiaries.

"**Davis-Bacon Act**" means Subchapter IV of Chapter 31 of Part A of Subtitle II of Title 40 of the United States Code, including and as implemented by the regulations set forth in Parts 1, 3 and 5 of title 29 of the Code of Federal Regulations.

"**Davis-Bacon Act Covered Contract**" means any contract, agreement or other arrangement for the construction, alteration or repair (within the meaning of Section 276a of the Davis-Bacon Act and 29 C.F.R. 5.2) of all or any portion of the Project.

"**Davis-Bacon Act Requirements**" means the requirement that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by the Guaranteed Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, and all regulations related thereto, including those set forth in 29 CFR 5.5, and all notice, reporting and other obligations related thereto as required by DOE, including the obligations under Section 7.18 (*Davis-Bacon Act*) and the inclusion of the provisions in Exhibit B (*Davis-Bacon Act Contract Provisions*) and the appropriate wage determination(s) of the Secretary of Labor in each Davis-Bacon Act Covered Contract.

"**DBA Compliance Matter**" means any deviation from compliance with the applicable Davis-Bacon Act Requirements.

"**DBA Compliance Matter Contractor**" means the DBA Contract Party that is party to the Davis-Bacon Act Covered Contract giving rise to the DBA Compliance Matter.

"**DBA Contract Party**" means any contractor, subcontractor (including any lower tier subcontractor) or other Person (other than any Borrower Entity) that is party to a Davis-Bacon Act Covered Contract.

"**Debarment Regulations**" means all of the following: (a) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400 – 9.409; and (b) the Government-wide Debarment and Suspension (Non-Procurement) regulations (Common Rule), 2 C.F.R. 200.214 implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 901.

"**Debt Service**" means, with respect to any period, the sum of: (a) principal, interest, fees and other amounts paid or to be paid under the Financing Documents; and (b) all other payments made or to be made with respect to other Indebtedness for Borrowed Money of the Borrower.

"**Debt Service Reserve Account**" has the meaning given to such term in the Accounts Agreement.

"**Debt Service Reserve Required Balance**" has the meaning given to such term in the Accounts Agreement.

"**Debt Sizing Parameters**" has the meaning as set out in Section 2.06(a) (*Determination of Advance Amounts*).

"**Default**" means any condition, event or circumstance that, with the giving of notice, the lapse of time or both, would become an Event of Default.

"**Designated Standard**" means:

(a) with respect to the Borrower, GAAP or IFRS (*provided* that unless such standards are GAAP, any Financial Statements prepared in accordance therewith shall include a reconciliation to GAAP, certified by the Independent Auditor); and

(b) with respect to any Person other than the Borrower, any of GAAP, IFRS or other applicable and appropriate generally accepted accounting principles to which such Person is subject and that may be applicable thereto from time to time.

"**Direct Agreement**" means each direct agreement entered into between a Major Project Participant and the Collateral Agent in respect of each Major Project Document.

"**Disclosed Adverse Proceedings**" means (a) any Adverse Proceeding disclosed in writing to DOE from time to time and (b) each of the following Adverse Proceedings disclosed in writing to DOE: (i) Houck v. Eos Energy Enterprises Inc. et al, Docket No. 2:23-cv-04113 (D.N.J. Aug 01, 2023); and (ii) Richard Delman v. Bryant R. Riley, Docket No. 2023-0293 (Del. Ch. Mar 08, 2023) and, in each case, which DOE has determined (in its discretion) will not prevent the conditions precedent to the Execution Date or the making of an Advance, as applicable, from being satisfied.

"**Disclosure Form to Report Lobbying**" has the meaning given to such term in Section 5.01(hh) (*Lobbying Certification*).

"**Disposition**" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license, sub-license or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Borrower Entity's or any Subsidiary's businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests owned by any Borrower Entity or Subsidiary, and excluding inventory sold or leased in the Ordinary Course of Business. For purposes of clarification, "Disposition" shall include (a) any license or sub-license (as licensor or sub-licensor) of Intellectual Property (other than non-exclusive licenses or sub-licenses granted in the ordinary course of business), (b) the sale or other disposition for value of any contracts, (c) the early termination or modification of any contract resulting in the receipt by any Borrower Entity or Subsidiary of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification), and (d) any sale of merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Borrower Entity or Subsidiary; *provided* that the term "Disposition" shall not include the creation or existence of any Permitted Lien, so long as no ownership is transferred to any party pursuant thereto. The terms "Dispose" and "Disposed of" shall have correlative meanings.

"**Disqualified Capital Stock**" means any Equity Interests issued by any Person that (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is or may become subject to redemption or repurchase by such Person at the option of the holder thereof, in whole or in part or (c) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Equity Interests described in this definition, on or prior to, in the case of clause (a), (b) or (c) above, the date that is ninety-one (91) days after the Maturity Date; provided that the Cerberus Equity Instruments shall not constitute Disqualified Capital Stock.

"**DOE**" has the meaning given to such term in the preamble hereto.

"**DOE Default Interest Rate**" has the meaning given to such term in Section 4.01(d) (*Reimbursement and Other Payment Obligations*).

"**DOE Extraordinary Expenses**" means, in connection with any technical, financial, legal or other difficulty experienced by the Project (e.g. engineering failure or financial workouts) that requires DOE to incur time or expenses (including third party expenses) beyond standard monitoring and administration of the Financing Documents, in accordance with Section 1702(h) of Title XVII, the amounts that DOE determines are required to: (a) reimburse DOE's additional internal administrative costs (including any costs to determine whether an amendment or modification would be required that could constitute a "modification" (as defined in Section 502(9) of FCRA)); and (b) any related fees and expenses of the Secured Party Advisors to the extent not paid directly by on or behalf of the Borrower.

"**DOE Guarantee**" means the guarantee issued by DOE in favor of FFB pursuant to the FFB Note Purchase Agreement.

"**DOE Guarantee Payment**" has the meaning given to such term in Section 4.01(c)(i) (*Reimbursement and Other Payment Obligations*).

"**DOE Representative**" means one or more employee(s) and representative(s) of DOE identified to the Borrower as its point of contact, as such employee(s) may be replaced from time to time by DOE's notice to the Borrower.

"**DOL**" means the United States Department of Labor.

"**Dollars**" or "**USD**" or "**$**" means the lawful currency of the United States.

"**Domestic Subsidiary**" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"**DPA**" means the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018.

"**Drawstop Notice**" has the meaning given to such term in Section 2.03(d) (*Drawstop Notices*).

"**Duquesne Project Site**" means the Real Property on which Line 3 and Line 4 are or are intended to be situated, as further described in Schedule G (*Project Site*), as the same may be updated pursuant to Section 6.15(c) (*Project Sites*).

"**ECF Percentage**" means, with respect to the prepayment (if any) required by Section 3.05(c)(i)(F) (*Mandatory Prepayments*) for any Fiscal Year of the Borrower, a percentage equal to (a) with respect to the amount of Excess Cash Flow (if any) that is equal to or less than one hundred million Dollars ($100,000,000) but greater than zero ($0) for such Fiscal Year, one hundred percent (100%) of such Excess Cash Flow, (b) with respect to the amount of Excess Cash Flow (if any) that is greater than one hundred million Dollars ($100,000,000) and equal to or less than two hundred million Dollars ($200,000,000) for such Fiscal Year, seventy-five percent (75%) of such Excess Cash Flow; (c) with respect to the amount of Excess Cash Flow (if any) that is greater than two hundred million Dollars ($200,000,000) and equal to or less than four hundred million Dollars ($400,000,000) for such Fiscal Year, fifty percent (50%) of such Excess Cash Flow;

and (d) with respect to all amounts of Excess Cash Flow (if any) greater than four hundred million Dollars ($400,000,000) for such Fiscal Year, twenty-five percent (25%) of such Excess Cash Flow.

"**Electronic Certified Payroll System**" means any electronic certified payroll reporting software that is compliant with the certified payroll requirements outlined in 29 CFR 5.5(a)(3)(ii).

"**Electronic Format**" means an unalterable electronic format (including Portable Document Format (.pdf)) with a reproduction of signatures where required or such other format as shall be mutually agreed between the Borrower and DOE.

"**Electronic Signature**" has the meaning given to such term in Section 11.18(b) (*Counterparts; Electronic Signatures*).

"**Eligibility Effective Date**" means December 15, 2021.

"**Eligible Applicant**" has the meaning given to such term in the Applicable Regulations.

"**Eligible Project**" has the meaning given to such term in the Applicable Regulations.

"**Eligible Project Cost Reimbursement Amounts**" means, with respect to any Tranche, proceeds of an Advance under such Tranche reimbursed to the Borrower for Eligible Project Costs for the Relevant Line that have been previously incurred and paid by the Borrower, as evidenced by acceptable invoices.

"**Eligible Project Costs**" means Project Costs that satisfy each of the following conditions: (a) DOE has determined the Project Costs to be "eligible costs" in accordance with Sections 609.2 and 609.10 of the Applicable Regulations; (b) the Project Costs have not been paid and are not expected to be paid any time after the First Advance Date with: (i) any federal grants, assistance, or loans (excluding the Guaranteed Loan); or (ii) other funds guaranteed by the Federal Government; (c) the Project Costs are identified in the Construction Budget; (d) the Project Costs do not constitute Cost Overruns; and (e) the Project Costs were incurred after the Eligibility Effective Date.

"**Emergency**" means an unforeseeable event, circumstance or condition (including as a result of an Event of Loss) that, in the good faith judgment of the Borrower (and subsequently confirmed by the Independent Engineer using information and facts that were available to the Borrower at the time that the applicable mitigation measures were implemented), necessitates the taking of immediate measures to prevent or mitigate: (a) a life threatening situation, safety, environmental or regulatory non-compliance concern, including breach of any Applicable Law; or (b) an event or circumstance not known or reasonably foreseeable prior to the preparation of the Annual Plan.

"**Emergency O&M Expenses**" means those amounts required to be expended in order to prevent or mitigate an Emergency; *provided* that such expenditures are either: (a) payable under an insurance policy; (b) payable by insurance or a warranty provided under any Project Document; or (c) in an amount that does not exceed two million five hundred thousand Dollars ($2,500,000) in any twelve (12) month period.

"**Employee Benefit Plan**" means, collectively: (a) all "employee benefit plans" (as defined in Section 3(3) of ERISA) including any Multiemployer Plans which are or at any time have been maintained or sponsored by any Borrower Entity or ERISA Affiliate or to which any Borrower Entity or ERISA Affiliate has ever made, or been obligated to make, contributions or with respect to which any Borrower Entity or ERISA Affiliate has incurred or is likely to incur any liability or obligation; (b) all Pension Plans; and (c) all Qualified Plans.

"**Engineering Contract**" means:

(a) that certain contract by Hi-Power and RPA Associates dated January 26, 2022; and

(b) each other contract between a Borrower Entity and an engineer and/or designer for engineering and/or design services in connection with the Project or any part thereof.

"**Environmental Claim**" means any and all obligations, liabilities, losses, abatements, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, notices of non-compliance or violation, investigations, proceedings, clean-up, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages) or penalties

relating in any way to any Environmental Law or any Governmental Approval issued under any such Environmental Law, including: (a) any and all Indemnity Claims by any Governmental Authority for enforcement, clean-up, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law; and (b) any and all Indemnity Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances, the violation or alleged violation of any Environmental Law or the violation or alleged violation of any Governmental Approval issued thereunder, or arising from alleged injury or threat of injury to human health, safety or the environment.

"**Environmental Consultant**" means such Person as may be appointed from time to time by DOE to act as environmental consultant in connection with the Project.

"**Environmental Laws**" means any and all foreign, Federal, state, provincial, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Applicable Law (including common law) regulating, relating or imposing liability or standards of conduct concerning: (a) protection of human health or safety (as it relates to exposure to Hazardous Substances), the environment or natural resources; or (b) the presence, Release or threatened Release, generation, use, management, handling, transportation, treatment, storage, or disposal of Hazardous Substances, in the case of each of clauses (a) and (b), as now or may at any time hereafter be in effect.

"**Equipment**" shall have the meaning given to such term in the Security Agreement.

"**Equipment Supply Contracts**" means each supply contract relating to the supply of any goods to the Project and having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, less than five million Dollars ($5,000,000).

"**Equity Contributions**" means the Base Equity Contributions, Cost Overrun Equity Contributions or Additional Equity Contributions, as applicable.

"**Equity Interests**" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests, including partnership interests, limited liability interests and trust beneficial interests, in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing and all rights (including, but not limited to, voting rights) and interests with respect to or derived from such equity interest; provided that any Indebtedness with conversion rights into capital stock of any Person shall not be deemed to be Equity Interests.

"**Equity Owner**" means, with respect to any Person, another Person holding Equity Interests in such first Person.

"**ERISA**" means the United States 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, trade or business (whether or not incorporated) that would be deemed at any relevant time to be: (a) a single employer with a Borrower Entity under Section 414(b), (c), (m) or (o) of the Code; or (b) under common control with a Borrower Entity under Section 4001 of ERISA.

"**ERISA Event**" means:

(a) a reportable event as defined in Section 4043 of ERISA with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event. Notwithstanding the foregoing, the existence of a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA with respect to any Pension Plan shall be a reportable event for the purposes of this clause (a) regardless of the issuance of any waiver;

(b) a withdrawal by any Borrower Entity or ERISA Affiliate from a Pension Plan or the termination of any Pension Plan resulting in liability under Section 4063 or 4064 of ERISA;

(c) the withdrawal of any Borrower Entity or ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4201, 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any liability with respect to such withdrawal, or the receipt by any Borrower Entity or ERISA Affiliate of notice from any Multiemployer Plan that it is insolvent within the meaning of Section 4245 of ERISA;

(d) the filing of a notice of intent to terminate any Pension Plan, or the treatment of a plan amendment as a termination, or the termination of any Pension Plan under Section 4041 or 4042 of ERISA, or the termination of any Multiemployer Plan under Section 4041A of ERISA; or the commencement of proceedings by the PBGC to terminate, or to appoint a trustee to administer, a Pension Plan or Multiemployer Plan;

(e) the present value of all non-forfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of an employee pension benefit plan subject to Title IV of ERISA) (in the opinion of DOE) materially exceeding the fair market value of the Pension Plan's assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan;

(f) the imposition of liability on any Borrower Entity or ERISA Affiliate pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

(g) the failure by the Borrower or an ERISA Affiliate to make any required contribution under Section 412 or 430 of the Code to an Employee Benefit Plan, the failure to meet the minimum funding standard of Section 302 of ERISA or Section 412 of the Code with respect to any Pension Plan (whether or not waived), the failure to make by its due date a required installment under Section 303(j) of ERISA or Section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan under Section 304 of ERISA or Section 431 of the Code;

(h) an event or condition that would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan;

(i) the imposition of any liability under Title I or Title IV of ERISA (other than PBGC premiums due but not delinquent under Section 4007 of ERISA) upon any Borrower Entity or ERISA Affiliate;

(j) an application for a funding waiver under Section 302(c) of ERISA or Section 412(c) of the Code with respect to any Pension Plan;

(k) the imposition of any lien on any of the rights, properties or assets of any Borrower Entity or ERISA Affiliate, or the posting of a bond or other security by such entities, in either case pursuant to Title I or IV of ERISA or to Section 412, 430, or 436 of the Code;

(l) the making of any amendment to any Pension Plan that could directly result in the imposition of a lien or the posting of a bond or other security;

(m) the occurrence of a non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA);

(n) the determination that an Employee Benefit Plan's qualification or tax-exempt status under Section 401(a) of the Code has been or could be revoked;

(o) a determination that any Employee Benefit Plan is, or is expected to be, in "at risk" status (within the meaning of Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code);

(p) the receipt by any Borrower Entity or ERISA Affiliate of any notice of the imposition of withdrawal liability or of a determination that a Multiemployer Plan is, or is expected to be, in "endangered" or "critical" status within the meaning of Section 305 of ERISA or Section 432 of the Code; or

(q) the occurrence of any Foreign Plan Event.

"**Event of Default**" has the meaning given to such term in Section 10.01 (*Events of Default*).

"**Event of Force Majeure**" means an event or circumstance beyond the reasonable control of, and not the result of the fault or negligence of, the Borrower, and that could not have been prevented by the exercise of reasonable diligence by the Borrower, including any act of God, fire, flood, severe weather, epidemic, equipment failure, failure or delay in issuance of Governmental Approvals (but which Governmental Approval the Borrower must be using commercially reasonable efforts to obtain) or other acts or inaction of Governmental Authorities (but which act or inaction the Borrower must be using commercially reasonable efforts to contest or reverse), change in Applicable Law, default by suppliers or contractors, quarantine restriction, explosion, sabotage, strike or other material labor disruption, act of war, act or threat of terrorism or riot or civil commotion.

"**Event of Loss**" means any condemnation, expropriation or taking (including by any Governmental Authority) of any portion of the Project or Collateral, or any other event that causes any portion of the Project or the Collateral to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title (or defect therein) or any damage, destruction or loss of such property.

"**Excess Advance Amount**" means, on any date of determination with respect to any Advance under the FFB Note, an amount equal to the total proceeds of such Advance that were: (a) applied by the Borrower to reimburse itself for applicable Project Costs incurred and paid but which did not constitute Eligible Project Costs relating to the FFB Note for which such Advance was sought; or (b) not applied by the Borrower to pay Eligible Project Costs incurred and invoiced relating to the FFB Note for which such Advance was sought.

"**Excess Cash Flow**" means, with respect to any Fiscal Year of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP the result of, if positive:

(a) Consolidated EBITDA,

minus

(b) the sum, without duplication, of the following:

(i) all cash Consolidated Interest Expenses (including, without limitation, all fees and expenses) added back in the calculation of Consolidated EBITDA during such period;

(ii) all principal payments of Indebtedness of the Borrower or any of its Subsidiaries during such period (other than any voluntary prepayments of the Guaranteed Loans hereunder and any voluntary prepayments of the Cerberus Loan under the Cerberus Credit Agreement), in each case of the foregoing, to the extent permitted hereunder and not financed by the issuance of Indebtedness or Equity Interests not otherwise permitted hereunder; and

(iii) the amount of taxes paid in cash by the Borrower or its Subsidiaries and added back in the calculation of Consolidated EBITDA during such period. Notwithstanding the foregoing, Excess Cash Flow shall not be less than zero Dollars ($0).

"**Excess Guaranteed Loan Amount**" means, with respect to each Tranche, the amount by which the aggregate principal amount of all Advances made under the FFB Note applicable to such Tranche exceeds the applicable Maximum Tranche Commitment Amount or the aggregate amount of Advances otherwise is inconsistent with the Debt Sizing Parameters.

"**Execution Date**" means the date on which all of the conditions precedent set out in Section 5.01 (*Conditions Precedent to the Execution Date*) have been satisfied or waived and the Guaranteed Loan is fully executed and delivered by all parties thereto.

"**Execution Date Base Case Financial Model**" has the meaning given to such term in Section 5.01(k) (*Base Case Financial Model*).

"**Extraordinary Amount**" means any cash or other amounts or receipts received by, or paid to, on behalf of or on account of the Borrower or, to the extent received in connection with the Project, any Borrower Entity or any of its Subsidiaries, not in the Ordinary

Course of Business (and not consisting of proceeds and other amounts required to be applied as a mandatory prepayment under Section 3.05(c)(i)(B) (*Mandatory Prepayments*), Section 3.05(c)(i)(C) (*Mandatory Prepayments*), Section 3.05(c)(i)(D) (*Mandatory Prepayments*), Section 3.05(c)(i)(E) (*Mandatory Prepayments*), Section 3.05(c)(i)(F) (*Mandatory Prepayments*), Section 3.05(c)(i)(K) (*Mandatory Prepayments*) and Section 3.05(c)(vi) (*Mandatory Prepayments*)), including: (a) indemnification payments; (b) any cash or other receipts in the nature of indemnification payments under or in respect of any acquisition documentation or any related documentation; (c) any judgment or settlement proceeds, or other consideration of any kind received in connection with any cause of action or proceeding or any legal or equitable claim after payment of all out of pocket fees and expenses actually paid or payable by any Borrower Entity or any of its Subsidiaries in connection with such judgments, settlements, or other proceedings resolution; (d) pension plan reversions; (e) any purchase price adjustment received in connection with any purchase agreement (excluding, however, any working capital adjustments made pursuant to such purchase agreement), and (f) cash received by or paid to or for the account of any Borrower Entity or any of its Subsidiaries in respect of cash receipts with respect to indemnity payments, payments from escrowed amounts, litigation proceeds, and other extraordinary receipts; provided that cash received in the form of a grant extended by a Governmental Authority or proceeds received from any issuance of Equity Interests in connection with any transaction permitted by Section 9.23 (*Certain Payments*) shall not constitute "Extraordinary Amount".

"**Facility Fee**" means one million six hundred sixty-four thousand nine hundred eighty-two Dollars ($1,664,982).

"**FCRA**" means the Federal Credit Reform Act of 1990, P.L. 101-508, 104 Stat. 1388-609 (1990), as amended by P.L. 105-33, 111 Stat. 692 (1997).

"**Federal Funding**" means any funds obtained from the United States or any agency or instrumentality thereof, including funding under any other loan program, but excluding allowable Federal tax benefits.

"**First Priority Lien**" means a legal claim or right against a property that takes precedence over all other liens or claims, and in the event of a default or foreclosure, the holder of the first priority lien is entitled to be paid before any other creditor or lienholder.

"**FFB**" means the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of Treasury.

"**FFB Borrower's Instruments**" means the "Borrower's Instruments" as defined in Section 3.2 of the FFB Note Purchase Agreement.

"**FFB Document**" means each of:

(a) the FFB Program Financing Agreement;

(b) the FFB Note Purchase Agreement;

(c) the DOE Guarantee;

(d) the FFB Note;

(e) the FFB Borrower's Instruments;

(f) the FFB Secretary's Instruments; and

(g) any other documents, certificates and instruments required in connection with the foregoing.

"**FFB Note**" means each promissory note to be issued by the Borrower in favor of FFB in accordance with other FFB Documents to induce FFB to advance funds thereunder to the Borrower, as such promissory note may be amended, supplemented, substituted and restated from time to time in accordance with its terms.

"**FFB Note Installment**" has the meaning given to such term in Section 3.02(b) (*Payments*).

"**FFB Note Obligations**" means, collectively, the unpaid principal of and interest on Advances made under the FFB Note, the FFB Note Reimbursement Obligations and all other obligations and liabilities of the Borrower (including interest accruing at the then applicable rate provided in the FFB Documents after maturity of the relevant Advances and Reimbursement Obligations and Post-Petition Interest) to DOE or FFB or any subsequent holder or holders of the FFB Note (on any portion thereof), whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of or in connection with this Agreement, the FFB Note, the FFB Note Purchase Agreement, the FFB Program Financing Agreement, the Security Documents, or any other document made, delivered or given in connection with any of the foregoing, in each case, whether on account of principal, interest, charges, expenses, fees, attorneys' or other Secured Party Advisors' fees and disbursements, reimbursement obligations, prepayment premiums, indemnities, costs or otherwise (including all fees and Advances made with respect to the FFB Note of DOE or FFB or any subsequent holder or holders of the FFB Note (or any portion thereof) that are required to be paid by the Borrower pursuant to the terms of any of the foregoing agreements).

"**FFB Note Purchase Agreement**" means the FFB Note Purchase Agreement entered into between the Borrower, the Secretary of Energy and FFB prior to the Execution Date.

"**FFB Note Reimbursement Obligations**" means any Reimbursement Obligations of the Borrower to DOE arising under, out of, pursuant to or in connection with the FFB Note.

"**FFB Program Financing Agreement**" means the Program Financing Agreement, dated as of September 16, 2009, between FFB and the Secretary of Energy.

"**FFB Secretary's Instruments**" means the "Secretary's Instruments" as defined in Section 3.3 of the FFB Note Purchase Agreement.

"**Final Construction Completion**" has the meaning given to such term in Schedule B (*Project Milestone Schedule*).

"**Financial Advisor**" means Greengate LLC or such other advisor appointed by DOE.

"**Financial Officer**" means, with respect to any Person, the general manager, any director, the chief financial officer, the controller, the treasurer or any assistant treasurer, any vice president of finance or any assistant vice president of finance or any other vice president or assistant vice president with significant responsibility for the financial affairs of such Person.

"**Financial Statements**" means, with respect to any Person, for any period, the balance sheet of such Person as at the end of such period and the related statements of income, stockholders' equity and cash flows for such period and for the period from the beginning of the then-current Fiscal Year to the end of such period, together with all notes thereto, with comparable figures for the corresponding period of the previous Fiscal Year, each prepared (except where otherwise noted herein) in accordance with the Designated Standard.

"**Financing Document**" means each of:

(a) this Agreement;

(b) each FFB Document;

(c) each Security Document;

(d) the Intercreditor Agreement;

(e) each Acceptable Letter of Credit, if any, delivered pursuant to any Financing Document;

(f) each agreement between any Secured Party and any holder of Equity Interests in the Borrower or any Borrower Entity regarding certain obligations, conditions, representations or covenants in relation to the Borrower, such Borrower Entity or the Project, as applicable; and

(g) each other certificate, document, instrument or agreement executed and delivered by any Borrower Entity for the benefit of any Secured Party in connection with any of the foregoing.

"**Financing Document Amounts**" means any amounts payable or allegedly payable by the Borrower to FFB under any provision of any Financing Document, other than Section 4.01 (*Reimbursement and Other Payment Obligations*).

"**First Advance**" means, with respect to each Tranche, the first Advance of the Guaranteed Loan advance under such Tranche occurring on the relevant First Advance Date.

"**First Advance Date**" means, with respect to each Tranche, the date on which the first Advance of the Guaranteed Loan under such Tranche has been made in accordance with this Agreement.

"**First Advance Longstop Date**" means, with respect to:

(a) Tranche 1, September 15, 2025;

(b) Tranche 2, September 15, 2026;

(c) Tranche 3, December 15, 2026; and

(d) Tranche 4, December 15, 2026.

"**First Interest Payment Date**" means March 15, 2028.

"**First Principal Payment Date**" means March 15, 2028.

"**First Priority**" means, with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien:

(a) has been validly created and perfected under all Applicable Law;

(b) is the only Lien to which such Collateral is subject, other than any Permitted Lien; and

(c) is the most senior Lien on such Collateral other than Permitted Liens.

"**Fiscal Quarter**" means the three (3)-month periods ending on March 31, June 30, September 30 and December 31 of each Fiscal Year.

"**Fiscal Year**" means, with respect to:

(a) the Borrower, the period beginning on January 1 and ending on December 31; and

(b) any other Person, such Person's financial year.

"**Fitch**" means Fitch Ratings Ltd.

"**Foreign Collateral Documents**" means any pledge, security or other collateral agreement pursuant to which the Equity Interests issued by, or the assets owned by, a Foreign Subsidiary are made subject to a Lien in favor of DOE or the Collateral Agent for the benefit of DOE and is governed by the laws of the jurisdiction in which such Foreign Subsidiary is formed or where their assets are located, all of which shall be in form and substance satisfactory to DOE in its sole discretion.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Foreign Collateral Documents**" means any pledge, security or other collateral agreement pursuant to which the Equity Interests issued by, or the assets owned by, a Foreign Subsidiary are made subject to a Lien in favor of the Collateral Agent for the benefit of DOE and is governed by the laws of the jurisdiction in which such Foreign Subsidiary is formed or where their assets are located, all of which shall be in form and substance satisfactory to the Collateral Agent in its sole discretion.

"**Foreign Plan**" means any employee benefit plan, program, policy, arrangement or agreement not subject to ERISA or Section 4975 of the Code, including any defined benefit pension plan maintained, contributed to or sponsored by the Borrower or any of its Subsidiaries for the benefit of employees employed outside the United States, other than any such plan, program, policy, arrangement or agreement that is funded through a trust or funding vehicle maintained exclusively by a Governmental Authority.

"**Foreign Plan Event**" means, with respect to any Foreign Plan:

(a) the existence of unfunded liabilities in excess of the amount permitted under any Applicable Law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority;

(b) the failure to make the required contributions or payments, under any Applicable Law, on or before the due date for such contributions or payments;

(c) the receipt of a notice from a Governmental Authority relating to the intention to terminate any such Foreign Plan, or alleging the insolvency of any such Foreign Plan;

(d) the incurrence of liability by the Borrower or any of its Subsidiaries under Applicable Law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein; or

(e) the occurrence of any transaction that is prohibited under any Applicable Law and that would reasonably be expected to result in the incurrence of any liability to the Borrower or any of its Subsidiaries, or the imposition on the Borrower or any of its Subsidiaries of any fine, excise tax or penalty resulting from any non-compliance with any Applicable Law.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary.

"**Form of Advance Request**" has the meaning given to such term in Section 2.03(a) (*Advance Requests*).

"**Fund Parties**" means, with respect to an investment fund, such fund's general partner, managing member, investment manager and/or fund administrator, as applicable.

"**GAAP**" means generally accepted accounting principles in the United States as in effect from time to time.

"**Governmental Approval**" means any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance or any other action of a similar nature, of or by a Governmental Authority, including any of the foregoing that are or may be deemed given or withheld by failure to act within a specified time period.

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

"**Governmental Judgment**" means, with respect to any Person, any judgment, order, decision or decree or any action of a similar nature, of or by a Governmental Authority having jurisdiction over such Person or any of its properties.

"**Guarantee**" means, as to any Person, obligations, contingent or otherwise (including a Contingent Obligation), guaranteeing or having the economic effect of guaranteeing any Indebtedness of another Person in any manner, whether directly or indirectly, and including any obligation:

(a) to purchase or pay any Indebtedness or to purchase or provide security for the payment of any Indebtedness;

(b) to purchase or lease property, securities or services for the purpose of assuring the payment of any Indebtedness;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of any other Person; or

(d) in respect of any letter of credit, letter of guaranty or bond issued to support any obligation or Indebtedness,

except that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business.

"**Guaranteed Loan**" has the meaning given to such term in Section 2.01(a) (*Purchase of the FFB Note*).

"**Guaranteed Loan Commitment Amount**" has the meaning given to "**Maximum Principal Amount**" in each FFB Note, as such amount may be adjusted from time to time in accordance with this Agreement, with the understanding that FFB's commitment to make Advances to the Borrower pursuant to the terms of the FFB Note Purchase Agreement shall not exceed an aggregate amount of two hundred seventy-seven million, four hundred ninety-seven thousand Dollars ($277,497,000).

"**Guarantor**" means each Subsidiary of the Borrower that is a party to this Agreement (as an original signatory or by joinder) or that otherwise executes and delivers a Guarantee.

"**Hazardous Substance**" means any substances, chemicals, materials or wastes defined, listed, classified or regulated as hazardous, toxic or a pollutant or contaminant in, or for which standards are imposed by any Governmental Authority or under, any applicable Environmental Laws, including: (a) any petroleum or petroleum by-products (including gasoline, crude oil or any fraction thereof), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, per and polyfluoroalkyl substances, and polychlorinated biphenyls, noise, odor and vibration; and (b) any other chemical, material or substance of which the import, storage, transport, use, Release or disposal of, or exposure to, is prohibited, limited or otherwise regulated under any Environmental Law.

"**Hedging Agreement**" means any agreement or instrument (including a cap, swap, collar, option, forward purchase agreement or other similar derivative instrument) relating to the hedging of any interest under any Indebtedness, including any foreign currency trading or other speculative transactions.

"**Hedging Transaction**" of any Person means (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of a Hedging Agreement, including any such obligations or liabilities under any Hedging Agreement.

"**Hedging Plan**" means a plan to be provided by the Borrower in form and substance satisfactory to DOE which may include hedging strategies and parameters of the Borrower to protect against market movements in commodity prices and currency exchange risk with respect to the Project, but not for speculative purposes.

"**Historical Financial Statements**" means, as of the Execution Date, the audited Financial Statements of the Borrower Entities for the Fiscal Year ending 2023, and the unaudited quarterly Financial Statements for the preceding four (4) quarters ending the most recent Fiscal Quarter in which audited Financial Statements of the Borrower Entities were filed with the Securities and Exchange Commission.

"**IFRS**" means the International Financial Reporting Standards, adopted by the International Accounting Standards Board, as in effect from time to time.

"**Immaterial Foreign Subsidiary**" means each of (a) Eos Energy Storage India Private Limited, (b) Eos Energy Storage S.R.L. and (c) any other Foreign Subsidiary approved in writing by DOE as an "Immaterial Foreign Subsidiary"; *provided* that the nature of such Foreign Subsidiaries' business and the scope of their assets shall not change materially from what they were on the Execution Date.

"**Indebtedness**" means, with respect to any Person, without duplication:

(a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind;

(b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;

(d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the Ordinary Course of Business and obligations in respect of the funding of plans under ERISA);

(e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed;

(f) all Guarantees by such Person;

(g) all Capital Lease Obligations of such Person;

(h) all obligations, contingent or otherwise (including Contingent Obligations), of such Person as an account party in respect of letters of credit and letters of guaranty or as a purchaser counterparty to a put agreement or such other similar agreement relating to the purchase of preferred stock of any of its Subsidiaries;

(i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances; and

(j) all obligations of such Person to redeem or purchase its preferred stock that are classified as indebtedness under the Designated Standard,

provided that 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 provide that such Person is not liable therefor.

"**Indebtedness for Borrowed Money**" means, as to any Person, without duplication: (a) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of property or services (other than any deferral: (i) in connection with the provision of credit in the Ordinary Course of Business by any trade creditor or utility; or (ii) of any amounts payable under the Project Documents); or (b) the aggregate amount required to be capitalized under any Capital Lease under which such Person is the lessee.

"**Indemnified Liability**" has the meaning given to such term in Section 11.07 (*Indemnification*).

"**Indemnified Party**" has the meaning given to such term in Section 11.07 (*Indemnification*).

"**Indemnity Claims**" has the meaning given to such term in Section 11.07 (*Indemnification*).

"**Independent Auditor**" means Deloitte & Touche LLP or such other firm of independent certified public accountants of nationally recognized standing as may be appointed by the Borrower from time to time with the prior written approval of DOE.

"**Independent Engineer**" means Sargent & Lundy, L.L.C., or such other Person appointed from time to time by DOE to act as technical advisor engineer in connection with the Project.

"**Insolvency Proceeding**" means any one (1) or more of the following under any Applicable Law, in any jurisdiction and whether voluntary or involuntary:

(a) any bankruptcy, insolvency, liquidation, company reorganization, restructuring, controlled management, suspension of payments or scheme of arrangement with respect to the Borrower or any Borrower Entity, including the Bankruptcy Code;

(b) any appointment of a provisional or interim liquidator, receiver, trustee, administrative receiver or other custodian for all or any substantial part of the property of the Borrower or any Borrower Entity;

(c) any notification, resolution or petition for winding up or similar proceeding with respect to any Borrower Entity; or

(d) any issuance of a warrant or attachment, execution or similar process against all or any substantial part of the property of any Borrower Entity.

"**Insurance/Condemnation Reinvestment**" has the meaning given to such term in Section 3.05(c)(i)(B) (*Mandatory Prepayments*).

"**Insurance Consultant**" means Willis Towers Watson, or such other Person appointed from time to time by DOE to act as insurance consultant in connection with the Project.

"**Integrated Schedule and Spending Plan**" has the meaning given to such term in Section 5.01(l)(ii) (*Milestone Schedules*).

"**Intellectual Property**" means any and all rights, priorities and privileges with respect to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including any and all of the following, as they exist anywhere in the world, whether registered or unregistered and including all registrations, issuances and applications therefor (whether or not any such applications are modified, withdrawn, abandoned or resubmitted) and all extensions and renewals thereof:

(a) Patents;

(b) Trademarks;

(c) Copyrights;

(d) Software;

(e) trade secrets and other confidential or proprietary information, including know-how, inventions, processes, procedures, algorithms, Source Code, databases, concepts, ideas, research or development information, techniques, technical information and data, specifications, methods, discoveries, modifications, extensions, and customer and supplier lists, in each case, whether or not reduced to a written or other tangible form (collectively, "**Trade Secrets**");

(f) domain names, registrations and Internet addresses;

(g) design registrations, and rights in databases and data compilations; and

(h) all other intellectual property or industrial property rights and all rights corresponding thereto throughout the world.

"**Intended Prepayment Date**" means the date identified in the Prepayment Election Notice as the particular date on which the Borrower intends to make the prepayment specified therein, which date must be a Business Day and shall not be on a Payment Date or the last day of any Fiscal Quarter.

"**Intercreditor Agreement**" means the Intercreditor Agreement by and between the Secured Parties and Cerberus, to be entered into on or prior to the Execution Date, in form and substance satisfactory to DOE.

"**Intermediate Holdco**" means Eos Energy Enterprises Intermediate Holdings, LLC, a Delaware limited liability company.

"**International Compliance Directives**" means all:

(a) Anti-Corruption Laws; and

(b) Sanctions.

"**Investment**" means, for any Person:

(a) the acquisition (whether for cash, property, services or securities or otherwise) or holding of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of or in any other Person;

(b) the making of any deposit with, or advance, loan or any other extension of credit to, any other Person or any guarantee of, or other Contingent Obligation with respect to, any Indebtedness or other liability of any other Person and (without duplication) any amount committed to be deposited, advanced, lent or extended to, or guaranteed on behalf of, any other Person; and

(c) the acquisition of any similar property, right or interest of or in any other Person.

"**Investment Company Act**" means the United States Investment Company Act of 1940.

"**IP Collateral**" means all: (a) existing and after-acquired rights, title and interests of the Borrower in or to Intellectual Property, including all of the Borrower's rights, title and interests in or to the Project IP, the Project IP Agreements and other licensing agreements or similar arrangements in and to Patents, Copyrights, Trademarks, Trade Secrets or Software; (b) rights to sue or otherwise recover for past, present and future infringements or other violations of the foregoing; and (c) income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect to any of the foregoing, including damages and payments for such infringements and other violations.

"**IP Security Agreement**" means:

(a) each security agreement entered into as of the Execution Date between a Borrower Entity that owns or has rights to Project IP, in favor of the Collateral Agent for the benefit of the Secured Parties; and

(b) each other intellectual property security agreement necessary or appropriate to create or perfect the Secured Parties' Lien in the Intellectual Property owned by, or registered copyrights exclusively licensed to, the Borrower and applied for, registered or issued in the United States.

"**Issuance Proceeds**" means any proceeds from any incurrence or issuance of any Indebtedness (other than Permitted Indebtedness), net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to any Person that is not an Affiliate of any Borrower Entity, including reasonable legal fees and expenses.

"**IT Systems**" has the meaning given to such term in Section 6.41 (*Information Technology; Cyber Security*).

"**Judgment Currency**" has the meaning given to such term in Section 11.06 (*Judgment Currency*).

"**Knowledge**" means, with respect to:

(a) any Borrower Entity, the actual knowledge of any Principal Persons of the Borrower or such Borrower Entity or any knowledge that should have been obtained by any Principal Person of the Borrower or such Borrower Entity upon reasonable investigation and inquiry; and

(b) any other Person, the actual knowledge of any such Person or any knowledge that should have been obtained by such Person upon reasonable investigation and inquiry.

"**KYC Parties**" has the meaning given to such term in Section 5.01(b)(ii) (*KYC Requirements*).

"**Late Charge**" has the meaning given to such term in the FFB Note.

"**Late Charge Rate**" has the meaning given to such term in the FFB Note.

"**Lease**" means any agreement that would be characterized in the Designated Standards as an operating lease.

"**Lender Force Majeure Event**" means any act, event or circumstance that is beyond the control of any Secured Party or such party's respective agents, including any act or provision of any present or future law or regulation of any Governmental Authority (other than FFB or DOE, unless DOE or FFB, as the case may be, is issuing such regulation in compliance with Applicable Law), any act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, strike or other material labor disruption, act of war, act of terrorism, riot, civil commotion, lapse of the statutory authority of the United States Department of the Treasury to raise cash through the issuance of Treasury debt instruments, the unavailability of the Federal Reserve Bank wire, disruption or failure of the Treasury Financial Communications System or other wire or communication facility, closure of the federal government, unforeseen or unscheduled closure or evacuation of such Secured Party's office or any other similar event.

"**Lien**" means, with respect to any asset:

(a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, license, charge or security interest in, on or of such asset;

(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; and

(c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Line**" has the meaning given to such term in Section 2.01 (*Loan Tranches*).

"**Line 1**" has the meaning given to such term in Section 2.01(b)(i) (*Loan Tranches*).

"**Line 2**" has the meaning given to such term in Section 2.01(b)(ii) (*Loan Tranches*).

"**Line 3**" has the meaning given to such term in Section 2.01(b)(iii) (*Loan Tranches*).

"**Line 4**" has the meaning given to such term in Section 2.01(b)(iv) (*Loan Tranches*).

"**Lines 3 and 4 Commencement Date**" means the date that is the earlier of (x) the date on which the Borrower delivers a notice to DOE certifying that it has commenced expending funds for Project Costs for Line 3 and/or Line 4 or (y) the First Advance Date of Tranche 3.

"**Line Commercial Operation**" means, with respect to any Line, the satisfaction of each of the conditions precedent set forth in Part II of Schedule J (*Project Schedule and Technical Definitions*), as determined by DOE in its sole discretion.

"**Line Commercial Operation Date**" means, with respect to each Line, the date on which Line Commercial Operation for such Line occurs as confirmed by DOE.

"**Line Commercial Operation Longstop Date**" means with respect to:

(a) Line 2, January 1, 2027;

(b) Line 3, September 1, 2027; and

(c) Line 4, September 30, 2028.

"**Line Non-Completion Notice**" means a written notice from the Borrower to DOE of the Borrower's decision not to construct or complete Line 3, Line 4 or both.

"**Lines 3 and 4 Commencement Date**" has the meaning given to such term in Section 7.23(a) (*Financial Covenants*).

"**Liquidity**" means, on any date of determination, the sum of all cash and Cash Equivalents (other than any Restricted Cash) owned by any Borrower Entity and held in a Borrower Operating Account. "**Loss Proceeds**" means all proceeds (other than any proceeds of business interruption insurance and proceeds covering liability of the Borrower to third parties but including proceeds under any casualty insurance policies) resulting from an Event of Loss, minus (without duplication) (a) any actual and reasonable costs incurred by any Borrower Entity or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Borrower Entity or such Subsidiary in respect thereof, (b) any bona fide direct costs incurred in connection with any sale of such assets pursuant to Section 7.04 (*Event of Loss*) to the extent paid or payable to any Person that is not an Affiliate of any Borrower Entity, including income or gains taxes payable as a result of any gain recognized in connection therewith and (C) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Guaranteed Loan) that is secured by a Lien on the assets in question and that is required to be repaid under the terms thereof as a result of such casualty or taking.

"**Maintenance Fee**" means a maintenance fee in respect of DOE's administrative expenses in servicing and monitoring the Project and the Financing Documents during the construction, start-up, commissioning and operation of the Project in an amount per year equal to three hundred fifty thousand Dollars ($350,000) over the term of the Guaranteed Loan.

"**Maintenance Plan**" means a maintenance plan in form and substance satisfactory to DOE of the Project's maintenance schedule, plan and budget.

"**Major Construction Contract**" means each Construction Contract having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, equal to or in excess of ten percent (10%) of the Project Costs.

"**Major Engineering Contract**" means each Construction Contract relating to the design and engineering of the Project and having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, equal to or in excess of five million Dollars ($5,000,000).

"**Major Operating Contract**" means each Operating Contract having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, equal to or in excess of five million Dollars ($5,000,000).

"**Major Project Document**" means each of:

(a) each Major Engineering Contract;

(b) each Major Construction Contract;

(c) each Major Supply Contract;

(d) each Major Operating Contract;

(e) each Major Vendor Agreement;

(f) each Real Property Document;

(g) each Permitted Creditor Document;

(h) each Permitted Tax Credit Transaction Document;

(i) each Additional Project Document, if any, under which: (A) aggregate consideration payable by or to Borrower or any of its Subsidiaries to or by a specific Person or such Person's Affiliates, of (x) prior to the date that is the two (2) year anniversary from the "Closing Date" under and as defined in the Cerberus Credit Agreement, Ten Million Dollars ($10,000,000) or more in any calendar year, and (y) on or after the date that is the two (2) year anniversary from the "Closing Date" under and as defined in the Cerberus Credit Agreement, Twenty Five Million Dollars ($25,000,000) or more in any calendar year; or (B) the breach, non-performance, cancellation or early termination of which has, or could reasonably be expected to, materially and adversely affect the Borrower or the Project;

(j) any other Project Document if, but only if, the Borrower and DOE agree that such document shall be treated as a "Major Project Document"; and

(k) any material support instrument provided in connection with any of the preceding.

"**Major Project Participants**" means each party (other than the Borrower) to any Major Project Document (except the Permitted Creditor Documents).

"**Major Supply Contract**" means each supply contract relating to the supply of any goods to the Project and having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, equal to or in excess of five million Dollars ($5,000,000).

"**Major Vendor Agreement**" each contract with any vendor relating to the Project and having a contract or purchase price, as the case may be, whether initially or thereafter by virtue of any change order, equal to or in excess of five million Dollars ($5,000,000).

"**Mandatory Prepayment**" means the prepayment of any outstanding Guaranteed Loan, in whole or in part, pursuant to Section 3.05(c) (*Mandatory Prepayments*).

"**Mandatory Prepayment Amounts**" has the meaning given to such term in Section 3.05(c) (*Mandatory Prepayments*).

"**Mandatory Prepayment Event**" has the meaning given to such term in Section 3.05(c) (*Mandatory Prepayments*).

"**Mandatory Prepayment Proceeds**" has the meaning given to such term in Section 3.05(d)(*Mandatory Prepayments*).

"**Market Consultant**" means NERA Economic Consulting, or such other Person appointed from time to time by DOE to act as market insurance consultant in connection with the Project.

"**Material Adverse Effect**" means, as determined by DOE as of any date, a material and adverse effect on:

(a) the business, operations, assets, property or condition (financial or otherwise) of any Borrower Entity;

(b) the Project or either of the Project Sites;

(c) the ability of any Borrower Entity to perform and comply with its payment obligations or any of its material obligations in a timely manner under any Transaction Document to which it is a party;

(d) the validity or enforceability of any provision under any Transaction Document;

(e) the validity, priority, perfection or enforceability of the Secured Parties' security interests in and liens on the Collateral or the ability of any Secured Party to exercise its rights and obligations in respect of the Collateral; or

(f) any material right, remedy or benefit available to or conferred upon DOE or any other Secured Party under any Transaction Document.

"**Material Indebtedness**" means any Indebtedness (other than Indebtedness under the Security Documents) of any one or more of the Borrower and its Subsidiaries having an outstanding principal amount of two million five hundred thousand Dollars ($2,500,000) or more.

"**Maturity Date**" means June 15, 2034.

"**Maximum Capitalized Interest Amount**" has the meaning given to such term in the FFB Note.

"**Maximum Guaranteed Loan Amount**" has the meaning given to such term in Section 2.01(a) (*Purchase of the FFB Note*).

"**Maximum Principal Amount**" means the amount set forth under the heading "Maximum Principal Amount" on the FFB Note.

"**Maximum Tranche Commitment Amount**" has the meaning given to such term in Section 2.01(b) (*Loan Tranches*).

"**Moody's**" means Moody's Investors Service, Inc.

"**Mortgage**" means the Multiple Indebtedness Mortgage, Pledge of Leases and Rents, and Security Agreement by each applicable Borrower Entity in favor of the Collateral Agent on behalf of the Secured Parties.

"**Mortgaged Leases**" means that: (a) certain Lease Agreement dated as of January 18, 2022, by and between Regional Industrial Development Corporation of Southwestern Pennsylvania, as Landlord ("**Turtle Creek Landlord**"), and Hi-Power, LLC, as tenant, (b) certain Lease Agreement dated as of April 18, 2023, by and between Regional Industrial Development Corporation of Southwestern Pennsylvania, as Landlord, and Hi-Power, LLC, as tenant; (c) a lease or similar agreement in respect of the Duquesne Project Site to be entered into on or prior to the First Advance Date; and (d) to extent required, the new lease agreement or amendment to the Lease Agreement for additional expansion premises, delivered pursuant to Section 5.03(i)(i)(A) (*Real Estate*), as amended, supplemented or otherwise modified from time to time.

"**Multiemployer Plan**" means a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) that is subject to Title IV of ERISA which any Borrower Entity or ERISA Affiliate contributes to or participates in, or with respect to which any Borrower Entity or ERISA Affiliate has or in the past has had any liability or other obligation (whether accrued, absolute, contingent or otherwise).

"**NEPA**" means the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and all regulations and publicly available determinations promulgated thereunder, as either amended or modified from time to time.

"**Net Amount**" means, (a) with respect to an Asset Sale, means an amount equal to: (i) cash payments (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received, but excluding proceeds from business interruption insurance) received by any Borrower Entity or any of its Subsidiaries from such Asset Sale, minus (without duplication) (ii) any bona fide direct costs incurred in connection with such Asset Sale to the extent paid or payable to any Person that is not an Affiliate of any Borrower Entity, including (A) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (B) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Guaranteed Loans) that is secured by a Lien on the Equity Interests or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (C) a reasonable reserve for any indemnification

payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by any Borrower Entity or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered the Net Amount; (b) (i) any cash payments or proceeds received by any Borrower Entity or any of its Subsidiaries or the Collateral Agent as lender loss payee (A) under any casualty insurance policies in respect of any covered loss thereunder, or (B) as a result of the taking of any assets of any Borrower Entity or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (without duplication) (ii) (A) any actual and reasonable costs incurred by any Borrower Entity or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Borrower Entity or such Subsidiary in respect thereof, (B) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (b)(i)(B) of this definition to the extent paid or payable to any Person that is not an Affiliate of any Borrower Entity, including income or gains taxes payable as a result of any gain recognized in connection therewith and (C) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Guaranteed Loan and the Cerberus Loan) that is secured by a Lien on the assets in question and that is required to be repaid under the terms thereof as a result of such casualty or taking; (c) Issuance Proceeds; and (d) Extraordinary Amount.

"**Non-Appealable**" means, with respect to any judgment or Required Approval, unless otherwise agreed by DOE: (a) such judgment or Required Approval is not subject to any pending or threatened appeal, intervention or similar proceeding or any unsatisfied condition which may result in the modification or revocation, recission, suspension thereof; and (b) all applicable appeal periods have expired (except for any Required Approval which does not have any limit on an appeal period under Applicable Law).

"**O&M Expense Shortfalls**" means, for any period, aggregate O&M Expenses during such period in excess of the amount budgeted in the Annual Plan for such period or not covered by revenues as projected in the Annual Plan or Base Case Financial Model for such period.

"**O&M Expenses**" means calculated, all amounts paid (or projected to be paid) by the Borrower for the administration, management and operation and maintenance of the Project.

"**OFAC**" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"**Officer's Certificate**" has the meaning given to such term in Exhibit P (*Form of Officer's Certificate*).

"**OMB**" means the Office of Management and Budget of the Executive Office of the President of the United States.

"**Omnibus Annual Report**" has the meaning given to such term in Section 8.02(a) (*Omnibus Annual Reports*).

"**Operating Contract**" means each equipment, services, supply and other contracts related to the operation, maintenance and management of the Project.

"**Operating Forecast**" means a periodic forecast prepared by the Borrower (on an annual and month-by-month basis) in connection with the operation of the Project and which shall:

(a) be the Borrower's good faith projections at such time taking into account all facts and circumstances then existing and assumptions believed by the Borrower to be reasonable on the date made, complete, fair and accurate estimates of all Operating Revenues reasonably expected to be received and all O&M Expenses (by category) reasonably expected to be incurred;

(b) reflect Debt Service due during each period, and *pro forma* Cash Flow Available for Debt Service projections for each period;

(c) include such other information as may be reasonably requested by DOE or the Independent Engineer; and

(d) be prepared on a basis consistent from period to period and consistent with the Operating Plan, in sufficient detail to permit meaningful comparisons, and shall include a statement of the assumptions on which it is based.

"**Operating Plan**" means the periodic operating plan for the Project prepared by the Borrower in connection with the operation of the Project and included in the Annual Plan, and that shall:

(a) describe the Project's operating plan for the relevant period;

(b) summarize any changes in the Maintenance Plan for the relevant period, including the Project's program for spare parts, inventory management and supply management;

(c) summarize any changes in the Project's capital plan for the relevant period;

(d) include such other information as may be reasonably requested by DOE or the Independent Engineer;

(e) be prepared on a basis consistent from period to period, and consistent with the Operating Forecast, in sufficient detail to permit meaningful comparisons; and

(f) include a statement of the assumptions on which it is based.

"**Operating Revenues**" means all cash receipts (or projected receipts) of the Borrower, including revenues from:

(a) the sales under the Sales Agreements;

(b) proceeds from business interruption and delay in start-up insurance policies;

(c) delay liquidated damages payable under any Construction Contract or any other Project Document; and

(d) interest and other income earned and received on the Project Accounts or the Borrower Operating Accounts,

provided that Operating Revenues shall not include proceeds (i) from casualty and Event of Loss insurance; or (ii) that are subject to a Mandatory Prepayment pursuant to Section 3.05(c) (*Mandatory Prepayments*).

"**Operator**" means the Borrower Entities or any replacement or successor operator of the Project or any portion thereof appointed by the Borrower.

"**Opinion of Borrower's Counsel re**: **Borrower's Instruments**" has the meaning given to such term in the FFB Note Purchase Agreement.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Person, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice (or as contemplated by such Person's business plan) and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Financing Document.

"**Organizational Documents**" means, with respect to:

(a) any corporation, its certificate or articles of incorporation or organization, as amended, and its by-laws, as amended;

(b) any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended;

(c) any general partnership and its partnership agreement, as amended; and

(d) any limited liability company, its articles of organization, as amended, and its operating agreement, as amended.

"**Overdue Amount**" means any amount owing under the FFB Note that is not paid when and as due.

"**Patents**" means any and all: (a) patents, certificates of invention, and other patent or similar industrial property rights, all registrations and recordings thereof, and all applications for patents of the United States or any other jurisdiction, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any foreign equivalent office; (b) reissues, reexaminations, continuations, divisionals, continuations-in-part, renewals, interferences or extensions thereof, and the inventions or designs disclosed or claimed therein (including the right to make, use, offer to sell, sell and/or import such inventions or designs); and (c) other Patents as described in any IP Security Agreement (if applicable).

"**Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107-56).

"**Payment Date**" means each March 15, June 15, September 15, and December 15, or, in each case, if such day is not a Business Day, the next Business Day, commencing on March 15, 2028.

"**PBGC**" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means an "employee benefit plan" (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan that is or was:

(a) at any time maintained or sponsored by any Borrower Entity or ERISA Affiliate or to which any Borrower Entity or ERISA Affiliate has ever made, or was obligated to make, contributions or has or could have any liability; and

(b) subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"**Perfection Certificate**" means a certificate in form satisfactory to the Collateral Agent and DOE that provides information with respect to the personal or mixed property of each Borrower Entity and each of its Subsidiaries.

"**Permitted Capital Expenditures**" means:

(a) any Capital Expenditure contemplated by the CapEx Budget or the then-approved Annual Plan;

(b) any Capital Expenditures with respect to Insurance/Condemnation Reinvestment in accordance with Section 3.05(c)(i)(B) (*Mandatory Prepayments*); or

(c) any Capital Expenditures that do not constitute Project Costs in an aggregate in any Fiscal Year not in excess of one million Dollars ($1,000,000).

"**Permitted Contest Conditions**" means a contest, pursued in good faith, challenging the enforceability, validity, interpretation, amount or application of any Applicable Law, Contest Claim, or other matter (legal, contractual or other) by appropriate proceedings timely instituted if: (a) the applicable Borrower Entity diligently pursues such contest; (b) the applicable Borrower Entity establishes adequate reserves with respect to the contested claim to the extent required by the Designated Standard; and (c) such contest: (i) could not reasonably be expected to have a Material Adverse Effect; (ii) does not involve any material risk or danger of any criminal or unindemnified civil liability being incurred by any Secured Party; and (iii) does not involve the risk of foreclosure, sale, forfeiture or loss of, or imposition of a Lien (other than a Permitted Lien) on the Project, any Line, the Project Sites or any other Collateral or the impairment of the use, operation or maintenance of the Project, any Line or the Project Sites.

"**Permitted Creditor Document**" means each of the Cerberus Financing Documents, the Atlas Side Letter, the Convertible Notes and each other document executed in connection therewith or any amendment, refinancing, replacement or other modification thereof otherwise, in each case, in accordance with this Agreement.

"**Permitted Disposition**" means:

(a) any transaction permitted under the Transaction Documents, including any Disposition of Product under the Sales Agreements;

(b) any Disposition of any equipment or property of the Borrower that is:

(i) obsolete;

(ii) no longer used or useful in the operation of the Project; or

(iii) replaced by other equipment of equal value and utility,

provided that in each case: (A) such Dispositions are valued at not more than three million Dollars ($3,000,000) on an aggregate basis in any twelve (12) month period; (B) the Borrower has received consideration in an amount equal to the value that would have been obtained in an arm's length transaction with an unaffiliated third party (unless such assets have only scrap value); and (C) the proceeds thereof are applied in accordance with Section 3.05(c)(i)(D) (*Mandatory Prepayments*); and

(c) any Disposition of Permitted Investments in accordance with the Accounts Agreement.

"**Permitted Equity Transfer**" means (a) the issuance of Equity Interests to Cerberus as permitted in Section 6.24 of the Cerberus Credit Agreement and in accordance with the terms of the Cerberus Credit Agreement, (b) any Transfer to a Qualified Transferee, (c) any Transfer permitted under this Agreement resulting in a Transferee holding, directly or indirectly, on an aggregate basis together with all Controlled Affiliates, less than ten percent (10%) of the direct or indirect voting rights or Equity Interests in any Borrower Entity and (d) any other Transfer resulting in a Transferee (other than a Qualified Transferee) holding, directly or indirectly, on an aggregate basis together with all Controlled Affiliates, ten percent (10%) or more of direct or indirect voting rights or Equity Interests in any Borrower Entity; provided that, in the case of this clause (d), the following conditions have been satisfied, as certified by a Responsible Officer of the Borrower:

(a) the Transferee is not a Prohibited Person;

(b) the Transfer does not and is not reasonably be expected to: (i) result in a Default or Event of Default; (ii) violate any law applicable to the ownership, operation or maintenance of the Project; or (iii) adversely affect the Borrower's regulatory status;

(c) the Transferee is, and the proposed Transfer is consummated in compliance with all Applicable Laws, including Anti-Corruption Laws, Anti-Money Laundering Laws, and Sanctions;

(d) the relevant Transferor has certified that such Transfer does not constitute a "covered transaction" as defined under the DPA or any of its implementing rules or regulations, or otherwise for purposes of review by CFIUS;

(e) none of the Transferor, the Transferee or the relevant Borrower Entity is required to obtain any Required Approvals or other consents or approvals of third parties for such Transfer (other than those that have been validly issued and obtained and are in full force and effect and are not the subject of an appeal or judicial or other review by any Governmental Authority);

(f) the Transfer does not give rise to any waiver or consent right under any Project Document, nor any termination, amendment or modification (including any modification of any rate or pricing terms) thereof (except any such waiver, consent, termination, amendment or modification that has been obtained and if DOE consent is required, such consent has been obtained in accordance with this Agreement); and

(g) not less than ten (10) days prior to the proposed date of Transfer, the Transferee has provided all requested documentation and other information related to, and has otherwise satisfied, the "know your customer" due diligence requirements of each Secured Party to its sole satisfaction pursuant to its policies, including policies relating to, *inter alia*, national security, foreign assistance, foreign policy, and the prevention and deterrence of corruption, fraud, collusion, coercion, money laundering activities, and terrorist financing.

"**Permitted Holder**" has the meaning given to the term "Permitted Holder" in the Cerberus Credit Agreement.

"**Permitted Hedging Agreement**" means a Hedging Agreement entered into in accordance with the Hedging Plan.

"**Permitted Indebtedness**" means:

(a) Indebtedness incurred under the Financing Documents;

(b) Indebtedness in respect of amounts due to trade creditors and accrued expenses, in each case arising in the Ordinary Course of Business, to the extent such amounts and expenses are not unpaid more than ninety (90) days past the due date therefor or are being contested in accordance with Permitted Contest Conditions;

(c) Indebtedness comprised of purchase money obligations or leases for discrete items of property and equipment not comprising an integral part of the Project, the amount of which does not exceed the cost of the equipment so financed in an aggregate amount not to exceed two hundred fifty thousand Dollars ($250,000);

(d) Permitted Shareholder Subordinated Loans;

(e) Indebtedness in connection with any automated clearinghouse transfer of funds in the Ordinary Course of Business;

(f) Indebtedness in respect of any bankers' acceptances, letters of credit, warehouse receipts or similar facilities, in each case, incurred in the Ordinary Course of Business;

(g) unsecured Indebtedness incurred for general corporate purposes in an aggregate amount outstanding at any one time not to exceed one million Dollars ($1,000,000);

(h) to the extent constituting Indebtedness, 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 or other cash management services in the Ordinary Course of Business;

(i) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(j) contingent liabilities incurred in the Ordinary Course of Business, including the acquisition or sale or other Dispositions of goods, services, supplies, merchandise or other assets in the normal course of business, the endorsement of negotiable instruments received in the normal course of business and indemnities provided under any of the Project Documents;

(k) to the extent constituting Indebtedness, (1) obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, indemnification obligations, obligations to pay insurance premiums, take-or-pay obligations contained in supply agreements and similar obligations incurred in the Ordinary Course of Business and (2) obligations in respect of any worker's compensation claims, health, disability or other employee benefits, guaranties, performance, surety, statutory, appeal or similar obligations incurred in the Ordinary Course of Business;

(l) Indebtedness consisting of the financing of insurance premiums in customary amounts consistent with the operations and business of the Borrower in the Ordinary Course of Business;

(m) Indebtedness consisting of a Permitted Tax Credit Transaction;

(n) Indebtedness incurred under the Cerberus Financing Documents and extensions, refinancing or replacements thereof as permitted by the Intercreditor Agreement;

(o) Indebtedness existing on the Execution Date and described on Schedule O (*Existing Indebtedness*) and extensions, refinancing or replacements thereof; *provided* that (i) such extension, refinancing or replacement does not increase the principal amount

of such Indebtedness (except in an amount equal to any reasonable prepayment premiums, fees, expenses or any other similar amounts that are customarily payable in respect of such Indebtedness), (ii) such extension, refinancing or replacement does not increase the interest rate of such Indebtedness, (iii) extensions, refinancing or replacement is unsecured, (iv) no Borrower Entity that is not originally obligated with respect to repayment of the corresponding Indebtedness is obligated with respect to such extension, refinancing or replacement, (v) such extension, refinancing or replacement does not result in a shortening of the average weighted maturity of the corresponding Indebtedness, and (vi) the terms of such extension, refinancing or replacement other than reasonable and customary fees are not less favorable, when taken as a whole, to the obligor thereunder than the original terms of the corresponding Indebtedness; *provided*, *further*, notwithstanding the foregoing, no extension, refinancing or replacement of such Indebtedness shall be permitted if such extension, refinancing or replacement could reasonably be expected to be adverse to the interests of DOE without prior written consent of DOE; *provided, however*, that notwithstanding anything to the contrary under this clause (o), so long as the Convertible Notes remain unsecured, any refinancing, extension or replacement of Convertible Notes pursuant to any Convertible Note Refinancing Plan that is consistent with customary or prevailing market standards or terms for transactions of a similar type at the time of the negotiation or consummation of such transactions shall be permitted.

(p) Indebtedness incurred in the Ordinary Course of Business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), or cash management services not to exceed, in the aggregate at any time outstanding, five hundred thousand Dollars ($500,000);

(q) Hedging Transactions entered into pursuant to a Permitted Hedging Agreement; and

(r) unsecured intercompany Indebtedness by a Borrower Entity in any of its wholly-owned Domestic Subsidiaries that are Guarantors; provided that all such Indebtedness owed by a Borrower Entity shall be subordinated in right of payment to the payment in full of the Obligations in form and substance satisfactory to DOE.

"**Permitted Investments**" means any of the following, to the extent owned by the Borrower free and clear of all Liens (other than Liens created under the Security Documents):

(a) direct obligations of the United States (including obligations issued or held in book-entry form on the books of the United States Department of the Treasury) or obligations, the timely payment of principal and interest of which is fully guaranteed by the United States maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(b) obligations, debentures, notes or other evidence of Indebtedness issued or guaranteed by any agency or instrumentality of the United States maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(c) interest-bearing demand or time deposits (including certificates of deposit) that are held in banks with a general obligation rating of not less than "A-" by S&P or the equivalent rating by Moody's, or if not so rated, secured at all times, in the manner and to the extent provided by law, by Collateral described in clause (a) or (b) of this definition, of a market value of no less than the amount of moneys so invested maturing not more than one hundred and eighty (180) days from the date of the creation thereof;

(d) commercial paper rated (on the date of acquisition thereof) at least "A-1" or "P-1" or equivalent by S&P or Moody's, respectively (or an equivalent rating by another nationally recognized credit rating agency of similar standing if neither of such corporations is then in the business of rating commercial paper), maturing not more than ninety (90) days from the date of creation thereof;

(e) money market funds, so long as such funds are rated "Aaa" by Moody's and "AAA" by S&P;

(f) any Advances, loans or extensions of credit or any stock, bonds, notes, debentures or other securities as DOE may from time to time approve;

(g) Investments owned by any Borrower Entity or any of its Subsidiaries on the Execution Date and described on Schedule P (*Existing Investments*);

(h) Investments made after the Execution Date by a Borrower Entity in any of its wholly-owned Domestic Subsidiaries that are Guarantors or in the Borrower;

(i) Investments (i) in any securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) consisting of deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Borrower Entities and their Subsidiaries;

(j) Investments made by a Borrower Entity in Eos Energy Storage India Private Limited or Eos Energy Storage S.R.L. to fund operating expenses incurred in the ordinary course of business, provided that such Investments shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000) in the aggregate in any calendar year; and

(k) ordinary course trade credit extended by the Borrower Entities or their Subsidiaries to their respective customers in connection with the sale of inventory in the Ordinary Course of Business.

Notwithstanding the foregoing, in no event shall any Borrower Entity make any Investment which results in or facilitates in any manner any (i) Restricted Payment not otherwise permitted under the terms of Section 9.04(a) (*Restricted Payments*) or (ii) any material deviation from the CapEx Budget.

"**Permitted Leases**" means leases of office space, office equipment or motor vehicles with respect to which the aggregate lease payments do not exceed one million Dollars ($1,000,000) per Fiscal Year.

"**Permitted Liens**" means:

(a) any Liens securing the Secured Obligations;

(b) Liens securing Indebtedness incurred under and in accordance with the Cerberus Financing Documents or the Trinity Loan;

(c) Liens for any tax, assessment or other governmental charge that is not yet due or is being diligently contested in accordance with the Permitted Contest Conditions and by appropriate proceedings timely instituted, so long as: (i) such tax, assessment or other governmental charge is not more than sixty (60) days delinquent; and (ii) a bond, adequate reserves or other security acceptable to DOE has been posted or provided in such manner and amount as to assure DOE that any taxes, assessments or other charges determined to be due will promptly be paid in full when such contest is determined;

(d) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over the Project Sites that do not and will not materially impair the development, construction, operation, or use by (or for the benefit of) the Borrower for the Project;

(e) Liens (not securing Indebtedness) of depository institutions and securities intermediaries (including rights of set-off or similar rights) with respect to deposit accounts or securities accounts;

(f) Liens securing: (i) judgments for the payment of money that do not constitute an Event of Default; or (ii) appeals and the other surety bonds related thereto;

(g) Liens on deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business;

(h) non-exclusive licenses of Intellectual Property granted in the Ordinary Course of Business;

(i) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the Ordinary Course of Business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five (5) days) are being contested in good

faith by appropriate proceedings, so long as reserves or other appropriate provisions, if any, as shall be required by Designated Standards shall have been made for any such contested amounts;

(j) Liens incurred in the Ordinary Course of Business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as (x) no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof and (y) the aggregate amount secured by such Liens does not exceed Five Hundred Thousand Dollars ($500,000);

(k) 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 so long as Liens are not more than sixty (60) days delinquent;

(l) Liens securing the Permitted Indebtedness owing to Wells Fargo Bank, N.A. listed on Schedule 6.1; and

(m) Liens securing Permitted Indebtedness (i) set forth in clause (m) in the definition of "Permitted Indebtedness" (so long as such Liens are limited to the Production Tax Credits sold or monetized in connection with such Permitted Tax Credit Transaction), (ii) set forth in clause (q) of the definition of "Permitted Indebtedness" (so long as such Liens are limited to cash collateral and not in excess of Five Hundred Thousand Dollars ($500,000) in the aggregate), (iii) in respect of letters of credit (so long as such Liens are limited to cash collateral and not in excess of one hundred and five percent (105%) of the face amount of such letters of credit) or (iv) set forth in clause (c) of the definition of "Permitted Indebtedness" (so long as such Liens are solely secured by assets financed thereby).

provided that, notwithstanding the foregoing, Permitted Liens shall not include any Lien on any Equity Interests of the Borrower (other than any Lien in favor of the Secured Parties).

"**Permitted Shareholder Subordinated Loans**" means any subordinated loans made by, or on behalf of, any Equity Owner in the Borrower to the Borrower in lieu of purchasing Equity Interests, on the terms and conditions acceptable to DOE.

"**Permitted Tax Credit Transaction**" shall mean any transfer, Disposition, financing transaction or series of financing transactions pursuant to which the Borrower or any Subsidiary may sell, convey or otherwise transfer, grant a security interest in, or otherwise monetizes its rights to Section 45X Tax Credit; provided that (a) such transaction is on terms satisfactory to DOE in its sole discretion (it being understood that any such transaction (x) with a purchase price of not less than ninety cents ($0.90) per Dollar of Section 45X Tax Credits and (y) otherwise on terms and conditions not less favorable in any material respect to DOE or the interests of any agent or lender than those set forth in the Banyan PTC Purchase Agreement (as defined under the Cerberus Credit Agreement), shall be satisfactory for purposes of the foregoing), (b) the proceeds thereof shall be applied solely (x) to finance Capital Expenditures in accordance with the Annual Plan or (y) in the case of a sale of Section 45X Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction, (1) to invest in long-term assets that are used or useful in the business, (2) to repay or repurchase Indebtedness of the Borrower Entities to the extent otherwise permitted under Section 9.23 (*Certain Payments*), or (3) to finance operating expenses of the Borrower Entities in the ordinary course of business, and (c) at the time of and immediately after giving effect to such Permitted Tax Credit Transaction (including the application of the proceeds thereof), no Default or Event of Default shall have occurred and all Borrower Entities shall be in pro forma compliance with all terms of the Financing Documents.

"**Permitted Tax Credit Transaction Documents**" means, collectively, all agreements, instruments, certificates, undertakings, notes, exhibits, notices, schedules and other documents relating to or entered into in connection with a Permitted Tax Credit Transaction or the matters contemplated therein, in each case, in form and substance satisfactory to DOE in its sole discretion.

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

"**Personal Data**" means any information or data that either: (a) relates to an identified or identifiable natural person, or that is reasonably capable of being used to identify, contact, or precisely locate a natural person, household, or a particular computing system or device, including without limitation, a natural person's name, street address, telephone number, email address, financial account number, government-issued identifier, social security number or tax identification number, biometric identifier or biometric information, banking

information relating to any natural person, or passport number, client or account identifier, or credit card number, or any Internet protocol address or any other unique identifier, device or machine identifier, photograph, or credentials for accessing any accounts; or (b) is defined as "personally identifiable information", "personal information", "personal data", or other similar terms, by any applicable Privacy and Information Security Requirements.

"**Personal Information**" means any data or information that is subject to: (a) Data Protection Laws; or (b) any contractual obligations, or privacy notices or policies, binding on the Borrower relating to the Processing of any data or information that identifies or can be used to identify an individual, household or device, whether directly or indirectly.

"**Phase I Environmental Site Assessment**" means a Phase I Environmental Site Assessment for a Project Site or Building 270 dated not more than one hundred and eighty (180) days prior to the Execution Date and satisfactory to DOE, prepared in accordance with the Standards for Phase I Environmental Site Assessments published by the American Society for Testing and Materials (ASTM), ASTM E1527-21, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, and accompanied by a reliance letter satisfactory in scope and content and addressed to DOE.

"**Phase II Environmental Site Assessment**" means a Phase II Environmental Site Assessment for a Project Site or Building 270, as applicable, satisfactory to DOE, prepared in accordance with the Standards for Phase II Environmental Site Assessments published by the American Society for Testing and Materials (ASTM), ASTM E1903-19, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, and accompanied by a reliance letter satisfactory in scope and content and addressed to DOE.

"**Pipeline**" means projects and/or prospective sales for which the Borrower has submitted technical proposals or non-binding quotes, including letters of intent or firm commitments from customers. Pipeline shall not include lead generation projects or Booked Orders.

"**Post-Petition Interest**" means all interest (or entitlement to fees or expenses or other charges) accruing or that would have accrued after the commencement of any Insolvency Proceeding, irrespective of whether a claim for post-filing or petition interest (or entitlement to fees or expenses or other charges) is allowed in any such Insolvency Proceeding.

"**Practice**" means to practice Intellectual Property in any way, including to use, reproduce, distribute, modify, improve, make, display, perform, create derivative works of, access and utilize.

"**Pre-Completion Costs**" means all Project Costs, O&M Expenses and Capital Expenditures incurred or expected to be incurred by the Borrower in connection with the financing, acquisition, permitting, development, design, engineering, procurement, construction, construction management, testing, startup, shakedown, operation and maintenance of each Line through the Project Completion Date, including any Cost Overruns.

"**Prepayment Election Notice**" has the meaning given to such term in the FFB Note.

"**Prepayment Price**" has the meaning given to such term in the FFB Note.

"**Principal Persons**" means any executive officer, director, or other Person with primary management or supervisory responsibilities with respect to any Borrower Entity or other Major Project Participant.

"**Privacy and Information Security Requirements**" means (i) all laws relating to the Processing of Personal Data, data privacy or information security, and (ii) the Payment Card Information Data Security Standards.

"**Process**" means any operation or set of operations that are performed on data or on sets of data, whether or not by automated means, including creation, receipt, maintenance, access, acquisition, use, disclosure, transmission, storage, retention, processing, destruction, modification or transfer (including cross-border transfer), and the words "Processing" and similar constructions shall have corresponding meanings.

"**Product**" means the Eos Znyth 3 battery units produced by the Project.

"**Program Requirements**" means all of the following:

(a) Title XVII;

(b) the Applicable Regulations; and

(c) all other Applicable Laws and regulations.

"**Prohibited Jurisdiction**" means any country, territory or jurisdiction that:

(a) at any time, is itself the target of comprehensive country-wide or territory-wide Sanctions (including, as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the region called Donetsk People's Republic and the region called Luhansk People's Republic), including any general export, import, financial or investment embargo under Sanctions;

(b) has been designated by the Secretary of Treasury under Section 311 or 312 of the Patriot Act, as warranting special measures due to money laundering concerns; or

(c) has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member, such as the Financial Action Task Force on Money Laundering, and with which designation the U.S. representative to the group or organization continues to concur.

"**Prohibited Person**" means any Person:

(a) named, identified, or described on the list of "Specially Designated Nationals and Blocked Persons" (Appendix A to 31 CFR chapter V) as published by OFAC at its official website, http://www.treas.gov/offices/enforcement/ofac/sdn/, or at any replacement website or other replacement official publication of such list;

(b) named, identified or described on any other blocked persons list, denied persons list, designated nationals list, entity list, debarred party list, unverified list, sanctions list or other list of designated individuals or entities with whom U.S. persons are in any way prohibited from conducting business, published or maintained by any agency or instrumentality of the United States, including lists published or maintained by OFAC, the U.S. Department of Commerce, and the U.S. Department of State;

(c) constituting a "foreign entity of concern", as defined in the Inflation Reduction Act of 2022 (P.L. 117-169);

(d) organized, resident, domiciled, or located in a Prohibited Jurisdiction;

(e) that is or constitutes the government of, or any Person owned or controlled by the government of, a Prohibited Jurisdiction;

(f) of which fifty percent (50%) or more is owned or controlled by, or acting for or on behalf of, any persons described in clauses (a) to (e) above;

(g) owned or controlled by, or acting on behalf of, any Person that is subject to or the target of any Sanctions;

(h) that is otherwise subject to or a target of Sanctions;

(i) that is debarred, suspended, proposed for debarment with a final determination still pending or declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from contracting with the U.S. government, any U.S. department or agency or instrumentality thereof or otherwise participating in procurement or non-procurement transactions with any U.S. government or any department or agency or instrumentality thereof pursuant to any of the Debarment Regulations;

(j) that has been indicted, convicted or has had a Governmental Judgment rendered against it for any of the offenses listed in any of the Debarment Regulations;

(k) that is subject to a "statutory disqualification", as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended; or

(l) whose direct or indirect owners of ten percent (10%) or more of its Equity Interests, by value or vote, include any Prohibited Person listed above.

"**Project**" means the development design, engineering, procurement, equipping, construction, startup and commissioning, testing, repair, management, maintenance and operation of four (4) large-scale production lines for the manufacturing of Eos Znyth 3 battery units in manufacturing facilities located at the Turtle Creek Project Site (for Line 1 and Line 2) and the Duquesne Project Site (for Line 3 and Line 4); provided that (i) if the Borrower fails to meet the conditions precedent to the First Advance Date for Tranche 3 or Tranche 4 by the applicable Availability Period End Date for such Tranches, or (ii) from and after delivery by the Borrower of a Line Non-Completion Notice, in respect of Line 3 or Line 4 (or both), which notice must occur prior to the First Advance Date of the applicable Tranche or Tranches, in each case, such Line or Lines will no longer be deemed a part of the Project.

"**Project Accounts**" has the meaning given to such term in the Accounts Agreement.

"**Project Budgets and Plans**" means each of the Construction Budget, the Annual Plan, the Construction Plan, the Operating Plan, the Maintenance Plan, the Project Milestone Schedule and the Integrated Schedule and Spending Plan, each as then in effect.

"**Project Completion**" has the meaning given to such term in Schedule B (*Project Milestone Schedule*).

"**Project Completion Date**" means the date on which Project Completion occurs as confirmed by DOE.

"**Project Completion Date Certificate**" means a certificate executed by a Responsible Officer of the Borrower, substantially in the form attached as Exhibit Q (*Form of Project Completion Date Certificate*) hereto and otherwise in form and substance satisfactory to DOE.

"**Project Completion Longstop Date**" means September 30, 2028.

"**Project Construction**" means the acquisition, permitting, development, design, engineering, procurement, construction, construction management, testing, start up and commissioning of the Project from commencement of the Project by the Borrower through the Project Completion Date.

"**Project Costs**" means all costs incurred or expected to be incurred in connection with Project Construction through the Project Completion Date, including:

(a) amounts payable under the Construction Contracts;

(b) interest, fees and expenses payable under the Financing Documents prior to the end of the applicable Availability Period;

(c) principal payments of the Guaranteed Loan occurring prior to the Project Completion Date, if any;

(d) costs to acquire title or use rights to the Project Sites, necessary easements and other Real Property interests;

(e) costs and expenses of legal, engineering, accounting, construction management and other advisors or Secured Party Advisors incurred in connection with the Project;

(f) fees, commissions and expenses payable to the Secured Parties in connection with the Project;

(g) development costs to the extent permitted to be paid under the Financing Documents;

(h) construction insurance premiums for Required Insurance obtained prior to the Line Commercial Operation Date;

(i) the Borrower's labor costs and general and administrative costs prior to the Project Completion Date;

(j) costs incurred under the Project Documents and in the Base Case Financial Model;

(k) funding of Liquidity to comply with the Liquidity covenant set forth in Section 7.23(c) (*Minimum Liquidity*);

(l) initial funding of the Debt Service Reserve Account in accordance with the Accounts Agreement; and

(m) such other costs or expenses approved by DOE,

but excluding any costs related to technical product development, marketing, product qualification with potential customers, customer development and engagement with respect to the Lines.

"**Project Document**" means each agreement necessary or appropriate for the Project, including:

(a) each Engineering Contract;

(b) each Construction Contract;

(c) each Supply Agreement;

(d) each Vendor Contract;

(e) each Operating Contract;

(f) each Sales Agreement;

(g) each Real Property Document;

(h) each Project IP Agreement;

(i) each Additional Project Document; and

(j) any material support instrument provided in connection with any of the preceding.

"**Project IP**" means all Intellectual Property that is: (a) used in, material or necessary for the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation or maintenance of the Project; (b) necessary to complete the activities designated to be completed for each Line, or to achieve Project Completion; or (c) necessary to exercise the Borrower's rights and perform its obligations under the Major Project Documents, as applicable, at the relevant time, but excluding any Software that: (i) has not been modified or customized for the Borrower; (ii) is readily commercially available; and (iii) is licensed under standard terms and conditions.

"**Project IP Agreement**" means each agreement or license granting or document evidencing the Borrower's exclusive ownership of all Project IP (including assignment agreements) or rights to use all Project IP.

"**Project Milestones**" has the meaning given to such term in Section 5.01(l)(i) (*Milestone Schedules*).

"**Project Milestone Schedule**" has the meaning given to such term in Section 5.01(l)(i) (*Milestone Schedules*).

"**Project Participant**" means any party to any Project Document or any party to a Financing Document other than the Secured Parties.

"**Project Sites**" means the Turtle Creek Project Site and to the extent Lines 3 and 4 are being built, the Duquesne Project Site.

"**Project Source Code**" means Source Code that constitutes Project IP owned by, or (subject to the applicable third party license terms) licensed to, any Borrower Entity.

"**Property**" means any present or future right or interest in, to or under any assets, equipment, facilities, contracts, leaseholds, business, receivables, revenues, accounts, or other property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible (including Intellectual Property).

"**Prudent Industry Practice**" means those practices, methods, equipment, specifications, and standards of safety and performance as are commonly accepted in the battery manufacturing industry as good, safe, prudent and commercial practices in connection with the design, construction, operation, maintenance, repair and use of the Project.

"**Punch List Items**" means items listed on the construction punch list that are certified in writing by the Borrower and agreed by DOE (in consultation with the Independent Engineer).

"**Qualified Investment Fund**" means an investment fund in relation to which:

(a) such fund and each of its Fund Parties have provided all requested documentation and other information related to, and has otherwise satisfied, the "know your customer" due diligence requirements of each Secured Party pursuant to its policies; and

(b) the relevant Fund Parties have certified in writing, to the satisfaction of DOE, that:

(i) due diligence on the fund's limited partners, members, or shareholders has been performed in accordance with the fund's anti-money laundering and "know your customer" policies that are consistent with applicable legislation, regulations, or industry guidelines;

(ii) the Fund Parties have developed and will maintain due diligence policies and procedures for prospective members or shareholders in accordance with the fund's anti-money laundering and "know your customer" policies that are consistent with applicable legislation, regulations, or industry guidelines;

(iii) the Fund Parties being reviewed are not a Prohibited Person; and

(iv) no ultimate beneficial owner in such Fund Party, together with its Controlled Affiliates, owns in the aggregate ten percent (10%) or more of the direct or indirect equity interests in the Borrower.

"**Qualified Plan**" means an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is intended to be tax-qualified under Section 401(a) of the Code and which is or at any time was maintained or sponsored by any Borrower Entity or ERISA Affiliate or to which any Borrower Entity or ERISA Affiliate has ever made, or been obligated to make, contributions or with respect to which any Borrower Entity or ERISA Affiliate has incurred or is likely to incur any liability or obligation.

"**Qualified Public Company Shareholder**" means each Person that holds, directly or indirectly, shares in a company, which shares are not restricted or closely held, but are freely available to the public for trading on any national securities exchange approved by or registered with the competent securities regulator of the relevant country.

"**Qualified Transferee**" means any Transferee that holds, directly or indirectly, any Equity Interests or ownership interest, as a Qualified Public Company Shareholder or through a Qualified Investment Fund.

"**Qualifying Customers**" means a customer to a Sales Agreement having reasonable financial capacity to support its obligations thereunder, as determined by DOE.

"**Quality Control Plan**" means the document to be provided by the Borrower in form and substance reasonably satisfactory to DOE (in consultation with the Independent Engineer) and designated as the "Quality Control Plan" which:

(a) links manufacturing process steps to key inspection and control activities;

(b) controls process variables to ensure that the Product meets both the Borrower's internal quality specifications and any quality specifications required by the Sales Agreements; and

(c) includes standards, methods, processes, testing locations (if not performed at the Project Sites) and identified control activities to ensure that the Product meets its required quality specifications.

"**Quarterly Certificate**" has the meaning given to such term in Section 8.02(b)(i) (*Quarterly Certificate*).

"**Quarterly Reporting Date**" has the meaning given to such term in Section 8.02(b)(i) (*Quarterly Certificate*).

"**Ratably**" means ratably in accordance with the then-outstanding principal amount owed in respect of the Guaranteed Loan and the Cerberus Loan, respectively; provided that Excess Obligations (as defined in the Intercreditor Agreement) will be excluded for the purposes of such calculation.

"**Real Property**" means, with respect to any Person, all right, title and interest of such Person in and to any and all parcels of real property owned, leased or encumbered by such Person, together with all improvements and appurtenant fixtures, equipment, easements and other property and rights incidental to the ownership, lease or operation thereof, including the Project Sites.

"**Real Property Document**" means each of:

(a) the Mortgaged Leases; and

(b) each other document evidencing the Borrower's ownership leasehold interest or other right and entitlement to use Real Property.

"**Reimbursement Amounts**" has the meaning given to such term in Section 4.01(c)(i) (*Reimbursement and Other Payment Obligations*).

"**Reimbursement Obligation**" means the obligation of the Borrower to reimburse DOE pursuant to Article IV (*Payment Obligations; Reimbursement*).

"**Release**" means, with respect to Hazardous Substances, any disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing, or migrating into, through or upon the natural or manmade environment (including any land, water or air and the abandonment or discarding of barrels, containers, and other closed receptacles containing Hazardous Substances), and "Released" shall have a corresponding meaning.

"**Release Date**" means the date on which all of the Secured Obligations (other than inchoate indemnity obligations) have been paid in full and the Guaranteed Loan Commitment Amount has been reduced to zero (0).

"**Relevant Line**" means, with respect to:

(a) Tranche 1, Line 1;

(b) Tranche 2, Line 2;

(c) Tranche 3, Line 3; and

(d) Tranche 4, Line 4.

"**Relevant Tranche**" means, with respect to:

(a) Line 1, Tranche 1;

(b) Line 2, Tranche 2;

(c) Line 3, Tranche 3; and

(d) Line 4, Tranche 4.

"**Requested Advance Date**" means, for any Advance Request, the date requested by the Borrower for FFB to make an Advance under the FFB Note.

"**Required Approvals**" means all Governmental Approvals and other consents and approvals of third parties necessary or required under Applicable Law or any contractual obligation for:

(a) the due execution, delivery recordation, filing or performance by any Borrower Entity or Major Project Participant of any Transaction Document to which such Person is a party and in the case of the Borrower, any FFB Document, in each case, to which it is, or is intended to be, a party;

(b) the issuance of the FFB Note and the borrowings under the FFB Documents, the use of the proceeds thereof and the Reimbursement Obligations;

(c) the grant of all Liens granted pursuant to the Security Documents;

(d) the perfection or maintenance of all Liens created under the Security Documents (including the First Priority nature thereof);

(e) the exercise by any Secured Party of its rights under any of the Financing Documents or the remedies in respect of the Collateral pursuant to the Security Documents;

(f) the development, construction, operation or maintenance of the Project; or

(g) the Borrower's ownership of the Project.

"**Required Approvals Schedules**" means the schedule attached hereto as Schedule K (*Required Approvals Schedule*), as updated or otherwise supplemented pursuant to Section 5.04(r) (*Required Approvals*); (a) setting out in Part A all Required Approvals required for the commencement and completion of construction or which otherwise have been obtained prior to the Execution Date; and (b) setting out in Part B a schedule of obtaining all Required Approvals not yet received as of the Execution Date.

"**Required Insurance**" means each of the contracts of insurance taken out or maintained (or required to be taken out or maintained) by each Borrower Entity and Major Project Participant in accordance with Schedule C (*Insurance*).

"**Responsible Officer**" means:

(a) with respect to any Person:

(i) that is a corporation, the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer, any Person holding equivalent positions in such corporations, or any other Financial Officer of such Person;

(ii) that is a partnership, each general partner of such Person or the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer, any Person holding equivalent positions in such corporations, or any other Financial Officer of a general partner of such Person; or

(iii) that is a limited liability company, the manager, managing partner or duly appointed officer of such Person, the individuals authorized to represent such Person pursuant to the Organizational Documents of such Person, or the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer, or any Person holding equivalent positions in such corporations, or any other Financial Officer of the manager or managing member of such Person; and

(b) with respect to any Borrower Entity, only those individuals holding any of the foregoing positions whose names appear on the relevant certificate of incumbency delivered pursuant to Section 5.01(i) (*Execution Date Certificates*), in each case, as such certificate of incumbency may be amended from time to time to identify the individuals then holding such offices and the capacity in which they are acting.

"**Restricted Cash**" means, at any time, the cash and Cash Equivalents of the Borrower and its Subsidiaries to the extent (a) classified (or required to be classified) as restricted cash or restricted cash or Cash Equivalents on the balance sheet of the Borrower and its Subsidiaries in accordance with GAAP, (b) such cash or Cash Equivalents are subject to any Lien (other than (x) Liens in favor of the Collateral Agent for the benefit of the Secured Parties (including, for the avoidance of doubt, the Liens in respect of the Cerberus Financing Documents permitted under clause (b) in "Permitted Liens") and (y) Liens permitted pursuant to clause (e) in "Permitted Liens"), (c) to the extent such cash or Cash Equivalents is held any Borrower Entity in escrow, trust or other fiduciary capacity for or on behalf of a client, borrower or customer of any Borrower Entity or any of its Affiliates.

"**Restricted License**" means any material license or other material agreement with respect to which any Borrower Entity or any Subsidiary is the licensee or licensor (a) that prohibits or otherwise restricts such Borrower Entity or such Subsidiary from granting a security interest in the interest of such Borrower Entity or such Subsidiary in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Collateral Agent's right to sell any Collateral; provided that Restricted Licenses shall not include off-the-shelf software and services, open source code, application programming interfaces (APIs) and/or other Intellectual Property that are made commercially available under shrink wrap or clickwrap licenses, online terms of service or use, or similar agreements that are not licensed, distributed or sold to customers, nor otherwise incorporated or embedded in any products.

"**Restricted Payment**" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Equity Interests of any Borrower Entity or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Equity Interests to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Equity Interests of any Borrower Entity or any of its Subsidiaries now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Borrower Entity or any of its Subsidiaries now or hereafter outstanding; (d) any payment or prepayment with respect to any earnout obligation or other deferred or contingent obligation of any Borrower Entity or any of its Subsidiaries incurred or crated in connection with any acquisition; (e) any payment of any management, consulting, advisory, transaction or similar fees payable to any holder of Equity Interests of any Borrower Entity or any of its Affiliates other than fees payable to affiliates of any Permitted Holder under any Advisory or Consulting Agreement and the Agency Fee (as defined in the Cerberus Financing Documents) payable to Cerberus under the Cerberus Financing Documents; (f) any payment or prepayment of principal of, premium, if any, or interest, fees or other amounts on or with respect to, and any redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment and any claim for rescission with respect to, any Subordinated Indebtedness, any Indebtedness secured on a junior basis to the Secured Obligations or any unsecured Indebtedness (including, without limitation, the Convertible Notes, and any payment or cash, Cash Equivalents or other property other than in shares of common stock of the Borrower in connection with the settlement of any conversion thereof in accordance with the terms thereof); (g) any required payment or prepayment of interest under the Cerberus Credit Agreement (other than interest "paid in kind" thereunder); (h) reduce its Share Capital (other than as required by the Designated Standards); (i) any payment (including with respect to any development, management or operation fee) to any Affiliate (other than another Borrower Entity or any Subsidiary thereof) of Borrower except for payments pursuant to any Major Project Document existing on the Execution Date or entered into in accordance with the terms of this Agreement; and (j) set aside any funds for any of the foregoing.

"**Safety Audit**" means a safety audit of the Project in a manner satisfactory to DOE that focuses on compliance with the regulations implementing the Occupational Safety and Health Act, and addresses the following general occupational safety and health compliance

items: management commitment and employee involvement; worksite analysis; hazard prevention and control; training for employees, supervisors, and managers; incident reporting and information posting.

"**Safety Report**" means a written report, in form satisfactory to DOE, with respect to an annual Safety Audit that sets forth: (i) any deficiencies identified as a result of such Safety Audit; (ii) any recommendations for the operation and maintenance of the Project; (iii) compliance with the regulations implementing the Occupational Safety and Health Act; and (iv) any other items reasonably requested by DOE.

"**Sales Agreement**" means any sales agreement, customer contract, service agreement or other customer agreement (including, to the extent applicable, letters of intent, firm contracts and active proposals, which shall be considered non-binding for purposes of this Agreement) entered into by or on behalf of the Borrower and customer/offtaker for the Products.

"**Sales Plan**" means a plan setting out the Borrower's strategy for sales and contracting for the Project, as such plan is updated from time to time by the Borrower in accordance with this Agreement.

"**Sanctions**" means (a) any economic, financial, and trade sanctions laws and export controls, Applicable Laws, regulations, embargoes or restrictive measures administered or enforced by the United States government, including OFAC, the U.S. Department of State, and the U.S. Department of Commerce; (b) any U.S. Executive Orders imposing economic or financial sanctions on any individuals, entities, countries or regimes; and (c) any multilateral economic or trade sanctions in which the United States participates.

"**SAM**" means the System for Award Management electronic database administered by the United States General Services Administration, found at www.sam.gov.

"**Scheduled Line Commercial Operation Date**" means, with respect to:

(a) Line 2, May 1, 2026;

(b) Line 3, January 1, 2027; and

(c) Line 4, January 1, 2028.

"**Scheduled Pre-Completion Costs**" means Pre-Completion Costs (including Budgeted Contingencies) set forth in the initial Construction Budget and Annual Plan delivered as of the Execution Date (as the same may be supplemented or amended from time to time with approval of DOE for the express purpose of updating the then-applicable "Scheduled Pre-Completion Costs").

"**Secretary of Energy**" means as of any date, the then-current secretary of the U.S. Department of Energy or, in their absence, the person discharging their duties or exercising their prerogatives in accordance with Applicable Law.

"**Secretary of Labor**" means as of any date, the then-current secretary of the U.S. Department of Labor or, in their absence, the person discharging their duties or exercising their prerogatives in accordance with Applicable Law.

"**Secretary of Treasury**" means as of any date, the then-current secretary of the U.S. Department of Treasury or, in their absence, the person discharging their duties or exercising their prerogatives in accordance with Applicable Law.

"**Section 45X Tax Credits**" means federal advanced manufacturing production credits under Section 45X of the Code.

"**Secured Obligations**" means, at any time, all FFB Note Obligations and all other amounts owed to DOE or any other Secured Party under the Financing Documents, including accrued interest thereon, fees, Secured Party Expenses, penalties and indemnity obligations.

"**Secured Parties' License**" means the right for the Secured Parties to use and otherwise Practice and to assign or sublicense, in each case, for no additional consideration, the Borrower's rights in and to Project IP under a Project IP Agreement (effective as of the Execution Date or, if acquired later, upon such acquisition date, but enforceable: (a) during the continuance of an Event of Default; (b) upon an enforcement and transfer of ownership in the Borrower; or (c) upon any bankruptcy or insolvency action involving the Borrower).

"**Secured Party**" means each of:

(a) DOE;

(b) FFB;

(c) any Agent; and

(d) any other holder of any Secured Obligations outstanding at any time.

"**Secured Party Advisor**" means each of:

(a) the Independent Engineer;

(b) the Insurance Consultant;

(c) the Market Consultant;

(d) the Environmental Consultant;

(e) Allen & Overy, LLP, as New York legal counsel to DOE;

(f) GRB Law, as Pennsylvania legal counsel to DOE; and

(g) each other advisor, legal counsel or consultant retained by DOE from time to time in connection with the Guaranteed Loan, the Project or the Transaction Documents.

"**Secured Party Expenses**" means any out-of-pocket costs, expenses and other amounts paid or incurred by any Secured Party from time to time in connection with the due diligence of the Borrower, the other Borrower Entities or the Project and the preparation, execution, recording and performance of this Agreement, the other Transaction Documents and any other documents and instruments related to this Agreement or thereto (including legal opinions), including any of the following:

(a) recordation and other costs, fees and charges in connection with the execution, delivery, filing, registration, or performance of the Transaction Documents or the perfection of the security interests in the Collateral;

(b) fees, charges, and expenses of any Secured Party Advisors;

(c) commissions, charges, costs and expenses for the conversion of currencies;

(d) other fees, charges, expenses and other amounts from time to time due to any Secured Party under or in connection with the Financing Documents, including Agent Fees;

(e) fees and expense of the legal counsel, consultants and advisors of any Secured Party with respect to any of the foregoing; and

(f) DOE Extraordinary Expenses.

"**Securities Intermediary**" means a "securities intermediary" (as such term is defined in the UCC).

"**Security Agreement**" means the Security Agreement entered into as of the Execution Date between the Borrower in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Security Document**" means each of:

(a) the Accounts Agreement;

(b) the Security Agreement;

(c) each Direct Agreement;

(d) the IP Security Agreement;

(e) the Mortgage;

(f) the Borrower Project Accounts Control Agreement;

(g) all subordination, attornment and non-disturbance agreements with landlords and sub-landlords;

(h) each other security document, agreement or instrument hereafter delivered to any Secured Party from time to time granting, or purporting to grant, a Lien on any property, rights and assets of any Person to secure any of the Secured Obligations; and

(i) such other documents, certificates, filings (including UCC-1 financing statements and fixture filings) and instruments that may be required by the Secured Parties in connection with the foregoing.

"**Sensitive Information**" means: (a) any information that is subject to Data Protection Laws; (b) any Trade Secrets or other information in which the Borrower Entities have confidential Intellectual Property rights (including any relevant Project IP owned by the Borrower Entities); and (c) any information with respect to which the Borrower Entities have contractual non-disclosure obligations.

"**Share Capital**" means, with respect to any Person, any and all shares, interests, quotas, participations or ownership or partnership interests or rights in or other equivalents of or in (however designated, whether voting or non-voting, ordinary or preferred) the equity or capital of such Person, now or hereafter outstanding, and any and all rights, warrants or options exchangeable for or convertible into any thereof.

"**Similar Law Plan**" has the meaning given to such term in Section 6.27(h) (*ERISA*).

"**Software**" means any and all: (a) computer programs and software implementations of algorithms, models and methodologies, in each case, whether in source code, object code or any other form; (b) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, firmware, development tools, configurations, interfaces, platforms and applications; (c) data, databases and compilations; and (d) documentation supporting or related to any of the foregoing (including training materials). Software shall include "software" as such term is defined in the UCC and computer programs that may be construed as included in the definition of "goods" in the UCC, including any licensed rights to Software, and all media that may contain Software or recorded data of any kind.

"**Source Code**" means, with respect to any Software, the human-readable form of such Software.

"**Specified Accounts**" means the Debt Service Reserve Account and Customer Warranty/LDs Account.

"**Specified Deferred Payments**" means, collectively, those certain deferred payments to be made by the Borrower to the specified credit support providers described therein as expressly set forth in Section 1 and Section 2 of the Atlas Side Letter.

"**S&P**" means S&P Global Ratings, a division of S&P Global Inc.

"**Subordinated Indebtedness**" means any Indebtedness of any Borrower Entity or any of its Subsidiaries which has been expressly subordinated to the Secured Obligations in a manner and form satisfactory to DOE in its sole discretion, as to right and time of payment and as to any other rights and remedies thereunder.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with the Designated Standard as of such date, as well as any other corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the total voting power of shares of 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 (1) or more of the other Subsidiaries of that Person or a combination thereof.

"**Substantial Completion**" has the meaning given to such term in Schedule B (*Project Milestone Schedule*).

"**Substantial Completion Date**" means the date on which Substantial Completion occurs as confirmed by DOE.

"**Tax Certificate**" has the meaning given to such term in Section 5.01(i)(ii) (*Execution Date Certificates*).

"**Taxes**" means all taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, penalties or additions thereto imposed in respect thereof.

"**Term Sheet**" means the Summary Terms and Conditions for Loan Guarantee under U.S. Department of Title XVII Loan Program, dated August 31, 2023.

"**Title Company**" means one (1) or more title companies satisfactory to DOE, satisfying DOE's requirements with respect to co-insurance or reinsurance.

"**Title Pro Forma**" has the meaning given to such term in Section 5.01(p).

"**Title XVII**" has the meaning given to such term in the preliminary statements.

"**Trademarks**" means any and all: (a) trademarks, trade names, business names, trade styles, service marks, trade dress, designs, fictitious business names, logos and other source or business identifiers (in each case, whether registered or unregistered); (b) registrations and applications for registration in the United States Patent and Trademark Office or any similar offices in any State of the United States or any political subdivision thereof or any other jurisdiction, and recordation renewals and extensions thereof; and (c) other Trademarks as described in any IP Security Agreement (if applicable), and in each case, together with all goodwill associated therewith and any other Trademarks as defined in the IP Security Agreement.

"**Trade Secrets**" has the meaning given to such term in the definition of "Intellectual Property".

"**Tranche**" has the meaning given to such term in Section 2.01(b) (*Loan Tranches*).

"**Tranche 1**" has the meaning given to such term in Section 2.01(b)(i) (*Loan Tranches*).

"**Tranche 1 First Advance Date**" means the First Advance Date in connection with Advances funded under Tranche 1.

"**Tranche 2**" has the meaning given to such term in Section 2.01(b)(ii) (*Loan Tranches*).

"**Tranche 3**" has the meaning given to such term in Section 2.01(b)(iii) (*Loan Tranches*).

"**Tranche 4**" has the meaning given to such term in Section 2.01(b)(iv) (*Loan Tranches*).

"**Transaction Document**" means each Financing Document and each Major Project Document.

"**Transfer**" means, with respect to any Equity Interest, any direct or indirect issuance, sale, assignment, exchange, conveyance or other transfer thereof, whether by agreement, operation of law or otherwise (and the verb "**Transfer**" and the nouns "**Transferor**" and "**Transferee**" shall be construed accordingly).

"**Transmission Code**" means the code delivered by DOE to each of the Authorized Transmitters of the Borrower.

"**Treasury**" means the U.S. Department of Treasury.

"**Treasury Financial Communications System**" means a secure, automated system used by the U.S. Department of the Treasury to facilitate the electronic transfer of funds and financial information.

"**Trinity Loan**" means indebtedness incurred pursuant to or in connection with that certain master equipment financing agreement, dated September 30, 2021, entered into by and between Hi-Power and Trinity Capital Inc., a company incorporated under the laws of the State of Maryland, including the guaranty by the Borrower related to such indebtedness.

"**Turtle Creek Project Site**" means the Real Property on which Line 1 and Line 2 are situated, as further described in Schedule G (*Project Sites*), including Building 700 and Building 200, as the same may be updated pursuant to Section 6.15(c) (*Project Sites*).

"**UCC**" means the Uniform Commercial Code as adopted and in effect in the State of New York.

"**Unfunded Pension Liabilities**" means the excess of an Employee Benefit Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that plan's assets, determined in accordance with the assumptions used for funding the Employee Benefit Plan pursuant to Section 412 of the Code for the applicable plan year.

"**United States**" and "**U.S.**" mean the United States of America.

"**Vendor Contract**" means each contract pursuant to which the Borrower procures equipment and technical services from third party vendors (excluding Construction Contracts) as required by the Borrower to design, engineer, procure, startup, commission, operate and maintain the Project, including any grants of third party Intellectual Property therein or ancillary thereto that do not constitute Project IP Agreements.

Execution Version

SCHEDULE D[1]

TECHNICAL CONDITIONS PRECEDENT[2]

Milestone/ Advance	Line/ Phase	Anticipated CapEx($M)	Anticipated DOE Debt ($M)	Capacity	Conditions Precedent
Financial Close	*N/A*	N/A	N/A	N/A	1) Borrower to have delivered a Level 3 Schedule for construction, commissioning, and shakedown of the Project until Final Construction Completion. Said schedule shall be consistent with the Base Case Financial Model. The Level 3 Schedule shall be provided in Primavera 6 format. 2) Z3 battery modules to have achieved a UL Rating as follows:

					a) UL 9540A Cell-Level Testing b) UL 1973 Cell-Level Certification 3) Borrower to have provided the As-Built Manufacturing Line Design ("**Final Manufacturing Line Design**") for Line 1 and the anticipated Manufacturing Line Design for Lines 1-2.
Line 1 Funding (single draw)					1) Receipt by DOE of evidence that the Borrower shall have: a) achieved compliance with each of the First Milestone and the Second Milestone, each under and as defined in the Cerberus Credit Agreement (in each case, irrespective of whether such compliance was achieved on any applicable milestone test date or otherwise); and b) received the proceeds of disbursement of the Tranche 1 Term Loan and the Tranche 2 Term Loan under and as defined in the Cerberus Credit Agreement. 2) The Borrower shall have on deposit in the Borrower Operating Accounts an amount equal to or in excess of the Base Funding Amount

1 Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in Annex A (Definitions) to the Loan Guarantee Agreement.

2 All conditions precedent to be delivered in form and substance satisfactory to DOE.

Schedule D-1

Milestone/ Advance	Line/ Phase	Anticipated CapEx($M)	Anticipated DOE Debt ($M)	Capacity	Conditions Precedent
Lines 2 - 4 First Advance					1) After giving effect to all Eligible Project Cost Reimbursement Amounts from the applicable Advance, all Project Accounts (including all Reserve Accounts) and, to the extent applicable, Borrower Operating Accounts shall have been funded in full to the then-applicable funding requirement as of the date of such Advance pursuant to this Agreement and the Accounts Agreement. 2) Substantial Completion, including all applicable Governmental Approvals completed for the host building and completion of NEPA process if the applicable Line is not located in the Turtle Creek Project Site. 3) For First Advance of Tranche 2, receipt by DOE of evidence that the Borrower shall have achieved compliance with the Third Milestone (excluding the Sales Milestone) under and as defined in the Cerberus Credit Agreement (irrespective of whether such compliance was achieved on any applicable milestone test date or otherwise).

					4) For First Advance of Tranche 3, receipt by DOE of evidence that the Borrower shall have achieved compliance with the Fourth Milestone (excluding the Sales Milestone) under and as defined in the Cerberus Credit Agreement (irrespective of whether such compliance was achieved on any applicable milestone test date or otherwise). 5) Prior Lines Requirements: a) Each prior Line to have achieved completion of all Milestones set forth in the Cerberus Credit Agreement as set forth above. i) If the Milestones are not applicable, then the previous Lines must have passed a Completion Test (**[*]**[*]-hour shifts on consecutive days at **[*]**% of full capacity, based on Effective Hours[3], in the month in which the test is performed (i.e., accounting for ramp schedule and shake down in a given month, if applicable)[4] assumed in the Base Case Financial Model). b) Previous Lines shall have exhibited the below yield for an extended period of time per the following cases: i) For First Advance of Tranche 2, Line 1 shall have exhibited at least **[*]**% of modeled capacity, based on Effective Hours in the month in which the test is performed[5] compared to the Base Case Financial Model over a **[*]**-month period; ii) For First Advance of Tranche 3 or 4, the following: (1) First Advance for Tranche 3 would require[6]: (a) Line 1 shall have exhibited at least **[*]**% of modeled production capacity based on Effective Hours in the months in which the test is performed compared to the Base Case Financial Model over a **[*]**-month period; and

3 "Effective Hours" means hours of production, excluding with respect to the applicable Line, maintenance, test/training runs, engineering builds, startup and other documented planned business interruption, outage and unplanned business interruption beyond the reasonable control of, and not the result of the fault or negligence of, the Borrower.

4 For Line 2, Row 34 (Batteries produced); for Line 3, Row 42 (Batteries produced); for Line 4, Row 50 (Batteries produced) in "Capacity" Worksheet in the Execution Date Base Case Financial Model.

5 Row 26 (Batteries Produced) in the "Capacity" Worksheet in the Execution Date Base Case Financial Model.

6 The sum of **[*]**% of the capacity of Line 1 in the 'Capacity' worksheet Row 28 and **[*]**% of the capacity of Line 2 in Row 36 must be equal to Line 13 of 'Monthly Statements'.

Milestone/ Advance	Line/ Phase	Anticipated CapEx($M)	Anticipated DOE Debt ($M)	Capacity	Conditions Precedent
					(b) Line 2 shall have exhibited at least **[*]**% of modeled capacity based on Effective Hours in the month in which the test is performed compared to the Base Case Financial Model over a **[*]**-month period. (1) For the Second Advance of Tranche 3, Line 2 shall have exhibited at least **[*]**% of modeled capacity based on Effective Hours in the months in which the test is performed[7] compared to the Base Case Financial Model over a **[*]**-month period. b) Lines 3 and 4 may be concurrently funded or may overlap – no requirement for completion of Line 3 prior to Line 4. 2) Borrower to have delivered an updated projection to the Level 3 Schedule and As-Built Manufacturing Line Design for the respective Line, including a Summary Description of Modifications to each as compared to Line 1 (in the case of Funding of Line 2) or as compared to Line 2 (in the case of Funding of Lines 3 and 4).
Each Advance	N/A	N/A	N/A	N/A	1) The Borrower shall demonstrate satisfaction of the following key performance indicators ("**KPIs**") for each Line then in production at the time of such Advance, in each case for a period of thirty (30) days prior to the proposed Advance Date and as measured against the Base Case Financial Model, in all cases based on Effective Hours: a) MWh Produced[8] - projected vs actual at not less than **[*]**% b) Line Yield[9] - Projected vs actual at not less than **[*]**% (based on each individual Line) c) At least **[*]**% of "Cubes" projected in the Base Case Financial Model shall pass the **[*]** test. 2) To the extent not otherwise delivered in connection with the First Advance under each Line, Borrower to deliver: a) UL ratings of All Products (or confirmation that prior certifications delivered with respect to such Product remain valid); b) No material adverse change in operating performance of existing Lines as compared against the Base Case Financial Model based on Effective Hours and adjusted for number of lines; a) Progress towards the Project Schedule and Preliminary Manufacturing Line Design, including progress reports and copies of all material equipment procurement and supply contracts.

7 Row 34 (Batteries Produced) in "Capacity" worksheet.

8 "Capacity" Row 56.

9 Scrap Rate of not more than 3% on a run rate basis (or Quality Yield not less than 97%), as defined in "Case Manager" Tab Row 144.

Schedule D-3

Milestone/ Advance	Line/Phase	Anticipated CapEx($M)	Anticipated DOE Debt ($M)	Capacity	Conditions Precedent
Project Completion	Completion of As-Built Lines	N/A	N/A	Financial Model	1) Funded Lines to have achieved Line Completion Tests; 2) Borrower to be in compliance with the Base Case Financial Model; 3) Borrower to have delivered the following to the extent not otherwise delivered pursuant to the Loan Guarantee Agreement: a) Operating Forecast and Operating Plan through the Maturity Date; b) O&M Budget through the Project Completion Date; c) Staffing plan and projections through the Maturity Date; d) UL ratings of All Products (or confirmation that prior certifications delivered with respect to such Product remain valid); e) KPIs based on the Base Case Financial Model and Table 1: Technical Metrics Schedule; f) Metrics based on the Base Case Financial Model and Table 1: Technical Metrics Schedule; g) If applicable, completed Manufacturing Line Designs for any subsequent lines and a Summary Description of Modifications to the Manufacturing Line Design from Line 4; and h) Full list of warranty claims, recalls, factory floor recordable injuries, and lost-time incidents on any Project Site 4) Reliability Test For Project Completion[10]: a) Each of Line 1, Line 2, and Line 3 shall have exhibited at least **[*]**% of full capacity compared to the Base Case Financial Model over a rolling **[*]**-month period preceding project completion, based on Effective Hours. b) Line 4 shall have exhibited at least **[*]**% of full capacity compared to the Base Case Financial Model over a rolling **[*]**-month period preceding project completion, based on Effective Hours.

[*]% of the capacity of Line 1 in the 'Capacity' worksheet Row 26, [*]% of the capacity of Line 2 in Row 34, and [*]% of the capacity of Line 3 in Row (42) .

For Line 4 (Row 50), it is [*]%.

Schedule D-4

Table: Technical Metrics Schedule

METRICS:

- Manufacturing Performance:
  - On-Time Completion
  - Line Cycle Time
  - Scrap
    - To include detailed reporting on areas where high scrap rates are occurring, including but not limited to differentiating between that which is recycled back into the manufacturing process and that which must be discarded as well as Factory Acceptance Test failure reporting
  - Availability
- Warranty and Performance Guarantee Claims[11]
- Actual COGS costs vs. Forecasted COGS costs[12]
- Laboratory Long-Term Lifecycle Performance Testing, including but not limited to capacity retention and round-trip efficiency
- UL Testing and Certification status
- Supply Agreements statuses related to product manufacturing

METRIC TYPE	MEASUREMENT	CALCULATION
Manufacturing Performance	On-Time Completion %	
Manufacturing Performance	Line Cycle Time	Battery output / Effective Hours Time (No interruptions) in seconds
Manufacturing Performance	Scrap Rate	Good batteries completed/Total batteries starting process
Manufacturing Performance	Line Availability (By Line)	Actual Automation Uptime/Planned Automation Uptime in %
Warranty and Performance Guarantee Claims	Total number of claims, MWh of claims, cause of claim	N/A
COGS costs	Actual COGS costs vs Forecasted COGS costs	
Laboratory Long-Term Lifecycle Performance Testing	Capacity Retention	
Laboratory Long-Term Lifecycle Performance Testing	Round-Trip Efficiency	

UL Testing and Certification	Status of UL Testing and Certification of Batteries and Cubes	N/A
Supply Agreements	Status of all supply agreements	N/A

11 In general, warranty or performance guarantee claims in totality shall be reported, including reporting status on the MWh which are under review for validity by Eos and those which are planned for replacement or other remedy (e.g., damage payment).

12 S&L considers Actual COGS costs vs. Forecasted COGS costs will be an important early-indicator for profitability problems, but recommends this shouldn't be binding in case the market moves and Eos is able get a higher selling price.

Exhibit 10.4

CERTAIN INFORMATION IN THIS EXHIBIT MARKED [*] HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (A) NOT MATERIAL AND (B) THE TYPE OF INFORMATION THAT THE COMPANY CUSTOMARILY AND ACTUALLY TREATS AS PRIVATE AND CONFIDENTIAL.

FIRST OMNIBUS AMENDMENT TO CREDIT DOCUMENTS

This FIRST OMNIBUS AMENDMENT TO CREDIT DOCUMENTS (this "Agreement") is made as of November 26, 2024 (the "First Amendment Effective Date"), by and among **EOS ENERGY ENTERPRISES, INC.**, a Delaware corporation, as borrower (the "Borrower") and grantor, the guarantors and other grantors party hereto, the Lenders party hereto, and **CCM DENALI DEBT HOLDINGS, LP**, as Administrative Agent (in such capacity, the "Administrative Agent") and Collateral Agent (in such capacity, the "Collateral Agent", together with the Administrative Agent, the "Agent").

RECITALS:

WHEREAS, the Borrower, the other Credit Parties, the Agent and Lenders are party to that certain Credit and Guaranty Agreement, dated as of June 21, 2024 (as amended, amended and restated, supplemented, extended, refinanced and/or otherwise modified and in effect prior to the date hereof, the "Existing Credit Agreement"; the Existing Credit Agreement as amended by this Agreement, the "Credit Agreement"; unless otherwise defined herein, capitalized terms used herein that are not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement).

WHEREAS, the Borrower, the other grantors party thereto and the Collateral Agent are party to that certain Pledge and Security Agreement, dated as of June 21, 2024 (as amended, amended and restated, supplemented, extended, refinanced and/or otherwise modified and in effect prior to the date hereof, the "Existing Security Agreement"; the Existing Security Agreement as amended by this Agreement, the "Security Agreement");

WHEREAS, the Borrower has requested that the Lenders and the Agent agree to make certain amendments to the Existing Credit Agreement and the Existing Security Agreement.

WHEREAS, the Borrower, the Lenders and the Agent have so agreed on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. Amendment to the Credit Documents. Effective as of the First Amendment Effective Date:

(a) the Existing Credit Agreement is hereby amended (a) to delete the stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~) and (b) to add the double-underlined text (indicated textually in the same manner as the following examples: double-underlined text), in each case, as set forth in the marked pages of the Credit Agreement attached as Exhibit A hereto and made a part hereof;

(b) the Compliance Certificate appearing as Exhibit C to the Existing Credit Agreement is hereby deleted in its entirety and replaced with the Compliance Certificate attached as Exhibit B hereto and made a part hereof;

(c) the Existing Credit Agreement is hereby amended to add Appendices C-1, C-2, D-1, D-2, E-1 and E-2 attached as Exhibit C hereto and made a part hereof; and

(d) the Existing Security Agreement is hereby amended (a) to delete the stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~) and (b) to add the double-underlined text (indicated textually in the same manner as the following examples: double-underlined text), in each case, as set forth in the marked pages of the Credit Agreement attached as Exhibit D hereto and made a part hereof.

2. Conditions to Effectiveness. This Agreement shall not become effective until all of the following conditions precedent shall have been satisfied or waived in the sole discretion of Agent:

(a) Credit Documents. The Administrative Agent shall have received (i) counterparts of this Agreement duly executed by each Credit Party, each Lender and the Agent, (ii) a fully executed copy of the Intercreditor Agreement and (iii) a fully executed copy on the Amended and Restated Fee Letter.

(b) Organizational Documents. The Administrative Agent shall have received (i) copies of each Organizational Document executed and delivered by each Credit Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors, sole member or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents (including the Intercreditor Agreement) to which it is a party or by which it or its assets may be bound as of the First Amendment Effective Date, certified as of the First Amendment Effective Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation dated as of a recent date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Opinions of Counsel to Credit Parties. Agents, Lenders and their respective counsel shall have received the favorable written opinion of Haynes & Boone LLP, as counsel for Credit Parties, as to such matters as Administrative Agent may reasonably request, dated as of the First Amendment Effective Date and otherwise in form and substance satisfactory to Administrative Agent in its sole discretion (and each Credit Party hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(d) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate from the chief financial officer of Borrower dated as of the First Amendment Effective Date.

(e) First Amendment Effective Date Certificate. Borrower shall have delivered to the Administrative Agent an executed Officer's Certificate, which shall include (without limitation) certifications with respect to Section 3 of this Agreement.

(a) Fees. Borrower shall have paid all reasonable fees, costs and expenses of Agents and the Lenders party hereto incurred on or prior to the First Amendment Effective Date, including, without limitation, all reasonable legal fees and expenses of Cooley LLP, counsel to Administrative Agent.

3. Representations and Warranties. Each Credit Party hereby represents and warrants as follows:

(a) Authority. Each Credit Party has the requisite corporate or limited liability company power and authority to execute and deliver this Agreement, and to perform its obligations hereunder and under the Credit Documents (as amended or modified hereby) to which it is a party. The execution, delivery and performance by each Credit Party of this Agreement have been duly approved by all necessary corporate or limited liability company action, have received all necessary governmental approval, if any, and do not contravene any law or any contractual restriction binding on any Credit Party. No other corporate or limited liability company proceedings are necessary to consummate such transactions.

(b) Enforceability. This Agreement has been duly executed and delivered by the Credit Parties. This Agreement and each Credit Document (as amended or modified hereby) is the legal, valid and binding obligation of each Credit Party, enforceable against each Credit Party in accordance with its terms, and is in full force and effect.

(c) Representations and Warranties. The representations and warranties made the Credit Parties contained in each Credit Document are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date hereof as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be

applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date).

(d) No Default. No event has occurred and is continuing that constitutes a Default or Event of Default as of the date hereof or would result from the execution and delivery of this Agreement.

4. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the "Credit Agreement" and "Security Agreement" in the Credit Document shall mean and be a reference to the "Credit Agreement" (as defined herein) and "Security Agreement" (as defined herein).

(b) The Credit Agreement, Security Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed. Each Credit Party hereby (i) agrees that, except as specifically provided herein, this Agreement and the transactions contemplated hereby shall not limit or diminish the obligations of the Credit Parties arising under or pursuant to the Credit Agreement or the other Credit Documents to which it is a party, (ii) reaffirms its obligations under the Credit Agreement and each and every other Credit Document to which it is a party and (iii) reaffirms all Liens on the Collateral which have been granted by it in favor of the Administrative Agent pursuant to any of the Credit Documents and all filings made with any Governmental Authority in connection with such Liens. Without in any way limiting the foregoing, this Agreement shall not constitute a novation of the Credit Documents or any Obligations.

(c) The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders (including in connection with any Default or Event of Default), nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith (or any Default or Event of Default thereunder).

(d) This Agreement is a Credit Document.

5. Release. Each Credit Party hereby remises, releases, acquits, satisfies and forever discharges Agent, the Lenders and their respective agents, employees, officers, directors, predecessors, attorneys and all others acting or purporting to act on behalf of or at the direction of Agent or the Lenders (collectively, "Releasees"), of and from any and all manner of actions, causes of action, suits, damages, claims and demands, in each case, that as of the date hereof are known or reasonably should be known to such Credit Party, in law or in equity, which such Credit Party ever had, now has or, to the extent arising from or in connection with any act, omission or state of facts taken or existing on or prior to the date hereof, may have after the date hereof against any Releasees in connection with the Credit Agreement or the other Credit Documents, including, but not limited to, the rights to contest (i) the right of Agent and each Lender to exercise its rights and remedies described in the Credit Agreement and the other Credit Agreement Documents, (ii) any provision of the Credit Agreement or the other Credit Documents or (iii) any conduct of Agent, the Lenders or other Releasees relating to or arising out of the Credit Agreement or the other Credit Documents on or prior to the date hereof.

6. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement shall be construed in accordance with and governed by the law of the State of New York. Sections 10.15 (Consent to Jurisdiction) and 10.16 (Waiver of Jury Trial) of the Credit Agreement are hereby incorporated by reference, mutatis mutandis.

7. Expenses; Headings; Electronic Execution; Counterparts. Sections 10.2 (Expenses), 10.13 (Headings), 10.25 (Electronic Execution of Assignments and Credit Documents) and 10.19 (Counterparts) of the Credit Agreement are hereby incorporated by reference, mutatis mutandis.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date set forth above.

CREDIT PARTIES:

EOS ENERGY ENTERPRISES, INC.

By: */s/ Joseph Mastrangelo*

Name: Joseph Mastrangelo
Title: Chief Executive Officer

EOS ENERGY ENTERPRISES INTERMEDIATE HOLDINGS, LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: President

EOS ENERGY STORAGE LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: Chief Executive Officer and President

EOS SERVICES LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: President

HI-POWER, LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: Chief Executive Officer and President

EOS INGENUITY LAB, LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: President

EOS ENTERPRISE HOLDINGS, LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: President

EOS ENERGY TECHNOLOGY HOLDINGS, LLC

By: */s/ Joseph Mastrangelo*
Name: Joseph Mastrangelo
Title: President

AGENTS AND LENDERS:

CCM DENALI DEBT HOLDINGS, LP, as Administrative Agent and Collateral Agent

By: */s/ Alexander D. Benjamin*
Name: Alexander D. Benjamin
Title: Manager

CCM DENALI DEBT HOLDINGS, LP, as a Lender

By: */s/ Alexander D. Benjamin*
Name: Alexander D. Benjamin
Title: Manager

Exhibit A to First Omnibus Amendment to Credit Documents
~~Execution Version~~

Exhibit A

Conformed Credit Agreement

CREDIT AND GUARANTY AGREEMENT

dated as of June 21, 2024

among

EOS ENERGY ENTERPRISES, INC.,
as Borrower,

THE GUARANTORS PARTY HERETO,

VARIOUS LENDERS,

and

CCM DENALI DEBT HOLDINGS, LP,
as Administrative Agent and Collateral Agent

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This **CREDIT AND GUARANTY AGREEMENT**, dated as of June 21, 2024, is entered into by and among **EOS ENERGY ENTERPRISES, INC.**, a Delaware corporation, as borrower ("Borrower"), the Guarantors party hereto from time to time, the Lenders party hereto from time to time, and **CCM DENALI DEBT HOLDINGS, LP**, as Administrative Agent (in such capacity, together with its successors and assigns in such capacity, "Administrative Agent") and Collateral Agent (in such capacity, together with its successors and assigns in such capacity, "Collateral Agent").

RECITALS:

WHEREAS capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof.

WHEREAS, Lenders have agreed to extend to Borrower a (a) multi-draw term loan facility in an aggregate amount of up to Two Hundred Ten Million Five Hundred Thousand Dollars ($210,500,000) and (b) revolving credit facility (in the Lenders' sole discretion) in an aggregate amount of up to One Hundred Five Million Dollars ($105,000,000), in each case, subject to the terms and conditions set forth herein, including use of proceeds in accordance with Section 2.3 hereof.

WHEREAS, Guarantors have agreed to guarantee the obligations of Borrower hereunder and to secure their respective Obligations by granting to Collateral Agent, for the benefit of Secured Parties, a First Priority Lien on substantially all of their respective assets, including a pledge of all of the Capital Stock of each of their respective Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

"13-Week Forecast" means a 13-week cash flow forecast of receipts and disbursements and Loans for the period from the Closing Date or such other period as required pursuant to Section 5.1(j), setting forth projected cash flows, Loans and disbursements, based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made.

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting in the acquisition by any Credit Party or any of its Subsidiaries, whether by purchase, merger, consolidation or otherwise, of all or substantially all of the assets, all of the Capital Stock, or a business line or unit or division, of any Person.

"Administrative Agent" has the meaning specified in the preamble hereto.

"Administrative Agent Advances" has the meaning specified in Section 9.9(d) hereof.

"Adverse Proceeding" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of any Credit Party or any of its Subsidiaries, threatened against or affecting any Credit Party or any of its Subsidiaries or any property of any Credit Party or any of its Subsidiaries.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling (including any member of the senior management group of such Person), controlled by, or under common control with, that Person (it being understood and agreed that the chief executive officers and co-chief executive officers of each Credit Party and of each of its Subsidiaries shall constitute "Affiliates" of each Credit Party). For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote five percent (5.0%) or more of the Securities having ordinary voting power for the election of directors, managing members, managers or general partners of such Person, or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything to the contrary contained herein, neither Administrative Agent, Collateral Agent, any Lender nor any of their respective Affiliates shall be deemed to be an Affiliate of any Credit Party.

"Affiliate Transaction" has the meaning specified in Section 6.12.

"AFG Indenture" means that certain Indenture, dated as of May 25, 2023, between Borrower, as issuer, and Wilmington Trust, National Association, as trustee.

"Agent" means each of Administrative Agent and Collateral Agent.

"Agent Affiliates" has the meaning specified in Section 10.1(b)(iii).

"Aggregate Amounts Due" has the meaning specified in Section 2.13.

"Aggregate Payments" has the meaning specified in Section 7.2.

"Agreement" means this Credit and Guaranty Agreement, dated as of June 21, 2024.

"Annual Plan" has the meaning specified in Section 5.1(j).

"Anti-Corruption and Anti-Bribery Laws" means, with respect to any Person, all laws of any jurisdiction applicable to such Person from time to time concerning or relating to bribery ~~or~~, corruption or kickbacks, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended ~~and~~, the United Kingdom Bribery Act 2010 and any similar laws.

"Anti-Money Laundering Laws" means any and all laws, judgments, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties of any jurisdiction applicable to any Credit Party or any of its Subsidiaries related to terrorism financing or money laundering, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the United Kingdom Money Laundering Regulations of 2017, and the United Kingdom Proceeds of Crime Act 2002, the United Kingdom Terrorism Act of 2000 and 2006 (as amended by the United Kingdom Anti-Terrorism Crime and Security Act 2001).

"Applicable Percentage" means (a) upon the making of the Initial Term Loan B, nineteen and nine tenths percent (19.9%) of the Fully Diluted Ownership of Borrower (of which eleven and forty-five hundredths percent (11.45%) shall consist of Warrants, and eight and forty-five hundredths percent (8.45%) shall consist of Preferred Stock), (b) upon the making of the Tranche 1 Term Loan, an additional four and nine tenths percent (4.9%) of the Fully Diluted Ownership of Borrower, which shall consist entirely of Preferred Stock (and, when combined with prior Borrowings, twenty-four and eight tenths percent (24.8%) of the Fully Diluted Ownership of Borrower), (c) upon the making of the Tranche 2 Term Loan, an additional six and one tenths percent (6.1%) of the Fully Diluted Ownership of Borrower, which shall consist entirely of Preferred Stock (and, when combined with prior Borrowings, thirty and nine tenths percent (30.9%) of the Fully Diluted Ownership of Borrower) and (d) upon the making of the Tranche 3 Term Loan, an additional two and one

tenths percent (2.1%) of the Fully Diluted Ownership of Borrower, which shall consist entirely of Preferred Stock (and, when combined with prior Borrowings, thirty-three and zero tenths percent (33.0%) of the Fully Diluted Ownership of Borrower); provided that the Applicable Percentage shall be subject to increase or decrease as set forth in the Milestone Schedule.

"Applicable Period" is as set out in the table in Section 2.5(a).

"Approval Date" has the meaning specified in Section 2.5(a).

"Approved Electronic Communications" means any notice, demand, communication, information, document or other material that any Credit Party provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein that is distributed to Agents or Lenders by means of electronic communications pursuant to Section 10.1(b).

"Approved Fund" means, with respect to any Lender, any Person (other than a natural Person) that (a)(i) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business or (ii) temporarily warehouses loans for any Lender or any Person described in clause (i) above and (b) is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) any Person (other than an individual) or any Affiliate of a Person (other than an individual) that administers or manages a Lender or an Affiliate of a Lender.

"Asset Sale" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer, license, sub-license or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Credit Party's or any Subsidiary's businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Capital Stock owned by any Credit Party or Subsidiary, and excluding inventory sold or leased in the ordinary course of business or the Convertible Notes and the Equity Instruments. For purposes of clarification, "Asset Sale" shall include (a) any license or sub-license (as licensor or sub-licensor) of Intellectual Property (other than non-exclusive licenses or sub-licenses granted in the ordinary course of business), (b) the sale or other disposition for value of any contracts, (c) the early termination or modification of any contract resulting in the receipt by any Credit Party or Subsidiary of a Cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification), and (d) any sale of merchant accounts (or any rights thereto (including, without limitation, any rights to any residual payment stream with respect thereto)) by any Credit Party or Subsidiary. For the avoidance of doubt, Asset Sale shall not include any sale of inventory by any Credit Party or Subsidiary, including, without limitation, any batteries produced and sold in the ordinary course of business.

"Assets" means all rights, properties or other assets, whether real, personal or mixed, tangible or intangible, of any kind, nature and description, whether accrued, contingent or otherwise, and wheresoever situated and whether or not carried or reflected, or required to be carried or reflected, on the books of any Person.

"Assignment Agreement" means an Assignment Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent.

"Atlas Facility" means that certain Senior Secured Term Loan Credit Agreement, dated as of July 29, 2022, by and among Borrower, ACP Post Oak Credit I LLC, as lender, administrative agent and collateral agent and the lenders from time to time party thereto (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

"Atlas Side Letter" means that certain Insurance Letter Agreement entered into on or prior to the date hereof by and among ~~the~~ Borrower and certain credit support providers party thereto.

"Authorized Officer" means, as applied to any Person, any individual holding the position of chairman (or equivalent) of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer, controller or treasurer (or the equivalent thereof) of such Person.

"Availability Period" means, solely to the extent that each tranche of Term Loans set forth in Section 2.1(a) have been drawn in full and the Lenders' have elected in their sole discretion to make the Revolving Loan available to Borrower, the period from and

including June 21, 2026, on which to but excluding the earlier of: (i) the Maturity Date and (ii) the date of termination of the Revolving Commitments.

"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.

"Banyan PTC Purchase Agreement" means that certain Tax Credit Purchase Agreement, dated as of April 22, 2024, between Borrower and Banyan Software, Inc. ("Banyan"), pursuant to which Borrower agreed to sell and transfer to Banyan all Production Tax Credits eligible to be claimed by Borrower for the 2023 calendar year, as in effect on the Closing Date.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Limit" prior to receiving the Requisite Stockholder Approval means a number of shares equal to 19.99% of the outstanding shares of common stock of ~~the~~ Borrower as of the initial Borrowing Date and after receiving the Requisite Stockholder Approval has the meaning specified in the Securities Purchase Agreement for a "Beneficial Ownership Limitation".

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Beneficiary" means each Agent and Lender.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such "employee benefit plan" or "plan".

"Borrower" has the meaning specified in the preamble hereto.

"Borrowing" means each borrowing of any Loan hereunder.

"Borrowing Date" means the funding date of any Borrowing.

"Borrowing Request" means a written request by Borrower for a Borrowing delivered to Administrative Agent in accordance with Section 2.1(c), which shall be substantially in the form attached hereto as Exhibit A.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"CapEx Budget" means the budget in the form of the CapEx Budget attached hereto as Exhibit H, as such budget may be replaced from time to time upon written mutual agreement by Borrower and the Administrative Agent in their respective sole discretion.

"CapEx Required Amount" has the meaning specified in Section 6.3.

"Capital Expenditures" shall mean any expenditure or commitment to expend money for any lease, purchase or other acquisition of any asset (including capitalized leasehold improvements) or any additions, improvements, repairs, improvements or other capitalized costs or expenditure, which would be classified as a fixed or capital asset on a consolidated balance sheet of Borrower and its Subsidiaries prepared in accordance with GAAP.

"Capital Lease" means, as applied to any Person, any lease of (or other agreement conveying the right to use) any property (whether real, personal or mixed) by that Person, as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"Capital Lease Obligations" means, with respect to any Person, 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.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing; provided that any Indebtedness with conversion rights into capital stock of any Person shall not be deemed to be Capital Stock.

"Capitalized Interest" has the meaning specified in Section 2.5(d).

"Cash" means money, currency or a credit balance in any demand or Deposit Account; provided that notwithstanding anything to the contrary contained herein, for purposes of calculating compliance with the requirements of ~~Section 3~~3 and 6 hereof "Cash" shall exclude any amounts that would not be considered "cash" under GAAP or "cash" as recorded on the books of Borrower and its Subsidiaries.

"Cash Equivalents" means, as of any date of determination, any of the following~~: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one year after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than two~~ to the extent owned by a Credit Party free and clean of all Liens other than Permitted Liens: (a) direct obligations of the United States (including obligations issued or held in book-entry form on the books of the United States Department of the Treasury) or obligations, the timely payment of principal and interest of which is fully guaranteed by the United States maturing not more than one hundred ~~seventy~~and eighty (~~270~~180) days from the date of the creation thereof ~~and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one hundred eighty (180) days after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than Five Hundred Million Dollars ($500,000,000); and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than Five Billion Dollars ($5,000,000,000), and (iii) has the highest rating obtainable from either~~; (b) obligations, debentures, notes or other evidence of Indebtedness issued or guaranteed by any agency or instrumentality of the United States maturing not more than one hundred and eighty (180) days from the date of the creation thereof; (c) interest-bearing demand or time deposits (including certificates of deposit) that are held in banks with a general obligation rating of not less than "A-" by S&P or the equivalent rating by Moody's, or if not so rated, secured at all times, in the manner and to the extent provided by law, by Collateral described in clause (a) or (b) of this definition, of a market value of no less than the amount of moneys so invested maturing not more than one hundred and eighty (180) days from the date of the creation thereof; (d) commercial paper rated (on the date of acquisition thereof) at least "A-1" or "P-1" or equivalent by S&P or Moody's, respectively (or an equivalent rating by another nationally recognized credit rating agency of similar standing if neither of such corporations is then in the business of rating commercial paper), maturing not more than ninety (90) days from the date of creation thereof; and (e) money market funds, so long as such funds are rated "Aaa" by Moody's and "AAA" by S&P ~~or Moody's~~.

"Cerberus" means Cerberus Capital Management, L.P. and its Affiliates, and/or certain funds, accounts or clients managed, advised or sub-advised by Cerberus Capital Management, L.P. or its Affiliates (in each case, together with their respective successors and assigns), as the context may require.

"Certificates of Designation" means, collectively, each Certificate of Designation duly adopted by the Board of Directors of Borrower in connection with the issuance of each series of Preferred Stock issued in order to satisfy the terms and conditions of the Credit Documents, which sets forth the preferences, conversion or other rights (as applicable), voting powers, restrictions, qualifications and terms and conditions of such series of Preferred Stock.

"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.

"Change of Control" means each occurrence of any of the following: (a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) other than a Permitted Holder of beneficial ownership of more than twenty five percent (25%) of the aggregate outstanding voting or economic power of the Capital Stock of Borrower; (b) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of Borrower (or its direct or indirect ultimate parent holding company) was approved by a vote of at least a majority of the directors of Borrower then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of Borrower; (c) Borrower shall cease to own and control, beneficially and of record, directly or indirectly, one hundred percent (100%) of the issued and outstanding Capital Stock of each of its Subsidiaries, except where such failure occurs as a result of a transaction or circumstance expressly permitted by the Credit Documents; or (d) a "change of control", "fundamental change" or any comparable term or provision under or with respect to (i) any of the Capital Stock of any Credit Party or any of its Subsidiaries ~~or~~, (ii) the DOE Obligations (including, without limitation, the DOE Loan Documents) or (iii) any Indebtedness of any Credit Party or any of its Subsidiaries the commitments or principal amount of which exceeds One Million Dollars ($1,000,000); provided, that any transaction or series of transactions with respect to the Capital Stock of Borrower undertaken by Cerberus or any of its Affiliates that results in a "change of control", "fundamental change" or any comparable term or provision shall not give rise to a Change of Control under this clause (d) solely as a result of such transaction or series of transactions.

"Closing Date" means the date on which all of the requirements set forth in Section 3.1 shall have been satisfied or waived in accordance with Section 10.5.

"Closing Date Certificate" means a Closing Date Certificate substantially in the form of Exhibit E-1.

"Collateral" means, collectively, all of the real, personal and mixed property (including, without limitation, Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations, including, without limitation, each Project Account other than the DOE Funding Account.

"Collateral Agent" has the meaning specified in the preamble hereto.

"Collateral Documents" means the Pledge and Security Agreement, the Intellectual Property Security Agreements, the Mortgages ~~(if any)~~, the Foreign Collateral Documents (if any), the Control Agreements, Material Contract Estoppel (if any), the Direct Agreements, the Project IP Agreements, the Mortgaged Leases, any other leasehold mortgage (if any) and all other instruments, documents and agreements delivered by any Credit Party pursuant to this Agreement or any of the other Credit Documents in order to

grant to Collateral Agent, for the benefit of Secured Parties, a Lien on any real, personal or mixed property of that Credit Party as security for the Obligations in each case, as and when entered into by the applicable Credit Parties.

"Commitment" means any Term Loan Commitment and any Revolving Commitment (whether or not such Revolving Commitment is provided on a committed basis).

"Company Data" means all data contained in the systems, databases, files or other records of any Credit Party or any of its Subsidiaries and all other information and data compilations used by any Credit Party or any of its Subsidiaries, whether or not in electronic form, including Personal Data.

"Compliance Certificate" means a Compliance Certificate substantially in the form of Exhibit C.

"Commission Payments" has the meaning specified in Section 4.31.

"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 any period, an amount determined for Borrower and its Subsidiaries on a consolidated basis equal to:

(a) Consolidated Net Income,

plus

(b) the sum, without duplication and to the extent included in the calculation of Consolidated Net Income for such period, of the following:

(i) Consolidated Interest Expense,

(ii) provisions for taxes based on income, profits or capital, including federal, state, franchise, excise, property and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest with respect thereto, and state taxes in lieu of business fees and payroll taxes,

(iii) total depreciation expense,

(iv) total amortization expense,

~~(v) losses arising from the consummation of any Permitted Tax Credit Transaction,~~

(~~v~~iv) non-cash expenses reducing Consolidated Net Income that do not represent a cash item in such period or any future period, including, without limitation, any non-cash expense relating to the vesting of warrants and any stock option and other equity-based compensation expenses (including restricted stock awards),

(~~vi~~vi) non-recurring expenses reducing Consolidated Net Income that have been approved in writing by the Administrative Agent in its reasonable discretion, and

(~~vii~~vii) losses arising from the settlement of any Hedging Transactions entered into pursuant to a Permitted Hedging Agreement or attributable to the movement in mark-to-market valuation of the same, *minus*

(c) the sum, without duplication and to the extent included in the calculation of Consolidated Net Income for such period, of the following:

(i) interest income,

(ii) non-cash income or gains that do not represent a cash item in such period or any future period, and

(iii) gains arising from the settlement of any Hedging Transactions entered into pursuant to a Permitted Hedging Agreement or attributable to the movement in mark-to-market valuation of the same.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest (including any Capitalized Interest)) of Borrower and its wholly-owned Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness, including all commissions, discounts and other fees and charges owed with respect to letters of credit.

"Consolidated Net Income" means, for any period, (a) the net income (or loss) of Borrower and its Subsidiaries (provided that for purposes of including the value of any Production Tax Credits, only net cash amounts received during such period from the monetization of any such Production Tax Credits pursuant to a Permitted Tax Credit Transaction shall be included in this definition of Consolidated Net Income) on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, *minus* (to the extent included in net income (or loss) for such period) (b) the sum of (i) the income (or loss) of any Person (other than a wholly-owned Subsidiary of Borrower) in which Borrower or any of its Subsidiaries has an ownership interest except to the extent that any such income is actually received in Cash by Borrower or such Subsidiary by reason of dividends or similar distributions during such period, *plus* (ii) the income of any Subsidiary of Borrower (other than a Credit Party) to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, *plus* (iii) any gains or losses attributable to Asset Sales (to the extent expressly permitted hereunder) or returned surplus assets of any Pension Plan.

"Consolidated Revenue" means, for any period, the revenue of Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP.

"Contingent Obligations" means, as to any Person, any obligation of such Person with respect to any Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, as a guarantee or otherwise:

(a) for the purchase, payment or discharge of any such primary obligation;

(b) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, including the obligation to make, take or pay or similar payments;

(c) to advance or supply funds;

(d) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor;

(e) to purchase property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or

(f) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof, including with respect to letter of credit obligations, swap agreements, foreign exchange contracts and other similar agreements (including agreements relating to derivative instruments); provided that: (i) the term "Contingent Obligations" shall not include endorsements of instruments for deposit or collection in the ordinary course of business; and (ii) the amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if

not stated or determinable, the maximum anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Contractual Obligation" means, as applied to any Person, any provision of any ~~Security~~Securities issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Contributing Guarantors" has the meaning specified in Section 7.2.

"Control Agreement" means (a) with respect to any Deposit Account, an agreement in form and substance satisfactory to Collateral Agent in its sole discretion, among Collateral Agent, the financial institution or other Person at which such Deposit Account is maintained and the Credit Party maintaining such account, effective for Collateral Agent to obtain "control" (within the meaning of Articles 8 and 9 under the UCC) of such account and (b) with respect to any Securities Account, an agreement in form and substance satisfactory to Collateral Agent in its sole discretion, among Collateral Agent, the Securities Intermediary with which the applicable entitlement or contract is carried and the Credit Party owning such entitlement or contract, that is effective for the Collateral Agent to obtain "control" (within the meaning of Articles 8 and 9 under the UCC) of such account.

"Controlled Account" means (a) any Deposit Account maintained by a Credit Party that is the subject of an effective Control Agreement and in which Collateral Agent has a First Priority Lien (including, for the avoidance of doubt, all monies on deposit in, or credited to, any such Deposit Account and all certificates and instruments, if any, representing or evidencing any such Deposit Account) and (b) any Securities Account that is the subject of an effective Control Agreement that is maintained by a Credit Party with a Securities Intermediary and in which Collateral Agent has a First Priority Lien (including all Financial Assets held in such Securities Account and all certificates and instruments, if any, representing or evidencing the Financial Assets contained therein).

"Convertible Note Maturity Date" means, with respect to any Convertible Note, the earliest of the maturity date (or equivalent term) and the date on which any such Convertible Note may be redeemed, repurchased, converted, or exchanged in satisfaction of the obligations thereof, in each case, other than any such date that Borrower (at its option) is expressly permitted to satisfy its obligations thereunder solely by the issuance of Borrower's common stock.

"Convertible Notes" means, collectively, those certain (~~i~~a) the convertible promissory notes issued by Borrower pursuant to that certain Indenture, dated as of April 7, 2022, by and between Borrower, as issuer, and Wilmington Trust, National Association, as trustee; (b) the convertible promissory notes issued by Borrower pursuant to that certain Indenture, dated as of May 25, 2023, by and between Borrower, as issuer, and Wilmington Trust, National Association, as trustee; (c) convertible promissory notes made by Borrower in favor of Wood River Capital, LLC, and issued pursuant to the Koch Indenture, such Koch Indenture as contemplated by the terms of that certain Investment Agreement dated as of July 6, 2021, between Borrower and Spring Creek Capital, LLC, an affiliate of Wood River Capital, LLC, both wholly-owned, indirect subsidiaries of Koch Industries, Inc., as such convertible promissory notes may be reissued, divided and increased, any increases limited to the addition of interest "paid in kind" under the terms of the Koch Indenture (~~collectively~~such notes under this clause (c), as may be refinanced or replaced in accordance with this Agreement, the "Koch Convertible Notes") and (~~ii~~d) convertible promissory notes made by Borrower in favor of Great American Insurance Company, Denman Street LLC, John B. Barding Irrevocable Children's Trust, Ardsley Partners Renewable Energy Fund, L.P., CCI SPV III, LP and AE Convert, LLC, and issued pursuant to the AFG Indenture, such AFG Indenture as contemplated by the terms of that certain Investment Agreement dated as of January 18, 2023, between Borrower and the purchasers party thereto, as such convertible promissory notes may be reissued, divided and increased, any increases limited to the addition of interest "paid in kind" under the terms of the ~~Koch~~AFG Indenture, in each case, as may be refinanced or replaced in accordance with this Agreement.

"Convertible Notes Refinancing Plan" means a plan provided by Borrower and in form and substance satisfactory to Administrative Agent, which will demonstrate Borrower's plan, assumptions and conduct, in a manner consistent with this Agreement, to refinance, extend or replace the Convertible Notes by the dates and in the manner set forth therein.

"Counterpart Agreement" means a Counterpart Agreement substantially in the form of Exhibit F delivered by a Credit Party pursuant to Section 5.10 or Section 5.12(b).

"Credit Documents" means, collectively, any of this Agreement, the Notes, if any, each Guaranty, the Collateral Documents, the Fee Letter, each Perfection Certificate, each Borrowing Request, each Equity Document, each Equity Instrument, the First Amendment, the Intercreditor Agreement and all other documents, instruments or agreements signed and delivered by or on behalf of a Credit Party in connection herewith.

"Credit Party" means Borrower and each Subsidiary of Borrower that is a Guarantor.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, dissolution, administration, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, winding up reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means ~~a~~any condition ~~or~~, event or circumstance that, after notice or lapse of time or both, would constitute an Event of Default.

"Default Rate" has the meaning specified in Section 2.6.

"Defaulting Lender" means, subject to Section 2.16, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified Borrower or 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 (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Laws, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; 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. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16) upon delivery of written notice of such determination to Borrower and each Lender.

"Delayed Draw Term Loans" shall mean, collectively, the Tranche 1 Term Loan, Tranche 2 Term Loan and Tranche 3 Term Loan.

"Deposit Account" means (a) all "deposit accounts" as defined in Article 9 of the UCC and (b) all of the accounts listed on Schedule 4 to the Pledge and Security Agreement under the heading "Deposit Accounts" (as such Schedule may be amended or supplemented from time to time in accordance with the Pledge and Security Agreement).

"Designated Advisor" means, collectively, (a) the Initial Advisors and (b) other third party financial advisors, independent engineers, insurance consultants, market consultants, environmental consultants, legal counsel, industry experts and any other advisor, agent, specialist, counsel or consultant from time to time required by the Administrative Agent to be retained by Borrower or a Subsidiary pursuant to Section 5.7(b), including, without limitation, any other advisor engaged on or prior to the Closing Date.

"Direct Agreement" means each direct agreement entered into between a Major Project Participant (as defined in the DOE Guarantee Agreement) and the Collateral Agent in respect of each Major Project Document.

"Disqualified Capital Stock" means any Capital Stock issued by any Person that (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is or may become subject to redemption or repurchase by such Person at the option of the holder thereof, in whole or in part or (c) is convertible or exchangeable at the option of the holder thereof for Indebtedness or Capital Stock described in this definition, on or prior to, in the case of clause (a), (b) or (c), the date that is ninety-one (91) days after the Maturity Date; provided that the Equity Instruments shall not constitute Disqualified Capital Stock.

"DOE" means the United States Department of Energy, an agency of the United States of America, together with its successors and assigns.

"DOE Accounts Agreement" means that certain Collateral Agency and Accounts Agreement, dated as of November 26, 2024, by and among Borrower, DOE and the DOE Collateral Agent, as account bank.

"DOE Collateral Agent" means Citibank, N.A., in its capacity as collateral agent for the benefit of the DOE Secured Parties, or any successor collateral agent appointed from time to time pursuant to the DOE Accounts Agreement.

"DOE Funding Account" has the meaning ascribed to such term in the DOE Accounts Agreement.

"DOE Guarantee Agreement" means that certain Loan Guarantee Agreement, dated as of November 26, 2024, by and among the Credit Parties and DOE, in each case, as amended, restated, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the Intercreditor Agreement.

"DOE Loan" means the "Guaranteed Loan" as defined in the DOE Guarantee Agreement.

"DOE Loan Documents" means all "Financing Documents" as defined in the DOE Guarantee Agreement, in each case, as amended, restated, amended and restated, supplemented, refinanced or otherwise modified from time to time in accordance with the Intercreditor Agreement.

"DOE Obligations" means the "Secured Obligations" as defined in the DOE Guarantee Agreement.

"DOE Secured Party" means each "Secured Party" as defined in the DOE Guarantee Agreement.

"Dollars" and "$" mean the lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

"Draw Period" has the meaning specified in the Milestone Schedule.

"ECF Percentage" means, with respect to the prepayment (if any) required by Section 2.10(e) for any Fiscal Year of Borrower, a percentage equal to (a) with respect to the amount of Excess Cash Flow (if any) that is equal to or less than One Hundred Million Dollars ($100,000,000) but greater than zero ($0) for such Fiscal Year, one hundred percent (100%) of such Excess Cash Flow, (b) with respect to the amount of Excess Cash Flow (if any) that is greater than One Hundred Million Dollars ($100,000,000) and equal to or less than Two Hundred Million Dollars ($200,000,000) for such Fiscal Year, seventy-five percent (75%) of such Excess Cash Flow; (c) with respect to the amount of Excess Cash Flow (if any) that is greater than Two Hundred Million Dollars ($200,000,000) and equal to or less than Four Hundred Million Dollars ($400,000,000) for such Fiscal Year, fifty percent (50%) of such Excess Cash Flow; and (d) with respect to all amounts of Excess Cash Flow (if any) greater than Four Hundred Million Dollars ($400,000,000) for such Fiscal Year, twenty-five percent (25%) of such Excess Cash Flow.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Sections 10.6(b)(iv), 10.6(b)(v), and 10.6(b)(vi) (subject to such consents, if any, as may be required under Section 10.6(b)(iii)).

"Employee Benefit Plan" means (A) any "employee benefit plan" as defined in Section 3(3) of ERISA, whether or not subject to ERISA, (B) stock option plans, stock purchase plans, bonus or incentive plans, severance pay plans, programs or arrangements, deferred compensation arrangements or agreements, employment agreements, compensation plans, programs, agreements or arrangements, change in control plans, programs or arrangements, supplemental income arrangements, vacation plans, and all other employee benefit plans, agreements, and arrangements, not described in (A) above; and (C) plans or arrangements providing compensation to employee and non-employee directors, in each case, that is or was sponsored, maintained or contributed to by, or required to be contributed by, any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates or with respect to which any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates has or would reasonably be expected to have any liability, contingent or otherwise.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" means any and all federal, state, local or foreign statutes, laws, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (a) environmental matters, including those relating to any Hazardous Materials Activity; (b) the generation, use, storage, transportation or disposal of Hazardous Materials; or (c) occupational safety and health, industrial hygiene, the protection of human, plant or animal health or welfare, in any manner applicable to any Credit Party or any of its Subsidiaries or any Facility.

"Equity Documents" means, collectively, any of the Warrants, the Certificates of Designation and the Securities Purchase Agreement.

"Equity Instruments" means any Warrant (including the common stock issuable upon exercise under each Warrant) and any Preferred Stock issued from time to time by Borrower, in each case, pursuant to the Securities Purchase Agreement.

"Equity Instruments Coverage Condition" means, with respect to each Borrowing of Term Loans and each achievement or failure to achieve any milestone set forth in the Milestone Schedule resulting in an adjustment to the Applicable Percentage, that (a) the Fully Diluted Ownership of Borrower represented by the Warrants issued through and including the date of any Borrowing, shall be equal to not less than the Applicable Percentage; provided that such Warrants shall be subject to the Beneficial Ownership Limit and, prior to receiving the Requisite Stockholder Approval, on a non-fully diluted basis and (b) such shares of Preferred Stock as are necessary to satisfy the Applicable Percentage to the extent that the issuance of Warrants is limited by application of the Beneficial Ownership Limit; provided that, (i) prior to receiving the Requisite Stockholder Approval, only Series A Preferred Stock of Borrower shall be issued in order to satisfy the Applicable Percentage and (ii) after receiving the Requisite Stockholder Approval, Series B Preferred Stock of Borrower shall be issued in order to satisfy the Applicable Percentage.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, the regulations promulgated and rulings issued thereunder and any successor thereto.

"ERISA Affiliate" means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) solely for purposes of Section 412 of the Internal Revenue Code or Section 302 of ERISA any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member. Any former ERISA Affiliate of any Credit Party or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such Credit Party or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Credit Party or such Subsidiary and with respect to liabilities arising after such period for which such Credit Party or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"ERISA Event" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Sections 412 or 430 of the Internal Revenue Code or Sections 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (d) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (e) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (f) the withdrawal or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Credit Party, any of its Subsidiaries or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (g) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, on any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates or the imposition of a Lien in favor of the PBGC under Title IV of ERISA; (i) the withdrawal of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (j) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) of ERISA or a violation of Section 436 of the Internal Revenue Code with respect to any Pension Plan; or (k) the occurrence of a non-exempt "prohibited transaction" with respect to which any Credit Party or any of its Subsidiaries is a "disqualified person" or a "party of interest" (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA, respectively) or which could reasonably be expected to result in a Material Adverse Effect.

"Erroneous Payment" has the meaning specified in Section ~~9.11(a)~~9.9(e).

"Erroneous Payment Deficiency Assignment" has the meaning specified in Section 9.11(d)(i).

"Erroneous Payment Impacted Class" has the meaning specified in Section ~~9.11(d)(i)~~9.11(c)(i).

"Erroneous Payment Return Deficiency" has the meaning specified in Section ~~9.11(d)(i)~~9.11(c)(i).

"Erroneous Payment Subrogation Rights" has the meaning specified in Section ~~9.11(e)~~9.11(d).

"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.

"Event of Default" has the meaning specified in Section 8.1.

"Event of Loss" means any condemnation, expropriation or taking (including by any Governmental Authority) of any portion of the Project or Collateral, or any other event that causes any portion of the Project or the Collateral to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title (or defect therein) or any damage, destruction or loss of such property.

"Excess Cash Flow" means, with respect to any Fiscal Year of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP the result, if positive, of:

(a) Consolidated EBITDA,

minus

(b) the sum, without duplication, of the following:

~~(i) all non-cash charges, expenses, accruals, losses, credits or other items added back in the calculation of Consolidated EBITDA during such period;~~

(~~ii~~i) all cash Consolidated Interest Expenses (including, without limitation, all fees and expenses) added back in the calculation of Consolidated EBITDA during such period;

(~~iii~~ii) all principal payments of Indebtedness of Borrower or any of its Subsidiaries during such period (other than any voluntary prepayments of the Loans hereunder and any voluntary prepayments of the DOE Loan under the DOE Guarantee Agreement), in each case of the foregoing, to the extent permitted hereunder and not financed by the issuance of Indebtedness or Capital Stock not otherwise permitted hereunder; and

~~(iv) the aggregate amount added back in the calculation of Consolidated EBITDA for such period pursuant to clause (b)(v) of the definition thereof solely to the extent paid in cash by Borrower or its Subsidiaries during such period; and~~

(~~v~~viii) the amount of taxes paid in cash by Borrower or its Subsidiaries and added back in the calculation of Consolidated EBITDA during such period. Notwithstanding the foregoing, Excess Cash Flow shall not be less than zero Dollars ($0).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.15, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.15(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Extraordinary Receipts" means any Cash or other amounts or receipts received by, or paid to ~~or for the~~, on behalf of or on account of the any Credit Party or any of its Subsidiaries, not in the ordinary course of business (and not consisting of proceeds and other amounts required to be applied as a mandatory prepayment under Section 2.10(a), (b), (c), (e) or ~~(f)~~(f) hereof), including (a) ~~pension plan reversions, (b) proceeds of judgments, proceeds of settlements~~indemnification payments; (b) any cash or other receipts in the nature

of indemnification payments under or in respect of any acquisition documentation or any related documentation; (c) any judgment or settlement proceeds, or other consideration of any kind received in connection with any cause of action or proceeding or any legal or equitable claim ~~or cause of action~~ after payment of all out of pocket fees and expenses actually paid or payable by any Credit Party or any of its Subsidiaries in connection with such judgments, settlements, or other proceedings resolution~~, (c) indemnity payments,~~; (d) pension plan reversions; (e) any purchase price adjustment received in connection with any purchase agreement (excluding, however, any working capital adjustments made pursuant to such purchase agreement), and (~~e~~f) ~~Cash~~cash received by or paid to or for the account of any Credit Party or any of its Subsidiaries in respect of ~~Cash~~cash receipts with respect to indemnity payments, payments from escrowed amounts, litigation proceeds, and other extraordinary receipts; provided that Cash received in the form of a grant extended by a Governmental Authority shall not constitute "Extraordinary Receipts".

"Facility" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by any Credit Party or any of its Subsidiaries.

"Fair Share" has the meaning specified in Section 7.2.

"Fair Share Contribution Amount" has the meaning specified in Section 7.2.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue 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), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation or official rules adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Internal Revenue Code.

"Federal Funds Effective Rate" means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) zero percent (0%).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States.

"Fee Letter" means the letter agreement of ~~even~~ date ~~herewith~~as of the First Amendment Effective Date between Borrower and Administrative Agent, as the same may be amended, restated or amended and restated from time to time.

"FFB" means the Federal Financing Bank, an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 that is under the general supervision of the Secretary of Treasury, together with its successors and assigns.

"Financial Asset" has the meaning set forth in Article 8 of the UCC.

"Financial Officer Certification" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the applicable Person that such financial statements fairly present, in all material respects, the financial condition, on a consolidated basis, of the Person described in such financial statements as of the dates indicated and the results of such Person's operations and cash flows, on a consolidated basis, for the periods indicated, subject to changes resulting from normal year-end adjustments.

"First Amendment" means that certain First Omnibus Amendment to Credit Documents, dated as of November 26, 2024, by and among the Administrative Agent, the Collateral Agent, the Lenders and the Credit Parties.

"First Amendment Effective Date" has the meaning set forth in the First Amendment.

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, such Lien is prior to all other Liens on such Collateral, subject ~~only to~~to the Intercreditor Agreement and any Permitted Lien which is prior as a matter of law.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Borrower and its Subsidiaries ending on December 31 of each calendar year.

"Foreign Collateral Documents" means any pledge, security or other collateral agreement pursuant to which the Capital Stock issued by, or the assets owned by, a Foreign Subsidiary are made subject to a Lien in favor of Collateral Agent for the benefit of the Secured Parties and is governed by the laws of the jurisdiction in which such Foreign Subsidiary is formed or where their assets are located, all of which shall be in form and substance satisfactory to Administrative Agent in its sole discretion.

"Foreign Lender" means a Lender that is not a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fully Diluted Ownership" means, as of any time of determination thereof, the number of shares of common stock outstanding, together with the number of shares of common stock that securityholders have the right to acquire directly or indirectly from Borrower on account of outstanding securities convertible or otherwise exchangeable for common stock, whether or not any such right is currently exercisable; provided that, solely for purposes of calculating Fully Diluted Ownership as set forth herein, with respect to any shares of Preferred Stock issued pursuant to the requirements of this Agreement and the Securities Purchase Agreement that do not convert into shares of common stock by their terms, the number of shares of common stock represented by the liquidation value of such shares of preferred stock shall be considered the number of shares of common stock. For the avoidance of doubt, the calculation of Fully Diluted Ownership of Borrower for the purposes of determining the Applicable Percentage in connection with the making of a Term Loan or any increase or decrease as set forth in the Milestone Schedule shall include any securities being issued in connection with such Term Loan advance or adjustment set forth in the Milestone Schedule.

"Funding Guarantors" has the meaning specified in Section 7.2.

"GAAP" means, subject to the limitations on the application thereof set forth in Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

"Governmental Authority" means the government of the United States of America or any other nation, or of 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).

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Grantor" has the meaning specified in the Pledge and Security Agreement.

"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, direct or indirect, of the guarantor (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 in support of such Indebtedness or obligation; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not so stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith. The term "Guarantee" used as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 7.2.

"Guarantor" means each Subsidiary of Borrower that is a party to this Agreement (as an original signatory or by joinder) or that otherwise executes and delivers a Guaranty.

"Guarantor Subsidiary" means each Subsidiary of Borrower that is a Guarantor.

"Guaranty" means the guaranty set forth in ~~Section 7~~7, each Counterpart Agreement and any other guaranty agreement, each in form and substance satisfactory to Administrative Agent in its sole discretion, pursuant to which a Subsidiary or any other Person guarantees payment and performance of all Obligations.

"Hazardous Materials" means any chemical, material or substance, that is listed, classified, regulated, characterized or otherwise defined as "hazardous," "toxic," "radioactive," a "pollutant," or "contaminant," (or words of similar intent or meaning) under applicable Environmental Law, including but not limited to petroleum, petroleum by-products, asbestos or asbestos-containing material, urea formaldehyde insulation, toxic mold, polychlorinated biphenyls, flammable or explosive substances, or pesticides.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedging Obligations" of any Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (a) any and all Hedging Transactions, (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transactions and (c) any and all renewals, extensions and modifications of any Hedging Transactions and any and all substitutions for any Hedging Transactions.

"Hedging Plan" means a plan to be provided by Borrower in form and substance satisfactory to Administrative Agent which may include hedging strategies and parameters of Borrower to protect against market movements in commodity prices and currency exchange risk with respect to the Project, but not for speculative purposes.

"Hedging Transaction" of any Person means (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into by such Person that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, spot transaction, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether or not any such transaction is governed by or subject to any master agreement and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to Administrative Agent or any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

"Historical Financial Statements" means as of the Closing Date, (a) the audited financial statements of Borrower and its Subsidiaries, for the Fiscal Years ended December 31, 2022 and December 31, 2023, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Year, and (b) for the interim period from December 31, 2023 to the Closing Date, unaudited financial statements of Borrower and its Subsidiaries, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the fiscal quarter ended March 31, 2024.

"Immaterial Foreign Subsidiary" means each of (a) Eos Energy Storage India Private Limited, (b) Eos Energy Storage S.R.L. and (c) any other Foreign Subsidiary approved in writing by Administrative Agent as an "Immaterial Foreign Subsidiary"; provided that the nature of such Foreign Subsidiaries' business and the scope of their assets shall not change materially from what they were on the First Amendment Effective Date.

"Indebtedness" means, as applied to any Person, means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business not past due for more than ninety (90) days and obligations in respect of the funding of plans under ERISA), (d) all obligations of such Person under any conditional sale or other title retention agreement(s) relating to property acquired by such Person, (e) all ~~obligations in respect of~~ Capital ~~Leases~~Lease Obligations of such Person, (f) all obligations, contingent or otherwise (including Contingent Obligations), of such Person in respect of letters of credit, banker's acceptances or similar extensions of credit and letters of guaranty or as a purchaser counterparty to a put agreement or such other similar agreement relating to the purchase of preferred stock of any of its Subsidiaries, (g) all Guarantees by such Person of Indebtedness of others, (h) all Indebtedness of a third party secured by any Lien on any property or asset owned or held by such Person, whether or not such Indebtedness has been assumed by such Person, (i) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Disqualified Capital Stock or other preferred stock that is classified as indebtedness under GAAP of such Person, (j) all Off-Balance Sheet Liabilities, ~~and~~ (k) all Hedging Obligations~~. The~~ and (l) all obligations of such Person to redeem or purchase its preferred stock that are classified as indebtedness under GAAP; provided that the Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership ~~or joint venture~~ in which such Person is a general partner ~~or a joint venturer~~), except to the extent ~~that~~ the terms of such Indebtedness provide that such Person is not liable therefor. ~~For purposes of determining the amount of attributed Indebtedness from Hedging Obligations, the "principal amount" of any Hedging Obligations at any time shall be the Net Mark-to-Market Exposure of such Hedging Obligations.~~

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Borrowings available or the use or intended use of the proceeds thereof, or any enforcement of any of the Credit Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty)); (b) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of any Credit Party or any of its Subsidiaries; or (c) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Credit Party or any Subsidiary of a Credit Party, and regardless of whether any Indemnitee is a party thereto.

"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 Credit Party under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Indemnitee" has the meaning specified in Section 10.3.

"Indemnitee Related Party" has the meaning specified in Section 9.7.

"Initial Advisors" means those advisors set forth on Schedule 1.2.

"Initial Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan to Borrower in a principal amount not to exceed the amount set forth under the heading Initial Commitment opposite such Lender's name on Appendix A.

"Initial Term Loan" has the meaning specified in Section 2.1(a).

"Initial Term Loan A" has the meaning specified in Section 2.1(a).

"Initial Term Loan B" has the meaning specified in Section 2.1(a).

"Intellectual Property" means (a) all inventions and discoveries (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures, together with all reissuances, divisionals, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith and all applications, registrations and renewals in connection therewith, (c) all copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith, (d) all mask works and designs and all applications, registrations and renewals in connection therewith (e) all know-how, trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice (including ideas, research and development, know-how, formulas, compositions and manufacturing and production process and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (f) all computer software (including data and related documentation) and internet domain names, (g) all other intellectual property and proprietary rights throughout the world, (h) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (i) the right to sue for past, present, and future infringements or misappropriation of any of the foregoing, including to recover damages, ~~and~~ (j) any rights or licenses to or from a third party in connection therewith and (k) without duplication of the foregoing, any Intellectual Property as defined in the DOE Guarantee Agreement.

"Intellectual Property Security Agreement" has the meaning specified in the Pledge and Security Agreement.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of November 26, 2024, by and among the Administrative Agent, Collateral Agent, DOE and DOE Collateral Agent, and acknowledged and agreed by the Credit Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Interest Rate" has the meaning specified in Section 2.5(a).

"Intermediate Holdco" means Eos Energy Enterprises Intermediate Holdings, LLC, a Delaware limited liability company.

"Internal Revenue Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Investment" means, without duplication, (a) any direct or indirect purchase or other acquisition by any Person, or of a beneficial interest in, or otherwise holding, any ~~of the~~ Capital Stock, Securities or evidence of Indebtedness of any other Person; (b) any direct or indirect ~~loan,~~deposit with, or advance, ~~investment or capital contributions by any Person~~loan or any other extension of credit to, any other Person ~~(other than Borrower or a Guarantor Subsidiary), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that~~or any guarantee of, or other Contingent Obligation with respect to, any Indebtedness or other liability of any other Person and (without duplication) any amount committed to be deposited, advanced, lent or extended to, or guaranteed on behalf of, any other Person ~~in the ordinary course of business~~, (c) any Guarantee by any Person of any obligations of another Person and (d) any direct or indirect ~~Acquisition by any~~acquisition of any similar property, right or interest of or in any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

"IRS" means the United States Internal Revenue Service.

"Issuance Proceeds" means any proceeds from any incurrence or issuance of any Indebtedness (other than Indebtedness expressly permitted under Section 6.1 hereof), net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to any Person that is not an Affiliate of any Credit Party, including reasonable legal fees and expenses.

"Koch Convertible Notes" has the meaning ascribed to such term in "Convertible Notes".

"Koch Indenture" means that certain Indenture, dated as of April 7, 2022, between Borrower, as issuer, and Wilmington Trust, National Association, as trustee.

~~"Landlord Collateral Access Agreement" means any agreement in favor of Collateral Agent, for the benefit of the Secured Parties, of any lessor, warehouseman, processor, consignee or other Person in possession of, having a Lien upon or having rights or interests in, any of the Collateral in form and substance satisfactory to Collateral Agent in its sole discretion, waiving or subordinating Liens or certain other rights or interests such Person may hold in regard to the Collateral and providing the Collateral Agent access to the Collateral.~~

"Lender" means each Person listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

"Lien" means (a) any lien, mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, ~~and~~ (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities~~.~~ and (c) 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.

"Lines 3 and 4 Commencement Date" has the meaning given to such term in the DOE Guarantee Agreement.

"Liquidity" means, on any date of determination, the sum of all Cash and Cash Equivalents (other than any Restricted Cash) owned by any Credit Party and held in a Controlled Account maintained by a branch office of the depository bank or securities intermediary located within the United States that is subject to a First Priority Lien in favor of Collateral Agent on the date of determination.

"Liquidity Trigger Date" means the earliest to occur of (a) the date on which the Term Loan is disbursed in full, (b) the first date on which any Indebtedness is incurred under the ~~Permitted Government Loan~~DOE Guarantee Agreement, and (c) Borrower having achieved Consolidated EBITDA for the most recent Fiscal Quarter for which Borrower shall have delivered (or was required to deliver) financial statements pursuant to Section 5.1(a) or 5.1(b) of not less than zero ($0).

"Loan" means the loans made by the Lenders to Borrower pursuant to this Agreement, including, without limitation, the Term Loans and any Revolving Loan, in each case, inclusive of Capitalized Interest.

"Loss Proceeds" means all proceeds (other than any proceeds of business interruption insurance and proceeds covering liability of Borrower to third parties but including proceeds under any casualty insurance policies) resulting from an Event of Loss, *minus* (without duplication) (a) any actual and reasonable costs incurred by any Credit Party or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Credit Party or such Subsidiary in respect thereof, (b) any bona fide direct costs incurred in connection with any sale of such assets pursuant to Section 5.22 to the extent paid or payable to any Person that is not an Affiliate of any Credit Party, including income or gains taxes payable as a result of any gain recognized in connection therewith and (c) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the assets in question and that is required to be repaid under the terms thereof as a result of such casualty or taking.

"Major Project Document" means each "Major Project Document" as defined in the DOE Guarantee Agreement.

"Margin Stock" has the meaning specified in Regulation U of the Federal Reserve Board as in effect from time to time.

"Master Intercompany Note" means that certain Master Intercompany Note, dated as of the Closing Date, among Borrower and its Subsidiaries.

"Materials" has the meaning specified in Section 10.1(b)(iv).

"Material Adverse Effect" means a material adverse effect on and/or material adverse developments with respect to (a) the business, performance, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower and its Subsidiaries taken as a whole; (b) the ability of any Credit Party to fully and timely perform its Obligations; (c) the legality, validity, binding effect, or enforceability against a Credit Party of a Credit Document to which it is a party; or (d) the rights, remedies and benefits available to, or conferred upon, any Agent, any Lender or any Secured Party under any Credit Document.

"Material Contract" means (a) the contracts listed on Schedule 4.15 and (b) each contract or agreement, or series of contracts or agreements (irrespective of whether related to the same subject matter), to which Borrower or any of its Subsidiaries is a party (other than this Agreement) (i) involving aggregate consideration under all such contract(s) and agreement(s) payable by or to Borrower or any of its Subsidiaries to or by a specific Person or such Person's Affiliates, of Two Million Five Hundred Thousand Dollars ($2,500,000) or more in any calendar year, (ii) for which Borrower may file or be required to file with the SEC pursuant to the Exchange Act (or any related rules and regulations), (iii) that is material to the business, condition (financial or otherwise), operations, performance, properties or prospects of Borrower or such Subsidiary, (iv) all Permitted Tax Credit Transaction Documents, (v) all ~~Permitted Government~~DOE Loan Documents, (vi) contracts or agreements with respect to any Facility or other Real Estate Assets of Borrower or such Subsidiary that are material to the business of Borrower or such Subsidiary and (vii) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (individually or in the aggregate). Without limiting the foregoing, all Material Contracts described in clauses (b)(i), (iii), (vi) and (vii) shall also be set forth on Schedule 4.15 under the applicable heading(s) for the clause(s) by which such contract constitutes a Material Contract.

"Material Contract Estoppel" means an undertaking in form and substance satisfactory to each Agent in their sole discretion pursuant to which each Person other than a Credit Party that is a party to a Specified Material Contract (excluding any agreements, permits or licenses between a Credit Party, on the one hand, and any Governmental Authority, on the other hand) (i) consents to the granting of Liens encumbering the applicable Credit Party's interest in such Specified Material Contract, (ii) consents to the enforcement of such Lien pursuant to the terms of the Credit Documents, (iii) consents to transfer of the applicable Specified Material Contract to any initial transferee following enforcement of such Lien or a transfer in lieu of such enforcement, and (iv) agrees to continue to perform its obligations under such Specified Material Contract so long as such transferee performs the obligations of the Credit Party thereunder.

"Material Indebtedness" means ~~any~~(a) the DOE Obligations (including, without limitation, Indebtedness under ~~any Permitted Government~~the DOE Loan Documents) or (b) any other Indebtedness (other than Indebtedness under the Credit Documents) of any one or more of Borrower and its Subsidiaries having an outstanding principal amount of Two Million Five Hundred Thousand Dollars ($2,500,000) or more.

"Maturity Date" means the earlier of (a) June ~~21~~15, ~~2029~~2034, or if such date is not a Business Day, the next succeeding Business Day, and (b) the date that all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise; provided that, if on any Springing Maturity Date any Convertible Notes remain outstanding, the Maturity Date shall instead be the Springing Maturity Date.

"Milestone Schedule" means Schedule 1.1 attached hereto, which sets forth the milestone events and corresponding time periods for which such milestones are required to be achieved.

"Moody's" means Moody's Investor Services, Inc.

"Mortgage" means a mortgage, deed of trust, deed to secure debt or similar security instrument made or to be made by a Person owning an interest in real property granting a Lien on such interest in real estate as security for the payment of Obligations which shall be in a form and substance reasonably acceptable to Collateral Agent., including any Multiple Indebtedness Mortgage, Pledge of Leases and Rents, and Security Agreement by each applicable Credit Party in favor of Collateral Agent on behalf of the Secured Parties dated on or prior to the Tranche 1 First Advance Date (as defined in the DOE Guarantee Agreement).

"Mortgage Deliverables" means, collectively, each of the following:

(a) fully executed and notarized Mortgages, in proper form for recording in all applicable jurisdictions, encumbering each Real Estate Asset (including the Mortgaged Leases) (each, a "Mortgaged Property");

(b) an opinion of counsel (which counsel shall be satisfactory to Collateral Agent in its sole discretion) in each state in which a Mortgaged Property is located with respect to the enforceability of the Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance satisfactory to Collateral Agent in its sole discretion;

(c) (i) ALTA mortgagee title insurance policies (with endorsements requested by Collateral Agent) or unconditional commitments therefor issued by one or more title companies satisfactory to Collateral Agent in its sole discretion with respect to each Mortgaged Property (each, a "Title Policy"), in amounts not less than the fair market value of each Mortgaged Property, together with a title report issued by a title company with respect thereto, dated not more than thirty (30) days prior to the date of the applicable Mortgage, and copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance satisfactory to Collateral Agent in its sole discretion and (ii) evidence satisfactory to Collateral Agent in its sole discretion that such Credit Party has paid to the title company or to the appropriate Governmental Authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each Mortgaged Property in the appropriate real estate records;

(d) evidence of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Federal Reserve Board, in form and substance satisfactory to Collateral Agent in its sole discretion;

(e) ALTA surveys of all Mortgaged Properties, certified to Collateral Agent and dated not more than thirty (30) days prior to the date on which the Mortgaged Property is acquired; and

(f) reports and other information, in form, scope and substance satisfactory to Collateral Agent in its sole discretion, regarding environmental matters relating to the Real Estate Assets, which reports shall include a Phase I and/or Phase II environmental reports for each of the Mortgaged Properties specified by Collateral Agent (the environmental consultants retained for such reports, the scope of the reports, and the results thereof of which shall be satisfactory to Collateral Agent in its sole discretion).

"Mortgaged Leases" means that: (a) certain Lease Agreement dated as of January 18, 2022, by and between Regional Industrial Development Corporation of Southwestern Pennsylvania, as Landlord, and Hi-Power, LLC, as tenant, (b) certain Lease Agreement dated as of April 18, 2023, by and between Regional Industrial Development Corporation of Southwestern Pennsylvania, as Landlord, and Hi-Power, LLC, as tenant; (c) a lease or similar agreement in respect of the Duquesne Project Site (as defined in the DOE Guarantee Agreement) to be entered into on or prior to the First Advance Date (as defined in the DOE Guarantee Agreement); and (d) to extent required, the new lease agreement or amendment to the Lease Agreement for additional expansion premises, delivered pursuant to First Amendment, as amended, supplemented or otherwise modified from time to time.

"Multiemployer Plan" means any Employee Benefit Plan which is a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA, including any such plan to which any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates has made or has been obligated to make contributions during the last six (6) years.

"NAIC" means The National Association of Insurance Commissioners, and any successor thereto.

"Net Cash Proceeds" means (a) with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received, but excluding proceeds from business interruption insurance) received by any Credit Party or any of its Subsidiaries from such Asset Sale, minus (without duplication) (ii) any bona fide direct costs incurred in connection with such Asset Sale to the extent paid or payable to any Person that is not an Affiliate of any Credit Party, including (A) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (B) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the Capital Stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale, and (C) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller's indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by any Credit Party or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Cash Proceeds; (b) (i) any Cash payments or proceeds received by any Credit Party or any of its Subsidiaries or Collateral Agent as lender loss payee (A) under any casualty insurance policies in respect of any covered loss thereunder, ~~or~~ (B) as a result of the taking of any assets of any Credit Party or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (without duplication) (ii) (A) any actual and reasonable costs incurred by any Credit Party or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Credit Party or such Subsidiary in respect thereof, (B) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (b)(i)(B) of this definition to the extent paid or payable to any Person that is not an Affiliate of any Credit Party, including income or gains taxes payable as a result of any gain recognized in connection therewith and (C) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans and the DOE Loan) that is secured by a Lien on the assets in question and that is required to be repaid under the terms thereof as a result of such casualty or taking; (c) ~~with respect to any issuance or incurrence of Indebtedness by any Credit Party or any of its Subsidiaries, the Cash proceeds thereof, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, in each case, paid to any Person that is not an Affiliate of any Credit Party, including reasonable legal fees and expenses; (d) with respect to any Extraordinary Receipt, the Cash proceeds received by or paid to or for the account of any Credit Party or any of its Subsidiaries; and (e) with respect to any issuance of Capital Stock, the Cash proceeds received by or for the account of any Credit Party or any of its Subsidiaries, minus any bona fide direct costs incurred in connection with such issuance, taxes (if any) paid or incurred in connection therewith and other reasonable fees, costs and expenses associated therewith, including expenses payable to a Person that is not an Affiliate of any Credit Party.~~ Issuance Proceeds; and (d) any Extraordinary Receipt.

~~"Net Mark-to-Market Exposure" of any Person means, as of any date of determination with respect to any Hedging Obligation, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from such Hedging Obligation, and for purposes hereof, "unrealized losses" means the fair market value of the cost to such Person of replacing the Hedging Transaction giving rise to such Hedging Obligation as of the date of determination (assuming the Hedging Transaction were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Hedging Transaction as of the date of determination (assuming such Hedging Transaction were to be terminated as of that date).~~

"Note" means a promissory note in the form of Exhibit B, as it may be amended, supplemented or otherwise modified from time to time.

"Obligations" means all obligations of every nature of each Credit Party from time to time owed to Agents (including former Agents) and the Lenders or any of them under any Credit Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), Capitalized Interest, Administrative Agent Advances, fees, expenses, indemnification or otherwise; provided that, notwithstanding the foregoing, the Borrower's obligation to purchase the Warrant from the holder thereof pursuant to Section 2.3 of the Warrant shall not constitute an "Obligation" hereunder.

"Obligee Guarantor" has the meaning specified in Section 7.7.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Balance Sheet Liabilities" of any Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any liability of such Person under any sale and leaseback transactions that do not

create a liability on the balance sheet of such Person, (c) any Synthetic Lease Obligations or (d) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization (including, without limitation, the Certificates of Designations) and its by-laws, as amended (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, its certificate or articles of organization or formation and its operating or limited liability agreement, and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Original Currency" has the meaning specified in Section 10.23.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such 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 Credit Document, or sold or assigned an interest in any Credit Document).

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Participant" has the meaning specified in Section 10.6(d).

"Participant Register" has the meaning specified in Section 10.6(d).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Payment Notice" has the meaning specified in Section ~~9.11(b)~~9.11(a).

"Payment Recipient" has the meaning specified in Section ~~9.11(a)~~9.9(e).

"Payoff Letter" shall mean the payoff letter entered into on or prior to the date hereof between the Borrower, as borrower, ACP Post Oak Credit I LLC, as administrative agent and collateral agent, and the lenders party from time to time to the Atlas Facility.

"PBGC" means the United States Pension Benefit Guaranty Corporation or any successor agency thereto.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 or Section 430 of the Internal Revenue Code or Section 302 of ERISA.

"Perfection Certificate" means a certificate in form satisfactory to Collateral Agent that provides information with respect to the personal or mixed property of each Credit Party and each of its Subsidiaries.

"Permitted Hedging Agreement" means a Hedging Transaction entered into in accordance with the Hedging Plan.

~~"Permitted Government Loan" means Indebtedness incurred by Borrower or any of its Subsidiaries pursuant to Title XVII Clean Energy Financing Program administered by the U.S. Department of Energy; provided that such Indebtedness shall be up to an amount to be agreed and otherwise on terms satisfactory to Administrative Agent in its sole discretion.~~

~~"Permitted Government Loan Documents" means, collectively, all agreements, instruments, certificates, undertakings, notes, exhibits, notices, filings, schedules and other documents relating to or entered into in connection with a Permitted Government Loan or the transactions contemplated therein, including an intercreditor agreement in form and substance satisfactory to Administrative Agent in its sole discretion, in each case, in form and substance satisfactory to Administrative Agent in its sole discretion.~~

"Permitted Holder" means Cerberus and any Lender (and any of their respective Affiliates, assignees or designees (including, without limitation, any Approved Fund) under any Equity Instruments).

"Permitted Liens" has the meaning specified in Section 6.2.

"Permitted Tax Credit Transaction" shall mean any transfer, ~~disposition~~Asset Sale, financing transaction or series of financing transactions pursuant to which the Borrower or any Subsidiary may sell, convey or otherwise transfer, grant a security interest in, or otherwise monetizes its rights to Production Tax Credits; provided that (a) such transaction is on terms satisfactory to Administrative Agent in its sole discretion (it being understood that any such transaction (x) with a purchase price of not less than ninety cents ($0.90) per Dollar of Production Tax Credits and (y) otherwise on terms and conditions not less favorable in any material respect to any Credit Party or the interests of any Agent or Lender than those set forth in the Banyan PTC Purchase Agreement, shall be satisfactory for purposes of the foregoing), (b) the proceeds thereof shall be applied solely (x) to finance Capital Expenditures in accordance with the ~~CapEx Budget~~Annual Plan or (y) in the case of a sale of Production Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction, (1) to invest in long-term assets that are used or useful in the business, (2) to repay or repurchase Indebtedness of the Credit Parties to the extent otherwise permitted under Section 6.20, or (3) to finance operating expenses of the Credit Parties in the ordinary course of business, and (c) at the time of and immediately after giving effect to such Permitted Tax Credit Transaction (including the application of the proceeds thereof), no Default or Event of Default shall have occurred and all Credit Parties shall be in pro forma compliance with all terms of the Credit Documents.

"Permitted Tax Credit Transaction Documents" means, collectively, all agreements, instruments, certificates, undertakings, notes, exhibits, notices, schedules and other documents relating to or entered into in connection with a Permitted Tax Credit Transaction or the matters contemplated therein, in each case, in form and substance satisfactory to Administrative Agent in its sole discretion.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"Personal Data" means any information or data that either: (a) relates to an identified or identifiable natural person, or that is reasonably capable of being used to identify, contact, or precisely locate a natural person, household, or a particular computing system or device, including without limitation, a natural person's name, street address, telephone number, email address, financial account number, government-issued identifier, social security number or tax identification number, biometric identifier or biometric information, banking information relating to any natural person, or passport number, client or account identifier, or credit card number, or any Internet protocol address or any other unique identifier, device or machine identifier, photograph, or credentials for accessing any accounts; or (b) is defined as "personally identifiable information," "personal information," "personal data," or other similar terms, by any applicable Privacy Requirements.

"Plan Assets" means "plan assets" within the meaning of 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA.

"Platform" has the meaning specified in Section 10.1(b)(i).

"Pledge and Security Agreement" means the Pledge and Security Agreement, dated as of even date herewith, among each Credit Party thereto and Collateral Agent, in form and substance acceptable to Collateral Agent, as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

"Practice" means to practice Intellectual Property in any way, including to use, reproduce, distribute, modify, improve, make, display, perform, create derivative works of, access and utilize.

"Preferred Stock" means any shares of preferred stock issued pursuant to the terms of this Agreement and the terms of the Securities Purchase Agreement, provided that ~~(i) on the Closing Date, only one share of Series A Preferred Stock of Borrower shall be issued, (ii) on any subsequent date of issuance that occurs prior to the Approval Date, only additional shares of Series A Preferred Stock of Borrower shall be issued, and (iii) on any date of issuance that occurs on or after the Approval Date,~~ only shares of Series B Preferred Stock of Borrower shall be issued on and after the First Amendment Effective Date.

"Principal Office" means, for Administrative Agent, Administrative Agent's "Principal Office" or account as set forth on Appendix B, or such other office or account as Administrative Agent may from time to time designate in writing to Borrower and each Lender.

"Privacy and Information Security Requirements" means (i) all laws relating to the Processing of Personal Data, data privacy or information security, and (ii) the Payment Card Information Data Security Standards.

"Privacy Notices" means any internal or external notices, policies, disclosures, or public representations by any Credit Party or any of its Subsidiaries in respect of such entity's Processing of Personal Data or privacy practices.

"Process" or "Processing" shall mean the collection, use, storage, processing, distribution, transfer, import, export, protection (including security measures), disposal or disclosure or other activity regarding data (whether electronically or in any other form or medium).

"Production Tax Credits" means any advanced manufacturing production tax credits under Section 45X generated by ~~the~~ Tax Credit Projects ~~pursuant to Section 45X~~or otherwise.

"Project" means the "Project" as defined in the DOE Guarantee Agreement.

"Project Account" means each "Project Account" as defined in the DOE Accounts Agreement.

"Project Completion" means each "Project Completion" as defined in the DOE Guarantee Agreement.

"Project Document" means each "Project Document" as defined in the DOE Guarantee Agreement.

"Project IP" means all Intellectual Property that is: (a) used in, material or necessary for the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation or maintenance of the Project; (b) necessary to complete the activities designated to be completed for each Line (as defined in the DOE Guarantee Agreement), or to achieve Project Completion (as defined in the DOE Guarantee Agreement); or (c) necessary to exercise Borrower's rights and perform its obligations under the Major Project Documents, as applicable, at the relevant time, but excluding any Software that: (i) has not been modified or customized for Borrower; (ii) is readily commercially available; and (iii) is licensed under standard terms and conditions.

"Project IP Agreement" means each agreement or license granting or document evidencing Borrower's exclusive ownership of all Project IP (including assignment agreements) or rights to use all Project IP.

"Project Source Code" means each "Project Document" as defined in the DOE Guarantee Agreement.

"Pro Rata Share" the percentage obtained by dividing (a) the Term Loan Exposure of that Lender, by (b) the aggregate Term Loan Exposure of all Lenders.

"Ratably" mean ratably in accordance with the then-outstanding principal amount owed in respect of the DOE Loan and the Loans, respectively; provided that Excess Obligations (as defined in the Intercreditor Agreement) will be excluded for the purposes of such calculation.

"Real Estate Asset" means, at any time of determination, any Real Property and any other interest (fee, leasehold, fixtures or otherwise) ~~then owned by~~of any Credit Party in any real property (including, without limitation, fixtures).

"Real Property" means, with respect to any Person, all right, title and interest of such Person in and to any and all parcels of real property owned, leased or encumbered by such Person, together with all improvements and appurtenant fixtures, equipment, easements and other property and rights incidental to the ownership, lease or operation thereof, including the Project Sites (as defined the DOE Guarantee Agreement).

"Recipient" means (a) any Agent or (b) any Lender, as applicable.

"Register" has the meaning specified in Section 10.6(c).

"Registered IP" has the meaning specified in Section 4.24(a).

"Regulation T" means Regulation T of the Federal Reserve Board, as in effect from time to time.

"Regulation U" means Regulation U of the Federal Reserve Board, as in effect from time to time.

"Regulation X" means Regulation X of the Federal Reserve Board, as in effect from time to time.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, members, managers, directors, officers, employees, agents, trustees, shareholders, administrators, managers, advisors, attorneys, controlling persons, agents, sub-agents and representatives of such Person and of such Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"Required Prepayment Date" has the meaning specified in Section 2.11(b).

"Requisite Lenders" means one or more Lenders having or holding more than fifty percent (50%) of the sum of (a) the aggregate Term Loan Exposure of all Lenders plus (b) the aggregate Revolving Exposure of all Lenders; provided that, at any time no Revolving Loans are outstanding, the Revolving Exposure of any Lender shall be zero ($0). The Term Loan Exposure and Revolving Exposure of any Defaulting Lender shall be disregarded in determining Requisite Lenders at any time.

"Requisite Stockholder Approval" means the affirmative vote from the minimum number of shareholder required to approve the transactions contemplated by this Agreement and the Equity Documents, including the issuance of common stock of Borrower in excess of the Beneficial Ownership Limit.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Cash" means, at any time, the cash and Cash Equivalents of Borrower and its Subsidiaries to the extent (a) classified (or required to be classified) as restricted cash or restricted Cash or Cash Equivalents on the balance sheet of Borrower and its Subsidiaries in accordance with GAAP, (b) such cash or Cash Equivalents are subject to any Lien (other than (x) Liens in favor of Collateral Agent for the benefit of the Secured Parties and (y) Liens permitted pursuant to Section 6.2(n)), (c) to the extent such Cash or Cash Equivalents is held any Credit Party in escrow, trust or other fiduciary capacity for or on behalf of a client, borrower or customer of any Credit Party or any of its Affiliates.

"Restricted License" means any material license or other material agreement with respect to which any Credit Party or any Subsidiary is the licensee or licensor (a) that prohibits or otherwise restricts such Credit Party or such Subsidiary from granting a security interest in the interest of such Credit Party or such Subsidiary in such license or agreement or any other property, or (b) for which a

default under or termination of could interfere with Collateral Agent's right to sell any Collateral; provided that Restricted Licenses shall not include off-the-shelf software and services, open source code, application programming interfaces (APIs) and/or other Intellectual Property that are made commercially available under shrink wrap or clickwrap licenses, online terms of service or use, or similar agreements that are not licensed, distributed or sold to customers, nor otherwise incorporated or embedded in any products.

"Restricted Payment" means (a) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any Credit Party or any of its Subsidiaries now or hereafter outstanding; (d) any payment or prepayment with respect to any earnout obligation or other deferred or contingent obligation of any Credit Party or any of its Subsidiaries incurred or crated in connection with any acquisition; (e) any payment of any management, consulting, advisory, transaction or similar fees payable to any holder of Capital Stock of any Credit Party or any of its Affiliates; ~~and~~ (f) any payment or prepayment of principal of, premium, if any, or interest, fees or other amounts on or with respect to, and any redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment and any claim for rescission with respect to, any Subordinated Indebtedness, any Indebtedness secured on a junior basis to the Obligations or any unsecured Indebtedness (including, without limitation, the Convertible Notes, and any payment or Cash, Cash Equivalents or other property other than in shares of common stock of Borrower in connection with the settlement of any conversion thereof in accordance with the terms thereof)~~.~~; (g) any reduction to Share Capital of any Credit Party or any of its Subsidiaries (other than as required by GAAP); (h) any payment (including with respect to any development, management or operation fee) to any Affiliate (other than another Credit Party or any Subsidiary thereof) of Borrower except for payments pursuant to any Major Project Document existing on the First Amendment Effective Date or entered into in accordance with the terms of DOE Guarantee Agreement and, to the extent otherwise required by this Agreement, permitted by Administrative Agent; and (i) any funds set aside for any of the foregoing.

~~"Revolving Loan" has the meaning specified in Section 2.1(b).~~

"Revolving Commitment" means with respect to any Lender, to the extent any Lender has elected to make a Revolving Loan in its sole discretion, its Revolving Commitment set forth beside such Lender's name under the applicable heading on Appendix A or in the applicable Assignment Agreement; provided that any Capitalized Interest in respect of Revolving Loans shall not reduce availability under the Revolving Commitment. The aggregate amount of the Revolving Commitments as of the Closing Date is One Hundred Five Million Dollars ($105,000,000).

"Revolving Exposure" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loan" has the meaning specified in Section 2.1(b).

"Sales Agreement" means any "Sales Agreement" as defined in the DOE Guarantee Agreement.

"Sanctioned Country" means, at any time, a country, territory or region that is, or whose government is, the subject or target of any Sanctions, including, as of the Closing Date, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea, Zaporizhzhia and Kherson regions of Ukraine, Cuba, Iran, North Korea and Syria.

"Sanctioned Person" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by OFAC, the U.S. Department of the Treasury, or the U.S. Department of State), or by the United Nations Security Council, the European Union or any EU member state, His Majesty's Treasury of the United Kingdom or any other relevant sanctions authority, (b) any Person located, operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled, directly or indirectly, by any such Person described in clause (a) or (b) of this definition.

"Sanctions" means sanctions or trade embargoes enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC, U.S. Department of State, or U.S. Department of Commerce, (b) the United

Nations Security Council, the European Union or any of its member states, His Majesty's Treasury of the United Kingdom, or (c) any other relevant sanctions authority.

"Second Currency" has the meaning set forth in Section 10.23.

"Section 45X" means Section 45X of the Internal Revenue Code, including any proposed, temporary or final regulations issued, and any notices, rulings, and procedures published, by the U.S. Department of Treasury or the IRS in connection therewith.

"Secured Parties" means (a) Administrative Agent, (b) Collateral Agent, (c) each Lender, (d) the beneficiaries of each indemnification obligation undertaken by any Credit Party under any Credit Document, and (e) the successors and assigns of each of the foregoing.

"Secured Parties' License" means the right for the Secured Parties to use and otherwise Practice and to assign or sublicense, in each case, for no additional consideration, Borrower's rights in and to Project IP under a Project IP Agreement (effective as of the First Amendment Effective Date or, if acquired later, upon such acquisition date, but enforceable: (a) during the continuance of an Event of Default; (b) upon an enforcement and transfer of ownership in Borrower; or (c) upon any bankruptcy or insolvency action involving Borrower).

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Account" means (a) all "securities accounts" as defined in Article 8 of the UCC and (b) all of the accounts listed on Schedule 4 of the Pledge and Security Agreement under the heading "Securities Accounts" (as such Schedule may be amended or supplemented from time to time in accordance with the Pledge and Security Agreement).

"Securities Act" means the Securities Act of 1933.

"Securities Intermediary" means a "securities intermediary" (as such term is defined in the UCC).

"Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated as of the Closing Date or any applicable date of issuance thereafter, by and among Borrower and Lenders (or any of their respective assignees or designees (including, without limitation, any Approved Fund)), pursuant to which Borrower shall issue Preferred Stock and Warrants in accordance with the terms thereof and hereof, as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

"Share Capital" means, with respect to any Person, any and all shares, interests, quotas, participations or ownership or partnership interests or rights in or other equivalents of or in (however designated, whether voting or non-voting, ordinary or preferred) the equity or capital of such Person, now or hereafter outstanding, and any and all rights, warrants or options exchangeable for or convertible into any thereof.

"Share Certificates" means, with respect to Capital Stock, the original share certificates (in physical form) representing such Capital Stock and the letters of allotment, if any, in relation to, and instruments from time to time received, receivable or distributed in respect of, or in exchange for, any such Capital Stock.

"Software" means any and all: (a) computer programs and software implementations of algorithms, models and methodologies, in each case, whether in source code, object code or any other form; (b) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, firmware, development tools, configurations, interfaces, platforms and applications; (c) data, databases and compilations; and (d) documentation supporting or related to any of the foregoing (including training materials). Software shall include "software" as such term is defined in the UCC and computer programs that may be construed as included in the definition of "goods" in the UCC, including any licensed rights to Software, and all media that may contain Software or recorded data of any kind.

"Solvency Certificate" means a Solvency Certificate of the chief financial officer of Borrower substantially in the form of Exhibit E-2.

"Solvent" means, with respect to any Person, that as of the date of determination, both (a)(i) the sum of such Person's debt (including contingent liabilities) does not exceed the present fair saleable value of such Person's present assets, (ii) such Person's capital is not unreasonably small in relation to its business as contemplated (x) on the Closing Date or (y) as of such other date of determination with respect to any transaction contemplated or undertaken after the Closing Date, (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise) and (iv) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they become due; and (b) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of 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).

"Source Code" means, with respect to any Software, the human-readable form of such Software.

"Specified Accounts" means each "Specified Account" as defined in the DOE Guarantee Agreement.

"Specified Deferred Payments" means, collectively, those certain deferred payments to be made by Borrower to the specified credit support providers described therein as expressly set forth in Section 1 and Section 2 of the Atlas Side Letter.

"Specified Material Contracts" means each contract or agreement, or series of contracts or agreements relating to the same subject matter, to which Borrower or any of its Subsidiaries is a party (other than this Agreement or any other Credit Document) (a) involving aggregate consideration under all such contract(s) and agreement(s) payable by or to Borrower or any of its Subsidiaries to or by a specific Person or such Person's Affiliates, of (x) prior to the date that is the two (2) year anniversary from the Closing Date, Ten Million Dollars ($10,000,000) or more in any calendar year, and (y) on or after the date that is the two (2) year anniversary from the Closing Date, Twenty Five Million Dollars ($25,000,000) or more in any calendar year, (b) relating to the lease or ownership of any Real Estate Asset where a manufacturing facility of a Credit Party or any Subsidiary is located that is material to the business of any Credit Party or Subsidiary (which, for the avoidance of doubt, includes the Turtle Creek Facility), and (c) for which the breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect (individually or in the aggregate).

"Springing Maturity Date" shall mean the 91st day prior to the Convertible Note Maturity Date.

"S&P" means Standard & Poor's Financial Services LLC.

"Subordinated Indebtedness" means any Indebtedness of any Credit Party or any of its Subsidiaries which has been expressly subordinated to the Obligations in a manner and form satisfactory to Administrative Agent in its sole discretion, as to right and time of payment and as to any other rights and remedies thereunder.

"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 total voting power of shares of 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 that, 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.

"Synthetic Lease" means a lease transaction under which the lease is accounted for as an "operating lease" by the lessee pursuant to FASB ASC 840 and the lessee is intended to be the "owner" of the leased property for federal income tax purposes.

"Synthetic Lease Obligations" means, with respect to any Person, the sum of (a) all remaining rental obligations of such Person as lessee under Synthetic Leases which are attributable to principal and, without duplication and (b) all purchase price payment obligations of such Person under such Synthetic Leases assuming such Person exercises the option to purchase the leased property at the end of the lease term.

"Tax Credit Project" means the production and sale of Znyth 3 battery units that constitute "qualifying battery components" or another "eligible component" (each, as defined in Section 45X), production and sale of Gen 2.3 battery units that constitute "qualifying battery components" or another "eligible component" or the production and sale of any other product (or component thereof) that constitute "qualifying battery components" or another "eligible component" that, in each case, (a) comply with all applicable requirements under Section 45X and (b) qualify for, and receive, Production Tax Credits.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, 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 Loan" means the Initial Term Loan and each Delayed Draw Term Loan, in each case, inclusive of Capitalized Interest.

"Term Loan Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan to Borrower in a principal amount not to exceed the amount set forth under the heading "Initial Commitment", "Tranche 1 Commitment", "Tranche 2 Commitment", "Tranche 3 Commitment", as the case may be, opposite such Lender's name on Appendix A or in the applicable Assignment Agreement. The aggregate amount of the Term Loan Commitments as of the Closing Date is Two Hundred Ten Million Five Hundred Thousand Dollars ($210,500,000).

"Term Loan Exposure" means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; provided that, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender's Term Loan Commitment.

"Total Prepayment Amount" has the meaning specified in the Fee Letter.

"Tranche 1 Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 1 Commitment opposite such Lender's name on Appendix A.

"Tranche 2 Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 2 Commitment opposite such Lender's name on Appendix A.

"Tranche 3 Commitment" means as to any Lender, the obligation of such Lender, if any, to make a Term Loan to Borrower in a principal amount not to exceed the amount set forth under the heading Tranche 3 Commitment opposite such Lender's name on Appendix A.

"Trinity Indebtedness" means any Indebtedness incurred pursuant to or in connection with that certain Master Equipment Financing Agreement, dated as of September 30, 2021, between the Hi-Power, LLC and Trinity Capital Inc., including the guaranty by Borrower of such Indebtedness.

"Turtle Creek Facility" has the meaning specified in Section 2.3.

"UCC" means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

"UK Financial Institution" 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.

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 2.15(g).

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

"Waivable Mandatory Prepayment" has the meaning specified in Section 2.11(b).

"WARN Act" means the Worker Adjustment and Retraining Notification Act of 1988 or any state or local equivalent law regarding mass layoffs, plant closings, or any similar large-scale employee termination events.

"Warrants" means, collectively, those certain warrants to purchase common stock issued from time to time by Borrower to Lenders or their assignees or designees (including, without limitation, any Approved Fund), as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time.

"Withholding Agent" means any Credit Party and 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.

1.2 Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by any Credit Party to Administrative Agent and the Lenders pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) shall (except as expressly set forth in Section 5.1(c)) be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in Section 5.1(e), if applicable), subject to normal year-end adjustments. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements. To the extent there are any changes in GAAP (or any changes in GAAP are implemented or take effect) after the date of this Agreement, if at any time such change in GAAP would affect the computation of any financial ratio or requirement set forth in any Credit Document, and Borrower or Administrative Agent shall so request, Administrative Agent and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP as in effect immediately prior to such change (or the implementation of such change) therein. Notwithstanding the foregoing, for purposes of determining compliance with the financial covenants contained in this Agreement, any election by any Credit Party to measure an item of Indebtedness using fair value (as permitted by Accounting Standards Codification Section 825-10 or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made. Notwithstanding anything to the contrary in this Agreement, for purposes of determining compliance with any basket, accordion or incremental feature, test, or condition under any provision of this Agreement or any other Credit Document, no Credit Party may retroactively divide, classify, re-classify or deem or otherwise treat a historical transaction as having occurred in reliance on a

basket or exception that was not available at the time of such historical transaction or if and to the extent that such basket or exception was relied upon for any later transaction. When used herein, the term "financial statements" shall be construed to include all notes and schedules thereto. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be construed to mean "Borrower and its Subsidiaries on a consolidated basis" unless the context clearly requires otherwise. Except as otherwise provided therein, this Section 1.2 shall apply equally to each other Credit Document as if fully set forth therein, *mutatis mutandis*.

1.3 Interpretation, etc.

(a) Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

(b) References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. Any requirement for a referenced agreement, instrument, certificate or other document to be in "substantially" the form of an Appendix, Schedule, or Exhibit hereto means that such referenced document shall be in the form of such Appendix, Schedule, or Exhibit with such modifications to such form as are approved by Administrative Agent, and, in the case of any Collateral Document, Collateral Agent, in each case in such Agent's sole discretion. The words "hereof", "hereunder", "hereby", and words of similar import used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

(c) The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

(d) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(e) Unless the context requires otherwise (i) 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 it was originally executed or as it may from time to time be amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (iii) the words "hereof", "herein" and "hereunder" and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular provision hereof, (iv) except as otherwise expressly provided herein, references to statutes, legislative acts, laws, regulations, and rules shall be deemed to refer to such statutes, acts, laws, regulations, and rules as in effect from time to time, including any amendments of the same and any successor statutes, acts, laws, regulations, and rules, unless any such reference is expressly limited to refer to any statute, act, law, regulation, or rule "as in effect on" a specified date and (v) 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.

(f) The use herein of the words "continuing", "continuance", "existing", or any words of similar import or derivatives of any such words in reference to any Event of Default means that such Event of Default has not been expressly waived.

(g) The terms lease and license shall be construed to include sub-lease and sub-license.

(h) Whenever the context may require, any pronoun shall be construed to include the corresponding masculine, feminine, and neuter forms.

(i) Unless otherwise expressly stated, if a Person may not take an action under this Agreement, then it may not take that action indirectly, or take any action assisting or supporting any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the Person but is intended to have substantially the same effects as the prohibited action. Except as otherwise provided therein, this Section 1.3 shall apply equally to each other Credit Document as if fully set forth therein, *mutatis mutandis*.

1.4 Divisions. For all purposes under the Credit 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 on the first date of its existence by the holders of its Capital Stock at such time. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, or disposition, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability companies (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, or disposition, or similar term, as applicable, to, of or with a separate Person.

2. LOANS

2.1 Loans.

(a) Term Loan Commitments.

(i) Subject to the terms and conditions hereof, each Lender severally agrees to make (x) on the Closing Date, and Borrower agrees to draw, a Term Loan in an aggregate principal amount equal to such Lender's Initial Commitment A (the "Initial Term Loan A") and (y) no later than one (1) Business Day after the Closing Date, a Term Loan in an aggregate principal amount equal to such Lender's Initial Commitment B (the "Initial Term Loan B" and, together with the Initial Term Loan A, the "Initial Term Loan"). Each Lender's obligation to make the Initial Term Loan shall terminate immediately and without further action on the applicable Borrowing Date after giving effect to the making of the applicable Initial Term Loan on such Borrowing Date.

(ii) Subject to the terms and conditions hereof (including, without limitation, compliance with the applicable milestone event set forth in the Milestone Schedule), each Lender severally agrees to make, during the applicable Draw Period set forth in the Milestone Schedule, a Term Loan in an aggregate principal amount equal to such Lender's Tranche 1 Commitment (the "Tranche 1 Term Loan"). Each Lender's obligation to make the Tranche 1 Term Loan shall terminate immediately and without further action on the earlier of (a) the applicable Borrowing Date after giving effect to the making of the Tranche 1 Term Loan on such Borrowing Date (if made) or (b) after the lapse of the applicable Draw Period set forth in the Milestone Schedule.

(iii) Subject to the terms and conditions hereof (including, without limitation, compliance with applicable milestone event set forth in the Milestone Schedule), each Lender severally agrees to make, during the applicable Draw Period set forth in the Milestone Schedule, a Term Loan in an aggregate principal amount equal to such Lender's Tranche 2 Commitment (the "Tranche 2 Term Loan"). Each Lender's obligation to make the Tranche 2 Term Loan shall terminate immediately and without further action on the earlier of (a) the applicable Borrowing Date after giving effect to the making of the Tranche 2 Term Loan on such Borrowing Date (if made) or (b) after the lapse of the applicable Draw Period set forth in the Milestone Schedule.

(iv) Subject to the terms and conditions hereof (including, without limitation, compliance with applicable milestone event set forth in the Milestone Schedule), each Lender severally agrees to make, during the applicable Draw Period set forth in the Milestone Schedule, a Term Loan in an aggregate principal amount equal to such Lender's Tranche 3 Commitment (the "Tranche 3 Term Loan"). Each Lender's obligation to make the Tranche 3 Term Loan shall terminate immediately and without further action on the earlier of (a) the applicable Borrowing Date after giving effect to the making of the Tranche 3 Term Loan on such Borrowing Date (if made) or (b) after the lapse of the applicable Draw Period set forth in the Milestone Schedule.

For the avoidance of doubt, the Lenders shall have no obligation to make the Term Loans under clauses (ii) through (iv) above unless or until the applicable milestone event set forth in the Milestone Schedule has been satisfied (or otherwise waived) in accordance with the terms thereof. Any Term Loan that is subsequently repaid or prepaid may not be reborrowed. All amounts owed hereunder with respect to any Term Loans, including the Total Prepayment Amount, shall be paid in accordance with the payment terms set forth herein (including, without limitation, payment terms with respect to interest payments set forth in Section 2.5 and mandatory prepayments, if any, set forth in Section 2.10) and in the Fee Letter, and, in any event, the Term Loan (inclusive of Capitalized Interest) shall be paid in full in Cash no later than the Maturity Date.

(b) Revolving Commitments. Subject to the terms and conditions hereof, any Lender may, in its sole discretion, agree from time to time during the Availability Period to make Loans ~~(each, a "Revolving Loan")~~ to Borrower in an aggregate principal amount not to exceed such Lender's Revolving Commitment (each such Loan, inclusive of Capitalized Interest, a "Revolving Loan"). Revolving Loans may be prepaid, and subject to the terms and conditions hereof (including the agreement by a Lender to extend such Revolving Loan in its sole discretion), be reborrowed. All amounts owed hereunder with respect to any Revolving Loans shall be paid in accordance with the payment terms set forth herein (including, without limitation, payment terms with respect to interest payments set forth in Section 2.5) and, in any event, any Revolving Loan shall be paid in full in Cash no later than the Maturity Date. Notwithstanding anything to the contrary in this Agreement or in any other Credit Document, no Lender shall have any obligation to make any Revolving Loan available (inclusive of Capitalized Interest) to Borrower under this Agreement.

(c) Borrowing Mechanics.

(i) Borrower shall deliver to Administrative Agent a fully executed Borrowing Request no later than (1) 11:00 a.m. (New York City time) two (2) Business Days (or such shorter period as Administrative Agent may agree in its sole discretion) for the Borrowing of the Initial Term Loan on the Closing Date and (2) 11:00 a.m. (New York City time) twelve (12) Business Days (or such shorter period as Administrative Agent may agree in its sole discretion) prior to the proposed Borrowing Date of any Delayed Draw Term Loans or Revolving Loan, and with respect to a Revolving Loan, evidence satisfactory to Administrative Agent confirming such Lender's agreement to provide the requested Revolving Loan. Each Borrowing Request shall be irrevocable; provided that, without limiting Section 3.2(e), Borrowing Requests for a Delayed Draw Term Loan may be expressly conditioned upon the compliance with the applicable milestone event set forth in the Milestone Schedule, in each case, to the extent that Borrower reasonably believes (at such time and continuing through the Borrowing Date) such milestone event will be achieved or satisfied in accordance with the terms thereof. Promptly upon receipt by Administrative Agent of such Borrowing Request for Term Loans, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Term Loan available to Administrative Agent not later than 11:00 a.m. (New York City time) on the Closing Date (or such later time as Administrative Agent may agree in its sole discretion), by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Upon satisfaction or waiver of the conditions precedent specified herein and receipt of all funds requested in the applicable Borrowing Request, Administrative Agent shall make the proceeds of the Term Loans available to Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Term Loans received by Administrative Agent from Lenders to be credited by wire transfer to the account of Borrower as may be designated in writing to Administrative Agent by Borrower in said Borrowing Request. Upon satisfaction or waiver of the conditions precedent specified herein (including, without limitation, a Lender's irrevocable, binding agreement to extend a Revolving Loan expressly referencing this Section and its irrevocable election pursuant to this Agreement) and receipt of all funds requested in the applicable Borrowing Request from the Lender agreeing to provide such Revolving Loan, Administrative Agent shall make the proceeds of the Revolving Loan available to Borrower on the Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of each such Revolving Loan received by Administrative Agent from such Lender(s) to be credited by wire transfer to the account of Borrower as may be designated in writing to Administrative Agent by Borrower in said Borrowing Request.

2.2 Pro Rata Shares. All Term Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Term Loan requested hereunder or purchase a participation required hereby.

2.3 Use of Proceeds. The proceeds of the Loans shall be used to (i) fund Capital Expenditures incurred in connection with the development, design, construction, installation and operation of the Credit Parties' Znyth 3 battery automation production lines located at the manufacturing ~~facility~~facilities in Turtle Creek, Pennsylvania (the "Turtle Creek Facility") and Duquesne, Pennsylvania (the "Duquesne Facility"), in each case, strictly in accordance with the CapEx Budget and Section ~~6.3~~6.3, (ii) fund working capital needs of Borrower strictly in accordance with the CapEx Budget, (iii) with respect to the Initial Term Loan A, repay all Indebtedness owing

under the Atlas Facility as contemplated by Section ~~3.1(a)(xviii)~~3.1(a)(xiii), together with fees and expenses due and owing thereunder and (iv) pay fees, costs and expenses payable by Borrower in connection with the transactions under this Agreement and the other Credit Documents; provided that, upon request by Administrative Agent, Borrower shall promptly (and in any event within two (2) Business Days) provide evidence (which shall be satisfactory to Administrative Agent in its sole discretion) of Borrower's compliance with the foregoing. No portion of the proceeds of any Loan shall be used in any manner that causes or might cause such Loan or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Federal Reserve Board or any other regulation thereof or to violate the Exchange Act.

2.4 Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it (including Capitalized Interest) and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Commitments or Borrower's Obligations in respect of any Loans; provided, further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Notes. If so requested by any Lender by written notice to Borrower at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Loans.

2.5 Interest on Loans.

(a) Except as otherwise set forth herein, all Loans (including any Capitalized Interest) and all other Obligations (to the extent not paid when due) shall bear interest from and including the date when made to the date of repayment (whether by acceleration or otherwise) at a rate equal to 15% per annum; provided that if Borrower is not permitted to issue its Series B Preferred Stock as contemplated herein and the Securities Purchase Agreement on or before September 19, 2024, then the applicable interest rate per annum shall be increased as set forth below commencing on the first day of each Applicable Period and continuing until the date on which Borrower is permitted to issue its Series B Preferred Stock as contemplated herein and the Securities Purchase Agreement (the "Approval Date") (as adjusted, the "Interest Rate").

Applicable Period	Interest Rate
September 20, 2024 to October 19, 2024	16%
October 20, 2024 to November 18, 2024	17%
November 19, 2024 to December 18, 2024	18%
December 19, 2024 to January 17, 2025	19%
January 18, 2025 to the Approval Date	20%

(b) Except as otherwise set forth herein, interest on each Loan shall be payable in arrears (i) daily (unless the cash interest election has been made or deemed made pursuant to Section 2.5(d)), (ii) upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid, and (iii) at maturity, including final maturity.

(c) Interest payable shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan (or, in the case of Capitalized Interest, the date of such capitalization, which is daily on each calendar day) shall be included, and the date of payment in cash of such Loan, shall be excluded; provided that, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan. In computing interest on any other Obligation, the date such Obligation is due and payable shall be included, and the date of payment of such Obligation shall be excluded; provided, further, that, if such Obligation is repaid on the same day on which it is due and payable, no interest shall accrue thereon.

(d) All accrued and unpaid interest on the Loans (other than interest accruing at the Default Rate which, for the avoidance of doubt, shall be payable in cash on demand by Administrative Agent) shall be due and payable, in arrears, on a daily basis

as compounded interest, added on a daily basis to the then outstanding principal balance of the Loans, which thereafter accrues interest at the then applicable rate (each such addition, "Capitalized Interest"); provided that Borrower may elect to pay interest in cash in arrears for any calendar month by providing written notice to Administrative Agent (in form and substance satisfactory to Administrative Agent in its sole discretion) at least five (5) Business Days prior to the end of such calendar month (in which case the interest for such month shall not be capitalized and shall instead be paid in cash on the last calendar day of each month (or, if such date is not a Business Day, on the next Business Day, including interest to, but excluding, such Business Day)); provided, further, that upon the occurrence and continuance of a Default or Event of Default, Borrower shall be deemed to have made such election and all interest shall be due and payable in cash as set forth in the preceding proviso. Interest shall also be paid on the date of any payment or prepayment of the Loans. All Capitalized Interest shall constitute additional principal on the Loans and shall begin accruing interest thereon commencing on the date on which such Capitalized Interest is added to the principal amount of the Loans on a daily basis each calendar day. Notwithstanding anything herein to the contrary, all interest due and payable on the date that the entire then outstanding principal amount of the Loans becomes due and payable (including, without limitation, all Capitalized Interest), whether at maturity, by acceleration or otherwise, shall be due and payable in full in cash on such date. All amounts (including fees, costs, expenses, indemnification obligations or other amounts payable hereunder or under any other Credit Document) shall constitute Obligations secured by the Collateral and, if not paid in cash when due, shall bear interest at the rate then applicable to Loans. Any portion of such interest that has accrued pursuant to this Section 2.5 that is not permitted to be capitalized pursuant to this clause (d) shall be paid in cash.

(e) Each determination of an interest rate by Administrative Agent pursuant to any provision of this Agreement or any other Credit Document shall be conclusive and binding on Borrower and the Lenders in the absence of manifest error.

2.6 Default Interest. Automatically upon the occurrence and during the continuance of any Event of Default, the principal amount of all Loans outstanding (inclusive of any Capitalized Interest) and, to the extent permitted by applicable law, any accrued and unpaid interest on the Loans and all Obligations (to the extent not paid when due) owed under any Credit Document, shall bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable Debtor Relief Laws) payable on demand at a rate (the "Default Rate") that is five percent (5.00%) per annum in excess of the Interest Rate. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Default or Event of Default or otherwise prejudice or limit any rights or remedies of any Agent or Lender. Default interest payable pursuant to this Section 2.6 shall be computed on the basis of a 360-day year, for the actual number of days elapsed in the period during which it accrues. Interest at the Default Rate shall be payable in cash on demand.

2.7 Fees. Borrower shall pay to Agents and Lenders (as applicable) all fees in the amounts and at the times set forth in the Fee Letter.

2.8 Amortization Payments. Commencing on ~~July~~March 31, ~~2026~~2028, Borrower shall repay to Administrative Agent the aggregate principal amount of the Term Loans outstanding on the last day of each calendar month in equal installments of one half of one percent (0.50%) of the aggregate outstanding balance of the Term Loans (inclusive of Capitalized Interest), together with any fees required to be repaid pursuant to the Fee Letter; provided that the remaining outstanding balance of Term Loans (inclusive of Capitalized Interest) shall be repaid on the Maturity Date, together with the accrued and unpaid interest thereon, and, notwithstanding the foregoing, all remaining Obligations (including, without limitation, all fees payable pursuant to the Fee Letter) relating to the Loans shall be immediately due and payable on the Maturity Date.

2.9 Voluntary Prepayments.

(a) Term Loans. Except as expressly provided in Section 2.8 and Section 2.10, at any time on or prior to ~~June 21~~March 31, ~~2027~~2028, Borrower may not prepay any Term Loans (whether in whole or in part) unless Administrative Agent consents to any such prepayment in its sole discretion. At any time after ~~June 21~~March 31, ~~2027~~2028, Borrower may voluntarily prepay the Term Loans on any Business Day, in whole or in part, by giving written notice to Administrative Agent (and Administrative Agent will promptly notify each Lender) no later than 11:00 a.m. (New York City time) twelve (12) Business Days prior to the date of such prepayment, in each case, together with any fees required to be repaid pursuant to the Fee Letter. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of the Term Loans or portion thereof to be prepaid. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice. Each partial prepayment of the Term Loans under this Section 2.9(a) shall be in an amount not less than Twenty Million Dollars ($20,000,000) and integral multiples of

Ten Million Dollars ($10,000,000) in excess of that amount, except as otherwise permitted by Administrative Agent in its sole discretion. Any such voluntary prepayment shall be applied as specified in Section 2.11(a).

(b) Revolving Loans. Borrower may voluntarily prepay the Revolving Loans on any Business Day, in whole or in part, by giving written notice to Administrative Agent (and Administrative Agent will promptly notify each Lender) no later than 11:00 a.m. (New York City time) twelve (12) Business Days prior to the date of such prepayment, in each case, together with any accrued and unpaid interest and any fees required to be repaid pursuant to the Fee Letter. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of the Revolving Loans or portion thereof to be prepaid. If such notice is given, the aggregate amount specified in such notice shall be due and payable on the date designated in such notice. Each partial prepayment of the Revolving Loans under this Section 2.9(b) shall be in an amount not less than One Million Dollars ($1,000,000) and integral multiples of One Million Dollars ($1,000,000) in excess of that amount, except as otherwise permitted by Administrative Agent in its sole discretion. Any such voluntary prepayment shall be applied as specified in Section 2.11(a).

2.10 Mandatory Prepayments.

(a) Asset Sales. No later than the second (2nd) Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any Net Cash Proceeds in respect of any Asset Sale in excess of Three Million Dollars ($3,000,000) in the aggregate in any Fiscal Year, Borrower shall prepay the ~~Term~~ Loans as set forth in Section 2.11(a) and the DOE Loan, Ratably, in an aggregate amount equal to 100% of such Net Cash Proceeds; provided, that, upon written notice by the Borrower to the Administrative Agent not more than two (2) Business Days following receipt of such Net Cash Proceeds, such Net Cash Proceeds shall be excluded from the prepayment requirements of this 2.10(a) if (x) the Borrower shall deliver to the Administrative Agent a certificate to the effect that the Borrower intends to apply the Net Cash Proceeds (or a portion thereof specified in such notice) to reinvest such Net Cash Proceeds in long term assets used or useful in the business of the Credit Parties within one hundred eighty (180) days after receipt of such Net Cash Proceeds (any such event, a "Asset Sale Reinvestment"), and certifying therein that no Event of Default exists prior to giving such notice and prior to or after giving effect to such Asset Sale Reinvestment, and (y) within one hundred eighty (180) days from the date of receipt of such Net Cash Proceeds, such Net Cash Proceeds shall be applied to such Asset Sale Reinvestment; provided, further, however, that the amount of such Net Cash Proceeds (i) that the Borrower or the applicable Credit Party or Subsidiary of any Credit Party shall have determined not to, or shall have otherwise ceased to, or is not able to, by operation of contract or law or otherwise (including not being able to make the certifications required pursuant to this clause (i) above), apply toward an Asset Sale Reinvestment or (ii) that have not been so applied toward an Asset Sale Reinvestment by the end of such one hundred eighty (180)-day period, in each case shall be applied to a mandatory prepayment of the Loans pursuant to this Section 2.10(a); provided, further, that no prepayment under this clause (a) shall be required for any Permitted Tax Credit Transaction consisting solely of an outright sale of such Production Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction (it being understood, for the avoidance of doubt, that Net Cash Proceeds from any Permitted Tax Credit Transaction that is a securitization or other financing transaction shall be subject to prepayment pursuant to this clause (a)).

(b) Insurance/Condemnation Proceeds. No later than the second (2nd) Business Day following the date of receipt by any Credit Party or any of its Subsidiaries (and immediately upon the direct receipt by any DOE Secured Party or the Collateral Agent (as the case may be) as lender loss payee of any Net Cash Proceeds of the type described in ~~this~~ clause (b) of the definition thereof), to the extent (and promptly following determination that) prepayment is required in accordance with Section 5.22, Borrower shall prepay the ~~Term~~ Loans as set forth in Section 2.11(a) and the DOE Loan, Ratably, in an aggregate amount equal to one hundred percent (100%) of such Net Cash Proceeds of the type described in clause (b) of the definition thereof; provided, that, with respect to Net Cash Proceeds of the type described in this clause (b), (1) the proceeds from any business interruption, delay in start-up or liability insurance shall be excluded for prepayment pursuant to this clause and (2) upon written notice by Borrower to Administrative Agent not more than two (2) Business Days following receipt of such Net Cash Proceeds, such Net Cash Proceeds shall be excluded from the prepayment requirements of this clause (b) if (i) Borrower shall deliver to Administrative Agent a certificate to the effect that Borrower intends to apply the Net Cash Proceeds (or a portion thereof specified in such notice) to reinvest such Net Cash Proceeds to restore or replace any assets affected by the related casualty event, within three hundred sixty five (365) days after receipt of such Net Cash Proceeds (any such event, an "Insurance/Condemnation Reinvestment"), and certifying therein that no Default or Event of Default exists prior to giving such notice and prior to or after giving effect to such Insurance/Condemnation Reinvestment, and (ii) within three hundred sixty five (365) days from the date of receipt of such Net Cash Proceeds, such Net Cash Proceeds shall be applied to such Insurance/Condemnation Reinvestment; provided, however, that the amount of such Net Cash Proceeds (x) that Borrower or the applicable Credit Party or Subsidiary of any Credit Party shall have determined not to, or shall have otherwise ceased to, or is not able to, by operation of

contract or law or otherwise (including not being able to make the certifications required pursuant to clauses (b)(i) and (ii) above), apply toward an Insurance/Condemnation Reinvestment or (y) that have not been so applied toward an Insurance/Condemnation Reinvestment by the end of such three hundred sixty five (365)-day period, in each case shall be applied to a mandatory prepayment of the ~~Term~~ Loans pursuant to this ~~clause~~ Section 2.10 (b).

(c) Issuance of Debt. On the date of receipt by any Credit Party or any of its Subsidiaries of any ~~Net Cash Proceeds from the issuance or incurrence of any Indebtedness of any Credit Party or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1)~~Issuance Proceeds, Borrower shall prepay the ~~Term~~ Loans as set forth in Section 2.11(a) and the DOE Loan, Ratably, in an aggregate amount equal to one hundred percent (100%) of such ~~Net Cash~~Issuance Proceeds.

(d) Extraordinary Receipts. No later than the second (2^{nd}) Business Day following the date of receipt by any Credit Party or any of its Subsidiaries of any ~~Net Cash Proceeds in respect of any~~ Extraordinary Receipt in excess of Five Million Dollars ($5,000,000) in the aggregate in any Fiscal Year, Borrower shall prepay the ~~Term~~ Loans as set forth in Section 2.11(a) and the DOE Loan, Ratably, in an aggregate amount equal to one hundred percent (100%) of such ~~Net Cash Proceeds~~Extraordinary Receipt; provided that no prepayment under this clause (d) shall be required for any Permitted Tax Credit Transaction consisting solely of an outright sale of such Production Tax Credits to a third party that is not an Affiliate and not in connection with a securitization or other financing transaction (it being understood, for the avoidance of doubt, that Net Cash Proceeds from any Permitted Tax Credit Transaction that is a securitization or other financing transaction shall be subject to prepayment pursuant to this clause (d)).

(e) Excess Cash Flow. Within twelve (12) Business Days of the date of delivery of the audited financial statements pursuant to Section 5.1(a) (or, if not delivered, the date on which such audited financial statements were required to have been delivered pursuant to Section 5.1(a)), commencing for the Fiscal Year ending on December 31, 2027, Borrower shall prepay the Loans and the DOE Loans, Ratably, in an aggregate amount equal to Excess Cash Flow for such Fiscal Year (plus, in the case of the Fiscal Year ending on December 31, 2027, Excess Cash Flow for each of the two preceding Fiscal Years, if any (provided that, Excess Cash Flow for the two preceding Fiscal Years shall be determined on an individual basis for each such Fiscal Year) multiplied by the ECF Percentage(s) applicable to such Excess Cash Flow for such Fiscal Year(s); provided that such amount shall be reduced by the aggregate amount of: (i) voluntary prepayments of principal of the DOE Loan and any Term Loans (to the extent otherwise permitted hereunder) during such Fiscal Year ~~and~~(s), (ii) Capital Expenditures made in cash during such period to the extent in accordance with the ~~CapEx Budget~~Annual Plan (other than Capital Expenditures that were financed with the proceeds of Indebtedness or issuances of Capital Stock of Borrower) and (iii) the aggregate amount required to be deposited into any Specified Account pursuant to any DOE Loan Document during such Fiscal Year(s), solely to the extent actually deposited into a Specified Account; provided, further, that such amount shall be subject to further reduction ~~€~~as necessary to ensure that, (i) in the case of the first occurrence of a prepayment required under this clause (e) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year(s), immediately after giving effect to such payment the aggregate amount of Cash and Cash Equivalents held by Borrower and its Subsidiaries is not less than Thirty Million Dollars ($30,000,000), (ii) in the case of the second occurrence of a prepayment required under this clause (e) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year(s), immediately after giving effect to such payment the aggregate amount of Cash and Cash Equivalents held by Borrower and its Subsidiaries is not less than Forty Million Dollars ($40,000,000) and (iii) in the case of the each subsequent occurrence of a prepayment required under this clause (e) due to Excess Cash Flow exceeding zero Dollars ($0) for such Fiscal Year(s), immediately after giving effect to such payment the aggregate amount of Cash and Cash Equivalents held by Borrower and its Subsidiaries is not less than Fifty Million Dollars ($50,000,000). Borrower shall include reasonably detailed calculations of Excess Cash Flow and the prepayment amount (including any component thereof) in the Compliance Certificate required to be delivered with such financial statements and otherwise in accordance with clause (~~f~~g) below. If such audited financials are not available or not delivered as required, Agent may elect to calculate Excess Cash Flow with reference to the December 31 quarterly financials or monthly financials, as determined by Agent in its sole discretion.

(f) Project Documents. In the event that any mandatory prepayment is required under clause (D) of Section 3.05(c)(i) in the DOE Guarantee Agreement, such prepayment shall be applied to the DOE Loan and the Loans, Ratably.

(g) ~~(f)~~ Prepayment Certificate. By or before 12:00 p.m. (New York City time) at least twelve (12) Business Days prior to any prepayment under this Section 2.10 or as soon as practicable thereafter, Borrower shall deliver written notice to Administrative Agent providing the proposed date of the prepayment, a reasonably detailed calculation of the prepayment and the sub-clause of this Section 2.10 pursuant to which the payment is being made. Concurrently with any prepayment of the ~~Term~~ Loans pursuant to Sections 2.10(a) through ~~2.10(e)~~2.10(f) or as soon as practicable thereafter, Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable Net Cash Proceeds or Excess Cash Flow (as the case may be), and the Total Prepayment Amount owing to Lenders under the Fee Letter, if any, as the case may be. In the event that Borrower shall subsequently determine that the actual amount received by the Credit Parties or their Subsidiaries exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the ~~Term~~ Loans in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

(h) ~~(g)~~ Prepayments Generally. Nothing contained in this Section 2.10 shall permit any Credit Party or any of its Subsidiaries to take any action that is otherwise prohibited by the terms and conditions of this Agreement.

2.11 Application of Prepayments/Reductions.

(a) Application of Prepayments by Type of Loans. ~~Any~~Subject to the Intercreditor Agreement, any voluntary prepayments of Loans pursuant to Section 2.9 and any mandatory prepayment of any ~~Term~~ Loan pursuant to Section 2.10 shall be applied as follows:

first, to the payment of all fees, costs, indemnities or other expenses then due pursuant to this Agreement or in any other Credit Document (including, without limitation, expenses and indemnities specified in Sections 2.10 and 10.3), to the full extent thereof;

second, to the payment of any accrued interest at the Default Rate, if any;

third, to the payment of any accrued interest (other than Default Rate interest);

fourth, to the payment of, as applicable, the Total Prepayment Amount, if any, on any Loan;

fifth, except as otherwise set forth in Section 2.11(b) in connection with any Waivable Mandatory Prepayment, to prepay Term Loans (inclusive of any Capitalized Interest) on a pro rata basis (in accordance with the respective outstanding principal amounts thereof);

sixth, ~~other than with respect to any mandatory prepayment required by~~except as otherwise set forth in Section ~~2.10~~2.11(b) in connection with any Waivable Mandatory Prepayment, to prepay Revolving Loans (inclusive of any Capitalized Interest) on a pro rata basis (in accordance with the respective outstanding principal amounts thereof), together with a corresponding permanent reduction of the Revolving Commitment;

seventh, to the payment in full of all other Obligations; and

eighth, upon satisfaction in full of all Obligations, to Borrower or as otherwise required by law.

Subject to items "*first*" through "*seventh*" preceding, Administrative Agent 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.

(b) Waivable Mandatory Prepayment. In the event a Credit Party (or any of its Subsidiaries) is required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the ~~Term~~ Loans, not less than twelve (12) Business Days prior to the date (or such shorter period permitted by Administrative Agent in its sole discretion or as may be required due to the later occurrence

of the event giving rise to such requirement) (the "Required Prepayment Date") on which any Credit Party (or any of its Subsidiaries) is required to make such Waivable Mandatory Prepayment, Borrower shall notify Administrative Agent of the amount of such prepayment in accordance with the requirements set forth in Section ~~2.10(f)~~2.10(g), and Administrative Agent will thereafter notify each Lender holding an outstanding ~~Term~~ Loan of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to Administrative Agent of its election to do so on or before 12:00 p.m. (New York City time) the first (1st) Business Day prior to the Required Prepayment Date (it being understood that any Lender which does not notify Administrative Agent of its election to exercise such option on or before 12:00 p.m. (New York City time) the first (1st) Business Day prior to the Required Prepayment Date shall be deemed not to have elected to exercise such option). On the Required Prepayment Date, Borrower shall (or cause any Subsidiary to) pay to Administrative Agent an amount (the "Required Mandatory Prepayment Amount") equal to (x) the amount of the Waivable Mandatory Prepayment less (y) an amount equal to that portion of the Waivable Mandatory Prepayment that would otherwise be payable to those Lenders that have elected to exercise such option. The Required Mandatory Prepayment Amount shall be applied to prepay the ~~Term~~ Loans of those Lenders that have elected (or have been deemed to have elected) not to exercise such option (which prepayment shall be applied in accordance with Section 2.11(a)). Such Required Mandatory Prepayment Amount shall include any fees payable pursuant to the Fee Letter (including without limitation the applicable Total Prepayment Amount).

2.12 General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in immediately available funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent, for the account of Lenders, not later than 12:00 p.m. (New York City time) on the date due at the Principal Office designated by Administrative Agent. For purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day (unless determined otherwise by Administrative Agent in its sole discretion).

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent shall promptly distribute to each Lender at such address or account as such Lender shall indicate in writing, such Lender's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due with respect thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder.

(e) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender, 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 Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 11:00 a.m. (New York City time) shall be a non-conforming payment (unless determined otherwise by Administrative Agent in its sole discretion). Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt written notice to Borrower and each applicable Lender (which may be by electronic mail) if any payment is non-conforming. Any non-conforming payment may constitute or

become an Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such payment is actually received by Administrative Agent (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) from the date such amount was due and payable until the date such amount is paid in full and from and after the date such non-conforming payment constitutes an Event of Default such interest shall accrue at the Default Rate determined pursuant to Section 2.6.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the Obligations have become due and payable in full hereunder, whether by acceleration, maturity or otherwise, all payments or proceeds received by any Agent hereunder or under any Collateral Document in respect of any of the Obligations, including, but not limited to all proceeds received by any Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to each Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by any Agent in connection therewith, and all amounts for which any Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as an Agent and not as a Lender) and all advances made by any Agent under any Collateral Document (including, without limitation, any Administrative Agent Advances) for the account of the applicable Grantor, and to the payment of all costs and expenses paid or incurred by any Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of the Lenders; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.13 Ratable Sharing. Lenders hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequateprotection of a deposit treated as cash collateral under the Bankruptcy Code or other applicable Debtor Relief Laws, receive payment or reduction of a proportion of the aggregate amount of principal, interest and other amounts then due and owing to such Lender hereunder or under the other Credit Documents (collectively, the "Aggregate Amounts Due" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.13 shall not be construed to apply to (a) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement or the Fee Letter or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it in accordance with the express terms of this Agreement.

2.14 Increased Costs; Capital Requirements.

(a) Compensation for Increased Costs. 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 or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses ~~(b)~~(b) through ~~(d)~~(d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its Loans, Loan principal, Commitments, or other obligations under the Credit Documents, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such other Recipient, Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements; Certificates for Reimbursement; Delay in Requests.

(i) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(ii) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 2.14(a) or 2.14(b) and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(iii) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to Section 2.14(a) or 2.14(b) shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section 2.14 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

2.15 Taxes; Withholding, etc.

(a) Defined Terms. For purposes of this Section 2.15, the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party under any Credit Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall 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 applicable Credit Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.15) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by Borrower. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by Borrower. The Credit Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any 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 Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that a Credit Party has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Credit 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 Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this Section 2.15(e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 2.15, such Credit Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment satisfactory to Administrative Agent in its sole discretion.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of U.S withholding Tax with respect to payments made under any Credit Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent 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 Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.15(g)(ii)(A), 2.15(g)(ii)(B) and 2.15(g)(ii)(D) below) 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.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be 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 upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or G-3, 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 U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be 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 upon the reasonable request of Borrower or Administrative Agent), executed copies of 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 Borrower or Administrative Agent to determine the withholding or deduction required to be made;

(D) if a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent 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 clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement; and

(E) Administrative Agent, and any successor or supplemental Administrative Agent, shall deliver to Borrower, on or prior to the date on which it becomes Administrative Agent, either (x) a properly completed and duly signed copy of IRS Form W-9 or (y) a properly completed and duly signed copy of IRS Form W-8ECI with respect to payments to be received under the Credit Documents for its own account and a properly completed and duly signed copy of IRS Form W-8IMY evidencing its agreement with Borrower to be treated as a U.S. person for U.S. federal withholding tax purposes.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.15 (including by the payment of additional amounts pursuant to this Section 2.15), 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 2.15 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (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 clause (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (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 clause (h) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Tax Treatment. The Credit Parties and the Lenders hereby acknowledge and agree that, for U.S. federal income tax purposes,

(i) Each Term Loan shall be treated as debt (and not as equity) under Section 385 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, and shall be treated as a debt instrument that is not a "contingent payment debt instrument" within the meaning of Treasury Regulation Section 1.1275-4;

(ii) Each draw of the Term Loan and concurrent issuance of Equity Instruments constitutes an investment unit within the meaning of Section 1273(c)(2) of the Internal Revenue Code.

(iii) As soon as reasonably practicable (and in no event later than ten (10) Business Days) after the Closing Date with respect to the Initial Term Loan, and at least ten (10) Business Days prior to each closing of a Delayed Draw Term Loan, Borrower shall deliver to the Administrative Agent its proposed determination, which determination shall be made reasonably and in good faith, of the issue price of the applicable Term Loan in accordance with Treasury Regulations Section 1.1273-2(h)(1) together with supporting calculations (including the fair market value of the Equity Instruments being issued in connection with such Term Loan), and Borrower shall consider in good faith Administrative Agent's comments to such proposed determination;

(iv) Borrower and the Lenders shall report all income tax matters with respect to the Term Loans and Equity Instruments consistent with U.S. federal income tax treatment and issue price determinations provided for by this Section 2.15(i), and shall not take any action or file any Tax return, report or declaration inconsistent therewith, unless: (x) otherwise required by a final determination within the meaning of Section 1313 of the Internal Revenue Code, or (y) a Lender notifies Borrower that it is taking a different position and properly discloses such position in accordance with Treasury Regulations Section 1.1273-2(h)(2).

(j) Survival. Each party's obligations under this Section 2.15 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Credit Document.

2.16 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 Requisite Lenders and as set forth in Section 10.5(b) and Section 10.5(e); and

(ii) Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *third*, if so determined by Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

2.17 Mitigation of Obligations. If any Lender requests compensation under Section 2.14(a) or 2.14(b), or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall (at the request of Borrower) 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 2.14 or 2.15 as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender and (iii) would not otherwise adversely affect the Loans or Commitments, as applicable, of such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3. CONDITIONS PRECEDENT

3.1 Closing Date.

(a) The obligation of each Lender to make the Initial Term Loan A on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(i) Credit Documents. Administrative Agent shall have received copies of (i) each Credit Document, duly executed and delivered by each applicable party thereto, (ii) the Master Intercompany Note duly executed and delivered by the parties thereto, and (iii) each Equity Instrument required to be issued on the Closing Date has been duly authorized, validly issued and delivered by Borrower and duly executed by the parties thereto, in each case, in form and substance satisfactory to Administrative Agent and the Lenders in their sole discretion.

(ii) Organizational Documents; Incumbency. Administrative Agent shall have received (i) copies of each Organizational Document executed and delivered by each Credit Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Credit Documents to which it is a party; (iii) resolutions of the Board of Directors, sole member or similar governing body of each Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents to which it is a party or by which it or its assets may be bound as of the Closing Date and the issuance of all Equity Instruments from time to time required by the Credit Documents, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Credit Party's jurisdiction of incorporation, organization or formation dated as of a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(iii) Organizational and Capital Structure. The organizational structure and capital structure of Borrower and its Subsidiaries shall be as set forth on Schedule 4.2.

(iv) Governmental Authorizations and Consents. Each Credit Party shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the execution, delivery and performance of the Credit Documents to which such Credit Party is a party and the transactions contemplated by the Credit Documents, and each of the foregoing shall be in full force and effect and in form and substance satisfactory to Administrative Agent in its sole discretion. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Credit Documents or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(v) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid, perfected First Priority security interest in the personal property Collateral, Collateral Agent shall have received:

(A) evidence satisfactory to Collateral Agent of the compliance by each Credit Party of its obligations under the Pledge and Security Agreement, the Intellectual Property Security Agreements and the other Collateral Documents (including, without limitation, its obligations to authorize or execute, as the case may be, and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(B) a completed Perfection Certificate dated as of the Closing Date and executed by an Authorized Officer of each Credit Party, together with all attachments contemplated thereby, including (A) the results of a recent search, by a Person satisfactory to Collateral Agent, of all effective UCC financing statements (or equivalent filings) made with respect to any personal or mixed property of any Credit Party in the jurisdictions specified in the Perfection Certificate, together with copies of all such filings disclosed by such search, and (B) UCC termination statements (or similar documents) duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements (or equivalent filings) disclosed in such search or otherwise in existence (other than any such financing statements in respect of Permitted Liens), and (C) evidence satisfactory to Collateral Agent of the termination and release of all Liens (other than Permitted Liens) or that arrangements for such terminations and release have been made;

(C) any Share Certificates representing shares of Capital Stock owned by or on behalf of any Credit Party constituting Collateral as of the Closing Date, together with undated stock powers (or their equivalent) with respect thereto executed in blank;

(D) opinions of counsel with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Credit Party is organized as Collateral Agent may reasonably request, in each case in form and substance satisfactory to Collateral Agent in its sole discretion; and

(E) evidence that each Credit Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including without limitation, any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(vi) CapEx Budget, 13-Week Forecast, and Cash reports. Lenders shall have received from Borrower the CapEx Budget, the 13-Week Forecast, and a detailed sources and uses for proceeds from the Initial Term Loan (including all aged payables), in each case, in form and substance satisfactory to Administrative Agent in its sole discretion.

(vii) Evidence of Insurance. Collateral Agent shall have received a certificate from Credit Parties' insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Collateral Agent, on behalf of Secured Parties, as additional insured and loss payee thereunder to the extent required under Section 5.5.

(viii) Opinions of Counsel to Credit Parties. Agents, Lenders and their respective counsel shall have received the favorable written opinions of Haynes & Boone LLP, counsel for Credit Parties, as to such matters as Administrative Agent may

reasonably request, dated as of the Closing Date and otherwise in form and substance satisfactory to Administrative Agent in its sole discretion (and each Credit Party hereby instructs such counsel to deliver such opinions to Agents and Lenders).

(ix) Fees. Borrower shall have paid all fees payable to the Lenders pursuant to the Fee Letter.

(x) Solvency Certificate. Administrative Agent shall have received a Solvency Certificate from the chief financial officer of Borrower dated as of the Closing Date and addressed to Administrative Agent and Lenders, and in form, scope and substance satisfactory to Administrative Agent, with appropriate attachments and demonstrating that after giving effect to the consummation of the transactions contemplated by the Loans to be made on the Closing Date, Borrower and its Subsidiaries are and will be Solvent.

(xi) Closing Date Certificate. Borrower shall have delivered to Administrative Agent an executed Closing Date Certificate, together with all attachments thereto, which shall include (without limitation) certifications with respect to clauses (a)(xii), (xvi), (xvii) and (xix) of this Section 3.1 and Section 3.2(c).

(xii) Compliance. Immediately prior to and after giving effect to the Borrowing of the Initial Term Loan (and the application of the proceeds therefrom), each Credit Party shall be in compliance with all the terms and provisions set forth herein and in each other Credit Document on its part to be observed or performed, including all financial covenants set forth in Section 6.8.

(xiii) Atlas Facility. Administrative Agent shall have received a fully executed Payoff Letter satisfactory to Administrative Agent in its sole discretion confirming that, subject to receipt of the Interest Escrow Amount and the Agreed Payoff Amount (each as defined in the Payoff Letter), all obligations owing by any Credit Party or its Subsidiaries in respect of the Atlas Facility shall be deemed repaid in full (other than the Specified Deferred Payments) and that all Liens and other obligations in respect thereof (and any rights or licenses granted to any lender or other third party in connection therewith) shall be released and terminated. The executed joint written termination notice of the Three-Party Escrow Service Agreement between Eos Energy Technology Holdings LLC, ACP Post Oak Credit I LLC and NCC Group Software Resilience (NA) LLC dated July 29, 2022 shall have been executed and delivered.

(xiv) [Reserved].

(xv) Due Diligence. Administrative Agent shall have completed its business, legal, market and collateral due diligence, in each case, the results of each of which shall be satisfactory to Administrative Agent in its sole discretion.

(xvi) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, in the sole discretion of Administrative Agent, singly or in the aggregate, materially impairs the consummation of the transactions contemplated hereunder or any of the other transactions contemplated by the Credit Documents, or that could reasonably be expected to have a Material Adverse Effect (individually or in the aggregate).

(xvii) No Material Adverse Change. Since December 31, 2023, no event, circumstance, development or change shall have occurred that has resulted in or caused, or could reasonably be expected to result in or cause, either individually or in the aggregate, a Material Adverse Effect.

(xviii) U.S. Patriot Act and Similar Disclosures. The Agent and each Lender shall have received at least five (5) Business Days prior to the Closing Date (a) all documentation and other information about Borrower and the Guarantors as has been reasonably requested in writing at least ten (10) Business Days prior to the Closing Date by Administrative Agent or the Lenders that they reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act and (b) a Beneficial Ownership Certification from each Credit Party or Subsidiary thereof that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

(xix) Accuracy of Representations and Warranties. The representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) on and as of the date of this Agreement, except to the extent such representations and warranties specifically relate

to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) on and as of such earlier date.

(b) The obligation of each Lender to make the Initial Term Loan B no later than one (1) Business Day after the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before such Borrowing Date:

(i) Atlas Facility. The Termination Date (as defined in the Payoff Letter) shall have occurred.

(ii) Fees. Borrower shall have paid all fees payable pursuant to the Fee Letter and all reasonable fees, costs and expenses of Agents and the Lenders party hereto incurred in connection with the negotiation, preparation and execution of this Agreement, including, without limitation, all reasonable legal fees and expenses of Cooley LLP, counsel to Administrative Agent.

(iii) Equity Instruments. Borrower shall have issued to the Lenders or their assignees or designees (including without limitation any Approved Fund) Equity Instruments such that, after giving effect to such issuance, the Equity Instruments Coverage Condition is satisfied, as determined by Administrative Agent and the Lenders in their sole discretion.

3.2 All Borrowings. The obligation of each Lender to make a Loan is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before each Borrowing Date:

(a) Borrowing Request. Administrative Agent shall have received (i) a Borrowing Request for the relevant Borrowing as required by Section 2.1(c), duly executed by an Authorized Officer of Borrower and (ii) with respect to any Revolving Loan, evidence satisfactory to Administrative Agent confirming such Lender's agreement to provide the requested Revolving Loan.

(b) Accuracy of Representations and Warranties. The representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) on the date of the Borrowing Request and as of the Borrowing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (other than those representations and warranties that are expressly qualified by a Material Adverse Effect or other materiality, in which case such representations and warranties shall be true and correct in all respects) on and as of such earlier date.

(c) No Defaults. As of the date the Borrowing Request and at the time of and after giving effect to each Borrowing, no event, fact or circumstance exists that constitutes a Default or an Event of Default.

(d) No Material Adverse Change. As of the date the Borrowing Request and at the time of and after giving effect to each Borrowing, no event, circumstance, development or change (either individually or in the aggregate) shall have occurred that has resulted in or caused, or could reasonably be expected to result in or cause, a Material Adverse Effect.

(e) Milestones. With respect to each Delayed Draw Term Loan, Administrative Agent and the Lenders shall have received evidence demonstrating that Borrower has satisfied the milestone set forth in the Milestone Schedule applicable to such tranche of Delayed Draw Term Loans, as determined by Administrative Agent and the Lenders in their sole discretion.

(f) CapEx Budget. With respect to each Delayed Draw Term Loan, Administrative Agent and the Lenders shall have received evidence demonstrating that there has been no adverse deviation from the CapEx Budget or 13-Week Forecast then in effect in any material respect, as determined by Administrative Agent and the Lenders in their sole discretion.

(g) Equity Instruments. With respect each Delayed Draw Term Loan, Borrower shall have issued to the Lenders or their assignees or designees (including, without limitation, any Approved Fund) Equity Instruments such that, after giving effect such issuance, the Equity Instruments Coverage Condition is satisfied, as determined by Administrative Agent and the Lenders in their sole discretion.

(h) Fees. With respect to each Delayed Draw Term Loan, Borrower shall have paid to the Lenders all fees payable pursuant to the Fee Letter.

(i) Compliance. Immediately prior to and after giving effect to any Borrowing (and the application of the proceeds therefrom), each Credit Party shall be in compliance with all the terms and provisions set forth herein and in each other Credit Document on its part to be observed or performed, including, without limitation, the CapEx Budget.

(j) Other Documents. Administrative Agent shall have received any other documents any Agent may reasonably request.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

4. REPRESENTATIONS AND WARRANTIES

In order to induce Agents and Lenders to enter into this Agreement and to make the Loans on the Closing Date, each Credit Party represents and warrants to each Agent and Lender that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification. Each of Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own (or lease pursuant to lease agreements) and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing (to the extent such concept is applicable in the relevant jurisdiction) in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case with respect to clause (c), except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not reasonably be expected to have, a Material Adverse Effect. As of the Closing Date, the jurisdiction of organization of each of Borrower and its Subsidiaries is set forth on Schedule 4.1.

4.2 Capital Stock and Ownership; Certain Intercompany Loans. The Capital Stock of each of Borrower and its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 4.2, as of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement to which any Credit Party or any of its Subsidiaries is a party requiring, and there is no Capital Stock of any Credit Party or any of its Subsidiaries outstanding which upon conversion, exchange or exercise would require, the issuance by any Credit Party or any of its Subsidiaries of any additional Capital Stock of any Credit Party or any of its Subsidiaries or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, any Capital Stock of any Credit Party or any of its Subsidiaries. Schedule 4.2 correctly sets forth the ownership interest of each Credit Party and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

4.3 Due Authorization. The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary corporate or other organizational action on the part of each Credit Party that is a party thereto.

4.4 No Conflict. The execution, delivery and performance by the Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to any Credit Party or any of its Subsidiaries, in each case, in any material respect, (ii) any of the Organizational Documents of any Credit Party or any of its Subsidiaries, or (iii) any order, judgment or decree of any court or other Governmental Authority binding on any Credit Party or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both), a material default or accelerate or trigger any obligations or grant of rights, under any Contractual Obligation of any Credit Party or any of its Subsidiaries; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of any Credit Party or any of its Subsidiaries (other than any Liens created under any of the

Credit Documents in favor of Collateral Agent, on behalf of Secured Parties); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of any Credit Party or any of its Subsidiaries, except for (x) such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders and (y) such approvals or consents which are set forth on Schedule 4.4.

4.5 Governmental Consents. The execution, delivery and performance by, or the enforcement against, each Credit Party of the Credit Documents to which it is a party and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except for (i) such as have been obtained or made and are in full force and effect or (ii) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

4.6 Binding Obligation. Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except (a) as such enforceability may be limited by applicable bankruptcy, insolvency examinership, reorganization, moratorium, liquidation or similar laws relating to or affecting generally the enforcement of limiting creditors' rights and remedies or by other equitable principles of general application relating to enforceability. (b) as limited by applicable law and (c) insofar as indemnification and contribution provisions may be limited by applicable law.

4.7 Historical Financial Statements. The Historical Financial Statements and the financial statements delivered by Borrower pursuant to Sections 5.1(a), (b) and (c) (if any) were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as of the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to known changes resulting from normal year-end adjustments. Neither any Credit Party nor any of its Subsidiaries (i) as of the Closing Date, has any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or financial condition of Borrower and its Subsidiaries taken as a whole and (ii) has any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the financial statements most recently delivered by Borrower pursuant to Sections 5.1(a), (b) and (c) or the notes thereto and which in any such case is material in relation to the business, operations, properties, assets, or financial condition of Borrower and its Subsidiaries taken as a whole.

4.8 CapEx Budget; 13-Week Forecast. The 13-Week Forecast of Borrower and its Subsidiaries provided to Administrative Agent on or prior to the Closing Date and any subsequent 13-Week Forecast delivered pursuant to Section 5.1(j) are based on good faith estimates and assumptions that Borrower believes are reasonable; provided that the 13-Week Forecasts are not to be viewed as facts and that actual results during the period or periods covered by the 13-Week Forecasts may differ from such 13-Week Forecasts and that the differences may be material. The CapEx Budget has been prepared in good faith, with due care and based upon assumptions Borrower believes to be reasonable. To the knowledge of Borrower, no facts exist that (either individually or in the aggregate) would result in any material change in the 13-Week Forecasts or the CapEx Budget.

4.9 No Material Adverse Change. Since December 31, 2023, no event, circumstance, development or change (either individually or in the aggregate) has occurred that has resulted in or caused, or could reasonably be expected to result in or cause, a Material Adverse Effect.

4.10 Adverse Proceedings, etc. There are no material Adverse Proceedings that, individually or in the aggregate could reasonably be expected to result in liability exceeding Two Million Five Hundred Thousand Dollars ($2,500,000), except as set forth in Schedule 4.10 hereto. Except as set forth in Schedule 4.10 hereto, no Credit Party nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in liability exceeding Two Million Five Hundred Thousand Dollars ($2,500,000) or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any Governmental Authority that, individually or in the aggregate, could reasonably be expected to in liability exceeding One Million Dollars ($1,000,000).

4.11 Payment of Taxes. All U.S. federal and state income tax returns and reports and all other material tax returns and reports of each Credit Party and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns

as due and payable, and all other material Taxes of each Credit Party and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been timely and properly paid except taxes that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and for which such Credit Party or such Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP and set forth in Schedule 4.11 hereto. There is no material Tax assessment or deficiency that has been, or could reasonably be expected to be, asserted against any Credit Party or any Subsidiary.

4.12 Properties.

(a) Title. Each Credit Party and its Subsidiaries has (i) good, sufficient and legal title to, (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property, including any Real Estate Assets), and (iii) valid licensed rights in, all of their respective properties and assets material to, or necessary for the conduct of, their businesses. All such properties and assets are free and clear of Liens except for Permitted Liens.

(b) Real Estate. As of the Closing Date, Schedule 4.12 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, leasehold interests, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Estate Asset of any Credit Party, regardless of whether such Credit Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and no Credit Party has any knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles. The Real Estate Assets are sufficient for the Borrower's business and operations.

4.13 Environmental Matters. (a) Each Credit Party and each of its Subsidiaries is in compliance in all material respects with all applicable Environmental Laws, and any past noncompliance has been fully resolved without any pending, on-going or future obligation or cost; (b) each Credit Party and each of its Subsidiaries has obtained and maintained in full force and effect all Governmental Authorizations required pursuant to Environmental Laws for the operation of their respective business; (c) there are and have been, no conditions, occurrences, violations of Environmental Law, or presence or Releases of Hazardous Materials that would reasonably be expected to form the basis of an Environmental Claim against any Credit Party or any of its Subsidiaries or related to any Real Estate Assets; (d) there are no pending material Environmental Claims against any Credit Party or any of its Subsidiaries, and no Credit Party nor any of its Subsidiaries has received any written notification of any alleged violation of, or liability pursuant to, any Environmental Law or responsibility for the Release or threatened Release of, or exposure to, any Hazardous Materials; and (e) no Lien imposed pursuant to any Environmental Law has attached to any Collateral and no conditions exist that would reasonably be expected to result in the imposition of such a Lien on any Collateral.

4.14 No Defaults. No Credit Party nor any of its Subsidiaries is in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a material default.

4.15 Material Contracts. Schedule 4.15, which may be supplemented from time to time to reflect any updates provided pursuant to Section 5.1(m), contains a true, correct and complete list of all the Material Contracts, and all the Material Contracts are in full force and effect and, to the knowledge of each Credit Party, no existing or forthcoming breach or default thereunder. Each Credit Party has delivered or made available to Administrative Agent true, correct and complete copies of each Material Contract (including any amendments, modifications, and supplements thereto) in effect and not previously delivered or made available to Administrative Agent. Except as described with specificity next to any individual Material Contract set forth on Schedule 4.15, no Credit Party is subject to any contract that contains any (i) non-competition or exclusivity obligations, (ii) minimum purchase obligations (whether by volume or percentage of requirements), (iii) requirement to pay a royalty, commission or revenue or profit share to any third party.

4.16 Governmental Regulation. No Credit Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal, state or foreign statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Credit Party nor any of its Subsidiaries is or is required to be registered as a "registered investment company" or a company "controlled" by a "registered investment

company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.17 Margin Stock. No Credit Party nor any of its Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U or X of the Federal Reserve Board.

4.18 Employee Matters.

(a) Compliance with Employment Laws. Each Credit Party and each of its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities pertaining to employment and employment practices, including wages, hours, compensation, fringe benefits, paid sick leave, employment or termination of employment, leave of absence rights, employment policies, immigration, terms and conditions of employment, child labor, labor or employee relations, affirmative action, government contracting obligations, equal employment opportunity and fair employment practices, disability rights and benefits, workers' compensation, unemployment compensation and insurance, health insurance continuation, whistle-blowing, privacy rights, harassment, discrimination, retaliation, and working conditions or employee safety or health. There are no actions, suits, claims, charges, complaints, grievances, arbitrations, investigations or other legal proceedings against any Credit Party or any of its Subsidiaries pending or to the knowledge of any Credit Party or any of its Subsidiaries, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment or engagement (or termination of employment or engagement) of any current or former employee, applicant, contractor, or other individual service provider of any Credit Party or any of its Subsidiaries, including, without limitation, any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wage or hours violations, unpaid wages, unpaid commissions, wrongful termination or any other employment related matter arising under applicable law. No Credit Party nor any of its Subsidiaries has implemented any "plant closing" or "mass layoff" of employees that would reasonably be expected to require notification under the WARN Act or any similar state or local law, no such "plant closing" or "mass layoff" will be implemented before the Closing Date without advance notification to and approval of Lenders, and there has been no "employment loss" as defined by the WARN Act within the ninety (90) days prior to the Closing Date. With respect to each Credit Party and each of its Subsidiaries, all employees are employed on an "at-will" basis and their employment can be terminated at any time for any reason without notice or payment of severance, change of control payments or acceleration, or other compensation or consideration being owed to such individual other than amounts owed as of the date of termination from employment based on service before that date or as required under applicable law.

(b) Labor. No Credit Party nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against any Credit Party or any of its Subsidiaries, or to the best knowledge of each Credit Party, threatened against any of them before the National Labor Relations Board (or the equivalent in any foreign jurisdiction) and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against any Credit Party or any of its Subsidiaries or to the best knowledge of each Credit Party, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving any Credit Party or any of its Subsidiaries, and (c) to the knowledge of each Credit Party, no union representation question existing with respect to the employees of any Credit Party or any of its Subsidiaries and, to the knowledge of each Credit Party, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) as could not reasonably be expected to have a Material Adverse Effect.

(c) Misconduct Claims. In the last three (3) years, (i) there have been no reported internal or external complaints accusing any supervisory or managerial employee of any Credit Party or any of its Subsidiaries of sexual harassment or sexual misconduct, and no investigations as to any such matters and (ii) there has been no settlement of, or payment arising out of or related to, any claim, litigation or complaint with respect to sexual harassment or sexual misconduct.

(d) Workplace Safety Claims. No Credit Party nor any of its Subsidiaries is engaged in any employment practice regarding employee safety or health that could reasonably be expected to have a Material Adverse Effect. There is no complaint pending against any Credit Party or any of its Subsidiaries, or to the best knowledge of each Credit Party or any of its Subsidiaries, threatened against any of them before the Occupational Safety and Health Administration (or the equivalent in any other jurisdiction).

Schedule 4.18(d) contains a contains a true, correct and complete chart of all matters involving a Credit Party or any of its Subsidiaries and a Governmental Authority pertaining to employee safety or health, with (i) a description of the nature of the matter; (ii) the date on which the applicable Credit Party or its Subsidiary was made aware of such matter; (iii) the actions taken to address such matter; (iv) a description of whether such matter is pending, and if so, an expected date on which such matter will be resolved.

4.19 Employee Benefit Plans.

(a) Except as would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect: (i) each Credit Party and each of its Subsidiaries are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan and the terms thereof, and have performed all their obligations under each Employee Benefit Plan; (ii) there are no pending or, to the best of each Credit Party's knowledge, threatened claims, actions, or lawsuits or action with respect to an Employee Benefit Plan; (iii) no Credit Party nor an of its Subsidiaries could reasonably be expected to be subject to a tax or penalty imposed by Section 502(i) or (l) of ERISA; (iv) no ERISA Event has occurred or is reasonably expected to occur; (v) each Credit Party and each of its Subsidiaries have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan; and (vi) there are no violations of the fiduciary responsibility rules with respect to any Employee Benefit Plan.

(b) The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan) did not exceed the aggregate current fair market value of the assets of such Pension Plan by an amount that could reasonably be expected to result in a Material Adverse Effect. As of the most recent valuation date for each Multiemployer Plan, the potential liability of any Credit Party, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 or Section 4205 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, could not reasonably be expected to result in a Material Adverse Effect.

(c) The liabilities of any Employee Benefit Plan that provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Credit Party or any of its Subsidiaries, do not create a Material Adverse Effect.

(d) Neither the Credit Party nor any ERISA Affiliate has ever maintained, contributed to, or been required to contribute to or had any liability or obligation (whether contingent or otherwise) with respect to any (i) Pension Plan, or a (ii) Multiemployer Plan.

(e) Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified and has either (a) received a favorable determination from the IRS or (b) is maintained under a prototype or volume submitter plan and may rely upon a favorable opinion or advisory letter issued by the IRS, and, to each Credit Party's knowledge, nothing has occurred subsequent to the issuance of such determination, opinion, or advisory letter which would cause such Employee Benefit Plan to lose its qualified status.

(f) The underlying assets of each Credit Party do not constitute Plan Assets of one or more Benefit Plans and the execution, delivery and performance of this Agreement and the other Credit Documents do not and will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code.

4.20 Certain Fees. No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

4.21 Solvency. Each Credit Party is and, upon the incurrence of any Loans on any date on which this representation and warranty is made, will be, Solvent.

4.22 Security Documents.

(a) The Pledge and Security Agreement, upon execution and delivery thereof by the parties thereto, will create in favor of Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral (as defined in the Pledge and Security Agreement) and the proceeds thereof, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability, and (i) when the certificates evidencing Pledged Interests (as defined in the Pledge and Security Agreement) are delivered to Collateral Agent (together with blank endorsements), the Lien created under the Pledge and Security Agreement shall constitute a perfected Lien on, and security interest in, all right, title and interest of the Credit Parties in such Pledged Equity Interests (as defined in the Pledge and Security Agreement) in each case prior and superior in right to any adverse claim of any other Person, and (ii) when financing statements in appropriate form are filed in the offices specified on Schedule 2 thereto, the Lien created under the Pledge and Security Agreement will constitute a perfected First Priority Lien on, and security interest in, all right, title and interest of the Credit Parties in such Collateral in which such a Lien can be perfected through such filings.

(b) Upon the recordation of any Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright Office, together with the financing statements in appropriate form filed in the offices specified on Schedule 2 of the Pledge and Security Agreement, the Lien created under the Pledge and Security Agreement shall constitute a perfected First Priority Lien on, and security interest in, all right, title and interest of the Credit Parties in the Pledged IP (as defined in the Pledge and Security Agreement) in which a security interest may be perfected by filing in the United States and its territories and possessions (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the Credit Parties after the date hereof).

4.23 Compliance with Laws, etc. Each Credit Party and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities in respect of the conduct of its business and the ownership of its assets and property, in each case, in all material respects.

4.24 Intellectual Property.

(a) Schedule 4.24(a)(i) provides a complete list of all registered copyrights, registered trademarks, and patents, and applications for any of the foregoing, owned by or filed in the name of any Credit Party or any of its Subsidiaries throughout the world, together with (x) the owner of such item, (y) the jurisdiction in which such item is issued, registered or pending, and (z) the issuance, registration or application date and number of such item ("Registered IP"). Schedule 4.24(a)(ii) provides a complete list of all agreements pursuant to which any Credit Party or any of its Subsidiaries has granted any license or rights in Intellectual Property to any other Person, except for non-exclusive licenses granted in the ordinary course of business. All Registered IP is subsisting and in compliance with all legal requirements, filings, payments, and other actions that are required to maintain such Registered IP in full force and effect. To each Credit Party's knowledge, all Registered IP that is registered or issued in the name of such Credit Party or such Subsidiary is valid and enforceable.

(b) (i) Each of the Credit Parties owns exclusively, or is licensed to use, all Intellectual Property necessary for or used in the conduct of its business, (ii) no claim has been asserted and is pending by any Person challenging or questioning the ownership, registration or use of any Intellectual Property of the Credit Parties or the validity or enforceability of any Intellectual Property of the Credit Parties or their Subsidiaries, (iii) the use of Intellectual Property by the Credit Parties or any of their Subsidiaries, the software, products and services offered by the Credit Parties or any of their Subsidiaries, and the conduct of the businesses of the Credit Parties or any of their Subsidiaries do not infringe, misappropriate, or violate on the Intellectual Property rights of any Person, and no claim has been asserted and is pending by any Person alleging such infringement, misappropriation, or violation of the Person's Intellectual Property rights, (iv) no other Person is infringing, misappropriating, or violating on the Intellectual Property rights of any Credit Party or any of their Subsidiaries, and (v) no Credit Party or Subsidiary has entered into any Restricted License.

(c) The software owned by each Credit Party and Subsidiary and licensed (including as a service) or distributed by such Credit Party or such Subsidiary to other Persons is not subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license such as the GNU General Public License, GNU Lesser General Public License, or GNU Affero General Public License) that would require or condition the use or distribution of such software, on the disclosure, licensing, or distribution of a material portion of any ~~source code~~Source Code of the proprietary software or the license or covenant not to sue of any patent rights of such Credit Party or such Subsidiary.

(d) The Credit Parties and their Subsidiaries have taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce their rights in all trade secrets owned by the Credit Parties and their Subsidiaries that are necessary to the conduct of their businesses. Schedule 4.24(d) provides a list of agreements in which the Credit Parties and their Subsidiaries have been required to deliver, license or make available the ~~source code~~Source Code of its software to any escrow agent or other Person who is not, or was not, as of the date thereof, an employee, consultant or independent contractor of such Credit Party or Subsidiary. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) shall, or could reasonably be expected to, result in the authorized delivery, license, or disclosure of any Credit Party's or its Subsidiaries' ~~source code~~Source Code to any other Person, including any release of ~~source code~~Source Code to any beneficiary of any software escrow arrangement.

4.25 Privacy and Data Security. Each Credit Party and its Subsidiaries complies, and during the past three (3) years has complied, in all material respects with (a) all Privacy and Information Security Requirements, (b) its Privacy Notices, (c) all Contractual Obligations relating to Processing of Personal Data, and (d) all Contractual Obligations relating to the use and sharing of Personal Data. No Credit Party nor any of its Subsidiaries nor, to the knowledge of each Credit Party, any other Person, has received any notice, allegation, complaint or other communication, and to the knowledge of each Credit Party, there is no pending investigation by any Governmental Authority or payment card association, regarding any actual or possible violation of any Privacy and Information Security Requirement by or with respect to any Credit Party or any of its Subsidiaries. To the knowledge of each Credit Party, no Credit Party nor any of its Subsidiaries has suffered a security breach with respect to any of the Company Data, and there has been no unauthorized or illegal use of or access to any Company Data. No Credit Party nor any of its Subsidiaries has notified, or been required to notify, any Person of any information security breach involving Personal Data. Each Credit Party and each of its Subsidiaries has provided the requisite notices and obtained all required consent, and satisfied all other requirements (including but not limited to notification to Governmental Authorities), necessary for such Credit Party's, or its Subsidiary's Processing (including international and onward transfer) of all Personal Data in connection with the conduct of the business as currently conducted and in consummation of the transactions contemplated hereunder.

4.26 Disclosure. No representation or warranty of any Credit Party contained in any Credit Document or in any other documents, certificates or written statements furnished to any Agent or Lender by or on behalf of any Credit Party or any of its Subsidiaries for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact (known to any Credit Party or its Subsidiaries, in the case of any document not furnished by them) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by the Credit Parties to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to any Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby. The information included in the Beneficial Ownership Certification is true and correct in all respects.

4.27 Patriot Act, OFAC. To the extent applicable, each Credit Party and its Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). Each Credit Party has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by such Credit Party and its directors, officers, employees and agents with Anti-Corruption and Anti-Bribery Laws and applicable Sanctions. Each Credit Party, and to the knowledge of each Credit Party, each of their respective officers, employees, directors and agents are in compliance with Anti-Corruption and Anti-Bribery Laws and applicable Sanctions in all material

respects. No Credit Party nor any of its Subsidiaries nor, to the knowledge of each Credit Party, any director, officer, employee, agent or Affiliate of any Credit Party, (a) is a Sanctioned Person or Sanctioned Country, (b) has assets located in a Sanctioned Country, or (c) derives revenues from investments in, or transactions with, Sanctioned Persons or Sanctioned Countries. No Credit Party nor any of its Subsidiaries nor, to the knowledge of each Credit Party, any of their respective directors, officers, employees or agents, is a Sanctioned Person. No part of the proceeds of the Loans will be used, 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 Anti-Corruption and Anti-Bribery Laws.

4.28 Anti-Money Laundering Laws. No Credit Party nor any of its Subsidiaries and, to the knowledge of any Credit Party, any officers or directors of such Credit Party or such Subsidiary (i) has violated or is in violation, in each case in any material respect, of any applicable Anti-Money Laundering Laws or (ii) has engaged or engages in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of offenses designated in any applicable law, regulation or other binding measure implementing the "Forty Recommendations" and "Nine Special Recommendations" published by the Organization for Economic Cooperation and Development's Financial Action Task Force on Money Laundering.

4.29 Senior Indebtedness. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under bankruptcy or similar laws) on the Loans and other Obligations, and fees and expenses in connection therewith, rank and will rank at least *pari passu* in priority of payment and in all other respects with all of its other present and future unsecured and unsubordinated Indebtedness and other obligations of the Credit Parties. Each Credit Party acknowledges that each Agent and each Lender is entering into this Agreement and is extending its Commitments in reliance upon this representation and warranty.

4.30 Production Tax Credits.

(a) Borrower and its Subsidiaries are in compliance with all laws, rules, regulations, and orders of any Governmental Authority necessary or advisable to ensure eligibility for all Production Tax Credits that could be available to Borrower and/or such Subsidiary.

(b) Borrower and its Subsidiaries have, on a timely basis, taken all advisable or required actions by any Governmental Authority with respect to all claims for Production Tax Credits that could be available to Borrower and/or such Subsidiary.

(c) All claims (including, without limitation, all applications, filings, policies and notices with respect to any claim) for all Production Tax Credits available to Borrower and/or such Subsidiary are in accordance with all applicable laws, rules, regulations and orders, and the application and presentation thereof in Borrower's financial statements are in conformity with GAAP.

4.31 Commissions. Neither the Credit Parties, nor any of their Subsidiaries, owes, nor has ever paid, any commissions, royalties, finder's fee, bounty or revenue/profit share payments to any third parties ("Commission Payment"), including sales agents, referral partners, distributors, installation partners, resellers, marketing agents or similar partners, in connection with the sale, lease or distribution of its products or services, and neither the Credit Parties, nor any of their Subsidiaries, have any pending negotiations with any third party relating to the sale, lease or distribution of its products or services that, if consummated, would require any Commission Payment.

5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than contingent indemnification obligations with respect to which no claim has been asserted), each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, each of the covenants in this Section 5.

5.1 Financial Statements and Other Reports. Unless otherwise provided below, Borrower will deliver to Administrative Agent for distribution to the Lenders:

(a) Annual Financial Statements. As soon as available, and in any event within one hundred and twenty (120) days after the end of each Fiscal Year, (i) the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year,

setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Annual Plan for the Fiscal Year covered by such financial statements, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of independent certified public accountants of recognized national standing selected by Borrower and satisfactory to Administrative Agent in its sole discretion (which report shall be unqualified as to scope of audit and not contain any going concern qualification or emphasis matter, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(b) Quarterly Financial Statements. As soon as available, and in any event within forty-five (45) days after the end of each Fiscal Quarter of each Fiscal Year (including the fourth Fiscal Quarter and commencing with the Fiscal Quarter ending June 30, 2024), the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Annual Plan and CapEx Budget for the current Fiscal Year covered by such financial statements, all in reasonable detail, together with a Financial Officer Certification with respect thereto;

(c) Monthly Reports. As soon as available, and in any event within thirty (30) days after the end of each month (commencing with the month ending May 31, 2024), the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such month and the related consolidated statements of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such month and for the period from the beginning of the then current Fiscal Year to the end of such month, setting forth in each case in comparative form the corresponding figures from the Annual Plan and CapEx Budget for the current Fiscal Year, all in reasonable detail and in form and substance satisfactory to Administrative Agent in its sole discretion, together with a Financial Officer Certification with respect thereto, provided, however, that such monthly financial statements (i) required by this Section 5.1(c) for any month ended prior to October 31, 2024 shall not be required to be prepared in accordance with GAAP and (ii) for any month-end that is also the end of a Fiscal Quarter, shall be delivered together with such Fiscal Quarter reporting under clause (b) above;

(d) Compliance Certificate; Cash Balances. Together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) a duly executed and completed Compliance Certificate, including (without limitation) evidence of the Cash and Cash Equivalents held by Borrower and each of its Subsidiaries; provided that, notwithstanding the foregoing, Administrative Agent may require evidence of the Cash and Cash Equivalents on a more frequent basis;

(e) Statements of Reconciliation after Change in Accounting Principles. If, as a result of any change in accounting principles and policies from those used in the preparation of the Historical Financial Statements, the consolidated financial statements of Borrower and its Subsidiaries delivered pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subsections had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form satisfactory to Administrative Agent in its sole discretion;

(f) Notice of Default. Within three (3) Business Days of Borrower's obtaining knowledge of the occurrence of (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Credit Party or its Subsidiaries with respect thereto, (ii) that any Person has given any notice to any Credit Party or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.1(b) or (iii) of the occurrence of any event or change that has caused or evidences or could be reasonably be expected to cause, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Default, Event of Default, default, event or condition, and what action Borrower (or such Credit Party) has taken, is taking and proposes to take with respect thereto;

(g) Intellectual Property Notice. Together with each Compliance Certificate required to be delivered under Section 5.1(d) for each month, written notice of (i) the registration of any copyright, patent or trademark, or the filing of any application for any of the foregoing, including any subsequent ownership right of any Credit Party or any of its Subsidiaries in or to any registered copyright, patent or registered trademark or application for any of the foregoing not shown in the Credit Documents, and (ii) any Credit Party's knowledge of an event that could reasonably be expected to materially and adversely affect the value of any Credit Party's or any of its Subsidiaries' Intellectual Property;

(h) Notice of Litigation. Within three (3) Business Days of any officer of any Credit Party obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by the Credit Parties to Administrative Agent or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii) if adversely determined, could be reasonably expected to have a Material Adverse Effect or to result in liability exceeding $2,500,000, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, or the exercise of rights or performance of obligations under any Credit Document, written notice thereof together with such other information as may be reasonably requested by Administrative Agent and available to any Credit Party to enable Administrative Agent and their counsel to evaluate such matters;

(i) ERISA. (i) Promptly upon the occurrence of or upon any officer of any Credit Party becoming aware of the forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action such Credit Party, its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of all notices received by any Credit Party or any of its Subsidiaries from a Multiemployer Plan sponsor concerning an ERISA Event;

(j) Annual Plan; 13-Week Variance Reports. (i) As soon as practicable and in any event no later than thirty (30) days after the beginning of each Fiscal Year, commencing with the Fiscal Year beginning January 1, 2025, (A) a consolidated plan and financial forecast for such Fiscal Year and each Fiscal Year (or portion thereof) through the final maturity date of the Loans (an "Annual Plan"), including a forecasted consolidated balance sheet cash flows of Borrower and its Subsidiaries for the end of each calendar month of such Fiscal Year and (B) forecasted consolidated statements of income and cash flows of Borrower and its Subsidiaries for each calendar month of each such Fiscal Year, together, in each case, with an explanation of the assumptions on which such forecasts are based, all in form satisfactory to Administrative Agent in its sole discretion and (ii) on or prior each Wednesday of each calendar week (commencing on June 26, 2024) (A) a variance report (x) showing actual cash receipts and disbursements for the four (4) week period ending the week prior to the reporting date and (y) providing an explanation for all material variances to the 13-Week Forecast, (B) an updated 13-Week Forecast for the current week and the immediately following consecutive 12 weeks, set forth on a monthly basis, in form acceptable to the Administrative Agent in its sole and absolute discretion, (C) a report showing the amount of cash payments by Borrower to third parties during the one (1) calendar month period prior to the reporting date and (D) a report in respect of such week setting out in reasonable detail progress made with respect to the 13-Week Forecast and (if applicable) the reason for any delays or cost overruns, and expenditure under the 13-Week Forecast, together with an explanation for any deviations therefrom;

(k) Insurance Report. As soon as practicable and in any event by the last day of each Fiscal Year, (i) a report outlining all material insurance coverage maintained as of the date of such report by Borrower and its Subsidiaries and (ii) a summary from an Authorized Officer of Borrower (which may be delivered via electronic mail) of all material insurance coverage planned to be maintained by Borrower and its Subsidiaries in the immediately succeeding Fiscal Year, each report in form and substance satisfactory to Administrative Agent in its sole discretion;

(l) Progress Report. On or before the fifth (5th) Business Day of each calendar month, a report in respect of such month setting out in reasonable detail progress made with respect to the transactions contemplated by the CapEx Budget and (if applicable) the reason for any delays or cost overruns, and expenditure under the CapEx Budget, together with an explanation for any deviations therefrom;

(m) Notice Regarding Certain Dispositions and Material Contracts. Within three (3) Business Days (or such longer period as agreed in writing by Administrative Agent in its sole discretion) after (i) any disposition of collateral (not including the liquidation of obsolete inventory to third parties on an arm's-length basis) that is the subject of any Collateral Document, or the incurrence

of any contractual obligations with respect to any disposition of collateral the subject of any Collateral Document permitted under this Agreement if the aggregate Cash and non-Cash consideration (including assumption of Indebtedness) in connection with such disposition is (or could reasonably be expected to become) One Million Dollars ($1,000,000) or more, which notice shall identify the related purchaser(s), the anticipated closing date of such disposition and the aggregate Cash and non-Cash consideration (including assumption of Indebtedness) to be paid in connection with such disposition; (ii) any Material Contract of any Credit Party or any Subsidiary, is terminated or amended in a manner that is adverse to such Credit Party or Subsidiary or adverse to the interests of any Agent or Lender, as the case may be, or (iii) Borrower's obtaining knowledge of any forthcoming or existing breach, default or event of default (however defined) under a Material Contract that gives the non-defaulting party the right to terminate such Material Contract, or any modification, amendment, or supplement to a Material Contract that could reasonably be expected to be adverse to such Credit Party or Subsidiary or adverse to the interests of any Agent or Lender, as the case may be; or (iv) the end of any Fiscal Quarter during which any new Material Contract is entered into, a written statement describing such event, with copies of such material amendments or new contracts together with an updated Schedule 4.15, delivered to Administrative Agent, and an explanation of any actions being taken with respect thereto;

(n) Board Materials. Borrower shall deliver to Administrative Agent (i) copies of copies of any detailed audit reports or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Credit Party by independent accountants in connection with the accounts or books of such Credit Party or any Subsidiary thereof, or any audit of any of them and (ii) all reports submitted to the board of directors (or any committee of the board of directors) of any Credit Party or any of its Subsidiaries, in each case, simultaneously with delivery of such reports to the board of directors (or committees thereof); provided that Borrower shall not be required to provide any information or materials relating to any discussion of any dispute or potential dispute relating to, or any refinancing or potential refinancing of, this Agreement;

(o) Information Regarding Corporate Structure. Borrower will furnish to Collateral Agent, at least thirty (30) days' prior to such change (or such shorter period as agreed in writing by Administrative Agent in its sole discretion), written notice of any change (i) in any Credit Party's corporate name, (ii) in any Credit Party's jurisdiction of organization, (iii) in any Credit Party's identity or corporate structure, or (iv) in any Credit Party's Federal Taxpayer Identification Number or state organizational identification number. Each Credit Party agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral and for Collateral Agent at all times following such change to have a valid, legal and perfected security interest as contemplated in the Collateral Documents. Each Credit Party also agrees promptly to notify Collateral Agent if any material portion of the Collateral is damaged or destroyed;

(p) Quarterly Collateral Verification. At the time of delivery of quarterly financial statements with respect to the preceding Fiscal Quarter pursuant to Section 5.1(b), each Credit Party shall deliver to Collateral Agent a certificate of an Authorized Officer (i) either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section 5.1(p) or identifying such changes that have occurred during the prior Fiscal Quarter, and (ii) certifying that all UCC financing statements (including fixtures filings, as applicable) or other appropriate filings, recordings or registrations, have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified in the Perfection Certificate or pursuant to Section 5.1(g) above to the extent necessary to protect and perfect the security interests under the Collateral Documents for a period of not less than eighteen (18) months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period);

(q) Tax Returns. Upon the request of Administrative Agent, copies of each U.S. federal income tax return and any other material tax return filed by or on behalf of any Credit Party;

(r) Management Letters. Promptly after the receipt thereof by any Credit Party or any of its Subsidiaries, a copy of any final "management letter" received by any such Person from its certified public accountants and the management's response thereto;

(s) Permitted Tax Credit Transaction. (i) Not less than ten (10) days (or such shorter period as may be agreed by Administrative Agent) prior to the entry into any Permitted Tax Credit Transaction, notice of any such contemplated Permitted Tax Credit Transaction, together with all term sheets, presentations, draft documents, diligence materials and project documents as and when provided or otherwise made available to such Credit Party or Subsidiary, together with pro forma financial statements and forecasts (including calculations verifying compliance with the covenants hereunder after giving effect to any such Permitted Tax Credit

Transaction), and (ii) promptly upon the occurrence thereof, copies of any reports and material notices relating to any Permitted Tax Credit Transaction; and

(t) Other Information ~~.~~ and Reports. (i) Within five (5) Business Days after their becoming available or being requested, as applicable, (A) copies of (~~i~~x) all financial statements, reports, notices and proxy statements sent or made available generally by any Credit Party to its security holders acting in such capacity or by any Subsidiary of a Credit Party to its security holders other than such Credit Party, (~~ii~~y) all regular and periodic reports and all registration statements and prospectuses, if any, filed by any Credit Party or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (~~iii~~z) all press releases and other statements made available generally by any Credit Party or any of its Subsidiaries to the public concerning material developments in the business of such Credit Party or any of its Subsidiaries, and (B) such other information and data with respect to any Credit Party or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent and (ii) no later than January 31, 2026, the Convertible Notes Refinancing Plan.

(u) DOE Reports. Without duplication of any other reports or notices required to be delivered to Administrative Agent or Collateral Agent under the Credit Documents, concurrently with delivery to the DOE and/or the DOE Collateral Agent, a copy of any report or notice delivered to the DOE and/or the DOE Collateral Agent pursuant to the DOE Loan Documents, including, without limitation, any report or notice delivered pursuant to Section 8.01 and 8.02 of the DOE Guarantee Agreement.

5.2 Existence. Except as otherwise permitted under Section ~~6.9~~(b), each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect (a) its existence and (b) all rights and franchises, licenses and permits material to its business; provided that no Credit Party (other than Borrower) nor any its Subsidiaries shall be required to preserve any such right or franchise, license or permit, if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to Lenders.

5.3 Payment of Taxes and Claims. Each Credit Party will, and will cause each of its Subsidiaries to, pay all material Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises when due and payable, and all claims (including claims for labor, services. materials and supplies) for sums that have become due and payable and that by law have or may result in a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings timely instituted and diligently conducted, so long as (a) adequate reserves or other appropriate provisions as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim. Each Credit Party shall, and shall cause each of its Subsidiaries to, comply with all requirements to properly claim in their respective Tax returns and/or monetize the advanced manufacturing production credit under Section 45X.

5.4 Maintenance of Properties; Intellectual Property.

(a) Maintenance of Properties. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of the Credit Parties and their Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

~~(b)~~ No Credit Party nor any of its Subsidiaries (either itself or through licensees) will do any act or knowingly omit to do any act whereby any Intellectual Property material to the conduct of its business may become abandoned, invalidated, or otherwise impaired.

(b) Maintenance of Project IP. The Borrower shall at all times: (i) acquire and maintain ownership of all Project IP owned by Borrower; or (ii) obtain and maintain its licenses or rights to use all Intellectual Property owned by any other Person, in each case, that are then required by either of them: (A) for the relevant Line, or to achieve Project Completion; or (B) to exercise its rights and perform its obligations under the Major Project Documents, in each case, as applicable at the relevant time.

(c) Protection of Project IP. Each Credit Party shall take all commercially reasonable steps to: (i) protect, enforce, preserve and maintain its rights, title or interests in and to the Project IP, including maintaining and pursuing any application, registration or issuance for Project IP owned by such Credit Party, which it, in its reasonable business judgment, believes should be maintained and pursued; (ii) protect the secrecy and confidentiality of all confidential information and Trade Secrets included in the Project IP, or with respect to which Borrower, has any confidentiality obligation, including by requiring all current and former employees, consultants, licensees, vendors and contractors to execute appropriate confidentiality agreements; and (iii) preserve its rights under and comply in all material respects with the terms and conditions of the Project IP Agreements and any other agreement granting a license to the Project IP. If: (A) any Project IP owned by Borrower or, to Borrower's knowledge, any Project IP owned by any other Person and licensed under any Project IP Agreement to Borrower becomes, as applicable: (I) abandoned, lapsed, dedicated to the public or placed in the public domain; (II) invalid or unenforceable; or (III) subject to any adverse action or proceeding before any intellectual property office or registrar; and (B) the foregoing, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, then, after Borrower obtains knowledge thereof, Borrower shall notify Administrative Agent thereof.

(d) Continued Security Interest in Project IP. Borrower shall, promptly upon the reasonable request of any Agent, execute (or procure the execution of) and deliver to DOE any document and take all actions necessary to acknowledge, confirm, register, record or perfect DOE's security interest in any part of the Project IP (including the filing of an Intellectual Property Security Agreement with the United States Patent and Trademark Office, the United States Copyright Office, or the corresponding entities in any applicable jurisdiction), whether such interest is now owned or hereafter acquired (whether by application, registration, purchase or otherwise).

(e) Protection Against Infringement. In the event that Borrower has knowledge of any breach or violation of any of the terms or conditions of any Project IP Agreement or that any material Project IP owned by any Credit Party is infringed, misappropriated or otherwise violated by any Person, Borrower shall: (a) take, or cause to be taken, actions or inactions that are, in Borrower's reasonable judgment, appropriate under the circumstances (taking into account Applicable Law with respect to such infringement, misappropriation or other violation), and protect its rights in such Project IP; and (b) after Borrower obtains knowledge of such infringement, misappropriation or other violation, notify Administrative Agent.

(f) Notice of Borrower's Alleged Infringement. In the event that Borrower has knowledge of any Adverse Proceeding alleging that any Credit Party, its respective businesses, or the development, design, engineering, procurement, construction, starting up, commissioning, ownership, operation, use or maintenance of the Project, is infringing, misappropriating or otherwise violating any Intellectual Property of any Person, Borrower shall: (i) take, or cause to be taken, such actions that are, in Borrower's reasonable business judgment, appropriate under the circumstances to avoid or avert a Material Adverse Effect; and (ii) after Borrower obtains knowledge thereof, report such notice or communication relating thereto to Administrative Agent.

(g) License Grant. Borrower hereby grants and shall cause each applicable Credit Party and each licensor of Project IP under a Project IP Agreement to grant or otherwise permit to grant to the Secured Parties a Secured Parties' License.

(h) Source Code Escrow. With respect to all Project Source Code, Borrower shall, and shall cause each applicable Credit Party to, at a Credit Party's cost and expense:

(i) no later than the First Amendment Effective Date, and thereafter, upon execution of any Project IP Agreement granting the right to use or access Source Code enter into a Source Code escrow agreement for the benefit of the Secured Parties with an escrow agent approved by Administrative Agent containing:

(A) terms and conditions (including release conditions, such conditions to include an unwillingness or inability to support or maintain the Software) that are usual and customary for Source Code escrow arrangements satisfactory to Administrative Agent; and

(B) the grant to the Secured Parties by the Credit Party or the third party that licenses Source Code to Borrower, as applicable (effective as of the First Amendment Effective Date, or if acquired later, upon such acquisition date, but

enforceable following the occurrence of any release condition specified in the Source Code escrow agreement) of an irrevocable, perpetual, non-exclusive, transferable, sublicensable, fully paid up and royalty-free right and license to Practice, compile and execute any and all Source Code and other materials placed into escrow pursuant to clause (ii) below, solely for purposes of developing, designing, engineering, procuring, constructing, starting up, commissioning, operating and maintaining the Project and achieving Project Completion, as applicable; and

(ii) promptly deposit in escrow (A) a complete, reproducible copy of all Project Source Code that is relevant to the applicable Line, or Project Completion, as applicable; and (B) all revisions, modifications and enhancements to such Project Source Code (including updates, upgrades and corrections thereto, and derivative works thereof) as such revisions, modifications or enhancements are used in or otherwise made available to the Project, in each case, together with all such documentation or materials as are reasonably required to exercise the rights granted in clause (B) above; provided that the foregoing obligations shall be deemed satisfied so long as Credit Parties are in compliance with Section 7.02(g) of the DOE Guarantee Agreement.

(i) Project IP Agreement Terms. Borrower shall ensure that each license agreement that constitutes a Project IP Agreement grants to Borrower: (i) a direct and transferable or sublicensable license; or (ii) an irrevocable, perpetual, and transferable or sublicensable sublicense to Project IP which is owned by any other Credit Party or which is either critical to (or otherwise inextricably embedded in) the Project or not readily replaceable; *provided* that with respect to Credit Party-owned Project IP, each license and sublicense is fully paid up and royalty-free for Borrower.

5.5 Insurance. The Credit Parties will maintain or cause to be maintained, with financially sound and reputable insurers, casualty insurance, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Credit Parties and their Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self- insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as are customary for such Persons. Without limiting the generality of the foregoing, each Credit Party will maintain or cause to be maintained replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Subject to the time periods set forth in Section 5.17, each such policy of insurance shall (i) name Collateral Agent, on behalf of Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each property insurance policy, contain a lender's loss payable clause or endorsement, satisfactory in form and substance to Collateral Agent in its sole discretion, that names Collateral Agent, on behalf of Secured Parties, as the lender's loss payee thereunder and provides for at least thirty (30) days' prior written notice to Collateral Agent of any modification or cancellation of such policy and ten (10) days' prior written notice in the case of the failure to pay any premiums thereunder.

5.6 Books and Records; Inspections. Each Credit Party will, and will cause each of its Subsidiaries to, maintain proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by any Agent or any Lender to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial, tax and accounting records (including electronic copies), and to discuss its and their affairs, finances, taxes and accounts with its and their officers and independent public accountants and tax advisors, all at the expense of Borrower and upon notice and at such times during normal business hours and as often as may be requested; provided that, unless an Event of Default shall have occurred and be continuing, not more than two such inspections per calendar year shall be required. Notwithstanding anything to the contrary in this Section 5.6, none of the Credit Parties will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any document, information or other matter that such Credit Party has been advised that (a) in respect of which such disclosure is then prohibited by law or any agreement binding on such Credit Party or (b) is subject to attorney-client privilege or constitutes attorney work product.

5.7 Lender Meetings; Advisor Engagement.

(a) Lender Meetings. Borrower shall offer to Administrative Agent and the Lenders, on a monthly basis, a meeting (either in person or teleconference), in which shall be attended by the then current Chief Executive Officer and the Chief Financial Officer and such other members of management as the Lenders may request, regarding aspects of its operations, business affairs and

financial condition, with such specific agenda items to be discussed during such meeting, and such other deliverables and requests to be provided by Borrower to the Lenders regarding aspects of its operations, business affairs and financial conditions in connection with such meeting (including materials supporting the 13-Week Forecast), in each case as requested by any Lender. Borrower agrees that any out-of-pocket expenses incurred in connection with such meetings shall be reimbursable pursuant to Section 10.2. Borrower shall participate, and shall cause such members of management to participate, in any meeting requested by Administrative Agent and the Lenders (i) following delivery of any 13-Week Forecast (or any failure to do so when required by Section 5.1(j)) and (ii) during the sixty (60) day period immediately following the Closing Date, at any time and place reasonably designated by Administrative Agent. Any such meeting described in the foregoing sentence shall, at the request of the Administrative Agent and the Lenders, be attended by any Designated Advisor or other advisor, in each case, as requested by Administrative Agent from time to time.

(b) Designated Advisors.

(i) Administrative Agent may from time to time identify any Designated Advisor to Borrower whose engagement Administrative Agent believes would be of benefit to Borrower or its Subsidiaries. Borrower shall in good faith consider such engagement and, unless Borrower reasonably determines that such engagement would be materially detrimental to Borrower or its Subsidiaries, Borrower shall, or shall cause the applicable Subsidiary, to engage such Designated Advisor at the cost of Borrower or the applicable Subsidiary; provided, that, notwithstanding the foregoing, Borrower and its Subsidiaries shall not, directly or indirectly, terminate any Initial Advisor for one year following the entry of the engagement with such Initial Advisors (other than a termination (x) pursuant to Section 4(b) or Section 4(d) under the services agreements with the Initial Advisors listed in numbers one (1) and two (2) of Schedule 1.2 or (y) for material breach by any such Initial Advisor for failure to perform). Borrower and its Subsidiaries shall make payments required under the relevant agreements with such Designated Advisor as provided therein other than any payment subject to a good faith dispute so long as such dispute is resolved within thirty (30) days of the original payment date thereof. Borrower shall, or shall cause the applicable Subsidiary, to deliver to Administrative Agent any reports, data, documents or other information relating to the engagement of any Designated Advisor promptly following request therefor.

(ii) If an Event of Default has occurred and is continuing: (A) Borrower and each Subsidiary shall, upon request by Administrative Agent, engage any Designated Advisor as Administrative Agent may request at any time and from time to time as specified by Administrative Agent; (B) Borrower and each Subsidiary shall (x) execute any related engagement letters, master service agreements or other related documents and (y) comply with any actions or requested by any management services agreement, statement of work, engagement letter or other similar document entered into in connection therewith; (C) Each Designated Advisor, its representatives and agents shall be permitted to (i) consult and cooperate with officers, members of management, employees, vendors, accountants and other relevant parties, (ii) visit, inspect, audit and monitor the properties and facilities of Borrower and its Subsidiaries upon notice and at during normal business hours, (iii) review all books, documents and records of Borrower and its Subsidiaries, (iv) discuss the affairs, finances and accounts with the representatives of Borrower and its Subsidiaries, and (v) discuss matters with the officers and designated representatives of Borrower and its Subsidiaries (D) Borrower agrees that all fees, expenses or other amounts payable pursuant to the terms of such agreements, statements, letters or other documents shall be for the account of Borrower and its Subsidiaries (if any) party thereto; (E) Borrower agrees that any out-of-pocket expenses incurred by the Administrative Agent or any Lender in connection with any such advisor and related meetings shall be subject to reimbursement pursuant to Section 10.2; and (F) Borrower and its Subsidiaries will perform and observe all of its covenants and obligations contained in each management services agreement, statement of work, engagement letter or other similar document entered into with such Designated Advisor.

5.8 Compliance with Contractual Obligations and Laws. Each Credit Party will comply, and will cause each of its Subsidiaries to comply, with the requirements of all Contractual Obligations and all applicable laws, rules, regulations and orders of any Governmental Authority, in each case, in all material respects.

5.9 Environmental Compliance. Each Credit Party will, and will cause each of its Subsidiaries to, use and operate all of its Facilities in compliance with all Environmental Laws, keep all necessary Governmental Authorizations required pursuant to any Environmental Laws, and handle all Hazardous Materials in compliance with all Environmental Laws in all material respects.

5.10 Subsidiaries. (i) in the event that any Person becomes a Domestic Subsidiary of Borrower, the Credit Parties shall (A) concurrently with such Person becoming a Domestic Subsidiary (or such later date as Administrative Agent may agree in writing in its sole discretion, which writing may be by email) cause such Subsidiary to become a Guarantor hereunder, an Obligor and a Payee under the Master Intercompany Note, and a Grantor under the Pledge and Security Agreement by executing and delivering to Administrative

Agent and Collateral Agent a Pledge Supplement (as defined in the Pledge and Security Agreement) and a Counterpart Agreement, and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, opinions, agreements, and certificates reasonably required by Agents; and (ii) in the event that any Person becomes a Foreign Subsidiary (other than an Immaterial Foreign Subsidiary) of Borrower, the Credit Parties shall (A) concurrently with such Person becoming a Foreign Subsidiary (or such later date as Administrative Agent may agree in writing in its sole discretion, which writing may be by email), cause such Subsidiary to become a Guarantor hereunder, an Obligor and a Payee under the Master Intercompany Note, and a Grantor under the Pledge and Security Agreement, and in the case of a Foreign Subsidiary, execute and deliver, or cause such Subsidiary to execute and deliver, to Administrative Agent and/or Collateral Agent, as applicable, such Foreign Collateral Documents with respect to the Capital Stock of such Subsidiary and/or the Collateral owned by such Subsidiary, in each case, as requested by Administrative Agent, and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, opinions, agreements, and certificates as are reasonably required by Agents; provided that no Foreign Subsidiary shall have any Domestic Subsidiaries; provided, further, in the event that any Subsidiary of Borrower (including an Immaterial Foreign Subsidiary) that is not a Credit Party under the Credit Documents becomes or is required pursuant to the DOE Loan Documents to become a co-borrower or guarantor with respect to the DOE Obligations, the Credit Parties and such Subsidiary shall, as the case may be, take all applicable actions set forth in the foregoing clauses (i) and (ii). With respect to each such Subsidiary, the Credit Parties shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Borrower, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Borrower; provided, further, that such written notice shall be deemed to supplement Schedules 4.1 and 4.2 for all purposes hereof.

5.11 Real Estate Assets. In the event that any Credit Party has or acquires a Real Estate Asset and such interest has not otherwise been made subject to the First Priority Lien of the Collateral Documents in favor of Collateral Agent, for the benefit of Secured Parties, then such Credit Party, within forty-five (45) days (or such later date as may be agreed by Administrative Agent in its sole discretion) of the request or acquisition of any Real Estate Asset, as applicable, shall take all such actions and execute and deliver, or cause to be executed and delivered, the applicable Mortgage Deliverables with respect to each such ~~owned~~ Real Estate Asset or applicable leasehold mortgage, subordination, pledge and/or estoppel with respect to each such leased Real Estate Asset, in each case that Collateral Agent may request to create in favor of Collateral Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Real Estate Assets, including all documents and other obligations required by Section 5.12(c). In addition to the foregoing, Borrower shall, at the request of Requisite Lenders, deliver, from time to time, to Administrative Agent such appraisals as are required by law or regulation of Real Estate Assets ~~owned by~~of a Credit Party with respect to which Collateral Agent has been granted a Lien.

5.12 Further Assurances.

(a) At any time or from time to time upon the request of Administrative Agent or Collateral Agent, each Credit Party will, at the expense of the Credit Parties, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to ~~effect fully~~(i) cause the Credit Documents to be properly executed, binding and enforceable in all relevant jurisdictions; (ii) perfect and maintain the priority of the Secured Parties' security interest in all Collateral; (iii) enable the Secured Parties to preserve, protect, exercise and enforce all other rights, remedies or interests granted or purported to be granted under the Credit Documents; and (iv) otherwise carry out the purposes of the Credit Documents.

(b) With respect to any assets or property acquired after the Closing Date by any Credit Party (other than any Real Estate Assets subject to Section 5.11) that constitutes "Collateral" under any of the Collateral Documents or is intended to be subject to the Liens created by any Collateral Documents but is not so subject to a Lien thereunder, but in any event, subject to the terms, conditions and limitations under the Credit Documents, (i) execute and deliver to Collateral Agent such amendments, addendums or supplements to the Pledge and Security Agreement to the extent required by the Pledge and Security Agreement to grant to Collateral Agent, for the benefit of the Secured Parties, a perfected First Priority Lien in such assets or property and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by the Pledge and Security Agreement to grant to Collateral Agent, for the benefit of the Secured Parties, a perfected First Priority Lien in such assets or property, including, without limitation, the filing of UCC financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be requested by Collateral Agent.

(c) ~~Subject to Section 5.17, each~~Each Credit Party shall ~~(or, in the case of any leased property with respect to any lease in effect on or prior to the Closing Date a copy of which has been furnished to the Administrative Agent, use commercially reasonable efforts to) obtain a Landlord Collateral Access Agreement with respect to any leased property at which any Credit Party maintains its headquarters or any Collateral with a value of more than One Million Dollars ($1,000,000) is located (including without limitation the location of any production line).~~execute and deliver, or cause to be executed and delivered, to Agent such additional documents or other instruments and shall take or cause to be taken such additional actions as Agent may require or reasonably request in writing, including any Mortgage (including any Mortgaged Lease) and other Mortgage Deliverables with respect to any Real Estate Asset of any Credit Party.

(d) In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Credit Parties and all of the outstanding Capital Stock of Borrower and the other direct and indirect Subsidiaries of Borrower.

5.13 Protection and Registration of Intellectual Property Rights.

(a) Each Credit Party shall: (i) protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Administrative Agent in writing of infringements of any Credit Party's Intellectual Property of which such Credit Party has knowledge; and (iii) not allow any Intellectual Property to be abandoned, forfeited or dedicated to the public without Administrative Agent's written consent.

(b) Each Credit Party shall cause each of its Subsidiaries to: (i) protect, defend and maintain the validity and enforceability of such Subsidiary's Intellectual Property; (ii) promptly advise Administrative Agent in writing of infringements of such Subsidiary's Intellectual Property of which such Credit Party or such Subsidiary have knowledge; and (iii) not allow any Intellectual Property to be abandoned, forfeited or dedicated to the public without Administrative Agent's written consent.

(c) If any Credit Party or any of its Subsidiaries (i) are assigned ownership of any patent, registered trademark, registered copyright, registered mask work, or are assigned any pending application for any of the foregoing, or (ii) apply for any patent or the registration of any trademark or copyright, then the Credit Parties shall provide written notice thereof to Administrative Agent in accordance with Section 5.1(g), and each applicable Credit Party shall execute such intellectual property security agreements and other documents and take such other actions as Administrative Agent or Collateral Agent shall reasonably request to perfect and maintain a First Priority perfected security interest in favor of Collateral Agent, for the benefit of the Secured Parties, in such property.

(d) If any Credit Party or any of its Subsidiaries (i) are assigned ownership of any Registered IP, or (ii) apply for Registered IP, then the Credit Parties shall provide written notice thereof to Administrative Agent in accordance with Section 5.1(g), and each applicable Credit Party shall execute such intellectual property security agreements and other documents and take such other actions as Administrative Agent or Collateral Agent shall reasonably request to perfect and maintain a First Priority perfected security interest in favor of Collateral Agent, for the benefit of the Secured Parties, in such property. Each Credit Party will diligently prosecute any pending application included in any Registered IP that is material to such Credit Party's business.

(e) Each Credit Party will ensure that the software owned by such Credit Party and licensed (including as a service) or distributed by such Credit Party to other Persons is not subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license such as the GNU General Public License, GNU Lesser General Public License, or GNU Affero General Public License) that would require or condition the use or distribution of such software, on the disclosure, licensing, or distribution of a material portion of any source code of the proprietary software.

(f) Each Credit Party will take reasonable steps to maintain the confidentiality of and otherwise protect and enforce their rights in all trade secrets owned by the Credit Party.

(g) Borrower shall provide written notice to Administrative Agent on the Compliance Certificate next delivered after Borrower or any Subsidiary enters into or becomes bound by any Restricted License. If requested by Administrative Agent, each Credit Party shall use best efforts to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Collateral Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Lenders' and Collateral Agent's rights and remedies under this Agreement and the other Credit Documents.

5.14 Anti-Corruption and Anti-Bribery Laws; Sanctions; Anti-Money Laundering Laws.

(a) No Credit Party shall directly or knowingly indirectly use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds, to any Subsidiary, agent joint venture partner, or other Person (i) 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 and Anti-Bribery Laws or Anti-Money Laundering Laws, or (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country in violation of any Sanctions applicable to any party to this Agreement, or in any manner that would result in the violation of any Sanctions applicable to any party hereto or other Person participating in a Loan, whether as arranger, advisor, investor or otherwise. No Credit Party shall repay any amount due under this Agreement or other Credit Document from funds which have been generated by activities or business conducted with any Sanctioned Person or in any Sanctioned Country or from activities that are in violation of Sanctions.

(b) Each Credit Party shall maintain in effect policies and procedures designed to ensure compliance by such Credit Party and its directors, officers, employees and agents with Anti-Corruption and Anti-Bribery Laws, Sanctions and Anti-Money Laundering Laws.

(c) The Credit Parties will (a) notify Administrative Agent and each Lender that previously received a Beneficial Ownership Certification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein and (b) promptly upon the request of Administrative Agent or any Lender, provide Administrative Agent or such Lender, as the case may be, any information or documentation reasonably requested by it for purposes of complying with the Beneficial Ownership Regulation.

5.15 General Business Covenants; Controlled Accounts~~; Cash Sweep~~.

(a) The Credit Parties and its Subsidiaries shall establish and maintain cash management systems reasonably acceptable to Administrative Agent, including with respect to Controlled Accounts and Project Accounts. Borrower and its Subsidiaries shall (i) instruct each Person remitting cash to or for the account of ~~the~~ Borrower or such Subsidiary to deposit such Cash to a Controlled Account and (ii) remit any amounts received by it or received by third parties on its behalf to a Controlled Account, in each case, except as otherwise expressly required by the DOE Guarantee Agreement or the DOE Accounts Agreement.

(b) ~~Each~~Subject to the terms of the Intercreditor Agreement, each Credit Party shall at all times cause each Deposit Account and each Securities Account established or maintained by such Credit Party to be a Controlled Account within ten (10) Business Days (or such later date as may be agreed to by Administrative Agent in its sole discretion) of opening (or acquisition) of any such Deposit Account or Securities Account, in each case, other than the DOE Funding Account so long as (and solely to the extent that) the DOE Funding Account does not constitute "Shared Collateral" under the Intercreditor Agreement.

(c) Each member of the senior management team of each Credit Party shall devote all or substantially all of his or her professional working time, attention, and energies to the management of the businesses of the Credit Parties.

5.16 Privacy and Data Security. Each Credit Party will (a) comply with all Privacy and Data Security Requirements; (b) employ commercially reasonable security measures that comply in all material respects with all Privacy and Data Security Requirements to protect Personal Data within its custody or control and require the same of all vendors that Process Personal Data on its behalf; and (c) promptly, but in any event within five (5) Business Days, notify Administrative Agent in writing if any Authorized Officer obtains knowledge of (i) any claim of violation by any Credit Party or its Subsidiaries of Privacy and Data Security Requirements or (ii) any

reportable incidents of data security breaches, intrusions, or unauthorized access, use, or compromise of Personal Data within its custody or control.

5.17 Post-Closing Matters. The Credit Parties shall deliver, or cause to be delivered, to Administrative Agent, or otherwise complete to Administrative Agent's sole satisfaction~~,~~:

(a) the items set forth on Schedule 5.17, on or before the date specified for such item or such later date determined by Administrative Agent in its sole discretion~~.~~; and

(b) not later than concurrently upon delivery of the same to the DOE or DOE Collateral Agent, as applicable, (i) a fully executed copy of the Mortgaged Lease with respect to the Turtle Creek Facility (together with related Mortgage Deliverables), (ii) a fully executed copy of each Direct Agreement, and (iii) a fully executed copy of each Project IP Agreement, each in favor of, and in form and substance satisfactory to, the Collateral Agent.

5.18 Production Tax Credits.

(a) Borrower and its Subsidiaries shall comply with all laws, rules, regulations and orders of any Governmental Authority necessary or advisable to ensure eligibility to claim and/or monetize all Production Tax Credits that could be available to Borrower and/or such Subsidiary.

(b) Borrower and its Subsidiaries shall, on timely basis, take all actions advisable or necessary under all applicable laws, rules, regulations and orders of any Governmental Authority to ensure eligibility to claim and/or monetize all Production Tax Credits that could be available to Borrower and/or such Subsidiary. Borrower and its Subsidiaries shall refrain from taking any action that could cause Borrower or such Subsidiary to not qualify for any claim or monetization of Production Tax Credits or lessen the amount available to Borrower or such Subsidiary for any Production Tax Credits.

5.19 Material Contracts. Borrower and its Subsidiaries will (a) perform and observe all of its material covenants and obligations contained in each of the Material Contracts, (b) take all reasonable and necessary action to prevent the termination or cancellation of any Material Contract (except for the expiration of any Material Contract in accordance with its terms and not as a result of a breach or default thereunder) and (c) upon the written request of any Agent, each Credit Party shall promptly (and in any event within five (5) Business Days of such request or such later time agreed to by such Agent in its sole discretion), use its commercially reasonable efforts to cause the delivery to the Collateral Agent of a Material Contract Estoppel with respect to each Specified Material Contract designated by such Agent from time to time from each Person that is a party to such Specified Material Contract.

5.20 Additional Equity Interests. Promptly, and in any event within five (5) Business Days of the failure to achieve any milestone set forth in the Milestone Schedule resulting in an adjustment to the Applicable Percentage, Borrower shall issue such additional Equity Instruments as are necessary to satisfy the Equity Instruments Coverage Condition after giving effect to such adjustment.

5.21 Adverse Proceedings; Defense of Claims. Borrower shall provide Administrative Agent with rights to review, with appropriate restrictions to protect waiver of any relevant privileges, including any attorney client privilege, controlled by Borrower, drafts of any submissions that any Credit Party has prepared for filing in any court or with any regulatory body in connection with proceedings to which any Credit Party is or is seeking to become a party.

5.22 Event of Loss. If any Event of Loss shall occur with respect to the Project or any part thereof, Borrower shall promptly deliver notice thereof to Agent and:

(a) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event;

(b) except with the prior written consent of Administrative Agent, not compromise or settle any claim with respect to such Event of Loss; provided that Administrative Agent's prior written consent shall not be required to compromise or settle any such claim that (i) involves an amount less than or equal to Two Million Dollars ($2,000,000) for such claim before completion of Line 3

(as defined in the DOE Guarantee Agreement), (ii) involves an amount less than or equal to Ten Million Dollars ($10,000,000) for such claim after completion of Line 3; or (iii) does not relate to the production of Z3 battery modules; and

(c) pay or apply the Net Cash Proceeds of all Loss Proceeds stemming from such event in accordance with Section 2.10(b).

6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations, such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, each of the covenants in this Section 6.

6.1 Indebtedness. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) unsecured intercompany Indebtedness permitted pursuant to Section 6.7(c); provided that (i) all such Indebtedness shall be evidenced by the Master Intercompany Note, and, if owed to a Credit Party, shall be subject to a First Priority Lien pursuant to the Pledge and Security Agreement and (ii) all such Indebtedness owed by a Credit Party shall be subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Master Intercompany Note;

(c) Indebtedness incurred by Borrower or any of its Subsidiaries arising from agreements providing for indemnification obligations in connection with permitted dispositions of any business, assets or Subsidiary of Borrower or any of its Subsidiaries permitted under this Agreement, or from surety bonds or performance bonds securing the performance of Borrower or any such Subsidiary pursuant to such agreements incurred in the ordinary course of its business;

(d) Indebtedness which may be deemed to exist pursuant to any worker's compensation claims, health, disability or other employee benefits, guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business;

(e) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts in the ordinary course of business in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000) at any time outstanding;

(f) Indebtedness existing on the Closing Date and described on Schedule 6.1 and extensions, refinancing or replacements thereof; provided that (i) such extension, refinancing or replacement does not increase the principal amount of such Indebtedness (except in an amount equal to any reasonable prepayment premiums, fees, expenses or any other similar amounts that are customarily payable in respect of such Indebtedness), (ii) such extension, refinancing or replacement does not increase the interest rate of such Indebtedness, (iii) extensions, refinancing or replacement is unsecured, (iv) no Credit Party or any Subsidiary that is not originally obligated with respect to repayment of the corresponding Indebtedness is obligated with respect to such extension, refinancing or replacement, (v) such extension, refinancing or replacement does not result in a shortening of the average weighted maturity of the corresponding Indebtedness, and (vi) the terms of such extension, refinancing or replacement other than reasonable and customary fees are not less favorable, when taken as a whole, to the obligor thereunder than the original terms of the corresponding Indebtedness; provided, further, notwithstanding the foregoing, (x) no extension, refinancing or replacement of such Indebtedness shall be permitted if such extension, refinancing or replacement could reasonably be expected to be adverse to the interests of Administrative Agent or any Lender without prior written consent of Administrative Agent or any Lender and (y) with respect to the Atlas Side Letter, any extension, refinancing or replacement thereof shall be in accordance with Section 6.18(e); provided, however, that notwithstanding anything to the contrary under this clause (f), so long as the Convertible Notes remain unsecured, any refinancing, extension or replacement of Convertible Notes pursuant to any Convertible Note Refinancing Plan that is consistent with customary or prevailing market standards or terms for transactions of a similar type at the time of the negotiation or consummation of such transactions shall be permitted;

(g) Indebtedness of Borrower or any of its Subsidiaries in connection with any automated clearinghouse transfer of funds in the ordinary course of business;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is promptly extinguished;

(i) Indebtedness ~~consisting of a Permitted Government Loan~~incurred under the DOE Loan Documents and extensions, refinancing or replacements thereof as permitted by the Intercreditor Agreement;

(j) Indebtedness consisting of a Permitted Tax Credit Transaction;

(k) Hedging Transactions entered into ~~in the ordinary course of business for bona fide hedging purposes and not for speculation~~pursuant to a Permitted Hedging Agreement;

(l) Indebtedness evidenced by letters of credit with an aggregate amount at any time outstanding not to exceed Four Million Dollars ($4,000,000); and

(m) Indebtedness under Capital Leases and purchase money obligations to finance the acquisition, construction or improvement of any fixed or capital assets not to exceed, in the aggregate at any time outstanding, Two Hundred Fifty Thousand Dollars ($250,000);

(n) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards"), or cash management services not to exceed, in the aggregate at any time outstanding, Five Hundred Thousand Dollars ($500,000); and

(o) other unsecured Indebtedness incurred for general corporate purposes not to exceed, in the aggregate at any time outstanding, One Million Dollars ($1,000,000).

Notwithstanding the foregoing or anything to the contrary herein, no Indebtedness of Borrower or any Subsidiary shall at any time contain any financial covenant or other maintenance covenant.

6.2 Liens. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any Credit Party or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement with respect to any such property, asset, income or profits under the UCC of any state except the following (collectively, the "Permitted Liens"):

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Credit Document;

(b) Liens for ~~Taxes if obligations with respect to such Taxes are (i)~~any Tax, assessment or other governmental charge that is not yet due or ~~(ii)~~is being diligently contested in ~~good faith~~accordance with the Permitted Contest Conditions (as defined in the DOE Guarantee Agreement) and by appropriate proceedings ~~promptly~~timely instituted ~~and diligently conducted~~, so long as: (~~x) Borrower and any applicable Subsidiary has set aside on its books~~i) such tax, assessment or other governmental charge is not more than sixty (60) days delinquent; and (ii) a bond, adequate reserves ~~with respect thereto in accordance with GAAP, (y) no notice of Lien or similar filing has been made with respect to such Taxes and such proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of property subject to any such Lien and (z) the aggregate amount of such Taxes does not exceed Five Hundred Thousand Dollars ($500,000);~~or other security acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any taxes, assessments or other charges determined to be due will promptly be paid in full when such contest is determined;

(c) statutory Liens of landlords, banks (and rights of set-off), of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five (5) days) are being

contested in good faith by appropriate proceedings, so long as reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as (x) no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof and (y) the aggregate amount secured by such Liens does not exceed Five Hundred Thousand Dollars ($500,000);

(e) leases, subleases, easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, and similar encumbrances affecting real property, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Borrower or any of its Subsidiaries and that, in the aggregate, do not materially detract from the value of the real property subject thereto;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any Cash earnest money deposits made by any Credit Party or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(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 so long as Liens are not more than sixty (60) days delinquent;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) non-exclusive licenses of Intellectual Property rights granted by any Credit Party or any of its Subsidiaries in the ordinary course of business;

(l) Liens in existence on the Closing Date described on Schedule 6.2;

(m) Liens of a collection bank arising by operation of law under Section 4-208 of the Uniform Commercial Code on items in the course of collection;

(n) Liens constituting customary contractual rights of set-off in favor of banks or other deposit-taking financial institutions encumbering deposits in connection with the establishment of Deposit Accounts in the ordinary course of business (and which are within the general practices customary in the banking industry) and not given in connection with the issuance of Indebtedness;

(o) Liens securing judgments that do not constitute a Default or Event of Default under Section 8.1(h); and

(p) Liens securing Indebtedness permitted pursuant to Section 6.1(e) (so long as such Liens are limited to deposit accounts held by such bank or financial institution), Section 6.1(g) (so long as such Liens are limited to deposit accounts held by such bank or financial institution), Section 6.1(h) (so long as such Liens are limited to deposit accounts held by such bank or financial institution), Section 6.1(i) (so long as such Liens are subject to an intercreditor agreement in form and substance satisfactory to Administrative Agent in its sole discretion), Section 6.1(j) (so long as such Liens are limited to the Production Tax Credits sold or monetized in connection with such Permitted Tax Credit Transaction), Section 6.1(k) (so long as such Liens are limited to cash collateral and not in excess of Five Hundred Thousand Dollars ($500,000) in the aggregate), Section 6.1(l) (so long as such Liens are limited to cash collateral and not in excess of one hundred and five percent (105%) of the face amount of such letters of credit) or Section 6.1(m) (so long as such Liens are solely secured by assets financed thereby).

6.3 Capital Expenditures. No Credit Party shall~~, nor shall it permit any of its Subsidiaries to,~~ make~~,~~ Capital Expenditures in any month (taken together with ~~other~~ all other Capital Expenditures made for the period from and including June 1, 2024 through the end of such month), in excess of ~~ten percent (10%) above the amount for such month as set forth in the row entitled "Total CapEx" as set forth in the CapEx Budget (taken together with other all "Total CapEx"~~: (x) until the Lines 3 and 4 Commencement Date, the amounts set forth in ~~the CapEx Budget for the period from and including June 1, 2024 through the end of such month). Notwithstanding anything herein or in the CapEx Budget to the contrary, no Credit Party shall, nor shall it permit any of its Subsidiaries to, make any Capital Expenditures relating to any production line (other than (a) production line one at the Turtle Creek Facility or (b) production line two so long as at least eighty percent (80%) of such Capital Expenditures are financed with proceeds from the Permitted Government Loan) without the written consent of the Administrative Agent (not to be unreasonably conditioned, withheld or delayed so long as (x) no Event of Default has occurred and is continuing, and (y) the Borrower provides a certificate of an Authorized Officer certifying that such Capital Expenditures are consistent with the CapEx Budget).~~ Appendix C-1 and (y) after the Lines 3 and 4 Commencement Date, the amounts set forth in Appendix C-2 (collectively, the "CapEx Required Amount").

6.4 No Further Negative Pledges. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to:

(a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an Asset Sale permitted under Section ~~6.9~~(b);

(b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be);

(c) this Agreement and the other Credit Documents;

(d) customary restrictions in joint venture agreements and other similar agreements applicable to joint ventures permitted pursuant to Section 6.7, so long as such restriction applies only to such joint venture; and

(e) restrictions in ~~any Permitted Government~~the DOE Loan Documents or any Permitted Tax Credit Transaction Documents.

6.5 Restricted Payments. No Credit Party shall, nor shall it permit any of its Subsidiaries, through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that:

(a) Borrower or any Subsidiary may make Restricted Payments pursuant to the terms of the Equity Instruments;

(b) any Subsidiary of Borrower may declare and pay dividends or make other distributions to Borrower or any Guarantor, and Borrower may declare and make dividend payments or other distributions payable solely in its Capital Stock (other than Disqualified Capital Stock);

(c) Borrower may convert any of its convertible securities into other securities (other than Disqualified Capital Stock) pursuant to the terms of such convertible securities or otherwise in exchange thereof; provided that no payment of any other consideration (including with limitation any Cash or Cash Equivalents) is made in connection therewith;

(d) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, Borrower may make cash interest payments pursuant to the terms of the Koch Convertible Notes solely to the extent expressly permitted by Section 6.20; ~~and~~

(e) so long as no Event of Default shall have occurred and be continuing, Borrower may make the Specified Deferred Payments pursuant to the Atlas Side Letter solely to the extent expressly permitted by Section 6.20~~.~~ ; and

(f) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, Borrower may refinance, extend or replace any of the Convertible Notes consistent with the terms of Section 6.1(f) and settle or terminate such Convertible Notes in accordance with the Convertible Note Refinancing Plan.

If any Credit Party receives a Restricted Payment from any Subsidiary or other Credit Party to which it is not entitled because such Restricted Payment was not made in accordance with this Section 6.5, then such Credit Party shall hold such Restricted Payment (or an amount equal thereto) as depository for the benefit of the Secured Parties and deliver the same to Administrative Agent (or otherwise as Administrative Agent may direct), subject to the Intercreditor Agreement, upon written demand therefor by Administrative Agent.

6.6 Restrictions on Subsidiary Distributions. Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any of its property or assets to Borrower or any other Subsidiary of Borrower other than (i) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (ii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Capital Stock expressly permitted under this Agreement and (iii) restrictions in ~~any Permitted Government~~the DOE Loan Documents or any Permitted Tax Credit Transaction Documents.

6.7 Investments. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, except:

(a) Investments in Cash and Cash Equivalents~~, in each case, to the extent maintained in a Controlled Account~~;

(b) Investments owned by any Credit Party or any of its Subsidiaries on the Closing Date and described on Schedule 6.7;

(c) Investments made after the Closing Date by a Credit Party in any of its wholly-owned Domestic Subsidiaries that are Guarantors or in Borrower;

(d) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors, and (ii) consisting of deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Credit Parties and their Subsidiaries;

(e) Investments made by a Credit Party in Eos Energy Storage India Private Limited or Eos Energy Storage S.R.L. to fund operating expenses incurred in the ordinary course of business, provided that such Investments shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000) in the aggregate in any calendar year; and

(f) ordinary course trade credit extended by the Credit Parties or their Subsidiaries to their respective customers in connection with the sale of inventory in the ordinary course of business.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any (i) Restricted Payment not otherwise permitted under the terms of Section 6.5 or (ii) any material deviation from the CapEx Budget.

6.8 Financial Covenants.

(a) Minimum Consolidated EBITDA. Borrower shall not permit Consolidated EBITDA, as of the last day of any Fiscal Quarter for the four Fiscal Quarter period then ended, beginning with the Fiscal Quarter ending ~~September 30, 2024~~December 31, 2025, to be less than ~~the required amount set forth in the following table for such date; provided that minimum~~: (x) for each such four Fiscal Quarter period ended on or prior to the Lines 3 and 4 Commencement Date, the "Minimum Consolidated EBITDA" amount specified for such four Fiscal Quarter period on Appendix D-1 hereto and (y) for each such four Fiscal Quarter period ended thereafter, the "Minimum Consolidated EBITDA" amount specified for such four Fiscal Quarter period on Appendix D-2 hereto; provided, that the "Minimum Consolidated EBITDA" amount for the Fiscal Quarters ending ~~September 30, 2024,~~ December 31, ~~2024 and~~2025, March 31, ~~2025~~2026, and June 30, 2026, shall be tested on the basis of the one Fiscal Quarter period then ended, the two Fiscal Quarter period then ended and the three Fiscal Quarter period then ended, respectively~~:~~.

~~Fiscal Quarter ending:~~	~~Minimum Consolidated EBITDA~~
~~September 30, 2024~~	~~($50,000,000)~~
~~December 31, 2024~~	~~($90,000,000)~~
~~March 31, 2025~~	~~[*]~~
~~June 30, 2025~~	~~[*]~~
~~September 30, 2025~~	~~[*]~~
~~December 31, 2025~~	~~[*]~~
~~March 31, 2026~~	~~[*]~~

~~June 30, 2026~~	~~[*]~~
~~September 30, 2026~~	~~[*]~~
~~December 31, 2026~~	~~[*]~~
~~March 31, 2027~~	~~[*]~~
~~June 30, 2027~~	~~[*]~~
~~September 30, 2027~~	~~[*]~~
~~December 31, 2027~~	~~[*]~~
~~March 31, 2028~~	~~[*]~~
~~June 30, 2028~~	~~[*]~~
~~September 30, 2028~~	~~[*]~~
~~December 31, 2028~~	~~[*]~~
~~March 31, 2029~~	~~[*]~~

(b) Minimum Consolidated Revenue. Borrower shall not permit Consolidated Revenue, as of the last day of any Fiscal Quarter for the four Fiscal Quarter period then ended, beginning with the Fiscal Quarter ending ~~September 30, 2024~~December 31, 2025, to be less than ~~the required amount set forth in the following table for such date; provided that minimum~~: (x) for each such four Fiscal Quarter period ended on or prior to the Lines 3 and 4 Commencement Date, the "Minimum Consolidated Revenue" amount specified for such four Fiscal Quarter period on Appendix E-1 hereto and (y) for each such four Fiscal Quarter period ended thereafter, the "Minimum Consolidated Revenue" amount specified for such four Fiscal Quarter period on Appendix E-2 hereto; provided, that the "Minimum Consolidated Revenue" amount for the Fiscal Quarters ending ~~September 30, 2024,~~ December 31, ~~2024 and~~2025, March 31, ~~2025~~2026, and June 30, 2026, shall be tested on the basis of ~~the~~ one Fiscal Quarter period then ended, the two Fiscal Quarter period then ended and the three Fiscal Quarter period then ended, respectively~~:~~.

~~Fiscal Quarter ending:~~	~~Minimum Consolidated Revenue~~
~~September 30, 2024~~	~~$5,000,000~~
~~December 31, 2024~~	~~$43,000,000~~
~~March 31, 2025~~	~~[*]~~
~~June 30, 2025~~	~~[*]~~
~~September 30, 2025~~	~~[*]~~
~~December 31, 2025~~	~~[*]~~

~~March 31, 2026~~	~~[*]~~
~~June 30, 2026~~	~~[*]~~
~~September 30, 2026~~	~~[*]~~
~~December 31, 2026~~	~~[*]~~
~~March 31, 2027~~	~~[*]~~
~~June 30, 2027~~	~~[*]~~
~~September 30, 2027~~	~~[*]~~
~~December 31, 2027~~	~~[*]~~

~~March 31, 2028~~	~~[*]~~
~~June 30, 2028~~	~~[*]~~
~~September 30, 2028~~	~~[*]~~
~~December 31, 2028~~	~~[*]~~
~~March 31, 2029~~	~~[*]~~

(c) Minimum Liquidity. Prior ~~to the date on which the Tranche 1 Term Loan has been disbursed and prior to the Liquidity Trigger Date, Borrower shall not permit Liquidity at any time to be less than Two Million Five Hundred Thousand Dollars ($2,500,000). On and after the date on which the Tranche 1 Term Loan has been disbursed and prior~~ to the Liquidity Trigger Date, Borrower shall not permit Liquidity at any time to be less than Five Million Dollars ($5,000,000). Commencing on the Liquidity Trigger Date, Borrower shall not permit Liquidity at any time to be less than Fifteen Million Dollars ($15,000,000).

(d) Remediation Plan. In the event of any failure to comply with the financial covenants set out in this Section 6.8, then, Borrower shall:

(i) deliver a remediation plan within thirty (30) days from the occurrence of such event, in form and substance satisfactory to the Administrative Agent, setting forth proposed steps to be taken by the Credit Parties;

(ii) to address such event in a manner acceptable to the Administrative Agent and periodically thereafter, deliver reports setting out the Borrower's execution of the remediation plan and compliance with the terms thereof; and

(iii) make relevant representatives and outside advisors available to meet and confer with the Administrative Agent, and its other outside advisors (including legal and financial advisors) on the contents of the remediation plan.

The delivery and/or the Administrative Agent's acceptance, of any remediation plan submitted pursuant to this Section 6.8 shall not constitute a waiver of any Default or Event of Default.

6.9 Fundamental Changes; Disposition of Assets. No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation or plan of division, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), or license or sub-license (as licensor or sub-licensor), exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or Capital Stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower may be merged with or into Borrower or any Guarantor, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Borrower or any Guarantor; provided that in the case of such a merger, Borrower or such Guarantor (to the extent Borrower is not a party to such transaction) shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

~~(c) disposals of obsolete or worn-out property or property or equipment that is no longer used or useful in the conduct of the business of Borrower and its Subsidiaries;~~

(c) [reserved];

(d) any disposition of any equipment or property of Borrower that is (i) obsolete, (ii) no longer used or useful in the operation of the Project or (iii) replaced by other equipment of equal value and utility; provided, that in each case: (A) such dispositions are valued at not more than Three Million Dollars ($3,000,000) on an aggregate basis in any twelve (12) month period; (B) Borrower has received consideration in an amount equal to the value that would have been obtained in an arm's length transaction with an unaffiliated third party (unless such assets have only scrap value); and (C) the proceeds thereof are applied in accordance with Section 2.10(a);

(e) ~~(d)~~ Investments made in accordance with Section 6.7 and, to the extent constituting an Asset Sale or disposition, Restricted Payments pursuant to Section 6.5;

(f) ~~(e)~~ dispositions of Cash Equivalents for Cash or other Cash Equivalents in the ordinary course of business, in each case, solely to the extent such dispositions are in accordance with the CapEx Budget;

(g) ~~(f)~~ granting of non-exclusive licenses (as licensor or sub-licensor) of Intellectual Property, in each case, in the ordinary course of business of Borrower and its Subsidiaries;

(h) ~~(g)~~ dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business;

~~(h) dispositions of equipment to the extent that: (i) such property is exchanged for credit against the purchase price of similar replacement equipment; or (ii) the proceeds of such disposition are reasonably promptly applied to the acquisition of such replacement equipment;~~

(i) dispositions solely between or among Credit Parties; and

(j) dispositions consisting solely of Permitted Tax Credit Transactions.

6.10 Disposal of Subsidiary Interests. Except for the Liens granted to Collateral Agent pursuant to the Credit Documents or as otherwise permitted pursuant to Section ~~6.9~~(b), no Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by applicable law.

6.11 Sales and Lease Backs. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than Borrower or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party to any Person (other than Borrower or any of its Subsidiaries) in connection with such lease.

6.12 Transactions with Shareholders and Affiliates. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property, the rendering of any service or the payment of any management, advisory or similar fees) with any Affiliate of any Credit Party (each such transaction, an "Affiliate Transaction"); provided that the Credit Parties and their Subsidiaries may enter into or permit to exist any

such Affiliate Transaction if (a) the terms of such transaction are not less favorable to Borrower or such Subsidiary, as the case may be, than those that might be obtained in a comparable arm's length transaction at the time from a Person who is not such a holder or Affiliate and such transaction is in the ordinary course of business, (b) such transaction is between or among Credit Parties, (c) such transaction is a Restricted Payment permitted by Section 6.5(a) hereunder, (d) ~~such transaction constitutes a guarantee permitted under Section 6.7~~[reserved], or (e) such transaction is listed on Schedule 6.12 attached hereto. Borrower shall promptly disclose in writing each transaction with any Affiliate of Borrower or any of its Subsidiaries or with any Affiliates or of any such holder to Administrative Agent. For the avoidance of doubt, this Section 6.12 shall not apply to any transaction or matter among any Credit Party and the Permitted Holder.

6.13 Conduct of Business; Non-Wholly-Owned Subsidiaries. From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Credit Party on the Closing Date and (ii) such other lines of business as may be consented to by Administrative Agent and Requisite Lenders. No Credit Party shall own, acquire, form, create, or incorporate any non-wholly-owned Subsidiary, except in the case of any Foreign Subsidiary to qualify directors if required by applicable law.

6.14 Uncertificated Securities. Each Credit Party shall not allow any Collateral consisting of uncertificated securities to be certificated without Collateral Agent's prior written consent.

6.15 Use of Proceeds. Borrower shall not, and shall not permit any of its Subsidiaries to, use the proceeds of any Loan in a manner that would violate Section 2.3 or 5.14.

6.16 Fiscal Year, Accounting Policies. No Credit Party shall, nor shall it permit any of its Subsidiaries to, change (i) its Fiscal Year end from December 31, (ii) its accounting policies from those in effect on the Closing Date or (iii) any tax election in a manner that could reasonably be expected to have an adverse effect on eligibility to claim Production Tax Credits or on the timing or amount of depreciation allowances.

6.17 Deposit Accounts, Securities Accounts and Commodities Accounts. No Credit Party shall:

(a) establish or maintain a Deposit Account or Securities Account that is not a Controlled Account ~~and no Credit Party will~~ (other than the DOE Funding Account so long as (and solely to the extent that) the DOE Funding Account does not constitute "Shared Collateral" under the Intercreditor Agreement);

(b) deposit any Cash (including, without limitation, Net Cash Proceeds and other proceeds of Collateral) in a Deposit Account which is not a Controlled Account~~. No Credit Party shall~~ ; or

(c) establish or maintain a commodities account other than in connection with Hedging Transactions permitted under Section 6.1.

6.18 Amendments to Certain Documents. No Credit Party shall:

(a) agree to any amendment, restatement, supplement, waiver, termination or other modification to any provision of any Credit Party's Organizational Documents (whether by merger or otherwise) (other than any amendment to the Organizational Documents of Borrower in connection with creation or issuance of any Equity Instruments, as long as such amendment is not adverse to the interests of any Agent or Lender);

(b) agree to any amendment, restatement, supplement, waiver, termination or other modification of any Convertible Notes, the Trinity Indebtedness, or any Subordinated Indebtedness except (in the case of Subordinated Indebtedness) to the extent permitted by the applicable (if any) intercreditor or subordination provisions;

(c) agree to any amendment, restatement, supplement, waiver, termination or other modification of any Specified Material Contract, including, Permitted Tax Credit Transaction Documents, if the effect of such amendment, restatement, supplement, waiver, termination or other modification could reasonably be expected to be adverse in any material respect to the interests of Administrative Agent or any Lender without prior written consent of Administrative Agent or any Lender;

(d) agree to any amendment, restatement, supplement, waiver, termination or other modification of ~~any Permitted Government Loan Document without the prior written consent from Administrative Agent~~the DOE Loan Documents to the extent prohibited by the Intercreditor Agreement; or

(e) agree to any amendment, restatement, supplement, waiver, termination or other modification of the Atlas Side Letter without the prior written consent from Administrative Agent.

6.19 Intellectual Property. Notwithstanding anything herein to the contrary, no Intellectual Property (nor any Capital Stock of any Subsidiary of Borrower that owns or has an exclusive license to Intellectual Property) may be transferred from, or disposed of or contributed by, or exclusively licensed by (in any such case, whether in connection with an Asset Sale, Investment, Restricted Payment or otherwise) Borrower or any of its Subsidiaries to any Person that is not a Credit Party without prior written consent from Administrative Agent.

6.20 Certain Payments.

(a) No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations (to the extent permitted hereunder), (ii) ordinary course Indebtedness consisting of credit card debt or netting, overdraft, and other cash management obligations, in each case, to the extent permitted to be incurred under Section 6.1, (iii) intercompany Indebtedness permitted to be incurred under Section 6.1(b), (iv) so long as no Event of Default shall have occurred and be continuing, the Specified Deferred Payments pursuant to the Atlas Side Letter, (v) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, and so long as Borrower shall have Consolidated EBITDA for the most recent four Fiscal ~~Quarters~~Quarter period for which Borrower shall have delivered financial statements pursuant to Section 5.1(a) or (b) of not less than zero ($0) (as demonstrated by the Compliance Certificate delivered in connection therewith), Borrower may elect to pay interest under the Koch Convertible Notes in cash in accordance with the terms thereof, ~~and~~ (~~vii~~vi) so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, on or after June 21, 2025, Borrower may redeem, repay or repurchase the Koch Convertible Notes in an amount not to exceed 100% of the principal amount thereof plus accrued and unpaid interest in each case solely with the net cash proceeds received by Borrower from the substantially concurrent issuance and sale of ~~the~~ Borrower's common stock (subject to the anti-dilution protection set forth in Section 3 of the Warrant (other than Section 3.4 thereof) and Section 9 of each Certificate of Designation (other than Section 9.4 thereof)) and (vii) the DOE Obligations to the extent not prohibited by the Intercreditor Agreement.

(b) Notwithstanding the foregoing or anything to the contrary herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make any payment ~~(whether by discount or otherwise)~~ of any consent fee or payment of a similar nature to any holder (or any of its Affiliates) of any Indebtedness in connection with any consent, amendment, waiver or other modification of any kind in respect of such Indebtedness (except as otherwise expressly permitted by this Agreement).

6.21 No Plan Assets; ERISA. No Credit Party shall hold Plan Assets. No Credit Party nor any ERISA Affiliate shall maintain, contribute to, or incur any liability or obligation (whether contingent or otherwise) with respect to any (i) Pension Plan, or a (ii) Multiemployer Plan.

6.22 Permitted Activities of Intermediate Holdco. Intermediate Holdco shall not (a) incur, directly or indirectly, any Indebtedness whatsoever other than (i) the Indebtedness under this Agreement and the other Credit Documents and (ii) to the extent constituting Indebtedness, any obligations arising under any ~~Permitted Government~~DOE Loan Documents or any Permitted Tax Credit Transaction Documents, (b) own or acquire any material assets (other than the Capital Stock of its Subsidiaries, any assets incidental thereto, Cash and Cash Equivalents), (c) engage in any material operations or business (other than activities incidental to being a holding company or necessary to maintain its legal existence (including the ability to incur fees, costs and expenses related to such maintenance)), (d) cease to directly own all of the Capital Stock of its Subsidiaries as of the Closing Date or (e) notwithstanding anything to the contrary in this Agreement, consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any other Person.

6.23 No Planned Group Employee Terminations. No Credit Party shall, nor shall it permit any of its Subsidiaries to implement any mass layoffs, plant closings, or any other planned group terminations of such entity's employees, regardless of whether such

actions trigger any notice obligations to such employees under the federal or any state WARN Act, or otherwise under any employment agreement.

6.24 Permitted Issuances of Capital Stock. Prior to June 21, 2025, Borrower shall not issue any shares of Capital Stock other than (i) the Equity Instruments (including any Capital Stock or other Equity Instruments issuable upon exercise or conversion thereof) and (ii) the issuance of shares of Capital Stock, options or other equity awards to employees, officers, directors or consultants of Borrower pursuant to any stock, equity or option plan or agreement duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors of Borrower or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to Borrower.

7. GUARANTY

7.1 Guaranty of the Obligations. Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment and performance in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the "Guaranteed Obligations").

7.2 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a "Funding Guarantor") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the Fair Share Contribution Amount with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third-party beneficiary to the contribution agreement set forth in this Section 7.2.

7.3 Payment by Guarantors. Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash in Dollars, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

7.4 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability; this Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of a Default or an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Default or Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid; provided that, without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; and (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against Borrower or any security for the Guaranteed Obligations; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment

or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or any agreement or instrument executed in connection therewith, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for Indebtedness other than the Guaranteed Obligations) to the payment of Indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

7.5 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account, Securities Account or credit on the books of any Beneficiary in favor of Borrower or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to willful misconduct; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, under any of the Credit Documents relating to the Guaranteed Obligations or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.6 Guarantors' Rights of Subrogation, Contribution, etc. Until the Guaranteed Obligations (other than contingent indemnity Obligations for which no claim has been asserted) shall have been indefeasibly paid in full in Cash and the Commitments shall have terminated, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations (other than contingent indemnity Obligations for which no claim has been asserted) shall have been indefeasibly paid in full in Cash and the Commitments shall have terminated, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any

collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations (other than contingent indemnity Obligations for which no claim has been asserted) shall not have been finally and indefeasibly paid in full in Cash and the Commitments shall not have been terminated, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.7 Subordination of Other Obligations. Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.8 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full in Cash and the Commitments shall have terminated. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

7.9 Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

7.10 Financial Condition of Borrower. Any Loans may be made to Borrower or continued from time to time may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

7.11 Bankruptcy, etc.

(a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent (for the benefit of Beneficiaries), or allow the claim of Administrative Agent (for the benefit of Beneficiaries) in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.12 Discharge of Guaranty Upon Sale of Guarantor. If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold, transferred or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

8. EVENTS OF DEFAULT

8.1 Events of Default. If any one or more of the following conditions or events shall occur (each, an "Event of Default"):

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) when due any amount of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise, (ii) when required to be paid hereunder, any Administrative Agent Advance, or (iii) any interest payable in cash on any Obligation or any fee or any other amount under any Credit Document (other than any amount of principal of any Loan or any Administrative Agent Advance) when due or, in the case of cash interest, within three (3) Business Days after the date due;

(b) Default Under Other Agreements. (i) Failure of any Credit Party or any of its Subsidiaries to pay when due (after giving effect to any applicable grace or cure period) any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Material Indebtedness or (ii) breach or default by any Credit Party or any of its Subsidiaries with respect to any other term of, or the occurrence of any other event under, (1) one or more items of Material Indebtedness or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Material Indebtedness, in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach, default or other event is to cause, or to permit the holder or holders of that Material Indebtedness (or a trustee on behalf of such holder or holders), with or without the passage of time, to cause, all or any portion of such Material Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; provided that the conversion of Convertible Notes in accordance with their terms shall not constitute an Event of Default under this clause (b)(ii) to the extent that (x) Borrower is expressly permitted to settle such conversions solely with the issuance of its common stock and (y) any payment of Cash or Cash Equivalents upon settlement thereof is expressly permitted by this Agreement; provided, further any transaction or series of transactions with respect to the Capital Stock of Borrower undertaken by Cerberus or any of its Affiliates that results in a "change of control" thereunder shall not give rise to an Event of Default under this clause (b) solely as a result of such "change of control".

(c) Breach of Certain Covenants. (I) Failure of any Credit Party to perform or comply with any term or condition contained in Section 5.1 and such default shall not have been remedied or waived within three (3) Business Days after such default, provided that the cure period set forth in this clause (I) shall apply on no more than three (3) separate occasions during the term of this Agreement; or (II) failure of any Credit Party or any of its Subsidiaries to perform or comply with any term or condition contained in ~~Section~~Sections 2.3, ~~or Section 5.2,~~ 5.3, 5.4(b), 5.5, ~~5.6, 5.7, 5.8,~~ 5.11, 5.14, 5.17, ~~5.18, 5.19, 5.20 or Section 6;~~5.20 or 6; provided, that, notwithstanding the foregoing, Borrower's failure to comply with clauses (a), (b) or (c) of Section 6.8 hereof shall not constitute an Event of Default under this clause (c) unless Borrower: (x) fails to provide the remediation plan pursuant to Section 6.8(d) or (y) fails at any time to comply with any such accepted remediation plan in accordance with Section 6.8(d);

(d) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing to any Agent or Lender pursuant hereto or thereto or in connection herewith or therewith shall be false

or misleading in any material respect as of the date made or deemed made or, to the extent that any such representation, warranty, certification or other statement is already qualified by materiality or material adverse effect, such representation, warranty, certification or other statement shall be false in any respect as of the date made or deemed made;

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents or any Equity Instrument, other than any such term referred to in any other Section of this Section 8.1, and such default shall not have been remedied or waived within ~~fifteen~~thirty (~~15~~30) days after the occurrence thereof;

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Credit Party or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Credit Party or any of its Subsidiaries under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, conservator, custodian or other officer having similar powers over any Credit Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee, conservator or other custodian of any Credit Party or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Credit Party or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged (provided that no Borrowings shall be available during the pendency of such proceedings);

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Any Credit Party or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or under any other Debtor Relief Law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee, conservator or other custodian for all or a substantial part of its property; or any Credit Party or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) any Credit Party or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or (iii) the board of directors (or similar governing body) of any Credit Party or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f);

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in the aggregate at any time an amount in excess of Two Million Five Hundred Thousand Dollars ($2,500,000) (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company does not dispute coverage) shall be entered or filed against any Credit Party or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of ~~sixty~~thirty (~~60~~30) days after the entry thereof (provided that no Borrowings shall be available during the pendency thereof);

(i) Dissolution. Any order, judgment or decree shall be entered against any Credit Party decreeing the dissolution or split up of such Credit Party and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days;

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate could reasonably be expected to result in liability of any Credit Party, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of Two Million Five Hundred Thousand Dollars ($2,500,000) during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430(k) of the Internal Revenue Code or under Section 303(k) or Title IV of ERISA;

(k) Change of Control. A Change of Control shall occur;

(l) Guaranties, Collateral Documents and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this

Agreement or any Collateral Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent (for the benefit of the Secured Parties) shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document (other than in respect of assets that, individually and in the aggregate, are not material to the Credit Parties, as determined by Administrative Agent in its sole discretion), in each case for any reason other than the failure of Collateral Agent or any Secured Party to take any action within its control, (iii) any Credit Party or other Person shall contest the validity or enforceability of any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Collateral Documents, (iv) any subordination agreement (or subordination provisions incorporated in any Subordinated Indebtedness) or any other intercreditor agreement, or any provisions thereof, ceases to be valid and enforceable against any holder of Indebtedness intended to be subordinated to the Obligations or secured by a Lien intended to be subordinated to the Lien of Collateral Agent or any holder of such Indebtedness shall so assert in writing, (v) the failure of any party thereto (other than any Agent or Lender) to comply in any material respect with the terms of any subordination agreement (or subordination provisions incorporated in any Subordinated Indebtedness) or any other intercreditor agreement, or (vi) without limiting the foregoing, any impairment of the first priority security interest in the Collateral, including, without limitation, the existence of Liens or security interests in the Collateral in favor of any party other than Collateral Agent or any other Secured Party than except for Permitted Liens;

(m) Material Adverse Effect. Any event, circumstance, development or change (either individually or in the aggregate) occurs that has resulted in or caused, or could reasonably be expected to result in or cause, a Material Adverse Effect;

(n) Material Contracts. (i) The termination of any Specified Material Contract (other than upon the expiration thereof in accordance with its terms); (ii) the receipt by Borrower or any of its Subsidiaries of written notice from a counterparty asserting a default by Borrower or any of its Subsidiaries under any Specified Material Contract where such alleged default, if accurate, would permit such counterparty to terminate such Specified Material Contract except for any allegation subject to a good faith dispute and such dispute remains unresolved for thirty (30) days of such allegation; or (iii) any amendment to a Specified Material Contract that is prohibited by Section 6.18; ~~or~~

(o) Delisting. The common stock of Borrower is no longer listed on an internationally recognized stock exchange in the United States~~.~~;

~~(p) Initial Term Loan B. The failure to satisfy all conditions precedents set forth in Section 3.1(b), or the failure to borrow in full of the Initial Term Loan B, in each case within one (1) Business Day of the Closing Date.~~

(p) [Reserved].

(q) DOE Change in Law. The Borrower is required to repay the DOE Loan pursuant to Section 3.05(c)(i)(L) of the DOE Guarantee Agreement;

THEN, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Borrower by Administrative Agent, (A) the Commitments, if any, of each Lender having such Commitments shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest on the Loans and any Administrative Agent Advances, and any Total Prepayment Amount in respect thereof, and (II) all other Obligations; (C) Collateral Agent may enforce any and all Liens and security interests created pursuant to the Collateral Documents; (D) Agents may exercise on behalf of themselves, the Lenders and the other Secured Parties all rights and remedies available to Administrative Agent, Collateral Agent, the Lenders and the other Secured Parties under the Credit Documents or under applicable law or in equity, and (E) Collateral Agent is hereby granted a license or right to use, license, or sublicense, without liability for royalties or any other charge, each Credit Party's Intellectual Property, whether owned by the Credit Party or licensed to the Credit Party in preparing for the sale, advertising for sale, and selling any Collateral and otherwise exercising all rights and remediates available to the Administrative Agent, Collateral Agent, the Lenders, and the other Secured Parties.

9. AGENTS

9.1 Appointment of Agents. CCM Denali Debt Holdings, LP is hereby appointed Administrative Agent and Collateral Agent hereunder and under the other Credit Documents and each Lender hereby authorizes CCM Denali Debt Holdings, LP, in such capacity, to act as Administrative Agent and Collateral Agent in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and the Lenders, and no Credit Party shall have any rights as a third party beneficiary of any of the provisions of this ~~Section 9~~9. 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 Borrower or any of its Subsidiaries. It is understood and agreed that the use of the term "agent" herein or in any other Credit Documents (or any other similar term) with reference to Administrative Agent or Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law but instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.2 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 Credit 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. In the event that any obligations (other than the Obligations) are permitted to be incurred hereunder and secured by Liens permitted to be incurred hereunder on all or a portion of the Collateral, each Lender authorizes the Administrative Agent and Collateral Agent, as applicable, to enter into intercreditor agreements, subordination agreements and amendments to the Collateral Documents to reflect such arrangements on terms acceptable to the Administrative Agent and Collateral Agent, as applicable. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit 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 Credit Documents, a fiduciary relationship or other implied (or express) obligations arising under agency doctrine of any applicable law in respect of any Lender; and nothing herein or any of the other Credit 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 Credit Documents except as expressly set forth herein or therein.

9.3 General Immunity.

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document, or for the creation, perfection or priority of any Lien, 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 Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit 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 Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Default or Event of Default or as to the value or sufficiency of any Collateral or as to the satisfaction of any condition set forth in ~~Section 3~~3 or elsewhere herein (other than confirm receipt of items expressly required to be delivered to such Agent) or to inspect the properties, books or records of Borrower or any of its Subsidiaries or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, managers, members, employees or agents shall be liable to Lenders (i) for any action taken or omitted by any Agent (A) under or in connection with any of the Credit Documents or (B) with the consent or at the request of the Requisite Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement) 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 or (ii) for any failure of any Credit Party to perform its obligations under this Agreement or any other Credit Document. No Agent shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose or be liable for the failure to disclose, any information relating to any Credit Party or any of its Affiliates that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. 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 Credit 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 Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite 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; provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Credit Document or applicable law, including for the avoidance of doubt any action that 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 have no liability for relying, upon any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) 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 Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Person shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5). Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, each Administrative Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. No Agent shall, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as an Agent or any of its Affiliates in any capacity.

(c) Notice of Default or Event of Default. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to such Agent by a Credit Party or a Lender. In the event that Administrative Agent shall receive such a notice, Administrative Agent shall give notice thereof to the Lenders; provided that failure to give such notice shall not result in any liability on the part of Administrative Agent.

9.4 Agents 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 any Credit Party or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from any Credit Party or any of its Subsidiaries for services in connection herewith and otherwise without having to account for the same to Lenders. The Lenders acknowledge that pursuant to such activities, Agents or their Affiliates may receive information regarding any Credit Party or any Affiliate of any Credit Party (including information that may be subject to confidentiality obligations in favor of such Credit Party or such Affiliate) and acknowledge that Agents and their Affiliates shall be under no obligation to provide such information to them.

9.5 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Each 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 and their respective Related Parties. The exculpatory, indemnification and other provisions of this Section 9 shall apply to any such sub-agent and to the Related Parties of such Agent and any such sub-agent. No Agent shall be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.6 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 Borrower and its Subsidiaries in connection with the Loans hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender, by delivering its signature page to this Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

9.7 Right to Indemnity. Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, and its Related Parties (each, an "Indemnitee Related Party"), to the extent that such Indemnitee Related Party shall not have been reimbursed by any Credit 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 Indemnitee Related Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Indemnitee Related Party in any way relating to or arising out of the Obligations, this Agreement or the other Credit Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE RELATED PARTY**; provided that (x) 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 Indemnitee Related Party's gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order, and (y) the unreimbursed liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements, as the case may be, was incurred by or asserted against such Agent (or any such sub-agent) in its capacity as such, or against any Indemnitee Related Party of any of the foregoing acting for such Agent (or any such sub-agent) in connection with such capacity. If any indemnity furnished to any Indemnitee Related Party for any purpose shall, in the opinion of such Indemnitee Related Party, be insufficient or become impaired, such Indemnitee Related Party 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 Indemnitee Related Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; provided, further, this sentence shall not be deemed to require any Lender to indemnify any Indemnitee Related Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.8 Successor Administrative Agent and Collateral Agent.

(a) Administrative Agent and Collateral Agent may resign at any time by giving thirty (30) days' prior written notice thereof to Lenders and Borrower. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five (5) Business Days' notice to Borrower, to appoint a successor Administrative Agent and Collateral Agent; provided that in no event shall any such successor Agent be a Defaulting Lender. Upon the acceptance of any appointment as Administrative Agent and Collateral Agent hereunder by a successor Administrative Agent and Collateral Agent, that successor Administrative Agent and Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and Collateral Agent and the retiring Administrative Agent and Collateral Agent shall promptly (i) transfer to such successor Administrative Agent and Collateral Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent and Collateral Agent under the Credit Documents, and (ii) execute and deliver to such successor Administrative Agent and Collateral Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent and Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring Administrative Agent and Collateral Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's and Collateral Agent's resignation hereunder as Administrative Agent and Collateral

Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent and Collateral Agent hereunder.

(b) Notwithstanding anything herein to the contrary, Administrative Agent and Collateral Agent may assign their rights and duties as Administrative Agent and Collateral Agent hereunder to an Affiliate of Cerberus without the prior written consent of, or prior written notice to, Borrower or the Lenders; provided that Borrower and the Lenders may deem and treat such assigning Administrative Agent and Collateral Agent as Administrative Agent and Collateral Agent for all purposes hereof, unless and until such assigning Administrative Agent or Collateral Agent, as the case may be, provides written notice to Borrower and the Lenders of such assignment. Upon such assignment such Affiliate shall succeed to and become vested with all rights, powers, privileges and duties as Administrative Agent and Collateral Agent hereunder and under the other Credit Documents.

9.9 Collateral Documents and Guaranty.

(a) Agents under Collateral Documents and Guaranty. Each Lender hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Lenders, to be the agent for and representative of Lenders with respect to the Guaranty, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written consent or authorization from Lenders, Administrative Agent or Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral (A) that is the subject of a sale, transfer or other disposition of assets permitted hereby to a Person that is not Borrower or any other Credit Party, or to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented or (B) upon termination of all Commitments and payment in full of all Obligations, or (ii) release any Guarantor from the Guaranty (x) pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented, in the case of each of clause (i) and (ii), in form and substance satisfactory to Administrative Agent. Upon request by any Agent at any time, the Requisite Lenders will confirm in writing such Agent's authority to release its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.9.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Administrative Agent, on behalf of Lenders in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Collateral Agent, and (ii) in the event of a foreclosure by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale or other disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) No Duty With Respect to Collateral. No Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall such Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(d) Administrative Agent Advances. Administrative Agent may (but shall not be obligated to) from time to time make such disbursements and advances ("Administrative Agent Advances") which Administrative Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by Borrower of the Loans and other Obligations or to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 10.2. Administrative Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to the Loans. Administrative Agent Advances shall constitute Obligations hereunder. Administrative Agent shall notify each Lender and Borrower in writing of each such Administrative Agent Advance, which notice shall include a description of the purpose of such Administrative Agent Advance. Without limitation to its obligations pursuant to Section 9.7, each Lender agrees that it shall make available to Administrative Agent, upon Administrative Agent's demand, in Dollars in immediately

available funds, the amount equal to such Lender's Pro Rata Share of each such Administrative Agent Advance. If such funds are not made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent, at the Federal Funds Effective Rate for three (3) Business Days and thereafter at the rate applicable to the Loans.

(e) If Administrative Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under Section ~~9.11(b)~~9.11(a)) that any funds (as set forth in such notice by Administrative Agent) received by such Payment Recipient from Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof)), such Erroneous Payment shall at all times remain the property of Administrative Agent pending its return or repayment as contemplated below in this Section ~~9.11(a)~~9.9(e) and held in trust for the benefit of Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one (1) Business Day thereafter (or such later date as Administrative Agent may, in its sole discretion, specify in writing), return to Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of Administrative Agent to any Payment Recipient under this clause ~~(a)~~(e) shall be conclusive, absent manifest error.

9.10 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) 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 and the other Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and Administrative Agent under Sections 2.7, 2.9, 10.2 and 10.3) allowed in such judicial proceeding;

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender 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 to pay to Administrative Agent any amount due for the compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.7, 2.9, 10.2 and 10.3.

9.11 Erroneous Payments.

(a) Without limiting immediately preceding clause ~~(a)~~(e), each Lender, Secured Party or other Payment Recipient who has received funds on behalf of a Lender, Secured Party or other Payment Recipient (and each of their respective successors and assigns), hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "Payment Notice"),

(y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then, in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one (1) Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying Administrative Agent pursuant to this Section ~~9.11(b)~~9.11(a).

For the avoidance of doubt, the failure to deliver a notice to Administrative Agent pursuant to this Section ~~9.11(b)~~9.11(a) shall not have any effect on a Payment Recipient's obligations pursuant to Section ~~9.11(a)~~9.9(e) or on whether or not an Erroneous Payment has been made.

(b) Each Lender or Secured Party hereby authorizes Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Credit Document, or otherwise payable or distributable by Administrative Agent to such Lender or Secured Party under any Credit Document with respect to any payment of principal, interest, fees or other amounts, against any amount that Administrative Agent has demanded to be returned under immediately preceding clause ~~(a)~~(e).

(c) (i)(i) In the event an Erroneous Payment (or portion thereof) is not recovered by Administrative Agent for any reason, after demand therefor by Administrative Agent in accordance with immediately preceding clause ~~(a)~~(e), from any Lender that has received such Erroneous Payment (or portion thereof) (or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon Administrative Agent's request to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by Administrative Agent in such instance)), and is hereby (together with Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to the Platform as to which Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to Borrower or Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under Section 9.7 and its applicable Commitments which shall survive as to such assigning Lender, (D) Administrative Agent and Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.6 (but excluding, in all events, any assignment consent or approval requirements (whether from Borrower or otherwise)), Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by Administrative Agent) and (y) may, in the sole discretion of Administrative Agent, be reduced by any amount specified by Administrative Agent in writing to the applicable Lender from time to time.

(d) The parties hereto agree that (x) irrespective of whether Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Credit Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Credit Parties' Obligations under the Credit Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrower or any other Credit Party; provided that this Section 9.11 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by 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 Administrative Agent from Borrower for the purpose of making such Erroneous Payment.

(e) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(f) Each party's obligations, agreements and waivers under this Section 9.11 shall survive the resignation or replacement of Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the payment in full of all Obligations (or any portion thereof) under any Credit Document.

9.12 Credit Bid. Each of the Lenders hereby irrevocably authorizes Agents, on behalf of Lenders, to take any of the following actions upon the instruction of the Requisite Lenders:

(a) consent to the disposition of all or any portion of the Collateral free and clear of the Liens securing the Obligations in connection with any disposition pursuant to the applicable provisions of the Bankruptcy Code, including Section 363 thereof;

(b) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any disposition of all or any portion of the Collateral pursuant to the applicable provisions of the Bankruptcy Code, including under Section 363 thereof;

(c) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any disposition of all or any portion of the Collateral pursuant to the applicable provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC;

(d) credit bid all or any portion of the Obligations, or purchase all or any portion of the Collateral (in each case, either directly or through one or more acquisition vehicles), in connection with any foreclosure or other disposition conducted in accordance with applicable law following the occurrence of an Event of Default, including by power of sale, judicial action or otherwise; and/or

(e) estimate the amount of any contingent or unliquidated Obligations of such Lender or other Secured Party.

Each Lender agrees that Agents are under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral; provided that, in connection with any credit bid or purchase described under clauses (b), (c) or (d) above, the Obligations owed to all of the Secured Parties (other than with respect to contingent or unliquidated liabilities as set forth in the next succeeding paragraph) may be, and shall be, credit bid by Agents on a ratable basis.

With respect to each contingent or unliquidated claim that is an Obligation, Agents are hereby authorized, but are not required, to estimate the amount thereof for purposes of any credit bid or purchase described above so long as the estimation of the amount or liquidation of such claim would not unduly delay the ability of Agents to credit bid the Obligations or purchase the Collateral in the relevant disposition. In the event that Agents, in their sole discretion, elects not to estimate any such contingent or unliquidated claim or any such claim cannot be estimated without unduly delaying the ability of Agents to consummate any credit bid or purchase in accordance with the above provisions, then any contingent or unliquidated claims not so estimated shall be disregarded, shall not be credit bid, and shall not be entitled to any interest in the portion or the entirety of the Collateral purchased by means of such credit bid.

In connection with any such credit bid (i) Agents shall be authorized to form one or more acquisition vehicles to make a bid, (ii) the Agents shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Agents with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Capital Stock thereof shall be governed, directly or indirectly, by the vote of the Requisite Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Requisite Lenders contained in Section 10.5 of this Agreement), (iii) Agents shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Capital Stock issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Capital Stock issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party which will receive Capital Stock issued by such acquisition vehicle) as Agents may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

10. MISCELLANEOUS

10.1 Notices.

(a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Credit Party, Collateral Agent, or Administrative Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Each notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that no notice to any Agent shall be effective until received by such Agent.

Any notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. Neither Administrative Agent nor any Lender shall incur any liability to any Credit Party in acting upon any telephonic notice that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of any Credit Party or for otherwise acting in good faith.

(b) Electronic Communications.

(i) Notices and other communications to any Agent, Lenders and any Credit Party hereunder may be delivered or furnished by other electronic communication (including e-mail and Internet or intranet websites, including Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the "Platform")) pursuant to procedures approved by Administrative Agent in its sole discretion; provided that, notwithstanding the foregoing, in no event will notices by electronic communication be effective to any Agent or any Lender pursuant to Section 2 if any such Person has notified Administrative Agent that it is incapable of receiving notices under such Section 2 by electronic communication. Any Agent or Borrower may, in its sole 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. In the case of any notices by electronic communication permitted in accordance with this Agreement, unless Administrative Agent otherwise prescribes, (A) any notices and other communications permitted to be sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment, but excluding any automatic reply to such e-mail), except that, if such notice or other communication is not sent during normal business hours at the location of the recipient, then such notice or communication shall be deemed not to have been received until the opening of business on the next Business Day for the recipient, and (B) notices or communications permitted to be 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 (A) of notification that such notice or communication is available and clearly identifying an accessible website address therefor.

(ii) Each Credit Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the gross negligence or willful misconduct of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective Related Parties (the "Agent Affiliates") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic 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 the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent Affiliates have any liability to any of the Credit Parties, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Credit Party's or Administrative Agent's transmission of communications through the Platform. Each party hereto agrees that no Agent has any responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Approved Electronic Communication or otherwise required for the Platform.

(iv) Each Credit Party, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies. Borrower and each other Credit Party hereby agrees to identify that portion of the materials and/or information provided by or on behalf of the any Credit Party (the "Materials") hereunder that contains any material non-public information and that (a) all such Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, and (b) by marking Materials "PUBLIC," Borrower and each other Credit Party shall be deemed to have authorized each Agent and the Lenders to treat such Materials as not containing any material non-public information (although it may be sensitive and proprietary) . Each Credit Party hereby acknowledges and agrees that, unless Borrower notifies Administrative Agent in advance, all financial statements and certificates furnished pursuant to Sections 5.1(a), (b) and (c) hereunder are hereby deemed to be suitable for distribution, and to be made available, to all Lenders and may be treated by Administrative Agent and the Lenders as not containing any material non-public information.

(v) All uses of the Platform shall be governed by and subject to, in addition to this Section 10.1, separate terms and conditions posted or referenced in such Platform and related agreements executed by the Lenders and their Affiliates in connection with the use of such Platform.

(vi) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

10.2 Expenses. Whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to, jointly and severally, pay promptly (a) all reasonable costs and expenses incurred by any Agent or any Lender in connection with the negotiation, preparation and documentation of the Credit Documents (including the reasonable fees, charges and disbursements of counsel for Agents) and any consents, amendments, supplements, waivers or other modifications thereto, regardless of whether the same become effective; (b) all reasonable fees, costs, expenses and disbursements of counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents or in connection therewith or the transactions completed therein and any consents, amendments, supplements, waivers or other modifications thereto and any other documents or matters requested by the Credit Parties; (c) all reasonable fees, costs and expenses incurred by Agents in creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and Taxes, stamp or documentary Taxes, search fees, title insurance premiums and reasonable fees, costs, expenses and disbursements of counsel to each Agent or Lender in connection with the Credit Documents or the transactions contemplated therein; (d) all reasonable fees, costs and expenses for, and disbursements of, any Agent's or any Lender's auditors, accountants, consultants, experts, appraisers and other advisors whether internal or external, and all reasonable attorneys' fees (including allocated costs of internal counsel and expenses and disbursements of outside counsel) incurred by any Agent or any Lender; (e) all reasonable fees, costs and expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by any Agent and its respective counsel) in connection with the enforcement, custody or preservation of any of the Collateral; (f) all other reasonable fees, costs and expenses incurred by any Agent or any Lender in connection with the syndication of the Loans and Commitments and the negotiation, preparation and execution of the Credit Documents and any consents, amendments, supplements, waivers or other modifications thereto and the transactions contemplated thereby; (g) reasonable costs or expenses (including Taxes and insurance premiums) required to be paid by any Credit Party, under any of the Credit Documents that are paid, advanced, or incurred by any Agent, (h) all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and costs of settlement, incurred by any Agent or any Lender (x) in connection with the enforcement, preservation or protection of its rights or remedies hereunder or under the other Credit Documents (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guaranty) or (y) in connection with any refinancing, restructuring, workout or negotiations of the credit arrangements provided under the Credit Documents (including all such costs and expenses incurred in connection with any insolvency or bankruptcy cases or proceedings); and (i) without limitation, all "Expenses" (as defined in that certain Non-Binding Proposal, dated as of May 14, 2024, by and among Borrower and Cerberus) incurred or accrued by Cerberus. All amounts due under this Section 10.2 shall be due and payable promptly upon demand.

10.3 Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party, jointly and severally, agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender, their respective Affiliates and the respective officers, partners, directors, trustees, employees and agents of each Agent and each Lender and of each of their respective Affiliates (each, an "Indemnitee"), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided that no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable order, of that Indemnitee. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. This Section 10.3(a) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(b) To the extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against Lenders, Agents and their respective Related Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the transmission of information through the Internet, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Credit Party hereby waives, releases and agrees not to sue upon or assert any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Person referred to in the immediately preceding sentence 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 Credit Documents or the transactions contemplated hereby or thereby.

(c) All amounts due under this Section 10.3 shall be due and payable promptly (and in any event within thirty (30) days) following receipt by Borrower of an invoice relating thereto setting forth such expenses.

10.4 Set-Off. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuation of any Event of Default, Administrative Agent, each Lender and each of their respective Affiliates is hereby authorized by each Credit Party at any time or from time to time (subject, in the case of a Lender or its Affiliates) to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (time or demand, provisional or final, general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured (in whatever currency)) and any other Indebtedness at any time held or owing by such Lender or Administrative Agent, to or for the credit or the account of any Credit Party (in whatever currency) against and on account of the obligations and liabilities of any Credit Party to such Lender or Administrative Agent and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto or with any other Credit Document, irrespective of whether or not (a) such Lender or Administrative Agent shall have made any demand hereunder, (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured or (c) such obligation or liability is owed to a branch or office of such different from the branch or office holding such deposit or obligation or such Indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees to notify Borrower and Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have.

10.5 Amendments and Waivers.

(a) Requisite Lenders' Consent. Subject to Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Requisite Lenders.

(b) Affected Lenders' Consent. Without the written consent of each Lender (other than a Defaulting Lender) that would be directly and adversely affected thereby, no amendment, modification, termination, waiver or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note of such Lender; provided that no amendment, modification or waiver of any condition precedent, covenant (other than the covenant to repay the Loans on the Maturity Date), Default or Event of Default shall constitute an extension of scheduled final maturity;

(ii) waive, reduce or postpone any scheduled repayment of principal (but not any prepayment of principal which may be waived, reduced or postponed with the consent solely of the Requisite Lenders) owed to such Lender; provided that (A) the waiver of (or amendment of the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal and (B) the waiver of any Default (other than a Default under Section 8.1(a)), Event of Default or mandatory reduction of the Commitments shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any scheduled repayment of principal;

(iii) reduce the rate of interest on any Loan (other than as provided in Section 2.5 or any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.6) or any fee or any premium payable hereunder;

(iv) waive or extend the time for payment of any such interest, fees or premiums (it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute an extension of any time for payment of interest, fees or premiums);

(v) reduce or forgive the principal amount of any Loan;

(vi) amend, modify, terminate or waive any provision of Section 2.11, Section 2.12(g), Section 2.13, this Section 10.5(b) or Section 10.5(c); provided that Administrative Agent and the Requisite Lenders may waive, in whole or in part, any prepayment so long as the application of any portion of such prepayment which is still required to be made is not altered;

(vii) amend the definition of "Requisite Lenders" or "Pro Rata Share"; provided that, with the consent of Administrative Agent and the Requisite Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Requisite Lenders" or "Pro Rata Share" on substantially the same basis as the Term Loan Commitments and the Term Loans are included on the Closing Date;

(viii) (A) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents, (B) subordinate the Lien of Collateral Agent on all or substantially all of the Collateral securing the Obligations to the Liens securing any other Indebtedness of the Credit Parties or subordinate any Guaranty of the Guarantors, except in each case as expressly provided in the Credit Documents as in effect on the Closing Date, (C) subordinate all or any portion of the Obligations in right of payment to any other Indebtedness, or (D) change or have the effect of changing the priority or pro rata treatment of any payment (including voluntary and mandatory prepayment), Liens, proceeds of Collateral or reductions in Commitments (including as a result, in whole or in part, of allowing the issuance or incurrence, pursuant to this Agreement or otherwise, of new loans or other Indebtedness having any priority senior to any of the Obligations in respect of any payments, Liens, Collateral or proceeds of Collateral, in exchange for any Obligations or otherwise), except in each case as expressly provided in the Credit Documents as in effect on the Closing Date; or

(ix) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Credit Document.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall be deemed to constitute an increase in any Commitment of any Lender; or

(ii) amend, modify, terminate or waive any provision of Section 9 as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the consent of such Agent.

(d) Consent of Administrative Agent and Borrower. With the consent of Borrower only, Administrative Agent may amend, modify or supplement this Agreement (i) to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Lender and (ii) to enter into additional or supplemental Collateral Documents.

(e) Defaulting Lenders; Events of Default. Notwithstanding anything contained herein to the contrary, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (A) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (B) subject in all respects to Section 2.16, no amendment or waiver shall reduce the principal amount of any Loan or reduce the rate of interest on any Loan, in each case, owing to a Defaulting Lender, without the consent of such Defaulting Lender and (ii) this Agreement may be amended and restated without the consent of any Lender (but with the consent of Borrower and Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated (but such Lender shall continue to be entitled to the benefits of Section 2.11, Section 2.13, Section 2.14, Section 2.15, Section 10.2 and Section 10.3), such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement. Notwithstanding anything herein or otherwise to the contrary, any Default or Event of Default occurring hereunder shall continue to exist (and shall be deemed to be continuing) until such time as such Default or Event of Default is waived in writing in accordance with the terms of this Section 10.5 notwithstanding (x) any attempted cure or other action taken by Borrower or any other Person subsequent to the occurrence of such Default or Event of Default or (y) any action taken or omitted to be taken by Administrative Agent or any Lender prior to or subsequent to the occurrence of such Default or Event of Default (other than the granting of a waiver in writing in accordance with the terms of this Section 10.5).

(f) Execution of Amendments, etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Agent, each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

10.6 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. 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, except that neither Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause (b) of this Section 10.6, (ii) by way of participation in accordance with the provisions of clause (d) of this Section 10.6, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (e) of this Section 10.6 (and any other attempted assignment or transfer by any party hereto shall be null and void). 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 clause (d) of this Section 10.6 and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and Collateral Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in Section 10.6(b)(i)(B) in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in Section 10.6(b)(i)(A), the aggregate amount of the Commitment or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each

such assignment (determined as of the date the Assignment Agreement with respect to such assignment is delivered to Administrative Agent) shall not be less than $1,000,000.

(ii) Proportionate Amounts. 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 with respect to the Loan or the Commitment assigned (or as otherwise permitted by Administrative Agent).

(iii) Required Consents. No consent shall be required for any assignment, except that the consent of Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of any Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment Agreement. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee of Three Thousand Five Hundred Dollars ($3,500); provided that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire, documentation required under Section 2.15(g) and any and all documentation and other information with respect to the assignee that is required by regulatory authorities under applicable "know your customer," Anti-Money Laundering Laws and other anti-money laundering regulations, including the Patriot Act.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) any Credit Party or to any Credit Party's Affiliates or Subsidiaries or (B) to 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 clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. 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 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 Borrower and 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 Administrative Agent and each other 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 Pro Rata Share thereof. 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.

Subject to acceptance and recording thereof by Administrative Agent pursuant to Section 10.6(c), from and after the effective date specified in each Assignment Agreement (which for the avoidance of doubt shall be the date of recordation in the Register), the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement 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 Sections 2.14, 2.15 and 10.2 with respect to facts and circumstances occurring prior to the effective date of such assignment; 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 paragraph 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 clause (d) of this Section 10.6.

(c) Register. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Borrower, shall maintain at one of its offices in the United States a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, the Commitments of, and principal amounts (and stated interest) of the Loans 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 Borrower, Administrative Agent 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. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, any Credit Party or any Credit Party's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Borrower, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.7 with respect to any payments made by such Lender to its Participant(s).

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, at such Lender's option, provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 10.5(b) and 10.5(c) that affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.14 and 2.15 subject to the requirements and limitations therein, including the requirements under Section 2.15 (it being understood that the documentation required under Section 2.15(g) shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.6(b); provided that such Participant (A) agrees to be subject to the provisions of Section 2.17 as if it were an assignee under Section 10.6(b); and (B) shall not be entitled to receive any greater payment under Section 2.14 or 2.15, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Commitment and/or the Loans or other obligations under the Credit 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 or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. 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 any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

10.7 Independence of Covenants, etc. All covenants, conditions and other terms hereunder and under the other Credit Documents shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, conditions or other terms, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant, condition or other term shall not avoid the occurrence of a Default or Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of the Loans. Notwithstanding anything herein or implied by law to the contrary, the obligations of each Credit Party set forth in Sections 2.14, 2.15, 5.20, 10.2, 10.3, 10.4, and 10.10 and the agreements of Lenders set forth in Sections 2.13, 9.3(b) and 9.7 shall survive the repayment of the Loans and the termination of the Credit Documents.

10.9 No Waiver; Remedies Cumulative. No failure or delay or course of dealing on the part of any Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

10.10 Marshalling; Payments Set Aside. Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or Administrative Agent, Collateral Agent or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability. In case any provision in or obligation hereunder or under any Note or other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12 Obligations Several; Actions in Concert. The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. Anything in this Agreement or any other Credit Document to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any Note or otherwise with respect to the Obligations without first obtaining the prior written consent of Administrative Agent or Requisite Lenders (as applicable), it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and any Note or otherwise with respect to the Obligations shall be taken in concert and at the direction or with the consent of Administrative Agent or Requisite Lenders (as applicable).

10.13 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

10.14 Applicable Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) THEREOF.

10.15 Consent To Jurisdiction.

(a) **ALL JUDICIAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, HEREBY EXPRESSLY AND IRREVOCABLY (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 AND SUCH SERVICE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; (iv) AGREES THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW AND (v) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION.**

(b) **EACH CREDIT PARTY HEREBY AGREES THAT PROCESS MAY BE SERVED ON IT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES PERTAINING TO IT AS SPECIFIED IN SECTION 10.1. ANY AND ALL SERVICE OF PROCESS AND ANY OTHER NOTICE IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE EFFECTIVE AGAINST ANY CREDIT PARTY IF GIVEN BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY OTHER MEANS OR MAIL WHICH REQUIRES A SIGNED RECEIPT, POSTAGE PREPAID, MAILED AS PROVIDED ABOVE.**

10.16 Waiver Of Jury Trial. **EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

10.17 Confidentiality. Each Agent and Lender shall hold all non-public information regarding the Credit Parties and their Subsidiaries and their businesses identified as such by Borrower and obtained by such Agent or Lender pursuant to the requirements hereof in accordance with such Agent's or Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by each Credit Party that, in any event, an Agent or a Lender may make (i) disclosures of such information to Affiliates or Related Parties of each Lender and Agent and to their respective current and prospective equity holders (including without limitation, partners) and Related Parties (and to other persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information

reasonably required by (A) any pledgee referred to in Section 10.6(e), (B) any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation by such Lender of any Commitments and/or Loans or any participations therein or (C) any direct or indirect investor or prospective investor in an Related Parties, (iii) disclosure to any rating agency when required by it; provided that, prior to any disclosure, such rating agency shall be instructed to preserve the confidentiality of any confidential information relating to the Credit Parties received by it from any Agent or any Lender, (iv) disclosure to any Lender's financing sources; provided that prior to any disclosure, such financing source is informed of the confidential nature of the information, (v) in connection with any litigation or dispute (including with respect to the exercise of remedies) which relates to this Agreement or any other Credit Document to which any Agent or any Lender is a party or is otherwise subject and (vi) disclosures required or requested by any Governmental Authority or representative thereof (including any self-regulatory authority, such as the NAIC) purporting to have authority over such Person or its Affiliates, respective current and prospective equity holders (including without limitation, partners) and Related Parties of such Person and of such Person's Affiliates or pursuant to legal or judicial process or other legal proceeding; provided that, unless specifically prohibited by applicable law or court order, such Agent or such Lender, as the case may be, shall make reasonable efforts to notify Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such Lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information. In addition, Agents 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 Agents and the Lenders in connection with the administration of this Agreement, the other Credit Documents, and the Commitments. Notwithstanding anything to the contrary set forth herein, each party hereto (and each of their respective employees, representatives or other agents) may disclose to any and all persons without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates. Notwithstanding the foregoing, on or after the Closing Date, Administrative Agent or any Lender may, at its own expense issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Credit Parties) (collectively, "Trade Announcements"). No Credit Party shall issue any Trade Announcement except disclosures required by applicable law, regulation, legal process or the rules of the Securities and Exchange Commission; provided that Borrower shall have provided Administrative Agent a reasonable opportunity and in any event not less than three (3) Business Days to review any such disclosures and shall revise and/or redact such disclosure as Administrative Agent may request so long as such revisions and/or redactions comply with applicable law, regulation, legal process or rules.

10.18 Usury Savings Clause. Notwithstanding any other provision herein, the aggregate interest rate charged or agreed to be paid with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent, for the benefit of the Lenders and Agents, as applicable, an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Highest Lawful Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest, throughout the contemplated term of the Obligations hereunder.

10.19 Counterparts. This Agreement may be executed in any number of counterparts (and by different parties hereto on different counterparts), each of which when so executed and delivered shall be deemed an original, but all such counterparts together

shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile, emailed .pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

10.20 Effectiveness; Entire Agreement; No Third Party Beneficiaries. Subject to Section 3.1, this Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written or telephonic notification of such execution and authorization of delivery thereof. This Agreement and the other Credit Documents represent the entire agreement of the Credit Parties and their Subsidiaries, Agents and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent or Lender relative to the subject matter hereof or thereof not expressly set forth or referred to herein or in the other Credit Documents. Nothing in this Agreement or in the other Credit Documents, express or implied, shall be construed to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder and, to the extent expressly contemplated hereby, Affiliates of each of Agents and Lenders, holders of participations in all or any part of a Lender's Commitments, Loans or in any other Obligations, and the Indemnitees) any rights, remedies, obligations, claims or liabilities under or by reason of this Agreement or the other Credit Documents. In the event of any conflict between the provisions of this Agreement and those of any other Credit Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of any Agent or Lender in any other Credit Document shall not be deemed a conflict with this Agreement.

10.21 Patriot Act. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Credit Party in accordance with the Patriot Act.

10.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Credit 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 Credit 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 undertaking, 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 Credit 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.

10.23 Judgment Currency. If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the "Original Currency") into another currency (the "Second Currency"), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, Administrative Agent could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Credit Party agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is

less than the amount originally due in the Original Currency, each Credit Party agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify Administrative Agent against such loss. The term "rate of exchange" in this Section 10.23 means the spot rate at which Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

10.24 Original Issue Discount. THE LOANS HAVE BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT WITHIN THE MEANING OF SECTION 1273(a) OF THE CODE AND TREASURY REGULATIONS SECTION 1.1273-1 FOR U.S. FEDERAL INCOME TAX PURPOSES. THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY OF THE LOANS MAY BE OBTAINED BY WRITING TO BORROWER AT ITS ADDRESS SET FORTH IN APPENDIX B.

10.25 Electronic Execution of Assignments and Credit Documents. The words "execution," "signed," "signature," "delivery," and words of like import in this Agreement or any other Credit Document shall in each case be deemed to include electronic signatures, electronic deliveries, signatures exchanged by electronic transmission, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that Administrative Agent or Collateral Agent may request, and upon any such request the Credit Parties shall be obligated to provide, manually executed "wet ink" signatures to any Credit Document. Without limiting the generality of the foregoing, each Credit Party hereby (i) agrees that, for all purposes, including in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Agents, the other Secured Parties and the Credit Parties, electronic images of this Agreement or any other Credit Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Credit Documents based solely on the lack of paper original copies of any Credit Documents, including with respect to any signature pages thereto.

10.26 No Fiduciary Duty. Each Agent, each Lender and each of their respective Affiliates (collectively, solely for purposes of this Section 10.26, the "Lenders"), may have economic interests that conflict with those of the Credit Parties, their equity holders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its equity holders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's- length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its equity holders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its equity holders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

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APPENDIX A

COMMITMENTS

Term Loan Commitments

Lender	Initial Commitment A	Initial Commitment B	Tranche 1 Commitment	Tranche 2 Commitment	Tranche 3 Commitment	Term Loan Commitment (Total)

CCM Denali Debt Holdings, LP	$ 8,400,000	$ 66,600,000	$ 30,000,000	$ 65,000,000	$ 40,500,000	**$ 210,500,000**

Revolving Loan Commitments

Lender	**Revolving Commitment**
CCM Denali Debt Holdings, LP	$ 105,000,000

APPENDIX B

NOTICE ADDRESSES

To any Credit Party:

EOS Energy Enterprises, Inc.
3920 Park Avenue
Edison, New Jersey 08820
Attention: [xxx]
E-mail: [xxx]

in each case, with a copy to (which shall not constitute notice):
Haynes and Boone LLP
30 Rockefeller Plaza
26th Floor
Attention: Alexander Grishman; Gilbert Porter
Email: alexander.grishman@haynesboone.com; gilbert.porter@haynesboone.com
Telephone: (212) 918-8965; (212) 659-4965

To Administrative Agent or Collateral Agent:

CCM Denali Debt Holdings, LP
c/o Cerberus Capital Management, L.P.
875 Third Avenue, 10th Floor
New York, NY 10022
Attention: [xxx]
Phone: [xxx]
Email: [xxx]
Attention: [xxx]
Email: [xxx]

with a copy to (which shall not constitute notice):

Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Attn: Matthew Bartus; Michael Tollini
Email: mbartus@cooley.com; mtollini@cooley.com
Telephone: (415) 693-2056; (202) 962-8380

Exhibit B

Compliance Certificate

Exhibit C

Appendices to Credit Agreement

Exhibit D

Conformed Security Agreement

Exhibit 99.1

For release

Eos Energy Closes $303.5 Million Loan Guaranteed by the U.S. Department of Energy to Support Project AMAZE and American Made Manufacturing Expansion

Loan supports next phase of Company's growth, expected to bring annual production capacity to 8 GWh, meeting long duration battery energy storage systems' growing demand

First Title 17 Battery loan closed under the current administration after an application and approval process that began in January 2021

Loan supports innovative technology development and closes 15 months after conditional loan commitment and detailed due diligence review

Eos' technology combined with Cerberus Capital Management and DOE funding addresses critical needs essential to long-term United States energy security

TURTLE CREEK, Pa., Dec. 03, 2024 — Eos Energy Enterprises, Inc. (NASDAQ: EOSE) ("Eos" or the "Company"), a leading provider of safe, scalable, efficient, and sustainable zinc-based long duration energy storage systems, today announced the successful closing of a $303.5 million loan guaranteed by the U.S. Department of Energy's ("DOE") Loan Programs Office ("LPO") ("the DOE loan"), marking the first Title 17 battery loan closed under the current administration. The DOE loan is a key step in advancing Project American Made Zinc Energy (AMAZE) and is expected to fund the expansion of Eos' manufacturing capacity to 8 GWh by 2027 to meet the growing demand for longer duration battery energy storage systems.

"Five years ago, we made the strategic decision to bring our manufacturing operations back to the U.S. from China – a move that has been transformative to our business and positioned Eos at the forefront of the American manufacturing renaissance," said Eos Chief Executive Officer Joe Mastrangelo. "Since then, we've made significant advancements in our battery technology, retooled our manufacturing facilities for greater efficiency, and established a U.S.- based supply chain with over 90% domestic content, all of which has brought us to this milestone today with the DOE. The DOE loan provides capital to scale our operations to meet the surging demand for reliable, long-duration energy storage solutions, all while supporting American manufacturing."

According to Fortune Business Insights, the battery energy storage system market in the U.S. is projected to grow significantly, reaching an estimated value of USD $31.4 billion by 2032, driven by the increasing adoption of renewable energy and the need for enhanced grid stability. To meet this demand, the Company, backed by its September 30, 2024, $589 million order backlog and $14.2 billion commercial pipeline, plans to use the funding to build four fully automated, state-of-the-art manufacturing lines. With one line already in commercial operation and having achieved 10-second battery manufacturing cycle times, these lines are expected to enable the production of Eos' zinc-based batteries designed to offer a reliable, cost-effective, and safe alternative to incumbent technologies and support the transition to a more sustainable energy grid.

Project AMAZE is designed to position Eos at the forefront of the clean energy transition, with the Company's goal of achieving 8 GWh of capacity by 2027, driven by increasing customer demand. The final loan guarantee amount of $303.5 million is lower than the amount in the Company's August 2023 conditional commitment driven by Project AMAZE operational costs coming in lower than forecast and the addition of the strategic investment by Cerberus Capital Management announced in June 2024. With the DOE's backing and the Delayed Draw Term Loan from Cerberus, Eos believes it has the foundational capital necessary to drive long-term, profitable growth. Together, these partnerships are driving forward the Company's mission to accelerate the clean energy transition and address critical needs vital to the long-term energy security of the United States.

Eos Chief Financial Officer Nathan Kroeker added, "We are thrilled to reach this important milestone, which we view as a strong endorsement of Eos' proprietary Z3™ technology and our ability to manufacture in the U.S. Closing on the loan marks a key achievement in executing our multi-phase capital strategy. The DOE loan guarantee, alongside our strategic investment from Cerberus, is expected to provide the capital required to build a profitable manufacturing business and supports our progress as we execute the Project AMAZE roadmap."

Eos' manufacturing expansion under Project AMAZE is poised to meet growing customer demand while generating significant economic benefits in the Mon Valley, supporting long-term sustainable growth in the energy storage sector. From just two employees in 2019, the Company has transformed an empty building in the region into a world-class clean energy manufacturing hub, with an over 250-person full time employee workforce in Turtle Creek. The project is expected to maintain and create up to 1,000 temporary and permanent jobs, including numerous apprenticeship opportunities through Eos' Clean Energy Careers Program, in partnership with local high schools, trade schools, and workforce development programs.

LOAN DETAILS

The key terms and conditions of the DOE loan are summarized below:

Amount	● $303.5 million o Lower than previously announced conditional commitment driven by operating costs coming in below forecast and the addition of the strategic investment by Cerberus Capital Management announced in June 2024 o Structured as a four-Tranche loan facility with multiple disbursements to cover 80% of "Eligible Costs" in accordance with LPO regulations, with each Tranche structured to address the construction, startup and shakedown of a separate automated production line. o The initial funding under the DOE loan, which is expected within 45 days, will reimburse the Company for 80% of "Eligible Costs" paid by the Company in connection with the automated line installed earlier this Summer (Line 1)
Interest Rate	● U.S. Treasury rate based
Maturity Date	● June 15, 2034
Other Items	● Customary covenants and events of defaults for a project finance loan facility ● Customary conditions precedent to each advance for a project finance loan facility

Haynes Boone, LLP served as Eos' legal advisor.

About Eos Energy Enterprises

Eos Energy Enterprises, Inc. is accelerating the shift to clean energy with positively ingenious solutions that transform how the world stores power. Our breakthrough Znyth™ aqueous zinc battery was designed to overcome the limitations of conventional lithium-ion

technology. It is safe, scalable, efficient, sustainable, manufactured in the U.S., and the core of our innovative systems that today provides utility, industrial, and commercial customers with a proven, reliable energy storage alternative for 3 to 12-hour applications. Eos was founded in 2008 and is headquartered in Edison, New Jersey. For more information about Eos (NASDAQ: EOSE), visit eose.com.

Eos Contacts

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Forward Looking Statements

Except for the historical information contained herein, the matters set forth in this press release are forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements include, but are not limited to, statements regarding our expected revenue, contribution margins, orders backlog and opportunity pipeline for the fiscal year ended December 31, 2024, our path to profitability and strategic outlook, the tax credits available to our customers or to Eos pursuant to the Inflation Reduction Act of 2022, the delayed draw term loan with Cerberus, milestones thereunder and the anticipated use of proceeds therefrom, the DOE loan and statements regarding the receipt of funds under the DOE loan and the anticipated use of proceeds therefrom, obtaining the requisite approvals from the DOE to receive guarantees under the loan guarantee agreement, our ability to meet the applicable conditions precedent under the loan guarantee agreement, statements that refer to outlook, projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "would" and similar expressions may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements are based on our management's beliefs, as well as assumptions made by, and information currently available to, them. Because such statements are based on expectations as to future financial and operating results and are not statements of fact, actual results may differ materially from those projected.

Factors which may cause actual results to differ materially from current expectations include, but are not limited to: changes adversely affecting the business in which we are engaged; our ability to forecast trends accurately; our ability to generate cash, service indebtedness and incur additional indebtedness; our ability to achieve the operational milestones on the delayed draw term loan; our ability to raise financing in the future, including the discretionary revolving facility from Cerberus; risks associated with the credit agreement with Cerberus, including risks of default, dilution of outstanding Common Stock, consequences for failure to meet milestones and contractual lockup of shares; our customers' ability to secure project financing; the amount of final tax credits available to our customers or to Eos pursuant to the Inflation Reduction Act; uncertainties around our ability to meet the applicable conditions precedent to any funding under the DOE loan; our ability to continue to develop efficient manufacturing processes to scale and to forecast related costs and efficiencies accurately; fluctuations in our revenue and operating results; competition from existing or new competitors; our ability to convert firm order backlog and pipeline to revenue; risks associated with security breaches in our information technology systems; risks related to legal proceedings or claims; risks associated with evolving energy policies in the United States and other countries and the potential costs of regulatory compliance; risks associated with changes to the U.S. trade environment; risks resulting from the impact of global pandemics, including the novel coronavirus, Covid-19; our ability to maintain the listing of our shares of common stock on NASDAQ; our ability to grow our business and manage growth profitably, maintain relationships with customers and suppliers and retain our management and key employees; risks related to the adverse changes in general economic conditions, including inflationary pressures and increased interest rates; risk from supply chain disruptions and other impacts of geopolitical conflict; changes in applicable laws or regulations; the possibility that Eos may be adversely affected by other economic, business, and/or competitive factors; other factors beyond our control; risks related to adverse changes in general economic conditions; and other risks and uncertainties.

The forward-looking statements contained in this press release are also subject to additional risks, uncertainties, and factors, including those more fully described in the Company's most recent filings with the Securities and Exchange Commission, including the Company's most recent Annual Report on Form 10-K and subsequent reports on Forms 10-Q and 8-K. Further information on potential risks that could affect actual results will be included in the subsequent periodic and current reports and other filings that the Company makes with the Securities and Exchange Commission from time to time. Moreover, the Company operates in a very competitive and rapidly changing environment, and new risks and uncertainties may emerge that could have an impact on the forward-looking statements contained in this press release.

Forward-looking statements speak only as of the date they are made. Readers are cautioned not to put undue reliance on forward-looking statements, and, except as required by law, the Company assumes no obligation and does not intend to update or revise these forward-looking statements, whether as a result of new information, future events, or otherwise.

Key Metrics

Backlog. Our backlog represents the amount of revenue that we expect to realize from existing agreements with our customers for the sale of our battery energy storage systems and performance of services. The backlog is calculated by adding new orders in the current fiscal period to the backlog as of the end of the prior fiscal period and then subtracting the shipments in the current fiscal period. If the amount of an order is modified or cancelled, we adjust orders in the current period and our backlog accordingly, but do not retroactively adjust previously published backlogs. There is no comparable US-GAAP financial measure for backlog. We believe that the backlog is a useful indicator regarding the future revenue of our Company.

Pipeline. Our pipeline represents projects for which we have submitted technical proposals or non-binding quotes plus letters of intent ("LOI") or firm commitments from customers. Pipeline does not include lead generation projects.

Booked Orders. Booked orders are orders where we have legally binding agreements with a Purchase Order ("PO"), or Master Supply Agreement ("MSA") executed by both parties.

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Amendment Flag	false
Document Period End Date	Nov. 26, 2024
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Entity Central Index Key	0001805077
Entity Tax Identification Number	84-4290188
Entity Incorporation, State or Country Code	DE
Entity Address, Address Line One	3920 Park Avenue
Entity Address, City or Town	Edison
Entity Address, State or Province	NJ
Entity Address, Postal Zip Code	08820
City Area Code	732
Local Phone Number	225-8400
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 "nsuri": "http://xbrl.sec.gov/dei/2024",
 "localname": "DocumentsIncorporatedByReferenceTextBlock",
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  "http://eose.com/role/Cover"
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 "lang": {
  "en-us": {
   "role": {
    "label": "Documents Incorporated by Reference [Text Block]",
    "documentation": "Documents incorporated by reference."
   }
  }
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 "auth_ref": [
  "r3"
 ]
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"dei_EntityAddressAddressLine1": {
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 "localname": "EntityAddressAddressLine1",
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  "en-us": {
   "role": {
    "label": "Entity Address, Address Line One",
    "documentation": "Address Line 1 such as Attn, Building Name, Street Name"
   }
  }
 },
 "auth_ref": []
},
"dei_EntityAddressAddressLine2": {
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 "localname": "EntityAddressAddressLine2",
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  "en-us": {
   "role": {
    "label": "Entity Address, Address Line Two",
    "documentation": "Address Line 2 such as Street or Suite number"
   }
  }
 },
 "auth_ref": []
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"dei_EntityAddressAddressLine3": {
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 "nsuri": "http://xbrl.sec.gov/dei/2024",
 "localname": "EntityAddressAddressLine3",
 "presentation": [
  "http://eose.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Address, Address Line Three",
    "documentation": "Address Line 3 such as an Office Park"
   }
  }
 },
 "auth_ref": []
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"dei_EntityAddressCityOrTown": {
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 "nsuri": "http://xbrl.sec.gov/dei/2024",
 "localname": "EntityAddressCityOrTown",
 "presentation": [
  "http://eose.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Address, City or Town",
    "documentation": "Name of the City or Town"
   }
  }
 },
 "auth_ref": []
},
"dei_EntityAddressCountry": {
 "xbrltype": "countryCodeItemType",
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 "localname": "EntityAddressCountry",
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  "en-us": {
   "role": {
    "label": "Entity Address, Country",
    "documentation": "ISO 3166-1 alpha-2 country code."
   }
  }
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 "auth_ref": []
},
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 "localname": "EntityAddressPostalZipCode",
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 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Address, Postal Zip Code",
    "documentation": "Code for the postal or zip code"
   }
  }
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 "auth_ref": []
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"dei_EntityAddressStateOrProvince": {
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 "localname": "EntityAddressStateOrProvince",
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 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Address, State or Province",
    "documentation": "Name of the state or province."
   }
  }
 },
 "auth_ref": []
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"dei_EntityBankruptcyProceedingsReportingCurrent": {
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 "nsuri": "http://xbrl.sec.gov/dei/2024",
 "localname": "EntityBankruptcyProceedingsReportingCurrent",
 "presentation": [
  "http://eose.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
    "label": "Entity Bankruptcy Proceedings, Reporting Current",
    "documentation": "For registrants involved in bankruptcy proceedings during the preceding five years, the value Yes indicates that the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court; the value No indicates the registrant has not. Registrants not involved in bankruptcy proceedings during the preceding five years should not report this element."
   }
  }
 },
 "auth_ref": [
  "r6"
 ]
},
"dei_EntityCentralIndexKey": {
 "xbrltype": "centralIndexKeyItemType",
 "nsuri": "http://xbrl.sec.gov/dei/2024",
 "localname": "EntityCentralIndexKey",
 "presentation": [
  "http://eose.com/role/Cover"
 ],
 "lang": {
  "en-us": {
   "role": {
```

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     "label": "Entity Central Index Key",
     "documentation": "A unique 10-digit SEC-issued value to identify entities that have filed disclosures with the SEC. It is commonly abbreviated as CIK."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntityCommonStockSharesOutstanding": {
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  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityCommonStockSharesOutstanding",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Common Stock, Shares Outstanding",
     "documentation": "Indicate number of shares or other units outstanding of each of registrant's classes of capital or common stock or other ownership interests, if and as stated on cover of related periodic report. Where multiple classes or units exist define each class/interest by adding class of stock items such as Common Class A [Member], Common Class B [Member] or Partnership Interest [Member] onto the Instrument [Domain] of the Entity Listings, Instrument."
    }
   }
  },
  "auth_ref": []
 },
 "dei_EntityCurrentReportingStatus": {
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  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityCurrentReportingStatus",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Current Reporting Status",
     "documentation": "Indicate 'Yes' or 'No' whether registrants (1) have 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 registrants were required to file such reports), and (2) have been subject to such filing requirements for the past 90 days. This information should be based on the registrant's current or most recent filing containing the related disclosure."
    }
   }
  },
  "auth_ref": []
 },
 "dei_EntityEmergingGrowthCompany": {
  "xbrltype": "booleanItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityEmergingGrowthCompany",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Emerging Growth Company",
     "documentation": "Indicate if registrant meets the emerging growth company criteria."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntityExTransitionPeriod": {
  "xbrltype": "booleanItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityExTransitionPeriod",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Elected Not To Use the Extended Transition Period",
     "documentation": "Indicate if an emerging growth company has elected not to use the extended transition period for complying with any new or revised financial accounting standards."
    }
   }
  },
  "auth_ref": [
   "r19"
  ]
 },
 "dei_EntityFileNumber": {
  "xbrltype": "fileNumberItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityFileNumber",
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   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity File Number",
     "documentation": "Commission file number. The field allows up to 17 characters. The prefix may contain 1-3 digits, the sequence number may contain 1-8 digits, the optional suffix may contain 1-4 characters, and the fields are separated with a hyphen."
    }
   }
  },
  "auth_ref": []
 },
 "dei_EntityFilerCategory": {
  "xbrltype": "filerCategoryItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityFilerCategory",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Filer Category",
     "documentation": "Indicate whether the registrant is one of the following: Large Accelerated Filer, Accelerated Filer, Non-accelerated Filer. Definitions of these categories are stated in Rule 12b-2 of the Exchange Act. This information should be based on the registrant's current or most recent filing containing the related disclosure."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntityIncorporationStateCountryCode": {
  "xbrltype": "edgarStateCountryItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityIncorporationStateCountryCode",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Incorporation, State or Country Code",
     "documentation": "Two-character EDGAR code representing the state or country of incorporation."
    }
   }
  },
  "auth_ref": []
 },
 "dei_EntityInteractiveDataCurrent": {
  "xbrltype": "yesNoItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityInteractiveDataCurrent",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Interactive Data Current",
     "documentation": "Boolean flag that is true when the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files)."
    }
   }
  },
  "auth_ref": [
   "r16"
  ]
 },
 "dei_EntityPrimarySicNumber": {
  "xbrltype": "sicNumberItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityPrimarySicNumber",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Primary SIC Number",
     "documentation": "Primary Standard Industrial Classification (SIC) Number for the Entity."
    }
   }
  },
  "auth_ref": [
   "r14"
  ]
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 "dei_EntityPublicFloat": {
  "xbrltype": "monetaryItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityPublicFloat",
  "crdr": "credit",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Public Float",
     "documentation": "The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter."
    }
   }
  },
  "auth_ref": []
 },
 "dei_EntityRegistrantName": {
  "xbrltype": "normalizedStringItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityRegistrantName",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Registrant Name",
     "documentation": "The exact name of the entity filing the report as specified in its charter, which is required by forms filed with the SEC."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntityShellCompany": {
  "xbrltype": "booleanItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityShellCompany",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Shell Company",
     "documentation": "Boolean flag that is true when the registrant is a shell company as defined in Rule 12b-2 of the Exchange Act."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntitySmallBusiness": {
  "xbrltype": "booleanItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntitySmallBusiness",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Small Business",
     "documentation": "Indicates that the company is a Smaller Reporting Company (SRC)."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
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 "dei_EntityTaxIdentificationNumber": {
  "xbrltype": "employerIdItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityTaxIdentificationNumber",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Tax Identification Number",
     "documentation": "The Tax Identification Number (TIN), also known as an Employer Identification Number (EIN), is a unique 9-digit value assigned by the IRS."
    }
   }
  },
  "auth_ref": [
   "r2"
  ]
 },
 "dei_EntityVoluntaryFilers": {
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  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityVoluntaryFilers",
  "presentation": [
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  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Voluntary Filers",
     "documentation": "Indicate 'Yes' or 'No' if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act."
    }
   }
  },
  "auth_ref": []
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 "dei_EntityWellKnownSeasonedIssuer": {
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  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "EntityWellKnownSeasonedIssuer",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Entity Well-known Seasoned Issuer",
     "documentation": "Indicate 'Yes' or 'No' if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Is used on Form Type: 10-K, 10-Q, 8-K, 20-F, 6-K, 10-K/A, 10-Q/A, 20-F/A, 6-K/A, N-CSR, N-Q, N-1A."
    }
   }
  },
  "auth_ref": [
   "r17"
  ]
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 "dei_Extension": {
  "xbrltype": "normalizedStringItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "Extension",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Extension",
     "documentation": "Extension number for local phone number."
    }
   }
  },
  "auth_ref": []
 },
 "dei_LocalPhoneNumber": {
  "xbrltype": "normalizedStringItemType",
  "nsuri": "http://xbrl.sec.gov/dei/2024",
  "localname": "LocalPhoneNumber",
  "presentation": [
   "http://eose.com/role/Cover"
  ],
  "lang": {
   "en-us": {
    "role": {
     "label": "Local Phone Number",
     "documentation": "Local phone number for entity."
    }
   }
  },
  "auth_ref": []
 },
 "dei_NoTradingSymbolFlag": {
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   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "No Trading Symbol Flag",
      "documentation": "Boolean flag that is true only for a security having no trading symbol."
     }
    }
   },
   "auth_ref": []
  },
  "dei_OtherReportingStandardItemNumber": {
   "xbrltype": "otherReportingStandardItemNumberItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "OtherReportingStandardItemNumber",
   "presentation": [
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   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Other Reporting Standard Item Number",
      "documentation": "\"Item 17\" or \"Item 18\" specified when the basis of accounting is neither US GAAP nor IFRS."
     }
    }
   },
   "auth_ref": [
    "r13"
   ]
  },
  "dei_PreCommencementIssuerTenderOffer": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "PreCommencementIssuerTenderOffer",
   "presentation": [
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   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Pre-commencement Issuer Tender Offer",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r7"
   ]
  },
  "dei_PreCommencementTenderOffer": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "PreCommencementTenderOffer",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Pre-commencement Tender Offer",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r9"
   ]
  },
  "dei_Security12bTitle": {
   "xbrltype": "securityTitleItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "Security12bTitle",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Title of 12(b) Security",
      "documentation": "Title of a 12(b) registered security."
     }
    }
   },
   "auth_ref": [
    "r1"
   ]
  },
  "dei_Security12gTitle": {
   "xbrltype": "securityTitleItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "Security12gTitle",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Title of 12(g) Security",
      "documentation": "Title of a 12(g) registered security."
     }
    }
   },
   "auth_ref": [
    "r5"
   ]
  },
  "dei_SecurityExchangeName": {
   "xbrltype": "edgarExchangeCodeItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "SecurityExchangeName",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Security Exchange Name",
      "documentation": "Name of the Exchange on which a security is registered."
     }
    }
   },
   "auth_ref": [
    "r4"
   ]
  },
  "dei_SecurityReportingObligation": {
   "xbrltype": "securityReportingObligationItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "SecurityReportingObligation",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Security Reporting Obligation",
      "documentation": "15(d), indicating whether the security has a reporting obligation under that section of the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r10"
   ]
  },
  "dei_SolicitingMaterial": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "SolicitingMaterial",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Soliciting Material",
      "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as soliciting material pursuant to Rule 14a-12 under the Exchange Act."
     }
    }
   },
   "auth_ref": [
    "r8"
   ]
  },
  "us-gaap_StatementClassOfStockAxis": {
   "xbrltype": "stringItemType",
   "nsuri": "http://fasb.org/us-gaap/2024",
   "localname": "StatementClassOfStockAxis",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Class of Stock [Axis]"
     }
    }
   },
   "auth_ref": []
  },
  "us-gaap_StatementLineItems": {
   "xbrltype": "stringItemType",
   "nsuri": "http://fasb.org/us-gaap/2024",
   "localname": "StatementLineItems",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Statement [Line Items]"
     }
    }
   },
   "auth_ref": []
  },
  "us-gaap_StatementTable": {
   "xbrltype": "stringItemType",
   "nsuri": "http://fasb.org/us-gaap/2024",
   "localname": "StatementTable",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Statement [Table]"
     }
    }
   },
   "auth_ref": []
  },
  "dei_TradingSymbol": {
   "xbrltype": "tradingSymbolItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "TradingSymbol",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Trading Symbol",
      "documentation": "Trading symbol of an instrument as listed on an exchange."
     }
    }
   },
   "auth_ref": []
  },
  "EOSE_WarrantsEachExercisableForOneShareOfCommonStockMember": {
   "xbrltype": "domainItemType",
   "nsuri": "http://eose.com/20241126",
   "localname": "WarrantsEachExercisableForOneShareOfCommonStockMember",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
      "label": "Warrants, each exercisable for one share of common stock"
     }
    }
   },
   "auth_ref": []
  },
  "dei_WrittenCommunications": {
   "xbrltype": "booleanItemType",
   "nsuri": "http://xbrl.sec.gov/dei/2024",
   "localname": "WrittenCommunications",
   "presentation": [
    "http://eose.com/role/Cover"
   ],
   "lang": {
    "en-us": {
     "role": {
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  "Subsection": "g"
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