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): August 3, 2026

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.)

Two Allegheny Center
Nova Tower 2
Pittsburgh, Pennsylvania 15212
(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
Warrant, each whole warrant exercisable to purchase one share of Common Stock at an exercise price of $5.481	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.

Amended and Restated Limited Liability Company Agreement for Frontier

On August 4, 2026, Eos Energy Enterprises, Inc. (the "**Company**"), CCM Frontier JV Holdco, LLC, an affiliate of Cerberus Capital Management, L.P. ("**CCM Frontier**") and HBC MSF Capital Solutions Blocker II LLC, an affiliate of Hudson Bay Capital Management LP ("**HBC**") entered into an Amended and Restated Limited Liability Company Agreement (the "**A&R LLCA**") for Frontier Power USA Parent, LLC, a Delaware limited liability company (the "**JV Company**").

The A&R LLCA was entered into pursuant to that certain binding amended and restated term sheet (the "**A&R Term Sheet**") dated June 30 ,2026 by and among the Company, CCM Frontier and HBC, as previously disclosed in a Current Report on Form 8-K, filed on June 30, 2026.

Equity Ownership

The Company contributed $112,637,878.86 (the "**Initial Class B Contribution**") to the JV Company in exchange for 112,637,879 Class B Units of the JV Company ("**Class B Units**") at a price of $1.00 per Class B Unit.

CCM Frontier (or its applicable designated affiliate) (a) received 50,000,001 Class A-1 Units of the JV Company ("**Class A-1 Units**") as founder's equity in consideration for the contracts, contacts, investment opportunities, subject matter expertise and other going concern value with respect to the frontier power platform developed by affiliates of CCM Frontier (the "**Pre-Closing Contribution**"), (b) contributed $100 million (the "**Initial Class A-2 Contribution**") to the JV Company (a portion of which may be contributed and utilized prior to the closing, including for purposes of the payment of the deposit under a capacity reservation agreement between the Company and the JV Company) in exchange for 100,000,000 Class A-2 Units of the JV Company ("**Class A-2 Units**" and, together with the Class A-1 Units, the "**Class A Units**"), at a price of $1.00 per Class A-2 Unit, and (c) received the CCM Warrants (as defined below).

HBC (or investment funds managed by HBC or its affiliates) (a) contributed $50 million (the "**Initial Class C Contribution**") to the JV Company in exchange for 50,000,000 Class C Units ("**Class C Units**" and, together with the Class A Units and the Class B Units, the "**Preferred Units**"), at a price of $1.00 per Class C Unit, and (b) received the HBC Warrants (as defined below).

Governance

The JV Company will be managed by a board of managers that will initially include seven members, four of which will be appointed by CCM Frontier and up to three of which will be appointed by the Company (subject to the Company maintaining certain ownership thresholds in the JV Company). The board of managers will have full and exclusive power to conduct and exercise control over the activities of the Company, subject to certain reserved and fundamental matters that will require the consent of a manager appointed by the Company or the Company, as applicable (so long as the Company maintains certain ownership thresholds in the JV Company).

Day to day oversight of the JV Company's development projects will be delegated to and performed by an appointee of CCM Frontier, which is initially an affiliate of CCM Frontier, pursuant to a management services agreement on customary terms and conditions agreed to by CCM Frontier and the Company.

Distributions

In the event of a liquidation of the JV Company, distributions will be made as follows: (a) first to CCM Frontier and HBC until they have received a return of their invested capital (excluding, with respect to CCM Frontier, the Pre-Closing Contribution), (b) second to the Company until it has received a return of its invested capital, (c) third to CCM Frontier until it has received a return of the Pre-Closing Contribution, (d) fourth, to CCM Frontier, the Company and HBC pro rata until they have received a pre-tax IRR of 10% compounded quarterly on invested capital (which shall include, for the avoidance of doubt, in respect of CCM Frontier the Pre-Closing Contribution and the Initial Class A-2 Contribution), (e) fifth to the holders of (i) Preferred Units pro rata and (ii) any incentive units in accordance with any management incentive plan adopted by the JV Company. Amounts previously distributed to the holders of Preferred Units and incentive units other than in a liquidation of the JV Company will be credited against amounts that would otherwise be distributable to the holders of Preferred Units and incentive units in a liquidation of the Company.

Distributions of available cash by the JV Company other than in a liquidation will be made as follows: (a) first to CCM Frontier, HBC and the Company pro rata (based on number of Preferred Units held) until they have received (i) a return of their invested capital (which shall include, for the avoidance of doubt, in respect of CCM Frontier the Pre-Closing Contribution and the Initial Class A-2 Contribution) and (ii) a pre-tax IRR of 10% (compounded quarterly) on such invested capital (which shall include, for the avoidance of doubt, in respect of CCM Frontier the Pre-Closing Contribution and the Initial Class A-2 Contribution), and (b) second to the holders of (i) Preferred Units pro rata and (ii) any incentive units in accordance with any management incentive plan adopted by the JV Company.

Transfers

Subject to HBC’s Exchange Right (as defined in the Exchange Agreement), CCM Frontier, HBC and the Company will not be permitted to transfer their respective Preferred Units in the JV Company prior to the third anniversary of the closing of the transactions contemplated by the A&R Term Sheet, except for certain permitted transfers to affiliates. After the third anniversary of the closing, CCM Frontier, HBC and the Company will be permitted to transfer their respective Preferred Units, subject to a right of first offer in favor of the non-transferring party.

The foregoing description of the A&R LLCA does not purport to be complete and is qualified in its entirety by reference to the full text of the A&R LLCA, which is filed as Exhibit 10.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Contribution and Warrants Issuance Agreement

On August 4, 2026, the Company and JV Company entered into a contribution and warrants issuance agreement (the “**Contribution Agreement**”).

As described above in “Amended and Restated Limited Liability Company Agreement for Frontier—Equity Ownership”, under the Contribution Agreement, JV Company issued 112,637,879 Class B Units (“**Class B Units**”) to the Company. Under the Contribution Agreement, the Company issued the CCM Warrants and HBC Warrants to JV Company, and such warrants were ultimately issued to CCM Frontier and HBC, respectively, under certain other agreements.

The foregoing description of the Contribution Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Contribution Agreement, which is attached as Exhibit 10.2 to this Current Report on Form 8-K, and is incorporated herein by reference.

Warrant Agreement

On August 3, 2026, the Company and Continental Stock Transfer & Trust Company entered into a warrant agreement (the “**Warrant Agreement**”) governing the terms of the Warrants (as defined below).

Pursuant to the A&R Term Sheet and in consideration for the Initial Class A-2 Contribution, the Company issued, directly or indirectly, to CCM Frontier 20,017,772 warrants (the “**CCM Warrants**”), each CCM Warrant is exercisable for one share of the Company’s common stock, par value $0.0001 per share, (the “**Common Stock**”) at an exercise price of $5.481, on the terms and subject to the conditions set forth in the Warrant Agreement. Pursuant to the A&R Term Sheet and in consideration for the Initial Class C Contribution, the Company issued, directly or indirectly, to HBC 10,008,886 warrants (the “**HBC Warrants**” and together with the CCM Warrants, the “**Warrants**”), each HBC Warrant is exercisable for one share of Common Stock at an exercise price of $5.481, on the terms and subject to the conditions set forth in the Warrant Agreement.

Each Warrant will be exercisable immediately upon issuance and will expire on the tenth anniversary of the issuance, unless earlier exercised or redeemed.

Each Warrant will be exercisable for cash or on a cashless basis. Each Warrant will be exercisable upon surrender of the Warrant, together with a notice of exercise, to the Company. Promptly after CCM Frontier or HBC, as the case may be, exercises any Warrants and, if applicable, the Company receives payment for the shares of Common Stock issuable upon such exercise, the Company will deliver to CCM or HBC, as the case may be, certificates or book-entries for the shares of Common Stock acquired and, if such Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing a warrant to purchase the shares of Common Stock not yet acquired. If, upon exercise of any Warrant, CCM or HBC, as the case may be, would be entitled to receive a fractional interest in a share of Common Stock, the Company will round down to the next whole share of Common Stock.

The CCM or HBC, as the case may be, will not have the rights or privileges of holders of Common Stock and any voting rights until it exercises the Warrants and receives shares of Common Stock. After the issuance of shares of Common Stock upon exercise of the Warrants, in whole or in part, CCM Frontier or HBC, as the case may be, will be entitled to one (1) vote for each share of Common Stock held of record on all matters to be voted on by stockholders.

The Warrants contain customary anti-dilution adjustments upon the occurrence of any dividend on shares of Common Stock payable in Common Stock, or any subdivision or combination with respect to the Common Stock. Upon the occurrence of any fundamental transaction, the Warrants will become exercisable for the same securities, cash, and property as would be payable for the shares issuable upon exercise of the unexercised portion of the Warrants as if such shares were outstanding on the record date for the acquisition and subsequent closing, and the exercise price shall be adjusted accordingly.

The Warrants will be issued in a private placement under Section 4(a)(2) of the Securities Act of 1933, as amended (the "**Act**"), and, along with the shares of Common Stock underlying the Warrants, not to be registered under the Act, or applicable state securities laws. The shares of Common Stock underlying the Warrants will be subject to customary registration rights, and after issuance may not be offered or sold in the United States except pursuant to an effective registration statement or an applicable exemption from the registration requirements of the Act and such applicable state securities laws.

The foregoing description of the Warrant Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Warrant Agreement and the Form of Warrant, which are attached as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K, and are incorporated herein by reference.

Exchange Agreement

On August 4, 2026, the Company, JV Company and HBC entered into an exchange agreement (the "**Exchange Agreement**").

The Company agreed to provide HBC the right to exchange, from time to time, (the "**Exchange Right**" and each such exchange, an "**Exchange**"), under the conditions described in the Exchange Agreement, up to 50,000,000 Class C Units of JV Company held by HBC (the "**Holder Units**") into the Company's Common Stock (the "**Exchange Shares**") based on $1.00 per Class C Unit (subject to customary adjustments for any unit split, dividends, distributions, recapitalizations, consolidations, mergers and other similar events), exchangeable for up to 9,122,422 shares of Common Stock at the applicable price per share of Common Stock as described in the Exchange Agreement. Each exercise of the Exchange Rights, if any, will be made in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act.

Subject to the adjustments described in the Exchange Agreement, the price per share of Common Stock for the Exchange Rights shall be determined as follows:

- if prior to December 31, 2026, (x) any portion, up to 50%, of the Holder Units at a price per share of Common Stock equal to $15.00, (y) any portion, up to 75%, of the Holder Units at a price per share of Common Stock equal to $17.50 and/or (z) all, or any portion, of the Holder Units at a price per share of Common Stock equal to $20 price per share;

- from and after December 31, 2026, all, or any portion, of the Holder Units at a price per share of Common Stock equal to $5.481; and/or

- all, or any portion, of the Holder Units at any time following the occurrence of (i) any voluntary or involuntary bankruptcy, change of control, liquidation, dissolution or winding up of JV Company, (ii) the delivery of notice to HBC by any member or JV Company (or any of their agents or representatives) of the intent by any person to exercise any drag-along rights (pursuant to the A&R LLCA), including the delivery of notice with respect to a potential Company Sale (as defined in the A&R LLCA) and which, for the avoidance of doubt, shall not require the prior consummation of the transaction(s) contemplated by such Company Sale, (iii) the occurrence of, or the entering into any contract or arrangement agreeing to do or take, any of the actions set forth in clauses (e) and (h) under "Reserved Matters" attached to the A&R LLCA as Schedule D-1 and (iv) the occurrence of, or the entering into any contract or arrangement agreeing to do or take, any of the actions set forth in clauses (a) (provided that for the purposes therein, such clause shall be deemed to include a pro rata redemption or repurchase of all Preferred Units at the same price per unit) and (d) under "Fundamental Matters" attached to the A&R LLCA as Schedule D-2, at a price per share of Common Stock equal to $5.481.

HBC may exercise its Exchange Rights only for a whole number of Exchange Shares. In no event will the Company be required to net cash settle any Exchange Rights exercise. If HBC would be entitled, upon the exercise of its Exchange Rights, to receive a fractional interest in an Exchange Share, the Company shall round down to the nearest whole number, the number of Exchange Shares to be issued to HBC.

The Company shall not effect any exercise of the Exchange Rights, and HBC shall not have the right to exercise any portion of such Exchange Rights, and any such exercise shall be null and void and shall be cancelled ab initio and treated as if never made, to the extent that immediately prior to or following the exercise of the Exchange Rights, HBC, together with its Attribution Parties (as defined in the Exchange Agreement), collectively beneficially owns or would beneficially own in excess of 9.8% of the shares of Common Stock that would be issued and outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of the Exchange Rights.

The Exchange Rights do not entitle HBC to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter.

The foregoing description of the Exchange Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Exchange Agreement, which is filed as Exhibit 4.3 to this Current Report on Form 8-K, and is incorporated herein by reference.

Side Letter Agreement

In connection with the Exchange Agreement, on August 4, 2026, the Company, CCM Frontier and the JV Company entered into a side letter agreement (the "**Side Letter Agreement**"). Pursuant to the Side Letter Agreement, in the event that, from time to time, HBC exercises its Exchange Right, then CCM Frontier will have the right, but not the obligation, to acquire any or all of the Exchange Units transferred by HBC to the Company that remain outstanding and held by the Company after giving effect to the cancellation and reissuance as set forth below (the "**Exchange Call Right**"). The Company will promptly, and in any event no later than five (5) business days following the consummation of an Exchange, provide written notice to CCM Frontier and JV Company of such Exchange, specifying the number of Exchange Units transferred by HBC to the Company in connection therewith (the "**Exchange Notice**").

Upon the consummation of an Exchange, a number of Exchange Units equal to ten percent (10%) of the Exchange Units subject to such Exchange will automatically be cancelled by JV Company, and concurrently with such cancellation JV Company will issue to CCM Frontier a number of Class C Units equal to the number of Exchange Unis so cancelled. If CCM Frontier desires to exercise its Exchange Call Rights with respect to an Exchange, then CCM Frontier will deliver written notice hereof to the Company, no later than ten (10) business days following CCM Frontier's receipt of the Exchange Notice, specifying the number of Exchange Units CCM Frontier desires to acquire (which may be any or all of the Exchange Units remaining outstanding and held by the Company after giving effect to the cancellation and reissuance (the "**Call Units**"), which notice will be irrevocable. Upon receipt of such written notice, the Company will be required to sell to CCM Frontier, and CCM Frontier will be required to purchase from the Company, such Call Units for a purchase price in cash equal to $1.00 per Call Unit.

In addition, pursuant to the Side Letter Agreement, we agree to indemnify CCM Frontier and JV Company and its subsidiaries, and their respective managers, officers, employees, agents and representatives from and against any and all losses or damages arising out of or resulting from (i) any breach by the Company of any representation, warranty, covenant or obligation of the Company under the Exchange Agreement, (ii) any failure by the Company to timely issue Exchange Shares or comply with its obligations under the Exchange Documents, (iii) any third-party claims (including claims by stockholders of the Company) arising from or relating to the issuance of Exchange Shares, (iv) any tax liabilities (or a portion thereof) imposed on JV Company or any of tis subsidiaries as a result of or in connection with any Exchange, solely to the extent attributable to actions or omissions of the Company, and (v) any securities law violations by the Company in connection with any Exchange or the issuance of Exchange Shares.

The foregoing description of the Side Letter Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Side Letter Agreement, which is attached as Exhibit 10.3 to this Current Report on Form 8-K, and is incorporated herein by reference.

Registration Rights Agreement

On August 4, 2026, the Company entered into registration rights agreements with each of CCM Frontier and HBC (together, the "**Registration Rights Agreements**").

Under the Registration Rights Agreements, the Company is required to, within thirty (30) calendar days after the Closing (as defined in the Registration Rights Agreement), file a registration statement registering the resale of the Registrable Securities (as defined in the Registration Rights Agreements). The Company will bear the expenses incurred in connection with the filing of any such registration statements. The Registration Rights Agreements do not contemplate the payment of penalties or liquidated damages as a result of a failure to register, or delays with respect to the registration of, the Registrable Securities.

Under the Registration Rights Agreements, we agree to indemnify the stockholders holding Registrable Securities and certain persons or entities related to such stockholders against any losses or damages resulting from any untrue statement or omission of a material fact in any prospectus or prospectus pursuant to which they sell Registrable Securities, unless the liability arose from their misstatement or omission, and these stockholders, if Registrable Securities held by these stockholders are included in the securities as to which registration, qualification or compliance is being effected, agree to indemnify the Company and certain persons or entities related to the Company against all losses caused by their misstatements or omissions in those documents in reliance on the information provided by such stockholder.

The foregoing description of the Registration Rights Agreements do not purport to be complete and are qualified in its entirety by reference to the full text of the Registration Rights Agreements, which are filed as Exhibits 4.4 and 4.5 to this Current Report on Form 8-K, and are incorporated herein by reference.

Amendment to Loan Guarantee Agreement

As previously disclosed, on November 26, 2024, the Company entered into a loan guarantee agreement, which was subsequently amended by that certain Amendment to Loan Guarantee Agreement entered into on March 25, 2025 and that certain Second Amendment to Loan Guarantee Agreement entered into on February 13, 2026 by and between the Company and the United States Department of Energy, an agency of the United States of America (the "**DOE**" and, such agreements collectively, the "**Loan Agreement**"). On August 4, 2026, the Company entered into that certain Third Amendment to Loan Guarantee Agreement (the "**Third Amendment**"), by and between the DOE and the Company, pursuant to which, among other things, the Loan Agreement was amended to, (i) implement the Thorn Hill site as an approved project site, (ii) permit certain investments into the JV Company and related transactions, (iii) permit the entry into the purchase commitment and capacity reservation agreement and commercial framework guidelines in connection with the Frontier transactions, as well as certain master supply agreements, purchase orders, and related documentation and agreements.

This description of the Third Amendment does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Third Amendment, which is attached as Exhibit 10.4 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K with respect to the Warrants and the Exchange Rights is incorporated by reference into this Item 3.02.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit Number	Description of Document
4.1	Warrant Agreement dated August 3, 2026 by and between Eos Energy Enterprises, Inc. and Continental Stock Transfer & Trust Company.
4.2	Form of Warrant Certificate (included as Exhibit A to Exhibit 4.1 hereto).
4.3	Exchange Agreement dated August 4, 2026 by and between Eos Energy Enterprises, Inc., Frontier Power USA Parent, LLC and HBC MSF Capital Solutions Blocker II LLC.
4.4	Registration Rights Agreement dated August 4, 2026 by and between Eos Energy Enterprises, Inc. and CCM Frontier JV Holdco, LLC.
4.5	Registration Rights Agreement dated August 4, 2026 by and between Eos Energy Enterprises, Inc. and HBC MSF Capital Solutions Blocker II LLC.
10.1	Amended and Restated Limited Liability Company Agreement dated August 4, 2026 by and among Eos Energy Enterprises, Inc., CCM Frontier JV Holdco, LLC and HBC MSF Capital Solutions Blocker II LLC.
10.2	Contribution and Warrants Issuance Agreement dated August 4, 2026 by and between Eos Energy Enterprises, Inc. and Frontier Power USA Parent, LLC.
10.3	Side Letter dated August 4, 2026 by and between Eos Energy Enterprises, Inc., CCM Frontier JV Holdco, LLC, and Frontier Power USA Parent, LLC.
10.4	Third Amendment to Loan Guarantee Agreement, dated August 4, 2026, by and between the Company and the United States Department of Energy
104	Cover page of this Current Report on Form 8-K formatted in Inline XBRL

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: August 6, 2026	By:	/s/ Alessandro Lagi
		Name: Alessandro Lagi
		Title: Chief Financial Officer

WARRANT AGREEMENT

THIS WARRANT AGREEMENT (this "***Agreement***"), dated as of August 3, 2026, is by and between Eos Energy Enterprises, Inc., a Delaware corporation (the "***Company***"), and Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (in such capacity, the "***Warrant Agent***", and also referred to herein as the "***Transfer Agent***").

WHEREAS, the Company is engaged in a public rights offering of units ("***Units***"), with each Unit to consist of one (1) share of the Company's common stock, par value $0.0001 per share ("***Common Stock***"), and 0.4388 warrants (the "***Public Warrants***") to purchase Common Stock;

WHEREAS, on or about August 4, 2026, the Company and Frontier Power USA Parent, LLC (the "***JV Company***") will enter into a Contribution and Warrants Issuance Agreement under which the Company will agree to issue to the JV Company an aggregate of 30,026,658 warrants (the "***Private Placement Warrants***" and together with the Public Warrants, the "***Warrants***") to purchase shares of Common Stock, each bearing the legend set forth in Exhibit B hereto;

WHEREAS, on or about August 4, 2026 (i) the JV Company and CCM Frontier JV Holdco, LLC will enter into a Contribution and Warrants Purchase Agreement providing for, among other things, the purchase by CCM Frontier JV Holdco, LLC of 20,017,772 of the Private Placement Warrants from the JV Company and (ii) the JV Company and HBC MSF Capital Solutions Blocker II LLC will enter into a Contribution and Warrants Purchase Agreement providing for, among other things, the purchase by HBC MSF Capital Solutions Blocker II LLC of 10,008,886 of the Private Placement Warrants from the JV Company;

WHEREAS, each whole Warrant entitles the holder thereof to purchase one share of Common Stock at a price of$5.4810 per whole share, subject to adjustment in either case as described herein;

WHEREAS, the Company has filed with the U.S. Securities and Exchange Commission (the "***Commission***") a registration statement on Form S-3, File No. 333-295819 (the "***Registration Statement***") and prospectus (the "***Prospectus***"), for the registration, under the Securities Act of 1933, as amended (the "***Securities Act***"), of, the Units, the Public Warrants and the Common Stock included in the Units;

WHEREAS, the Company desires the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, registration, transfer, exchange, redemption and exercise of the Warrants;

WHEREAS, the Company desires to provide for the form and provisions of the Warrants, the terms upon which they shall be issued and exercised, and the respective rights, limitation of rights, and immunities of the Company, the Warrant Agent, and the holders of the Warrants; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Warrants, when executed on behalf of the Company and countersigned by or on behalf of the Warrant Agent, as provided herein, the valid, binding and legal obligations of the Company, and to authorize the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company for the Warrants, and the Warrant Agent hereby accepts such appointment and agrees to perform the same in accordance with the terms and conditions set forth in this Agreement.

2. Warrants.

2.1 Form of Warrant. Each Warrant shall be issued in registered form only, and, if a physical certificate is issued, shall be in substantially the form of Exhibit A hereto, the provisions of which are incorporated herein and shall be signed by, or bear the facsimile signature of, the Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, Chief Administration Officer and/or any other officer or position of the Company that may succeed any of the foregoing roles, responsibilities, functions, and/or capacities for the Company. In the event the person whose facsimile signature has been placed upon any Warrant shall have ceased to serve in the capacity in which such person signed the Warrant before such Warrant is issued, it may be issued with the same effect as if he or she had not ceased to be such at the date of issuance. All of the Public Warrants shall initially be represented by one or more book-entry certificates (each, a "***Book-Entry Warrant Certificate***"). All of the Private Placement Warrants shall be issued in the form of Definitive Warrant Certificates. The Company may, subject to the provisions of this Agreement, upon the request of Hudson Bay Master Fund Ltd., without the consent of any other holder of Warrants, issue additional warrants under this Agreement with the same terms as the Warrants upon the surrender for cancellation of an equal aggregate number of "Warrants" (as defined in that certain Warrant Agreement, dated as of June 30, 2026, by and between the Company and Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent), which additional warrants will be considered Warrants for all purposes under this Agreement.

2.2 Effect of Countersignature. If a physical certificate is issued, unless and until countersigned by the Warrant Agent pursuant to this Agreement, a Warrant certificate shall be invalid and of no effect and may not be exercised by the holder thereof.

2.3 Registration.

2.3.1 Warrant Register. The Warrant Agent shall maintain books (the "***Warrant Register***") for the registration of original issuance and the registration of transfer of the Warrants. Upon the initial issuance of the Warrants, the Warrant Agent shall issue and register the Warrants in the names of the respective holders thereof in such denominations and otherwise in accordance with instructions delivered to the Warrant Agent by the Company. All of the Public Warrants shall initially be represented by one or more Book-Entry Warrant Certificates deposited with The Depository Trust Company (the "***Depositary***") and registered in the name of Cede & Co., a nominee of the Depositary. Ownership of beneficial interests in the

Public Warrants shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) the Depositary or its nominee for each Book-Entry Warrant Certificate, or (ii) institutions that have accounts with the Depositary (each such institution, with respect to a Warrant in its account, a "***Participant***").

If the Depositary subsequently ceases to make its book-entry settlement system available for the Public Warrants, the Company may instruct the Warrant Agent regarding making other arrangements for book-entry settlement. In the event that the Public Warrants are not eligible for, or it is no longer necessary to have the Public Warrants available in, book-entry form, the Warrant Agent shall provide written instructions to the Depositary to deliver to the Warrant Agent for cancellation each Book-Entry Warrant Certificate, and the Company shall instruct the Warrant Agent to deliver to the Depositary definitive certificates in physical form evidencing such Warrants ("***Definitive Warrant Certificate***"). Such Definitive Warrant Certificate shall be in the form annexed hereto as Exhibit A, with appropriate insertions, modifications and omissions, as provided above.

2.3.2 Registered Holder. Prior to due presentment for registration of transfer of any Warrant, the Company and the Warrant Agent may deem and treat the person in whose name such Warrant is registered in the Warrant Register (the "***Registered Holder***") as the absolute owner of such Warrant and of each Warrant represented thereby (notwithstanding any notation of ownership or other writing on a Definitive Warrant Certificate made by anyone other than the Company or the Warrant Agent), for the purpose of any exercise thereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary.

2.4 Detachability of Warrants. The Common Stock and the Public Warrants comprising the Units will be issued separately and will be separately transferable immediately upon issuance.

2.5 Fractional Warrants. The Company shall not issue fractional Warrants other than as part of the Units, each of which is comprised of one (1) share of Common Stock and 0.4388 Public Warrants. If a holder of Warrants would be entitled to receive a fractional Warrant, the Company shall round down to the nearest whole number of Warrants to be issued to such holder.

2.6 Private Placement Warrants. Other than as described herein, the Private Placement Warrants shall be identical to the Public Warrants.

3. Terms and Exercise of Warrants.

3.1 Warrant Price. Each Warrant shall entitle the Registered Holder thereof, subject to the provisions of such Warrant and of this Agreement, to purchase from the Company the number of shares of Common Stock stated therein, at the price of $5.4810 per share, subject to the adjustments provided in Section 4 hereof and in the second to last sentence of this Section 3.1. The term "Warrant Price" as used in this Agreement shall mean the price per share at which shares of Common Stock may be purchased at the time a Warrant is exercised. The Company in its sole discretion, upon advance approval by the Company's full Board of Directors, may lower the Warrant Price at any time prior to the Expiration Date (as defined below) for a period of not less than twenty (20) Business Days; provided that the Company shall provide at least twenty (20) days prior written notice of such reduction to Registered Holders of the Warrants; provided further that any such reduction shall be identical among all of the Warrants. A "***Business Day***" means any day, other than a Saturday, Sunday or federal holiday, on which banks in New York City are generally open for normal business.

3.2 Duration of Warrants. A Warrant may be exercised only during the period (the "***Exercise Period***") commencing on the date hereof and terminating on the earliest to occur of: (x) at 5:00 p.m., New York City time on the date that is ten (10) years after the date hereof, (y) the liquidation of the Company and (z) the Redemption Date (as defined below) as provided in Section 6.2 hereof (the "***Expiration Date***"); provided, however, that the exercise of any Warrant shall be subject to the satisfaction of any applicable conditions, as set forth in subsection 3.3.2 below. Except with respect to the right to receive the Redemption Price (as defined below) in the event of a redemption (as set forth in Section 6 hereof), each outstanding Warrant not exercised on or before the Expiration Date shall become void, and all rights thereunder and all rights in respect thereof under this Agreement shall cease at 5:00 p.m. New York City time on the Expiration Date. The Company in its sole discretion, upon advance approval by the Company's full Board of Directors, may extend the duration of the Warrants by delaying the Expiration Date; provided, that the Company shall provide at least twenty (20) days prior written notice of any such extension to Registered Holders of the Warrants and, provided further that any such extension shall be identical in duration among all the Warrants.

3.3 Exercise of Warrants.

3.3.1 Payment. Subject to the provisions of the Warrant and this Agreement, a Warrant may be exercised by the Registered Holder thereof by delivering to the Warrant Agent at its corporate trust department (i) the Definitive Warrant Certificate evidencing the Warrants to be exercised, or, in the case of a Book-Entry Warrant Certificate, the Warrants to be exercised (the "***Book-Entry Warrants***") on the records of the Depositary to an account of the Warrant Agent at the Depositary designated for such purposes in writing by the Warrant Agent to the Depositary from time to time, (ii) a notice of exercise ("***Notice of Exercise***") for the shares of Common Stock as to which the Warrant is exercised, properly completed and executed by the Registered Holder on the reverse of the Definitive Warrant Certificate or, in the case of a Book- Entry Warrant Certificate, properly delivered by the Participant in accordance with the Depositary's procedures and (iii) payment in full of the Warrant Price for each full share of Common Stock as to which the Warrant is exercised, as follows:

(a) in the case of solely the Private Placement Warrants, in lawful money of the United States by cash, check or wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the shares of Common Stock being purchased;

(b) in the case of the Public Warrants and any Private Placement Warrants (other than any Private Placement Warrants for which the election in the preceding subsection 3.3.1(a) is made), by surrendering the Warrants for that number of shares of Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares of

Common Stock underlying the Warrants, multiplied by the excess of the "Fair Market Value" (as defined in this subsection 3.3.1(b)) over the Warrant Price, by (y) the Fair Market Value. Solely for purposes of this subsection 3.3.1(b), the "Fair Market Value" shall mean the last reported sale price of the Common Stock on the trading day on which the relevant Notice of Exercise is sent to the Warrant Agent from the holder of such Warrants or its securities broker or intermediary (or, if the date of such Notice of Exercise is not a trading day, the immediately preceding trading day); or

(c) in the event of a redemption of the Public Warrants or any Private Placement Warrants (other than any Private Placement Warrants for which the election in subsection 3.3.1(a) is made) pursuant to Section 6 hereof, by surrendering the Warrants for that number of shares of Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares of Common Stock underlying the Warrants, multiplied by the excess of the "Fair Market Value", as defined in this subsection 3.3.1(c) over the Warrant Price by (y) the Fair Market Value. Solely for purposes of this subsection 3.3.1(c) and Section 6.3, the "Fair Market Value" shall mean the average of the last reported sale prices of the Common Stock for the ten (10) trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of the Warrants, pursuant to Section 6 hereof.

3.3.2 Issuance of Shares of Common Stock on Exercise. Promptly after the exercise of any Warrant (and, in the case of an exercise pursuant to subsection 3.3.1(a) above, after receipt of the funds in payment of the Warrant Price), subject to subsection 3.3.5, if applicable, the Company shall issue to the Registered Holder of such Warrant a book-entry position or certificate, as applicable, for the number of full shares of Common Stock to which he, she or it is entitled, registered in such name or names as may be directed by him, her or it, and if such Warrant shall not have been exercised in full, a new book-entry position or countersigned Warrant, as applicable, for the number of shares of Common Stock as to which such Warrant shall not have been exercised; *provided*, that the Company shall use commercially reasonable efforts to issue such Common Stock and such Warrant for the number of shares of Common Stock as to which the Warrant shall not have been exercised, if applicable, in the number of trading days comprising the Standard Settlement Period following the date of the relevant Notice of Exercise. As used herein, "***Standard Settlement Period***" means the standard settlement period, expressed in a number of trading days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise and "***Trading Market***" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing). If fewer than all the Warrants evidenced by a Book-Entry Warrant Certificate are exercised, a notation shall be made to the records maintained by the Depositary, its nominee for each Book-Entry Warrant Certificate, or a Participant, as appropriate, evidencing the balance of the Warrants remaining after such exercise. No Warrant shall be exercisable and the Company shall not be obligated to issue shares of Common Stock upon exercise of a Warrant unless the Common Stock issuable upon such Warrant exercise has been registered, qualified or deemed to be exempt from registration or qualification under the securities laws of the state of residence of the Registered Holder of the Warrants. In the event that the condition in the immediately preceding sentence is not satisfied with respect to a Warrant, the holder of such Warrant shall not be entitled to exercise such Warrant and such

Warrant may have no value and expire worthless, in which case the purchaser of a Unit containing such Public Warrants shall have paid the full purchase price for the Unit solely for the shares of Common Stock underlying such Unit. Subject to Section 4.6 of this Agreement, a Registered Holder of Public Warrants may exercise its Public Warrants only for a whole number of shares of Common Stock. In no event will the Company be required to net cash settle any Warrant exercise. If the holder of any Warrant would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share of Common Stock, the Company shall round down to the nearest whole number, the number of shares of Common Stock to be issued to such holder.

3.3.3 Valid Issuance. All shares of Common Stock issued upon the proper exercise of a Warrant in conformity with this Agreement shall be validly issued, fully paid and non-assessable.

3.3.4 Date of Issuance. Each person in whose name any book-entry position or certificate, as applicable, for shares of Common Stock is issued shall for all purposes be deemed to have become the holder of record of such shares of Common Stock on the date on which the Warrant, or book-entry position representing such Warrant, was surrendered for exercise (and, in the case of an exercise pursuant to subsection 3.3.1(a) above, payment of the Warrant Price was made), irrespective of the date of delivery of such certificate in the case of a certificated Warrant, except that, if the date of such surrender (and, if applicable, payment) is a date when the share transfer books of the Company or book-entry system of the Warrant Agent are closed, such person shall be deemed to have become the holder of such shares of Common Stock at the close of business on the next succeeding date on which the share transfer books or book-entry system are open.

3.3.5 Maximum Percentage. An Economic Interest Holder of a Warrant may notify the Company in writing in the event it elects to be subject to the provisions contained in this subsection 3.3.5; provided that no Economic Interest Holder of a Warrant shall be subject to this subsection 3.3.5 unless he, she or it makes such election. If the election is made by an Economic Interest Holder, the Company shall not effect any exercise of such Economic Interest Holder's Warrant, and such Economic Interest Holder shall not have the right to exercise any portion of such Warrant, and any such exercise shall be null and void and shall be cancelled ab initio and treated as if never made, to the extent that immediately prior to or following the exercise set forth on the applicable Notice of Exercise, such Economic Interest Holder, together with its Attribution Parties, collectively beneficially owns or would beneficially own in excess of 4.9% or 9.8% (as specified by the Economic Interest Holder) (the "***Maximum Percentage***") of the shares of Common Stock that would be issued and outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of the Warrant. For purposes of calculating beneficial ownership for determining whether the Maximum Percentage is or will be exceeded, the aggregate number of shares of Common Stock beneficially owned by such Economic Interest Holder together with its Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of the Warrant with respect to which the determination is being made, but shall exclude shares of Common Stock that would be issuable upon (x) exercise of the remaining, unexercised portion of the Warrant beneficially owned by such Economic Interest Holder or its Attribution Parties and (y) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Economic Interest Holder or its Attribution Parties (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***") and the rules promulgated thereunder. For purposes of this subsection 3.3.5, in determining the number of outstanding shares of Common Stock, an Economic Interest Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent annual report on Form 10-K, quarterly report on Form 10-Q, current report on Form 8-K or other public filing with the Commission as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Economic Interest Holder, the Company shall within three (3) Business Days confirm orally and in writing or by electronic mail to the Economic Interest Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of equity securities of the Company by the Economic Interest Holder and its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The Registered Holder on the applicable Notice of Exercise shall disclose to the Company the number of shares of Common Stock that the Economic Interest Holder, together with its Attribution Parties, beneficially owns. In the event that the issuance of shares of Common Stock to the Registered Holder upon exercise of this Warrant would result in the Economic Interest Holder, together with its Attribution Parties, being deemed to beneficially own, in the aggregate, more than the Maximum Percentage, the number of shares so issued by which the Economic Interest Holder's, together with its Attribution Parties', aggregate beneficial ownership exceeds the Maximum Percentage (the "***Excess Shares***") shall be deemed null and void and shall be cancelled ab initio, and the Economic Interest Holder and/or its Attribution Parties shall not have the power to vote or to transfer the Excess Shares. By written notice to the Company, an Economic Interest Holder of a Warrant may from time to time increase or decrease the Maximum Percentage applicable to such Economic Interest Holder to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company. For purposes of clarity, any shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Economic Interest Holder or its Attribution Parties for any purpose including for purposes of Section 13(d) of the Exchange Act and the rules promulgated thereunder or Section 16 of the Exchange Act and the rules promulgated thereunder, including Rule 16a-1(a)(1) under the Exchange Act. No prior inability to exercise this Warrant pursuant to this subsection shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this subsection 3.3.5 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this subsection 3.3.5 to the extent necessary to correct this subsection or any portion of this subsection which may be defective or inconsistent with the intended beneficial ownership limitation contained in this subsection 3.3.5 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor registered holder or economic interest holder of this Warrant. Each reference in this subsection 3.3.5 to the term Economic Interest Holder refers to the Economic Interest Holder directing the Registered Holder to exercise the Warrants. "***Affiliate***" means any person directly or indirectly controlled by, controlling or under common control with, an Economic Interest Holder, but only for so long as such control shall continue. For purposes of this definition, "control" (including, with correlative meanings, "controlled by", "controlling" and "under common control with") means, with respect to a person, possession, direct or indirect, of (a) the power to direct or cause direction of the management and policies of such person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), or (b) at least 50% of the voting securities (whether directly or pursuant to any option, warrant or other similar arrangement) or other comparable equity interests. "***Attribution Parties***" means, collectively, the following persons: (i) any investment vehicle, including any funds, feeder funds, or managed accounts, currently or from time to time after the initial issue date of the Warrants, directly or indirectly managed or advised by the Economic Interest Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Economic Interest Holder or any of the foregoing, (iii) any person acting or who could be deemed to be acting as a Section 13(d) "group" together with the Economic Interest Holder or any Attribution Parties and (iv) any other persons whose beneficial ownership of the Common Stock would or could be aggregated with the Economic Interest Holder's and/or any other Attribution Parties for purposes of Section 13(d) or Section 16 of the Exchange Act. For clarity, the purpose of this definition is to subject collectively the Economic Interest Holder and all of its Attribution Parties to the Maximum Percentage. "***Economic Interest Holder***" means (i) with respect to any Definitive Warrant Certificate, the holder thereof and (ii) with respect to any Book-Entry Warrant Certificate, the person holding a beneficial interest therein through an account with a depositary participant (or similar arrangement).

4. Adjustments.

4.1 Stock Dividends.

4.1.1 Split-Ups. If after the date hereof, and subject to the provisions of Section 4.6 below, the number of outstanding shares of Common Stock is increased by a stock dividend payable in shares of Common Stock, or by a split-up of shares of Common Stock or other similar event, then, on the effective date of such stock dividend, split-up or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be increased in proportion to such increase in the outstanding shares of Common Stock. A rights offering to holders of the Common Stock entitling holders to purchase shares of Common Stock at a price less than the "Fair Market Value" (as defined below) shall be deemed a stock dividend of a number of shares of Common Stock equal to the product of (i) the number of shares of Common Stock actually sold in such rights offering (or issuable under any other equity securities sold in such rights offering that are convertible into or exercisable for the Common Stock) and (ii) one (1) minus the quotient of (x) the price per share of Common Stock paid in such rights offering divided by (y) the Fair Market Value. For purposes of this subsection 4.1.1, (a) if the rights offering is for securities convertible into or exercisable for Common Stock, in determining the price payable for Common Stock, there shall be taken into account any consideration received for such rights, as well as any additional amount payable upon exercise or conversion and (b) "Fair Market Value" means the volume weighted average price of the Common Stock as reported during the ten (10) trading day period ending on the trading day prior to the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such rights. For the avoidance of doubt, there shall be no adjustment related to the rights offering pursuant to which the Units are issued.

4.1.2 Extraordinary Dividends. If the Company, at any time while the Warrants are outstanding and unexpired, shall pay a dividend or make a distribution in cash, securities or other assets to the holders of the Common Stock on account of such shares of Common Stock (or other shares of the Company's capital stock into which the Warrants are convertible), other than as described in subsection 4.1.1 above (any such non-excluded event being referred to herein as an "***Extraordinary Dividend***"), then the Warrant Price shall be decreased, effective immediately after the effective date of such Extraordinary Dividend, by the amount of cash and/or the fair market value (as determined by the Board, in good faith) of any securities or other assets paid on each share of Common Stock in respect of such Extraordinary Dividend.

4.2 Aggregation of Shares. If, after the date hereof and subject to the provisions of Section 4.6 hereof, the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Common Stock or other similar event, then, on the effective date of such consolidation, combination, reverse stock split, reclassification or similar event, the number of shares of Common Stock issuable on exercise of each Warrant shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

4.3 Adjustments in Warrant Price. Whenever the number of shares of Common Stock purchasable upon the exercise of the Warrants is adjusted, as provided in subsection 4.1.1 or Section 4.2 above, the Warrant Price shall be adjusted (to the nearest cent) by multiplying such Warrant Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock purchasable upon the exercise of the Warrants immediately prior to such adjustment, and (y) the denominator of which shall be the number of shares of Common Stock so purchasable immediately thereafter.

4.4 Replacement of Securities upon Reorganization, etc. In case of any reclassification or reorganization of the outstanding shares of Common Stock (other than a change under subsections 4.1.1 or 4.1.2 or Section 4.2 hereof or that solely affects the par value of such shares of Common Stock), or in the case of any merger or consolidation of the Company with or into another entity or conversion of the Company as another entity (other than a consolidation or merger in which the Company is the continuing corporation and is not a subsidiary of another entity whose stockholders did not own all or substantially all of the Common Stock of the Company in substantially the same proportions immediately before such transaction) and that does not result in any reclassification or reorganization of the outstanding shares of Common Stock), or in the case of any sale or conveyance to another entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the holders of the Warrants shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Warrants and in lieu of the shares of Common Stock of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the holder of the Warrants would have received if such holder had exercised his, her or its Warrant(s) immediately prior to such event without giving effect to the Maximum Percentage in subsection 3.3.5, if applicable (the "***Alternative Issuance***"); provided, however, that if the holders of the Common Stock were entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets constituting the Alternative Issuance for which each Warrant shall become exercisable shall be deemed to be the weighted average of the kind and amount received per share by the holders of the Common Stock in such consolidation or merger that affirmatively make such election. If any reclassification or reorganization also results in a change in shares of Common Stock covered by subsection 4.1.1, then such adjustment shall be made pursuant to subsection 4.1.1 or Sections 4.2, 4.3 and this Section 4.4. The provisions of this Section 4.4 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no event will the Warrant Price be reduced to less than the par value per share issuable upon exercise of such Warrant. The Company shall not enter into or be a party to any transaction subject to the provisions of this Section 4.4 unless the successor entity, if any, assumes in writing all of the obligations of the Company under this Warrant Agreement.

4.5 Notices of Changes in Warrant. Upon every adjustment of the Warrant Price or the number of shares of Common Stock issuable upon exercise of a Warrant, the Company shall give written notice thereof to the Warrant Agent, which notice shall state the Warrant Price resulting from such adjustment and the increase or decrease, if any, in the number of shares of Common Stock purchasable at such price upon the exercise of a Warrant, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Upon the occurrence of any event specified in Sections 4.1, 4.2, 4.3 or 4.4, the Company shall give written notice of the occurrence of such event to each holder of a Warrant, at the last address set forth for such holder in the Warrant Register, of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

4.6 No Fractional Shares. Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares of Common Stock upon the exercise of Warrants. If, by reason of any adjustment made pursuant to this Section 4, the holder of any Warrant would be entitled, upon the exercise of such Warrant, to receive a fractional interest in a share, the Company shall, upon such exercise, round down to the nearest whole number the number of shares of Common Stock to be issued to such holder.

4.7 Form of Warrant. The form of Warrant need not be changed because of any adjustment pursuant to this Section 4, and Warrants issued after such adjustment may state the same Warrant Price and the same number of shares of Common Stock as is stated in the Warrants initially issued pursuant to this Agreement; provided, however, that the Company may at any time in its sole discretion make any change in the form of Warrant that the Company may deem appropriate and that does not affect the substance thereof, and any Warrant thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant or otherwise, may be in the form as so changed.

4.8 Other Events. In case any event shall occur affecting the Company as to which none of the provisions of the preceding subsections of this Section 4 are strictly applicable, but which would require an adjustment to the terms of the Warrants in order to (i) avoid an adverse impact on the Warrants and (ii) effectuate the intent and purpose of this Section 4, then, in each such case, the Company shall appoint a firm of independent public accountants, investment banking or other appraisal firm of recognized national standing, which shall give its opinion as to whether or not any adjustment to the rights represented by the Warrants is necessary to effectuate the intent and purpose of this Section 4 and, if they determine that an adjustment is necessary, the terms of such adjustment. The Company shall adjust the terms of the Warrants in a manner that is consistent with any adjustment recommended in such opinion.

5. Transfer and Exchange of Warrants.

5.1 Registration of Transfer. The Warrant Agent shall register the transfer, from time to time, of any outstanding Warrant upon the Warrant Register, upon surrender of such Warrant for transfer, in the case of a certificated Warrant, properly endorsed with signatures properly guaranteed and accompanied by appropriate instructions for transfer. Upon any such transfer, a new Warrant representing an equal aggregate number of Warrants shall be issued and the old Warrant shall be cancelled by the Warrant Agent. In the case of certificated Warrants, the Warrants so cancelled shall be delivered by the Warrant Agent to the Company from time to time upon request. A Registered Holder of Private Placement Warrants may transfer all or part of such holder's Private Placement Warrants or the shares of Common Stock issuable upon exercise of the Private Placement Warrants to any transferee, subject to compliance with applicable securities laws; provided, however, that in connection with any such transfer, such Registered Holder will give the Company notice of the portion of the Private Placement Warrant being transferred with the name, address and taxpayer identification number of the transferee and such Registered Holder will surrender such Private Placement Warrant to the Company for reissuance to the transferee(s); and provided further, that any subsequent transferee shall agree in writing with the Company (x) that such transferee is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) and/or an institutional "accredited investor" (as that term is defined in Rule 501(a) under Regulation D promulgated pursuant to the Securities Act) and (y) to be bound by all of the terms and conditions of such Private Placement Warrant.

5.2 Procedure for Surrender of Warrants. Warrants may be surrendered to the Warrant Agent, together with a written request for exchange or transfer, and thereupon the Warrant Agent shall issue in exchange therefor one or more new Warrants as requested by the Registered Holder of the Warrants so surrendered, representing an equal aggregate number of Warrants; provided, however, that except as otherwise provided herein or in any Book-Entry Warrant Certificate or Definitive Warrant Certificate, each Book-Entry Warrant Certificate and Definitive Warrant Certificate may be transferred only in whole and only to the Depositary, to another nominee of the Depositary, to a successor depository, or to a nominee of a successor depository; provided further, however, that in the event that a Warrant surrendered for transfer bears a restrictive legend (as in the case of the Private Placement Warrants), the Warrant Agent shall not cancel such Warrant and issue new Warrants in exchange thereof until the Warrant Agent has received an opinion of counsel for the Company stating that such transfer may be made and indicating whether the new Warrants must also bear a restrictive legend.

5.3 Fractional Warrants. The Warrant Agent shall not be required to effect any registration of transfer or exchange which shall result in the issuance of a warrant certificate or book-entry position for a fraction of a warrant, except as part of the Units.

5.4 Service Charges. No service charge shall be made for any exchange or registration of transfer of Warrants.

5.5 Warrant Execution and Countersignature. The Warrant Agent is hereby authorized to countersign and to deliver, in accordance with the terms of this Agreement, the Warrants required to be issued pursuant to the provisions of this Section 5, and the Company, whenever required by the Warrant Agent, shall supply the Warrant Agent with Warrants duly executed on behalf of the Company for such purpose.

6. Redemption.

6.1 Redemption. The Company may not redeem the Warrants at its option pursuant to this Section 6 at any time before the date that is five (5) years after the date hereof. Not less than all of the outstanding Warrants may be redeemed, at the option of the Company, upon advance approval by the Company's full Board of Directors, at any time on or after the date that is five (5) years after the date hereof, while they are exercisable and prior to their expiration, at the office of the Warrant Agent, upon notice to the Registered Holders of the Warrants, as described in Section 6.2 below, at the price of $0.01 per Warrant (the "***Redemption Price***"), provided that the last reported sale price of the Common Stock has been at least $10.9620 per share (subject to adjustment in compliance with Section 4 hereof), on each of twenty (20) trading days within the thirty (30) trading-day period ending on the Business Day prior to the date on which notice of the redemption is given.

6.2 Date Fixed for, and Notice of, Redemption. In the event that the Company elects to redeem all of the Warrants, the Company shall fix a date for the redemption on or after the date that is five (5) years after the date hereof (the "***Redemption Date***"). Notice of redemption shall be mailed by first class mail, postage prepaid, by the Company not less than thirty (30) days prior to the Redemption Date (such period, the "***Redemption Period***") to the Registered Holders of the Warrants to be redeemed at their last addresses as they shall appear on the registration books or, in the case of Book-Entry Warrants, delivered pursuant to the applicable procedures of the Depositary. Any notice mailed or delivered in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Registered Holder received such notice.

6.3 Exercise After Notice of Redemption. The Warrants may be exercised at any time after notice of redemption shall have been given by the Company pursuant to Section 6.2 hereof and prior to the Redemption Date. The notice of redemption shall contain the information necessary to calculate the number of shares of Common Stock to be received upon exercise of the Warrants, including the "Fair Market Value" (as such term is defined in subsection 3.3.1(b) hereof) in such case. On and after the Redemption Date, the record holder of the Warrants shall have no further rights except to receive, upon surrender of the Warrants, the Redemption Price.

7. Other Provisions Relating to Rights of Holders of Warrants.

7.1 No Rights as Stockholder. A Warrant does not entitle the Registered Holder thereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter.

7.2 Lost, Stolen, Mutilated, or Destroyed Warrants. If any Warrant is lost, stolen, mutilated, or destroyed, the Company and the Warrant Agent may on such terms as to indemnity or otherwise as they may in their discretion impose (which shall, in the case of a mutilated Warrant, include the surrender thereof), issue a new Warrant of like denomination, tenor, and date as the Warrant so lost, stolen, mutilated, or destroyed. Any such new Warrant shall constitute a substitute contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated, or destroyed Warrant shall be at any time enforceable by anyone.

7.3 Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock that shall be sufficient to permit the exercise in full of all outstanding Warrants issued pursuant to this Agreement.

8. Concerning the Warrant Agent and Other Matters.

8.1 Payment of Taxes. The Company shall promptly pay all taxes and charges that may be imposed upon the Company or the Warrant Agent in respect of (i) the issuance and delivery of the Warrants and (ii) the issuance or delivery of shares of Common Stock upon the exercise of the Warrants, provided, however, that the Company shall not be obligated to pay any transfer taxes incurred in connection with (i) a Registered Holder's request to register the Warrants in the name of, or deliver shares of Common Stock to, a Person other than such Registered Holder or (ii) any assignment, transfer or replacement of Warrants or shares of Common Stock made at the request of the Registered Holder.

8.2 Resignation, Consolidation, or Merger of Warrant Agent.

8.2.1 Appointment of Successor Warrant Agent. The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder after giving sixty (60) days' notice in writing to the Company. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor Warrant Agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after it has been notified in writing of such resignation or incapacity by the Warrant Agent or by the holder of a Warrant (who shall, with such notice, submit his, her or its Warrant for inspection by the Company), then the holder of any Warrant may apply to the Supreme Court of the State of New York for the County of New York for the appointment of a successor Warrant Agent at the Company's cost. Any successor Warrant Agent, whether appointed by the Company or by such court, shall be a corporation organized and existing under the laws of the State of New York, in good standing and having its principal office in the Borough of Manhattan, City and State of

New York, and authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. After appointment, any successor Warrant Agent shall be vested with all the authority, powers, rights, immunities, duties, and obligations of its predecessor Warrant Agent with like effect as if originally named as Warrant Agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor Warrant Agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor Warrant Agent all the authority, powers, and rights of such predecessor Warrant Agent hereunder; and upon request of any successor Warrant Agent the Company shall make, execute, acknowledge, and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Warrant Agent all such authority, powers, rights, immunities, duties, and obligations.

8.2.2 Notice of Successor Warrant Agent. In the event a successor Warrant Agent shall be appointed, the Company shall give notice thereof to the predecessor Warrant Agent and the Transfer Agent for the Common Stock not later than the effective date of any such appointment.

8.2.3 Merger or Consolidation of Warrant Agent. Any corporation into which the Warrant Agent may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Warrant Agent shall be a party shall be the successor Warrant Agent under this Agreement without any further act.

8.3 Fees and Expenses of Warrant Agent.

8.3.1 Remuneration. The Company agrees to pay the Warrant Agent reasonable remuneration for its services as such Warrant Agent hereunder and shall, pursuant to its obligations under this Agreement, reimburse the Warrant Agent upon demand for all expenditures that the Warrant Agent may reasonably incur in the execution of its duties hereunder.

8.3.2 Further Assurances. The Company agrees to perform, execute, acknowledge, and deliver or cause to be performed, executed, acknowledged, and delivered all such further and other acts, instruments, and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Agreement.

8.4 Liability of Warrant Agent.

8.4.1 Reliance on Company Statement. Whenever in the performance of its duties under this Agreement, the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a statement signed by the Chief Executive Officer, Chief Financial Officer, President, Executive Vice President, Vice President, Secretary or Chairman of the Board of the Company and delivered to the Warrant Agent. The Warrant Agent may rely upon such statement for any action taken or suffered in good faith by it pursuant to the provisions of this Agreement.

8.4.2 Indemnity. The Warrant Agent shall be liable hereunder only for its own gross negligence, willful misconduct or bad faith. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted by the Warrant Agent in the execution of this Agreement, except as a result of the Warrant Agent's gross negligence, willful misconduct or bad faith.

8.4.3 Exclusions. The Warrant Agent shall have no responsibility with respect to the validity of this Agreement or with respect to the validity or execution of any Warrant (except its countersignature thereof). The Warrant Agent shall not be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant. The Warrant Agent shall not be responsible to make any adjustments required under the provisions of Section 4 hereof or responsible for the manner, method, or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant or as to whether any shares of Common Stock shall, when issued, be valid and fully paid and non-assessable.

8.5 Acceptance of Agency. The Warrant Agent hereby accepts the agency established by this Agreement and agrees to perform the same upon the terms and conditions herein set forth and among other things, shall account promptly to the Company with respect to Warrants exercised and concurrently account for, and pay to the Company, all monies received by the Warrant Agent for the purchase of shares of Common Stock through the exercise of the Warrants.

9. Miscellaneous Provisions.

9.1 Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns.

9.2 Notices. Any notice, statement or demand authorized by this Agreement to be given or made by the Warrant Agent or by the holder of any Warrant to or on the Company shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

Eos Energy Enterprises, Inc.
3920 Park Avenue
Edison, NJ 08820
Attention: General Counsel

Any notice, statement or demand authorized by this Agreement to be given or made by the holder of any Warrant or by the Company to or on the Warrant Agent shall be sufficiently given when so delivered if by hand or overnight delivery or if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, New York 10004
Attention: Compliance Department

9.3 Applicable Law. The validity, interpretation, and performance of this Agreement and of the Warrants shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

9.4 Persons Having Rights under this Agreement. Nothing in this Agreement shall be construed to confer upon, or give to, any person or corporation other than the parties hereto and the Registered Holders of the Warrants any right, remedy, or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the Registered Holders of the Warrants.

9.5 Examination of the Warrant Agreement. A copy of this Agreement shall be available at all reasonable times at the office of the Warrant Agent in the Borough of Manhattan, City and State of New York, for inspection by the Registered Holder of any Warrant. The Warrant Agent may require any such holder to submit such holder's Warrant for inspection by the Warrant Agent.

9.6 Counterparts. This Agreement may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

9.7 Effect of Headings. The section headings herein are for convenience only and are not part of this Agreement and shall not affect the interpretation thereof.

9.8 Amendments. This Agreement may be amended by the parties hereto without the consent of any Registered Holder (i) for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained herein, and (ii) to provide for the delivery of Alternative Issuance pursuant to Section 4.4. All other modifications or amendments, other than to subsection 3.3.5, which cannot be waived or amended, including any modification or amendment to increase the Warrant Price or shorten the Exercise Period, shall require the vote or written consent of the Registered Holders of 50% of the number of the then outstanding Public Warrants and 50% of the number of then outstanding Private Placement

Warrants, provided that, with respect to any amendment to the terms of the Private Placement Warrants or any provision of this Agreement with respect to the Private Placement Warrants which does not adversely affect the interests of the Registered Holders of the Public Warrants, only 50% of the number of then outstanding Private Placement Warrants is required. Notwithstanding the foregoing, the Company may lower the Warrant Price or extend the duration of the Exercise Period pursuant to Sections 3.1 and 3.2, respectively, upon advance approval by the Company's full Board of Directors, without the consent of the Registered Holders or Economic Interest Holders.

9.9 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

[*Signature Page Follows*]

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

EOS ENERGY ENTERPRISES, INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer

CONTINENTAL STOCK TRANSFER & TRUST COMPANY, as Warrant Agent

By: /s/ Henry Farrell
Name: Henry Farrell
Title: Vice President

[*Signature Page to Warrant Agreement*]

EXHIBIT A
FORM OF WARRANT CERTIFICATE
[FACE]

Number

Warrants
THIS WARRANT SHALL BE VOID IF NOT EXERCISED PRIOR TO THE EXPIRATION OF THE EXERCISE PERIOD PROVIDED FOR IN THE WARRANT AGREEMENT DESCRIBED BELOW
EOS ENERGY ENTERPRISES, INC.
Incorporated Under the Laws of the State of Delaware

CUSIP __________

Warrant Certificate

This Warrant Certificate certifies that , or registered assigns, is the registered holder of warrant(s) [(as revised by the attached Schedule of Exchanges of Interests in the Book-Entry Warrant Certificate)] evidenced hereby (the "***Warrants***" and each, a "***Warrant***") to purchase shares of common stock, $0.0001 par value per share ("***Common Stock***"), of Eos Energy Enterprises, Inc., a Delaware corporation (the "***Company***"). Each whole Warrant entitles the holder, upon exercise during the Exercise Period set forth in the Warrant Agreement referred to below, to receive from the Company that number of fully paid and non-assessable shares of Common Stock as set forth below, at the exercise price (the "***Warrant Price***") as determined pursuant to the Warrant Agreement upon surrender of this Warrant Certificate at the office or agency of the Warrant Agent referred to below, subject to the conditions set forth herein and in the Warrant Agreement. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Each whole Warrant is initially exercisable for one (1) fully paid and non-assessable shares of Common Stock. No fractional shares will be issued upon exercise of any Warrant. If, upon the exercise of Warrants, a holder would be entitled to receive a fractional interest in a share of Common Stock, the Company will, upon exercise, round down to the nearest whole number the number of shares of Common Stock to be issued to the Warrant holder. The number of shares of Common Stock issuable upon exercise of the Warrants is subject to adjustment upon the occurrence of certain events as set forth in the Warrant Agreement.

The initial Warrant Price per share of Common Stock for any Warrant is equal to $5.4810 per share. The Warrant Price is subject to adjustment upon the occurrence of certain events set forth in the Warrant Agreement.

Subject to the conditions set forth in the Warrant Agreement, the Warrants may be exercised only during the Exercise Period and to the extent not exercised by the end of such Exercise Period, such Warrants shall become void.

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof and such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent, as such term is used in the Warrant Agreement.

This Warrant Certificate shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to conflicts of laws principles thereof.

EOS ENERGY ENTERPRISES, INC.

By: ________________________
Name:
Title:

CONTINENTAL STOCK TRANSFER & TRUST COMPANY, as Warrant Agent

By: ________________________
Name:
Title:

[Form of Warrant Certificate]
[Reverse]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants entitling the holder on exercise to receive shares of Common Stock and are issued or to be issued pursuant to a Warrant Agreement dated as of August 3, 2026 (the "***Warrant Agreement***"), duly executed and delivered by the Company to Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (the "***Warrant Agent***"), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the holders (the words "***holders***" or "***holder***" meaning the Registered Holders or Registered Holder, respectively) of the Warrants. A copy of the Warrant Agreement may be obtained by the holder hereof upon written request to the Company. Defined terms used in this Warrant Certificate but not defined herein shall have the meanings given to them in the Warrant Agreement.

Warrants may be exercised at any time during the Exercise Period set forth in the Warrant Agreement. The holder of Warrants evidenced by this Warrant Certificate may exercise them by surrendering this Warrant Certificate, with the form of notice of exercise set forth hereon properly completed and executed, as provided for in the Warrant Agreement, at the principal corporate trust office of the Warrant Agent. In the event that upon any exercise of Warrants evidenced hereby the number of Warrants exercised shall be less than the total number of Warrants evidenced hereby, there shall be issued to the holder hereof or his, her or its assignee, a new Warrant Certificate evidencing the number of Warrants not exercised.

The Warrant Agreement provides that upon the occurrence of certain events the number of shares of Common Stock issuable upon the exercise of the Warrants set forth on the face hereof may, subject to certain conditions, be adjusted. If, upon exercise of a Warrant, the holder thereof would be entitled to receive a fractional interest in a share of Common Stock, the Company shall, upon exercise, round down to the nearest whole number of shares of Common Stock to be issued to the holder of the Warrant.

Warrant Certificates, when surrendered at the principal corporate trust office of the Warrant Agent by the Registered Holder thereof in person or by legal representative or attorney duly authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Warrant Certificate or Warrant Certificates of like tenor evidencing in the aggregate a like number of Warrants.

Upon due presentation for registration of transfer of this Warrant Certificate at the office of the Warrant Agent a new Warrant Certificate or Warrant Certificates of like tenor and evidencing in the aggregate a like number of Warrants shall be issued to the transferee(s) in exchange for this Warrant Certificate, subject to the limitations provided in the Warrant Agreement, without charge except for any tax or other governmental charge imposed in connection therewith.

The Company and the Warrant Agent may deem and treat the Registered Holder(s) hereof as the absolute owner(s) of this Warrant Certificate (notwithstanding any notation of ownership or other writing hereon made by anyone), for the purpose of any exercise hereof, of any distribution to the holder(s) hereof, and for all other purposes, and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary. Neither the Warrants nor this Warrant Certificate entitles any holder hereof to any rights of a stockholder of the Company.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE BOOK-ENTRY WARRANT CERTIFICATE[1]

INITIAL NUMBER OF WARRANTS REPRESENTED BY THIS BOOK-ENTRY WARRANT CERTIFICATE: [______]

The following exchanges, transfers or cancellations of this Book-Entry Warrant Certificate have been made:

Date	Amount of Increase (Decrease) in Number Of Warrants Represented by this Book-Entry Warrant Certificate	Number Of Warrants Represented by this Book-Entry Warrant Certificate After Such Increase (Decrease)	Signature of Authorized Signatory of Warrant Agent

[1] Insert for Book-Entry Warrant Certificate only.

Notice of Exercise
(To Be Executed Upon Exercise of Warrant)

The undersigned hereby irrevocably elects to exercise the right, represented by this Warrant Certificate, to receive shares of Common Stock of Eos Energy Enterprises, Inc. (the "**Company**") [and herewith tenders payment for such shares of Common Stock to the order of the Company in the amount of $ in accordance with the terms hereof][2]. This exercise is being made in respect of shares of Common Stock purchasable hereunder. The undersigned requests that a certificate for the shares of Common Stock issuable upon such exercise be registered in the name of , whose address is and that such shares of Common Stock be delivered to whose address is . If said number of shares of Common Stock is less than all of the shares of Common Stock purchasable hereunder, the undersigned requests that a new Warrant Certificate representing the remaining balance of such shares of Common Stock be registered in the name of , whose address is and that such Warrant Certificate be delivered to , whose address is .

In the event that the Warrant has been called for redemption by the Company pursuant to Section 6 of the Warrant Agreement, the number of shares of Common Stock that this Warrant is exercisable for on a "cashless" basis shall be determined in accordance with subsection 3.3.1(c) and Section 6.3 of the Warrant Agreement.

In the event that the Warrant is to be exercised on a "cashless" basis pursuant to subsection 3.3.1(b) of the Warrant Agreement, the number of shares of Common Stock that this Warrant is exercisable for shall be determined in accordance with subsection 3.3.1(b) of the Warrant Agreement.

If subsection 3.3.5 of the Warrant Agreement applies:

Each Notice of Exercise submitted by a Registered Holder may only be submitted on behalf of a single Economic Interest Holder of the Warrants.

By its delivery of this Notice of Exercise, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Economic Interest Holder together with its Attribution Parties will not beneficially own in excess of the number of shares of Common Stock (as determined in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended) permitted to be beneficially owned under subsection 3.3.5 of the Warrant Agreement to which this notice relates.

Current aggregate beneficial ownership of Common Stock of the Economic Interest Holder together with its Attribution Parties (immediately prior to the exercise of this Warrant): ____________________shares of Common Stock.

[*Signature Page Follows*]

[2] Include only for Private Placement Warrants for which the exercise is being made pursuant to subsection 3.3.1(a) of the Warrant Agreement.

Date: , 20

(Signature)

(Address)

(Tax Identification Number)

Signature Guaranteed:

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO SEC RULE 17Ad-15 UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (OR ANY SUCCESSOR RULE).

EXHIBIT B

LEGEND

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

SECURITIES EVIDENCED BY THIS CERTIFICATE AND SHARES OF COMMON STOCK OF EOS ENERGY ENTERPRISES, INC. (THE "COMPANY") ISSUED UPON EXERCISE OF SUCH SECURITIES SHALL BE ENTITLED TO REGISTRATION RIGHTS UNDER A REGISTRATION RIGHTS AGREEMENT TO BE EXECUTED BY THE COMPANY."

Exhibit 4.3

EXCHANGE AGREEMENT

This Exchange Agreement (this "**Agreement**") is entered into as of August 4, 2026, by and between Eos Energy Enterprises, Inc., a Delaware corporation (the "**Company**"), and HBC MSF Capital Solutions Blocker II LLC (the "**Holder**") and Frontier Power USA Parent, LLC, a Delaware limited liability company (the "**Frontier Parent**"), with reference to the following facts:

A. On June 30, 2026, the Company, the Holder, and CCM Frontier JV Holdco, LLC (collectively, the "**Members**"), entered into that certain binding term sheet (the "**Term Sheet**") with respect to, among other things (x) that certain Rights Offering (as defined in the Term Sheet) and (y) that certain joint venture and investment by the Members with respect to Frontier Parent;

B. On August 4, 2026, pursuant to the Term Sheet, the Members entered into that certain Amended and Restated Limited Liability Company Agreement of Frontier Parent (as in effect as of the date hereof, the "**LLC Agreement**"), pursuant to which, among other things, the Holder, as a Member, acquired such Class C Units of Frontier Parent as set forth on Schedule A attached thereto (including any share capital into which such Class C Units shall have been changed or any share capital resulting from a reclassification of such Class C Units or such other share capital, collectively, the "**Holder Units**");

C. The Company desires to grant the right to the Holder to, from time to time, exchange (the "**Exchange Rights**", and each such exchange, an "**Exchange**") all, or any part, of the Holder Units as designated by the Holder into shares (the "**Exchange Shares**") of Common Stock (as defined below), in accordance with the terms of this Agreement, which is permitted in accordance with the terms of the LLC Agreement;

D. The Company and the Holder have entered into that certain Registration Rights Agreement, dated as of the date hereof (the "**Registration Rights Agreement**"), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), including the Exchange Shares, under the Securities Act of 1933, as amended (the "**Securities Act**") and the rules and regulations promulgated thereunder, and applicable state securities laws;

E. On or prior to the date hereof, the Holder, the Company and the Frontier Parent entered into that certain Contribution and Warrants Purchase Agreement, pursuant to which, among other things, the Holder shall purchase, and the Frontier Parent shall sell and deliver to the Holder, certain warrants to purchase 10,008,886 shares of Common Stock of the Company (such warrants, collectively, the "**HBC Warrants**", and the shares of Common Stock issuable pursuant to the terms of the HBC Warrants, including, without limitation, upon exercise or otherwise, collectively, the "**Warrant Shares**", and together with the Exchange Shares, the "**Shares**"); and

F. Each Exchange, if any, will be made in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Exchange Price.

1.1 Subject to the terms and conditions set forth in this Agreement, the Holder has the Exchange Right to, from time to time, Exchange all, or any part, of the Holder Units as designated by the Holder for Exchange Shares, based upon a value (the "**Unit Value**") of $1.00 per Holder Unit (subject to customary adjustments for any unit split, dividends, distributions, recapitalizations, consolidations, mergers and other similar events) as follows (the "**Exchange Conditions**", and such applicable price per share of Common Stock in an Exchange as determined in accordance herewith and subject to any adjustments herewith, each, an "**Exchange Price**"):

1.1.1 if prior to December 31, 2026, (x) any portion, up to 50%, of the Holder Units at a price of $15.00 per share of Common Stock, (y) any portion, up to 75%, of the Holder Units at a price of $17.50 per share of Common Stock and/or (z) all, or any portion, of the Holder Units at a price of $20.00 per share of Common Stock;

1.1.2 from and after December 31, 2026, all, or any portion, of the Holder Units at a price per share of Common Stock equal to $5.481, the purchase price of units in the Rights Offering; and/or

1.1.3 all, or any portion, of the Holder Units at any time following the occurrence of (i) any voluntary or involuntary bankruptcy, change of control, liquidation, dissolution or winding up of Frontier Parent, (ii) the delivery of notice to the Holder by any Member or Frontier Parent (or any of their agents or representatives) of the intent by any Person (as defined below) to exercise any drag-along rights pursuant to Section 8.03 of the LLC Agreement, including the delivery of notice with respect to a potential Company Sale (as defined in the LLC Agreement) and which, for the avoidance of doubt, shall not require the prior consummation of the transaction(s) contemplated by such Company Sale, (iii) the occurrence of, or the entering into any contract or arrangement agreeing to do or take, any of the actions set forth in clauses (e) and (h) under "Reserved Matters" attached LLC Agreement as Schedule D-1 and (iv) the occurrence of, or the entering into any contract or arrangement agreeing to do or take, any of the actions set forth in clauses (a) (provided that for the purposes herein, such clause shall be deemed to include a pro rata redemption or repurchase of all Preferred Units (as defined in the LLC Agreement) at the same price per unit) and (d) under "Fundamental Matters" attached to the LLC Agreement as Schedule D-2, at a price per share of Common Stock equal to $5.481, the purchase price of units in the Rights Offering.

2. Terms of Exchange Rights.

2.1 Exchange; Exchange Share Amount. Subject to the satisfaction of any applicable Exchange Conditions and Section 2.3.4 below, the Holder may exercise, in whole or in part, the Exchange Rights at any time or times on or after the date hereof as permitted pursuant to the Exchange Conditions, by delivery to the Company, Frontier Parent and the Transfer Agent (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed Notice of Exchange in the form attached hereto as **Exhibit A** (each, a "**Notice of Exchange**"). The aggregate number of Exchange Shares (each an "**Exchange Share Amount**") to be issued to the Holder in any Exchange shall equal the quotient of (i) the product of (x) the Unit Value of the Holder Units in such Exchange and (y) the aggregate number of Holder Units in such Exchange, divided by (y) the applicable Exchange Price. Against the issuance to the Holder of the Exchange Share Amount of Exchange Shares in an Exchange, the Holder shall contemporaneously transfer the Holder Units exchanged in such Exchange, to the Company in accordance with the terms of the LLC Agreement as the payment of the aggregate Exchange Price in connection therewith.

2.2 Exchange Eligibility Period. The Exchange Rights may be exercised at any time any Holder Units remain outstanding (the "**Exchange Eligibility Period**").

2.3 Mechanics of Exchange.

2.3.1 Issuance of Exchange Shares. As soon as commercially practicable following the Company's receipt of a Notice of Exchange (each, an "**Exchange Date**"), the Company shall transmit by electronic mail an acknowledgment of confirmation of receipt of such Notice of Exchange, in the form attached hereto as **Exhibit A-1**, to the Holder, Frontier Parent and the Transfer Agent (as defined below), which confirmation shall constitute an instruction to the Transfer Agent, in accordance with the Irrevocable Transfer Agent Instructions (as defined below), to process such Notice of Exchange in accordance with the terms herein. The Company shall use commercially reasonable efforts to cause the Transfer Agent to promptly enter into the share transfer books of the Company, registered in the name of the Holder or its designee, the aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such exercise; *provided* that the Company shall use commercially reasonable efforts to cause the Transfer Agent to register such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such exercise in one (1) Trading Day after the Exchange Date. Upon delivery to the Company, Frontier Parent and the Transfer Agent of such Notice of Exchange, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Exchange Shares with respect to which such Exchange Rights that have been exercised, irrespective of the date such Exchange Shares are entered into the share transfer books of the Company, except that, if the Exchange Date is a date when the share transfer books of the Company are closed, the Holder shall be deemed to have become a holder of record of the Exchange Shares at the close of business on the next succeeding date on which the share transfer books are open; provided, that the Holder shall be deemed to have waived any voting rights of any such Exchange Shares, as necessary, such that the aggregate voting rights of any Common Stock (including such Exchange Shares) beneficially owned by the Holder and/or any Attribution Parties (as defined below), collectively, on any such date of determination shall not exceed the Maximum Percentage (as defined below) as a result of any such exercise of any Exchange Rights. "**Trading Day**" means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Nasdaq Capital Market (the "**Principal Market**"), or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price or trading volume determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

2.3.2 Subject to Section 3.4 of this Agreement, the Holder may exercise its Exchange Rights only for a whole number of Exchange Shares. In no event will the Company be required to net cash settle any Exchange Rights exercise. If the Holder would be entitled, upon the exercise of its Exchange Rights, to receive a fractional interest in an Exchange Share, the Company shall round down to the nearest whole number, the number of Exchange Shares to be issued to the Holder.

2.3.3 Valid Issuance. All Exchange Shares issued upon the proper exercise of Exchange Rights in conformity with this Agreement shall be validly issued, fully paid and non-assessable.

2.3.4 Maximum Percentage. The Company shall not effect any exercise of the Exchange Rights, and the Holder shall not have the right to exercise any portion of such Exchange Rights, and any such exercise shall be null and void and shall be cancelled ab initio and treated as if never made, to the extent that immediately prior to or following the exercise set forth on the applicable Notice of Exchange, the Holder, together with its Attribution Parties (as defined below), collectively beneficially owns or would beneficially own in excess of 9.8% (the "**Maximum Percentage**") of the shares of Common Stock that would be issued and outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of the Exchange Rights. For purposes of calculating beneficial ownership for determining whether the Maximum Percentage is or will be exceeded, the aggregate number of shares of Common Stock beneficially owned by the Holder together with its Attribution Parties shall include the number of Exchange Shares issuable upon exercise of the Exchange Rights with respect to which the determination is being made, but shall exclude shares of Common Stock that would be issuable upon (x) exercise of the remaining, unexercised portion of the Exchange Rights of the Holder or its Attribution Parties and (y) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by the Holder or its Attribution Parties (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section

13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules promulgated thereunder. For purposes of this subsection 2.3.4, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent annual report on Form 10-K, quarterly report on Form 10-Q, current report on Form 8-K or other public filing with the United States Securities and Exchange Commission (the "**Commission**") as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within three (3) Business Days (as defined below) confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of equity securities of the Company and/or Exchange Rights, as applicable, by the Holder and its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The Holder on the applicable Notice of Exercise shall disclose to the Company the number of shares of Common Stock that the Holder, together with its Attribution Parties, beneficially owns. In the event that the issuance of shares of Common Stock to the Holder upon exercise of the Exchange Rights would result in the Holder, together with its Attribution Parties, being deemed to beneficially own, in the aggregate, more than the Maximum Percentage, the number of shares so issued by which the Holder's, together with its Attribution Parties', aggregate beneficial ownership exceeds the Maximum Percentage (the "**Excess Shares**") shall be deemed null and void and shall be cancelled ab initio, and the Holder and/or its Attribution Parties shall not have the power to vote or to transfer the Excess Shares. By written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage applicable to the Holder to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company. For purposes of clarity, any Exchange Shares issuable pursuant to the terms of the LLC Agreement and/or this Agreement in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder or its Attribution Parties for any purpose including for purposes of Section 13(d) of the Exchange Act and the rules promulgated thereunder or Section 16 of the Exchange Act and the rules promulgated thereunder, including Rule 16a-1(a)(1) under the Exchange Act. No prior inability to exercise Exchange Rights pursuant to this subsection shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this subsection 2.3.4 shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this subsection 2.3.4 to the extent necessary to correct this subsection or any portion of this subsection which may be defective or inconsistent with the intended beneficial ownership limitation contained in this subsection 2.3.4 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor registered holder or Holder of the Exchange Right. "**Affiliate**" means any person directly or indirectly controlled by, controlling or under common control with, the Holder, but only for so long as such control shall continue. For purposes of this definition, "control" (including, with correlative meanings, "controlled by", "controlling" and "under common control with") means, with respect to a person, possession, direct or indirect, of (a) the power to direct or cause direction of the management and policies of such person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), or (b) at least 50% of the voting securities (whether directly or pursuant to any option, warrant or other similar arrangement) or other comparable equity interests. "**Attribution Parties**" means, collectively, the following persons: (i) any investment vehicle, including any funds, feeder funds, or managed accounts, currently or from time to time after the initial issue date of the Exchange Rights, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any person acting or who could be deemed to be acting as a Section 13(d) "group" together with the Holder or any Attribution Parties and (iv) any other persons whose beneficial ownership of the Common Stock would or could be aggregated with the Holder's and/or any other Attribution Parties for purposes of Section 13(d) or Section 16 of the Exchange Act. For clarity, the purpose of this definition is to subject collectively the Holder and all of its Attribution Parties to the Maximum Percentage. "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

3. Adjustments.

3.1 Adjustment of Exchange Rights Upon Reorganization, etc. In case of any reclassification or reorganization of the outstanding shares of Common Stock (other than a stock split, stock dividend or a change that solely affects the par value of such shares of Common Stock), or in the case of any merger or consolidation of the Company with or into another entity or conversion of the Company as another entity (other than a consolidation or merger in which the Company is the continuing corporation and is not a subsidiary of another entity whose stockholders did not own all or substantially all of the Common Stock of the Company in substantially the same proportions immediately before such transaction and that does not result in any reclassification or reorganization of the outstanding shares of Common Stock), or in the case of any sale or conveyance to another entity of the assets or other property of the Company as an entirety or substantially as an entirety in connection with which the Company is dissolved, the Exchange Rights shall thereafter become the right to purchase and receive, upon the basis and upon the terms and conditions specified in the Exchange Rights and in lieu of the shares of Common Stock of the Company immediately theretofore purchasable and receivable upon the exercise of the rights represented thereby, the kind and amount of shares of stock or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation, or upon a dissolution following any such sale or transfer, that the Exchange Rights would have received if the Holder had exercised the Exchange Right(s) immediately prior to such event without giving effect to the Maximum Percentage in subsection 2.3.4, if applicable (the "**Alternative Issuance**"); provided, however, that if the Holder was entitled to exercise a right of election as to the kind or amount of securities, cash or other assets receivable upon such consolidation or merger, then the kind and amount of securities, cash or other assets constituting the Alternative Issuance for which the Exchange Rights shall become exercisable shall be deemed to be the weighted average of the kind and amount received per share by the holders of the Common Stock in such consolidation or merger that affirmatively make such election. The provisions of this Section 3.1 shall similarly apply to successive reclassifications, reorganizations, mergers or consolidations, sales or other transfers. In no event will the Exchange Price be reduced to less than the par value per share issuable upon exercise of such Exchange Right. The Company shall not enter into or be a party to any transaction subject to the provisions of this Section 3.1 unless the successor entity, if any, assumes in writing all of the obligations of the Company under this Agreement.

3.2 Extraordinary Dividends. If the Company, at any time during the Exchange Eligibility Period, shall pay a dividend or make a distribution in cash, securities or other assets to the holders of the Common Stock on account of such shares of Common Stock (or other shares of the Company's capital stock into which Exchange Rights are exchangeable), other than as described in Section 3.1 above or Section 3.5 below (any such non-excluded event being referred to herein as an "**Extraordinary Dividend**"), then the Exchange Price shall be decreased, effective immediately after the effective date of such Extraordinary Dividend, by the amount of cash and/or the fair market value (as determined by the board of directors of the Company (the "**Board of Directors**"), in good faith) of any securities or other assets paid on each share of Common Stock in respect of such Extraordinary Dividend.

3.3 Notices of Changes in Exchange Right. Upon the occurrence of any stock split, stock dividend or such other event specified in Section 3.1 or Section 3.2, the Company shall give written notice of the occurrence of such event to the Holder of the record date or the effective date of the event. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such event.

3.4 No Fractional Shares. Notwithstanding any provision contained in this Agreement to the contrary, the Company shall not issue fractional shares of Common Stock upon the exercise of Exchange Rights. If, by reason of any adjustment made pursuant to this Section 3, the Holder would be entitled, upon the exercise of such Exchange Right, to receive a fractional interest in a share, the Company shall, upon such exercise, round to the nearest whole number the number of shares of Common Stock to be issued to the Holder.

3.5 Split-Ups and Aggregations. If on or after the date hereof, the number of outstanding shares of Common Stock is increased by a stock dividend payable in shares of Common Stock, or by a split-up of shares of Common Stock or other similar event, or the number of outstanding shares of Common Stock is decreased by a consolidation, combination, reverse stock split or reclassification of shares of Common Stock or other similar event, then, on the effective date of such stock dividend, split-up, consolidation, combination, reverse stock split, reclassification or similar event, the Exchange Price in effect immediately prior to such event shall be adjusted (to the nearest tenth of a cent) by multiplying such Exchange Price immediately prior to such adjustment by a fraction (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to giving effect to the relevant transaction or event and (y) the denominator of which shall be the number of shares of Common Stock outstanding immediately thereafter. Any adjustment pursuant to this Section 3.5 shall become effective immediately after the effective date of such subdivision or combination.

3.6 Other Events. In case any event shall occur affecting the Company as to which none of the provisions of the preceding subsections of this Section 3 are strictly applicable, but which would require an adjustment to the terms of the Exchange Rights in order to (i) avoid an adverse impact on the Exchange Rights and (ii) effectuate the intent and purpose of this Section 3, then, in each such case, the Company shall appoint a firm of independent public accountants, investment banking or other appraisal firm of recognized national standing, which shall give its opinion as to whether or not any adjustment to the rights represented by the Exchange Rights is necessary to effectuate the intent and purpose of this Section 3 and, if they determine that an adjustment is necessary, the terms of such adjustment. The Company shall adjust the terms of the Exchange Rights in a manner that is consistent with any adjustment recommended in such opinion.

4. Other Provisions Relating to Exchange Rights.

4.1 No Rights as Stockholder. The Exchange Rights do not entitle the Holder thereof to any of the rights of a stockholder of the Company, including, without limitation, the right to receive dividends, or other distributions, exercise any preemptive rights to vote or to consent or to receive notice as stockholders in respect of the meetings of stockholders or the election of directors of the Company or any other matter.

4.2 Reservation of Common Stock. The Company shall at all times reserve and keep available a number of its authorized but unissued shares of Common Stock that shall be sufficient to permit the exercise in full of all outstanding Exchange Rights issued pursuant to this Agreement.

4.3 Tax Matters.

4.3.1 The Company shall promptly pay all transfer taxes and other similar charges that may be imposed upon the Company in respect of (i) the issuance of shares of Common Stock upon the exercise of the Exchange Rights, provided, however, that the Company shall not be obligated to pay any transfer taxes incurred in connection with (A) the Holder’s request to deliver shares of

Common Stock to a Person other than the Holder or (ii) any assignment, transfer or replacement of Exchange Rights or shares of Common Stock made at the request of the Holder.

4.3.2 Prior to the date hereof, Holder has delivered to the Company an IRS Form W-9 (or any successor form) signed under penalties of perjury to the Company. Holder agrees to notify the Company promptly if the information contained in any IRS Form W-9 (or any successor form) delivered by the Holder changes and thereafter deliver to the Company an updated IRS Form W-9 (or any successor form). Holder agrees to complete and to provide to the Company in a timely manner any other tax documentation that may be reasonably required by the Company in connection with the Exchange Rights or shares of Common Stock.

5. Representations and Warranties of the Company. The Company hereby represents and warrants to the Holder as of the date hereof as follows:

5.1 Organization and Qualification. The Company and each of the Subsidiaries (as defined below) is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted except where the failure to be so qualified or in good standing, as the case may be, would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial position, stockholders' equity, results of operations or prospects of the Company and its subsidiaries taken as a whole or on the performance by the Company of its obligations under this Agreement (a "**Material Adverse Effect**"). Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents, except where such violation or default, as the case may be, would not, individually or in the aggregate, have a Material Adverse Effect. "**Subsidiary**" means any subsidiary of the Company that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Exchange Act (as defined below).

5.2 Authorization and Binding Obligation. The Company has full right, power and authority to execute and deliver this Agreement, the Registration Rights Agreement, the Irrevocable Transfer Agent Instructions (as defined below) and each of the other agreements and certificates entered into by the parties hereto in connection with Exchanges and the other the transactions contemplated by this Agreement (collectively, the "**Exchange Documents**"), and to perform its obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery by it of this Agreement and the other Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby has been duly and validly taken. The Exchange Documents have been duly authorized, executed and delivered by the Company and, assuming due execution and delivery by the Holder, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting rights or remedies of creditors generally; and (ii) the application of general principles of equity.

5.3 No Conflict; Required Filings and Consents. No consent, filing, approval, authorization, order, registration or qualification of or with any court or arbitrator or governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement, the issuance and sale of the Exchange Rights and the consummation by the Company of the transactions contemplated by this Agreement, except for (i) such as have been obtained or made, (ii) the registration of the Exchange Shares under the Securities Act and those that may be required under the Exchange Act, applicable state Securities laws, or by NASDAQ or the Financial Industry Regulatory Authority, Inc., and (iii) those that, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect.

5.4 Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Holder contained herein, each Exchange is exempt from registration under the Securities Act, pursuant to the exemption provided by Section 4(a)(2) thereof, and applicable state securities laws.

5.5 Granting of Exchange Rights. The granting by the Company to the Holder of the Exchange Rights pursuant to the LLC Agreement and the terms hereof is duly authorized, validly established and free from all free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, rights, proxies, equity or other adverse claim thereto (collectively, "**Liens**"). Upon issuance in each Exchange in accordance herewith or pursuant to the Exchange Right, as applicable, the Exchange Shares, when issued, will be validly issued, fully paid and nonassessable and free from all Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of shares of Common Stock. For the avoidance of doubt, no Exchange shall be valid unless the Holder Units to be exchanged pursuant to such Exchange are delivered free from all Liens.

5.6 Equity Capitalization. The authorized, issued and outstanding shares of capital stock of the Company are as set forth in the Company's most recent Annual Report on Form 10- K and Quarterly Report on Form 10-Q (except for subsequent issuances, if any, pursuant to reservations, agreements or employee benefit plans referred to in such Annual Report or Quarterly Report, pursuant to the exercise of convertible securities or options referred to in such Annual Report or Quarterly Report or pursuant to transactions announced subsequent to the filing of such Annual Report or Quarterly Report). "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

5.7 Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided the Holder or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information with respect to the Company or any of its Subsidiaries solely as it pertains to this Agreement, the Term Sheet, or the transactions contemplated herein or therein since June 30, 2026; provided, however, that nothing herein shall restrict the Company's ability to disclose this Agreement and any details with respect hereto in one or more press releases or in any Current Report on Form 8-K, Quarterly Report on Form 10-Q and/or Annual Report on Form 10-K. Further, the Company shall not, and shall cause each of its Subsidiaries and their respective officers, directors, affiliates, employees and agents, not to, provide the Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of the Holder.

5.8 No General Solicitation. Neither the Company nor any other person or entity authorized by the Company to act on its behalf has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to securities pursuant to this Agreement. Assuming the accuracy of the representations and warranties of the Holder set forth in Section 6, neither the Company nor any of its affiliates, its subsidiaries nor any person acting on their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any Company security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) for the exemption from registration for the transactions contemplated hereby.

5.9 Registration Eligibility. The Company is eligible to register the Registrable Securities (defined in the Registration Rights Agreement) for resale by the Holder using Form S-3ASR promulgated under the 1933 Act.

6. Representations and Warranties of Holders. The Holder represents and warrants to the Company, as of the date hereof, as follows:

6.1 Organization and Authority. The Holder has the requisite power and authority to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement by the Holder and the consummation by Holder of the transactions contemplated hereby has been duly authorized by Holder's board of directors or other governing body. This Agreement has been duly executed and delivered by Holder and constitutes the legal, valid and binding obligation of Holder, enforceable against Holder in accordance with its terms.

6.2 Ownership of Holder Units. The Holder owns the Holder Units, and upon consummation of an Exchange will transfer the applicable Holder Units to the Company, free and clear of any Liens (other than the obligations pursuant to this Agreement, the LLC Agreement and the other Exchange Documents and applicable securities laws).

6.3 Reliance on Exemptions. The Holder understands that the Exchange Shares are being offered and exchanged in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Holder's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein and in the Exchange Documents in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the Exchange Shares.

6.4 Validity; Enforcement. This Agreement and the Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

6.5 No Conflicts. The execution, delivery and performance by the Holder of this Agreement and the Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

6.6 No Consideration Paid. No commission or other remuneration has been paid by the Holder for soliciting any Exchange contemplated hereby.

6.7 No Public Sale or Distribution. Upon each Exchange the Holder will acquire the Exchange Shares issuable upon exercise of the Exchange Rights with respect thereto for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the Securities Act; provided, however, by making the representations herein, the Holder does not agree, or make any representation or warranty, to hold any of the Exchange Shares for any minimum or other specific term and reserves the right to dispose of the Exchange Shares at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act. The Holder does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Exchange Shares in violation of applicable securities laws. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity (as defined below) or any department or agency thereof. "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

6.8 Accredited Investor Status. The Holder is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D.

6.9 Information. The Holder and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the Exchanges that have been requested by the Holder. The Holder and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigations conducted by the Holder or its advisors, if any, or its representatives shall modify, amend or affect the Holder's right to rely on the Company's representations and warranties contained herein. The Holder understands that its investment in the Exchange Shares involves a high degree of risk. The Holder has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Exchange Shares.

6.10 No Governmental Review. The Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Exchange Shares or the fairness or suitability of the investment in the Exchange Shares nor have such authorities passed upon or endorsed the merits of the Exchanges.

6.11 Transfer or Resale. The Holder understands that except as provided in the Registration Rights Agreement and Section 10 hereof: (i) the Exchange Shares have not been and are not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, pledged, assigned or transferred other than pursuant to (A) an effective registration statement under the Securities Act, or (B) Rule 144 promulgated under the Securities Act (or a successor rule thereto) ("**Rule 144**"); (ii) any sale of the Exchange Shares made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144, and further, if Rule 144 is not applicable, any resale of the Exchange Shares under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the Commission promulgated thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Exchange Shares under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

6.12 No General Solicitation. The Holder is not acquiring the Exchange Rights as a result of any general or public solicitation or general advertising, or publicly disseminated advertisement, article, notice or other communication regarding the Exchange Rights published in any newspaper, magazine or similar media or broadcast over television, radio or the internet or presented at any seminar or any other general solicitation or general advertisement, including any of the methods described in Section 502(c) of Regulation D under the Securities Act.

7. No Shareholder Approval. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the issuance of any Exchange Shares pursuant to this Agreement to require approval of stockholders of the Company for purposes of the 1933 Act or under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of NASDAQ or any exchange or automated quotation system on which any of the securities of the Company are listed or designated for quotation.

8. No Integration. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf shall, directly or indirectly, make any offers or sales of any security (as defined in the Securities Act) or solicit any offers to buy any security or take any other actions, under circumstances that would require registration of the Exchange Shares under the Securities Act or cause any Exchange to be integrated with such offering or any prior offerings by the Company for purposes of Regulation D under the Securities Act.

9. Listing. The Exchange Shares to be delivered shall have been approved for listing on the Nasdaq, subject to official notice of issuance.

10. Transfer Agent Instructions; Legend.

10.1 Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the "**Transfer Agent**") in a form acceptable to the Holder (the "**Irrevocable Transfer Agent Instructions**") to credit shares to the applicable balance accounts on the share transfer books of the Company, registered in the name of the Holder or its respective nominee(s), for the Exchange Shares in such amounts as specified from time to time by the Holder to the Company upon the exercise of the Exchange Rights. The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 11.1 will be given by the Company to its Transfer Agent with respect to the Exchange Shares, and that the Exchange Shares shall otherwise be freely transferable on the books and records of the Company, as applicable, to the extent provided in this Agreement, the Exchange Rights and the other Exchange Documents. If the Holder effects a sale, assignment or transfer of the Exchange Shares as permitted by this Agreement, the Company shall permit the transfer and shall promptly instruct its Transfer Agent to credit shares to the applicable balance accounts on the share transfer books of the Company in such name and in such denominations as specified by the Holder to effect such sale, transfer or assignment. Subject to Section 4.3, any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the issuance of such opinions or the removal of any legends or the issuance of any opinions with respect thereto on any of the Exchange Shares shall be borne by the Company.

10.2 Legends. The Holder understands that the Shares will be issued pursuant to an exemption from registration or qualification under the Securities Act and applicable state securities laws, and except as set forth below, the Shares shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against such transfers):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE.
>
> SECURITIES EVIDENCED BY THIS CERTIFICATE AND SHARES OF COMMON STOCK OF EOS ENERGY ENTERPRISES, INC. (THE "COMPANY") ISSUED UPON EXERCISE OF SUCH SECURITIES SHALL BE ENTITLED TO REGISTRATION RIGHTS UNDER A REGISTRATION RIGHTS AGREEMENT TO BE EXECUTED BY THE COMPANY.

10.3 Removal of Legends. The Shares shall not be required to contain the legend set forth in Section 11.2 above or any other legend (i) following any sale of such Shares pursuant to an effective registration statement covering the resale of such Shares by the Holder or (ii) following any sale of such Shares pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company). If a legend is not required pursuant to the foregoing, the Company shall no later than one (1) Trading Day (or such earlier date as required pursuant to the Exchange Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date the Holder delivers such Shares to the Company) following the written request by the Holder to the Company or the transfer agent (with notice to the Company), together with any other deliveries from the Holder as may be required above in this Section 11.3, as directed by the Holder, register an entry on the share transfer books of the Company representing such Shares that is free from all restrictive and other legends, registered in the name of the Holder or its designee. Subject to Section 4.3, the Company shall be responsible for any transfer agent fees with respect to any issuance of Shares or the removal of any legends with respect to any Shares in accordance herewith.

10.4 FAST Compliance. While the Exchange Rights remain exercisable hereunder, the Company shall maintain a transfer agent that participates in FAST.

11. Fees. The Company shall reimburse Kelley Drye & Warren LLP, on demand, for all costs and expenses incurred by it in connection with preparing and delivering this Agreement, the LLC Agreement and the Exchange Documents (including, without limitation, all legal fees and disbursements in connection therewith, and due diligence in connection with the transactions contemplated thereby) in an aggregate non-accountable amount equal to $200,000.00 to Kelley Drye & Warren LLP. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, The Depository Trust Company fees or broker's commissions (other than for Persons engaged by any Buyer) relating to or arising out of the transactions contemplated hereby. Other than as noted above and subject to Sections 4.3 and 11,

each of the Company and the Holder shall pay its own expenses with respect to any exercise and issuance of the Exercise Shares. If any party shall commence any action or suit to enforce any provisions of the Exchange Documents, then, the prevailing party shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or suit.

12. Blue Sky. The Company shall make all filings and reports relating to the Exchange as required under applicable securities or "Blue Sky" laws of the states of the United States following the date hereof, if any.

13. Effective Date. Except as otherwise provided herein, this Agreement shall be deemed effective as of such date that Company and the Holder shall have duly executed and delivered this Agreement.

14. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

15. Miscellaneous.

15.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including the Holder. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Holder. The Exchange Rights may not be assigned or transferred to any Person (other than any Affiliate of the Holder) without the prior written consent of the Company.

15.2 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party. No specific representation or warranty shall limit the generality or applicability of a more general representation or warranty. Each and every reference to share prices, shares of Common Stock and any other numbers in this Agreement that relate to the shares of Common Stock shall be automatically adjusted for any share splits, share dividends, share combinations, recapitalizations or other similar transactions that occur with respect to the shares of Common Stock after the date of this Agreement. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, nothing contained herein shall constitute a representation or warranty against, or a prohibition of, any actions with respect to the borrowing of, arrangement to borrow, identification of the availability of, and/or securing of, securities of the Company in order for the Holder (or its broker or other financial representative) to effect short sales or similar transactions in the future.

15.3 Remedies. Each party shall have all rights and remedies set forth in the Exchange Documents and all rights and remedies which each party has been granted at any time under any other applicable agreement or contract and all of the rights which each party has under any applicable law. The remedies provided in this Agreement and the other Exchange Documents shall be cumulative and in addition to all other remedies available under this Agreement and the other Exchange Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief).

15.4 Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Exchange Documents, whenever the Holder exercises its Exchange Right and the Company or the Transfer Agent does not timely perform its related obligations within the periods herein provided, then the Holder (or such applicable Investor) may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company and the Transfer Agent to the extent that the Exchange has not already been effected, its Exchange Notice in whole or in part without prejudice to its future actions and rights.

15.5 Notices. Any notice, statement or demand authorized by this Agreement to be given or made by the Holder to or on the Company shall be sufficiently given (i) when so delivered if by hand or overnight delivery; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses (until another such address is filed in writing by the Company with Frontier Parent) for such communications shall be as follows:

Eos Energy Enterprises, Inc.
3920 Park Avenue
Edison, NJ 08820
Attention: General Counsel
E-mail: legal@eose.com

Any notice, statement or demand authorized by this Agreement to be given or made by the Holder or by the Company to Frontier Parent shall be sufficiently given (i) when so delivered if by hand or overnight delivery; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses (until another such address is filed in writing by Frontier Parent with the Company) for such communications shall be as follows:

Cerberus Operations and Advisory Company, LLC
875 3rd Avenue
New York, NY 10022
Email: OGC@cerberus.com; jhansen@cerberusoperations.com

c/o Eos Energy Enterprises, Inc.
3920 Park Avenue
Edison, NJ 08820
Attention: General Counsel
E-mail: legal@eose.com

Any notice, statement or demand authorized by this Agreement to be given or made by the Holder to the Transfer Agent shall be sufficiently given (i) when so delivered if by hand or overnight delivery; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses (until another such address is filed in writing by the Transfer Agent (or by the Company on behalf of the Transfer Agent) with the Holder) for such communications shall be as follows:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, New York 10004
Attention: Compliance Department
E-mail: sjones@continentalstock.com

Any notice, statement or demand authorized by this Agreement to be given or made by the Company, the Transfer Agent or Frontier Parent to the Holder shall be sufficiently given when (i) when so delivered if by hand or overnight delivery; (ii) upon receipt, when sent by electronic mail (provided that such sent e-mail is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's e-mail server that such e-mail could not be delivered to such recipient); or (iii) if sent by certified mail or private courier service within five (5) days after deposit of such notice, postage prepaid, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses (until another such address is filed in writing by the Holder with the Company) for such communications shall be as set forth on the signature page of the Holder attached hereto.

15.6 Applicable Law. The validity, interpretation, and performance of this Agreement shall be governed in all respects by the laws of the State of New York, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. Each party hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. Each party hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenient forum.

15.7 Persons Having Rights under this Agreement. Nothing in this Agreement shall be construed to confer upon, or give to, any person or corporation other than the parties hereto any right, remedy, or claim under or by reason of this Agreement or of any covenant, condition, stipulation, promise, or agreement hereof. All covenants, conditions, stipulations, promises, and agreements contained in this Agreement shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

15.8 Amendments. Except for Section 2.3.4 and this Section 16.8, which may not be amended, modified or waived, this Agreement may only be amended, modified or waived with the written consent of the Company and the Holder. Notwithstanding the foregoing, the Company may lower the Exchange Price upon advance approval by the full Board of Directors, without the consent of the Holder.

15.9 Counterparts. This Agreement may be executed in any number of original or facsimile counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

15.10 Effect of Headings. The section headings herein are for convenience only and are not part of this Agreement and shall not affect the interpretation thereof.

15.11 Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

15.12 MFN. If, after the date of the Term Sheet, the Company and/or the Frontier Parent, directly or indirectly enters into, provides, issues, grants (or enters into an agreement with respect to any of the foregoing) to a member of Frontier Parent a right to exchange (and/or convert) such member's equity in Frontier Parent, in whole or in part, into shares of Common Stock and/or Common Stock Equivalents (as defined below) of the Company on terms more favorable to such member than those provided to the Holder under this Agreement (for the avoidance of doubt, an earlier timeline than that set forth in Section 1.1 shall be deemed more favorable), then (i) Frontier Parent or the Company shall provide notice thereof to the Holder promptly following the occurrence thereof and (ii) the terms and conditions of Holder's Exchange Right shall be, without any further action by Holder or Frontier Parent or the Company, automatically amended and modified in an economically and legally equivalent manner such that the Holder shall receive the benefit of the more favorable terms and/or conditions (as the case may be) set forth in such agreement; provided that upon written notice to Frontier Parent or the Company, as applicable, at any time within 60 days following the notice delivered by Frontier Parent or the Company pursuant to clause (i) above, the Holder may elect not to accept the benefit of any such amended or modified term or condition, in which event the term or condition contained in such agreement shall not apply to the Holder as if such amendment or modification never occurred with respect to the Holder. The provisions set forth herein shall apply similarly and equally to each issuance or grant of a more favorable exchange right. "**Common Stock Equivalents**" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

15.13 [Reserved.]

[Signature Page Follows]

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

COMPANY:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer

FRONTIER PARENT:

FRONTIER POWER USA PARENT, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

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

HOLDER:

HBC MSF CAPITAL SOLUTIONS BLOCKER II LLC

By: /s/ Richard Allison
Name: Richard Allison
Title: Authorized Signatory*

Authorized Signatory Hudson Bay Capital Management LP not individually, but solely as Investment Advisor to HBC MSF Capital Solutions Blocker II LLC

Notices:

HBC MSF Capital Solutions Blocker II LLC
c/o Hudson Bay Capital Management LP
290 Harbor Drive, 3rd Floor
Stamford, CT 06902
Attn: Capital Solutions Team
Email: investments@hudsonbaycapital.com
Phone: (212) 571-1244

EXHIBIT A

Notice of Exchange

Eos Energy Enterprises, Inc.

The undersigned holder hereby exercises, in part, the exchange rights to receive shares of Common Stock (the "**Exchange Shares**") of Eos Energy Enterprises, Inc., a Delaware corporation (the "**Company**") in exchange for Class C Units (the "**Holder Units**") of Frontier Power USA Parent, LLC, a Delaware limited liability company (the "**Frontier Parent**"), established pursuant to the terms of (a) that certain Limited Liability Company Agreement of Frontier Parent, dated August 4, 2026 and (b) that certain Exchange Agreement, dated August 4, 2026, by and between the Company, Frontier Parent and the investor signatory thereto (the "**Exchange Agreement**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Exchange Agreement.

The Company shall deliver to Holder, or its designee or agent as specified below, _______ Exchange Shares in exchange for _____ Holder Units in accordance with the terms of the Exchange Agreement.

The Holder hereby represents and warrants to the Company that, after giving effect to the issuance of Exchange Shares in accordance herewith, the Holder shall not be in breach of Section 2.3.4 of the Exchange Agreement. As of the date hereof, the Holder beneficially owns ______ shares of Common Stock, together with its Attribution Parties, without giving effect to the issuance of Exchange Shares pursuant to this notice. Notwithstanding the foregoing, neither the Company nor Frontier Parent shall be permitted to use the foregoing beneficial ownership information for any other purposes than determining application of Section 2.3.4 under the Exchange Agreement.

Delivery shall be made to Holder, or for its benefit, as follows:

Issue to: ____

____

____

Date: ______________________________

____

Name of Registered Holder

____

By: ________________________________

Name:

Title:

Tax ID: ________________________________

Facsimile: ________________________________

E-mail Address: ________________________________

EXHIBIT A-1

ACKNOWLEDGMENT

The Company hereby acknowledges this Notice of Exchange and hereby directs Continental Stock Transfer & Trust Company to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated August 4, 2026, from the Company and acknowledged and agreed to by Continental Stock Transfer & Trust Company.

EOS ENERGY ENTERPRISES, INC.

By: ______________________________

Name:

Title:

REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of August 4, 2026, is by and among Eos Energy Enterprises, Inc., a Delaware corporation with offices located at Two Allegheny Center, Nova Tower 2, Pittsburgh, Pennsylvania 15212 (the "**Company**") and the undersigned holders (each, a "**Holder**," and collectively, the "**Holders**").

RECITALS

A. In connection with (i) that certain binding term sheet, by and between the Company, HBC MSF Capital Solutions Blocker II LLC, CCM Frontier JV Holdco, LLC, and the other parties thereto, dated as of June 30, 2026 (the "**Term Sheet**"), (ii) that certain Amended and Restated Limited Liability Company Agreement of Frontier Power USA Parent, LLC ("**Frontier Parent**"), dated as of August 4, 2026 (as in effect as of the date hereof, the "**LLC Agreement**"), (iii) that certain Contribution and Warrants Issuance Agreement, dated as of August 4, 2026, by and between the Company and the Frontier Parent (the "**EOS Contribution Agreement**"), and (v) that certain Contribution and Warrants Purchase Agreement, dated as of August 4, 2026, by and between the Frontier Parent and CCM Frontier JV Holdco, LLC (the "**Frontier Parent Contribution Agreement**", and together with, the Term Sheet, the LLC Agreement, and the EOS Contribution Agreement, the "**Transaction Documents**"), Holder (which, for the avoidance of doubt, as of the date hereof, constitutes solely CCM Frontier JV Holdco, LLC) has acquired or will acquire, upon the terms and subject to the conditions of the Transaction Documents warrants (the "**Warrants**") which will be exercisable for shares of Common Stock (such underlying shares, the "**Warrant Shares**"), in accordance with the terms of the Warrants.

B. To induce the Holders to consummate the transactions contemplated by the Transaction Documents, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Holders hereby agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

(a) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(b) "**Closing Date**" means August 4, 2026.

(c) "**Effective Date**" means the date that the applicable Registration Statement has been declared effective by the SEC.

(d) "**Effectiveness Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of the (A) 60th calendar day after the Closing Date and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of the (A) 60th calendar day following the date on which the Company was required to file such additional Registration Statement and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review.

(e) "**Filing Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day after the Closing Date and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

(f) "**Investor**" means a Holder or any transferee or assignee of any Registrable Securities or Warrants, as applicable, to whom a Holder assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee of any Registrable Securities or Warrants, as applicable, assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(g) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

(h) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(i) "**Registrable Securities**" means (i) the Warrant Shares issued or issuable upon the exercise of the Warrants and (ii) any capital stock of the Company issued or issuable with respect to the Warrant Shares, or the Warrants, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Warrants) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on exercise of the Warrants.

(j) "**Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering Registrable Securities.

(k) "**Required Holders**" means, as of any given time, the holders of a majority of the Registrable Securities as of such time (excluding any Registrable Securities held by the Company or any of its Subsidiaries as of such time).

(l) "**Required Registration Amount**" 100% of the maximum number of Warrant Shares issued or issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth therein), all subject to adjustment as provided in Section 2(e).

(m) "**Rule 144**" means Rule 144 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration.

(n) "**Rule 415**" means Rule 415 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC providing for offering securities on a continuous or delayed basis.

(o) "**SEC**" means the United States Securities and Exchange Commission or any successor thereto.

2. Registration.

(a) Mandatory Registration. The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement on Form S-3 covering the resale of all of the Registrable Securities, provided that such initial Registration Statement shall register for resale at least the number of shares of Common Stock equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC; provided further that if Form S-3 is unavailable for such a registration, the Company shall use such other form as is required by Section 2(c). The Company shall use its best efforts to have such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, declared effective by the SEC as soon as practicable (if not automatically effective), but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(b) Legal Counsel. Subject to Section 5 hereof, Simpson Thacher & Bartlett LLP, counsel solely to the lead investor ("**Legal Counsel**") shall represent the lead investor with respect to this Agreement and any registration with respect hereto.

(c) WKSI/Ineligibility to Use Form S-3. If the Company is a Well-Known Seasoned Issuer (as defined in Rule 405 under the Securities Act) at the time of filing, the Company shall file an automatic shelf registration statement on Form S-3ASR covering the resale of the Registrable Securities. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of all

Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the resale of all the Registrable Securities has been declared effective by the SEC and the prospectus contained therein is available for use.

(d) Sufficient Number of Shares Registered. In the event the number of shares available under any Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(f), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC (if not automatically effective), but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(e) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the staff of the SEC (the "**Staff**") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an "underwriter," then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC's "by or on behalf of the Company" offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. Any reduction pursuant to this paragraph will first reduce all Registrable Securities other than those issued or issuable pursuant to the Transaction Documents. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a registration statement within twenty (20) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such registration statement in the same manner as otherwise contemplated in this Agreement for registration statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to "affiliate" status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement (it being understood that the special demand right under this sentence may be exercised by an Investor multiple times and with respect to limited amounts of Registrable Securities in order to permit the resale thereof by such Investor as contemplated above).

(f) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

3. Related Obligations.

The Company shall use its best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use its best efforts to cause such Registration Statement to become effective as soon as practicable after such filing (if not automatically effective, but in no event later than the Effectiveness Deadline). Subject to Allowable Grace Periods, the Company shall keep each

Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (i) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 2(e)) without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "**Registration Period**"). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities. The Company shall submit to the SEC, within one (1) Business Day after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the Staff or that the Staff has no further comments on a particular Registration Statement (as the case may be) and (ii) the consent of Legal Counsel is obtained pursuant to Section 3(c) (which consent shall be immediately sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than twenty-four (24) hours after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) Subject to Section 3(j) of this Agreement, the Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement; provided, however, by 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 8-K, Form 10-Q or Form 10-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the

Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel and legal counsel for each other Investor to review and comment upon (i) each Registration Statement at least five (5) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to each Registration Statement (including, without limitation, the prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel or any legal counsel for any other Investor reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto or to any prospectus contained therein without the prior consent of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall promptly furnish to Legal Counsel and legal counsel for each other Investor, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to each Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries, (ii) after the same is prepared and filed with the SEC, one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference and all exhibits, if requested by an Investor, and (iii) upon the effectiveness of each Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto; provided, however, that any such item listed in the foregoing clauses (i) through (iii) which is available on the EDGAR system (or successor thereto) need not be furnished in physical form. The Company shall reasonably cooperate with Legal Counsel and legal counsel for each other Investor in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall notify Legal Counsel, legal counsel for each other Investor and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, may include an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries), and, subject to Section 3(j), promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission. The Company shall also promptly notify Legal Counsel, legal counsel for each other Investor and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel, legal counsel for each other Investor and each Investor by facsimile or e-mail on the same day of such effectiveness and by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment will be reviewed by the SEC, (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate; and (iv) of the receipt of any request by the SEC or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related prospectus. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto.

(e) The Company shall (i) use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and (ii) notify Legal Counsel, legal counsel for each other Investor and each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(f) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, to the extent reasonably requested by such Investor in connection with establishing or maintaining a due diligence defense under applicable securities laws, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(g) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection by (i) such Investor, and (ii) legal counsel for such Investor (collectively, the "**Inspectors**"), customary diligence documents for an underwritten offering (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector in connection with establishing or maintaining a due diligence defense for the Investor under applicable securities laws, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (2) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (3) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(h) If requested by an Investor, the Company shall as soon as commercially practicable after receipt of notice from such Investor and subject to Section 3(j) hereof, (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or prospectus contained therein if reasonably requested by an Investor holding any Registrable Securities.

(i) The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(j) Notwithstanding anything to the contrary herein (but subject to the last sentence of this Section 3(j)), at any time after the Effective Date of a particular Registration Statement, the Company may delay the disclosure of material, non-public information concerning the Company or any of its Subsidiaries the disclosure of which at the time is not, in the good faith opinion of the board of directors of the Company, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"), provided that the Company shall promptly notify the Investors in writing of the (i) existence of material, non-public information giving rise to a Grace Period (provided that in each such notice the Company shall not disclose the content of such material, non-public information to any of the Investors) and the date on which such Grace Period will begin and (ii) date on which such Grace Period ends, provided further that (I) no Grace Period shall exceed ten (10) consecutive days and during any three hundred sixty five (365) day period all such Grace Periods shall not exceed an aggregate of thirty (30) days, (II) the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period and (III) no Grace Period may exist during the sixty (60) Trading Day period immediately following the Effective Date of such Registration Statement (provided that such sixty (60) Trading Day period shall be extended by the number of Trading Days during such period and any extension thereof contemplated by this proviso during which such Registration Statement is not effective or the prospectus contained therein is not available for use) (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, such Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) above and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) above and the date referred to in such notice. The provisions of Section 3(e) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of each Grace Period, the Company shall again be bound by the first sentence of Section 3(d) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary contained in this Section 3(j), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Transaction Documents in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, prior to such Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(k) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and any Holder being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Documents.

(l) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(m) The Company shall use its best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(j), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel, legal counsel for each other Investor and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(n) The Company shall use its best efforts to cause all of the Common Stock covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, or other market on which similar securities issued by the Company are then listed.

(o) The Company has not entered, and will not hereafter enter, into any agreement with respect to registration rights for its securities which is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement. To the extent that the Company, on or after the date hereof, grants any superior or more favorable registration rights or terms to any Person with respect to the registration rights granted hereunder and terms provided herein than those provided to the Holders of Registrable Securities as set forth herein, any such superior or more favorable registration rights or terms shall also be deemed to have been granted simultaneously to the Holders of Registrable Securities, and the Company shall promptly prepare and execute such documents to reflect and provide such Holders with the benefit of such superior or more favorable registration rights and/or terms with respect to their Registrable Securities.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor with respect to such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) or the first sentence of 3(d), such Investor will promptly discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or the first sentence of Section 3(d) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary in this Section 4(c), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Transaction Documents in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(e) or the first sentence of Section 3(d) and for which such Investor has not yet settled.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, FINRA filing fees (if any) and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

(a) The Company shall defend, protect, indemnify and hold harmless the Investor and its affiliates, directors and officers and each person, if any, who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith, and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or based upon arising out of or based upon any untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or prospectus or necessary to make the statements in a Registration Statement or prospectus (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading (a "**Misstatement**") contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in such Registration Statement, any amendment or supplement to such Registration Statement, preliminary prospectus, final prospectus or summary prospectus, or any free writing prospectus relating to such Registration Statement, or any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder applicable to the Company or any state securities (or blue sky) law, rule or regulation and relating to action or inaction required of the Company in connection with any such registration. Each Investor will, in the event that any registration of any Registrable Securities held by the Investor is being effected under the Securities Act pursuant to this Agreement and the Company has required the Investor to provide such an undertaking on the same terms, indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any), and each other person, if any, who controls such underwriter within the meaning of the Securities Act, against any Indemnified Liabilities, insofar as such Indemnified Liabilities arise out of or are based upon any Misstatement contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement thereto, if the Misstatement was made (or not made, in the case of an omission) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of such Investor expressly for use therein, and shall reimburse the Company and its directors and officers for any reasonable, customary and documented out-of-pocket legal or other expenses incurred by any of them in connection with investigation or defending any such Loss; provided that such Investor shall be liable under this Section 6(a) for only that amount of a Indemnified Liabilities as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a) shall not apply to amounts paid in settlement of any Indemnified Liabilities if such settlement is effected without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnitee and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(b) Promptly after receipt by an Indemnitee under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 6, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (A) the Company has agreed in writing to pay such fees and expenses; (B) the Company shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (C) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company), provided further, that in the case of clause (C) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for the Indemnitees. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnitee under this Section 6, except to the extent that the Company is materially and adversely prejudiced in its ability to defend such action.

(c) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, within ten (10) days after bills are received or Indemnified Liabilities are incurred.

(d) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnitee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144; and

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood and agreed that nothing herein shall limit any obligations of the Company under the Transaction Documents) and the filing of such reports and other documents is required for the applicable provisions of Rule 144.

9. Assignment of Registration Rights.

All or any portion of the rights under this Agreement shall be automatically assignable by each Investor to any transferee or assignee (as the case may be) of all or any portion of such Investor’s Registrable Securities, or Warrants, if: (i) such Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Transaction Documents and the Warrants (as the case may be); and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing, but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of Registrable Securities or (2) imposes any obligation or liability on any Investor without such Investor's prior written consent (which may be granted or withheld in such Investor's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Solely for purposes of this Agreement, a Person is deemed to be a holder of Registrable Securities whenever such Person owns, or is deemed to own, of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be:

If to the Company:

Eos Energy Enterprises, Inc.
Two Allegheny Center
Nova Tower 2
Pittsburgh, Pennsylvania 15212
Attention: Chief Financial Officer

With a copy (for informational purposes only) to:

Eos Energy Enterprises, Inc.
Attention: Chief Legal Officer
Email: legal@eose.com

With a copy (for informational purposes only) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Roshni Banker Cariello; Steven Glendon
Email: roshni.cariello@davispolk.com; steven.glendon@davispolk.com

If to the Transfer Agent:

Continental Stock Transfer & Trust Co.
1 State Street, 30th Floor
New York, NY 10004
Attention: Compliance Department
E-mail: sjones@continentalstock.com

If to Legal Counsel:

Simpson Thacher & Bartlett LLP
4250 Lexington Avenue
New York, New York 10017
Attention: Lin Toback
Email: LToback@stblaw.com

If to a Holder, to its mailing address and/or email address set forth on the signature pages attached to this Registration Rights Agreement, with copies to such Holder's representatives as set forth in this Registration Rights Agreement, or to such other mailing address and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Simpson Thacher & Bartlett LLP shall only be provided notices sent to the lead investor. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof. The Company and each Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by any other party hereto and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which any party may be entitled by law or equity.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision of law or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in State of New York or the United States District Court for the Southern District of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein constitute the entire agreement among the parties hereto and thereto solely with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto solely with respect to the subject matter hereof and thereof; provided, however, nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Investor has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Investor in the Company, (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries or any rights of or benefits to any Investor or any other Person in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Investor and all such agreements shall continue in full force and effect or (iii) limit any obligations of the Company under any of the other Transaction Documents.

(g) Subject to compliance with Section 9 (if applicable), this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, their respective permitted successors and assigns and the Persons referred to in Sections 6 and 7 hereof.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(i) This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party. Notwithstanding anything to the contrary set forth in Section 10, terms used in this Agreement but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by each Investor.

(l) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding Warrants then held by the Investors have been exercised for Registrable Securities without regard to any limitations on exercise of the Warrants.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor under this Agreement and the other Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under this Agreement or any other Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by this Agreement or any of the other the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other

Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among Investors.

[signature page follows]

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Alessandro Lagi
Name: Alessandro Lagi
Title: Chief Financial Officer

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

HOLDERS:

CCM Frontier JV Holdco, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of August 4, 2026, is by and among Eos Energy Enterprises, Inc., a Delaware corporation with offices located at Two Allegheny Center, Nova Tower 2, Pittsburgh, Pennsylvania 15212 (the "**Company**") and the undersigned holders (each, a "**Holder**," and collectively, the "**Holders**").

RECITALS

A. In connection with (i) the Exchange Agreement by and among the Company, the Holders, and Frontier Power USA Parent, LLC (the "**Frontier Parent**"), dated as of August 4, 2026 (the "**Exchange Agreement**"), (ii) that certain binding term sheet, by and between the Company, HBC MSF Capital Solutions Blocker II LLC, CCM Frontier JV Holdco, LLC, and the other parties thereto, dated as of June 30, 2026 (the "**Term Sheet**"), (iii) that certain Amended and Restated Limited Liability Company Agreement of Frontier Parent, dated as of August 4, 2026 (as in effect as of the date hereof, the "**LLC Agreement**"), (iv) that certain Contribution and Warrants Issuance Agreement, dated as of August 4, 2026, by and between the Company and the Frontier Parent (the "**EOS Contribution Agreement**"), and (v) that certain Contribution and Warrants Purchase Agreement, dated as of August 4, 2026, by and between the Frontier Parent and HBC MSF Capital Solutions Blocker II LLC (the "**Frontier Parent Contribution Agreement**", and together with the Exchange Agreement, the Term Sheet, the LLC Agreement, and the EOS Contribution Agreement, the "**Exchange Transaction Documents**"), the Holders have acquired or will acquire, upon the terms and subject to the conditions of the Exchange Transaction Documents, (i) the Exchange Rights (as defined in the Exchange Agreement) which will be exercisable for shares of the Company's common stock, par value $0.0001 per share (the "**Common Stock**" and, such underlying shares, the "**Exchange Shares**") and (ii) warrants (the "**Warrants**") which will be exercisable for shares of Common Stock (such underlying shares, the "**Warrant Shares**"), in accordance with the terms of the Warrants.

B. To induce the Holders to consummate the transactions contemplated by the Exchange Transaction Documents, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Holders hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Exchange Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(b) "**Closing Date**" means August 4, 2026.

(c) "**Effective Date**" means the date that the applicable Registration Statement has been declared effective by the SEC.

(d) "**Effectiveness Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the earlier of the (A) 60th calendar day after the Closing Date and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the earlier of the (A) 60th calendar day following the date on which the Company was required to file such additional Registration Statement and (B) 2nd Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Registration Statement will not be reviewed or will not be subject to further review.

(e) "**Filing Deadline**" means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day after the Closing Date and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

(f) "**Investor**" means a Holder or any transferee or assignee of any Registrable Securities or Warrants, as applicable, to whom a Holder assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee of any Registrable Securities or Warrants, as applicable, assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(g) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

(h) "**register**," "**registered**," and "**registration**" refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(i) "**Registrable Securities**" means (i) the Exchange Shares issued or issuable upon the exchange of the Class C Units (as defined in the LLC Agreement), (ii) the Warrant Shares issued or issuable upon the exercise of the Warrants and (iii) any capital stock of the Company issued or issuable with respect to the Exchange Shares, the Warrant Shares, the Warrants, or the Class C Units, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Warrants) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on exercise of the Warrants.

(j) "**Registration Statement**" means a registration statement or registration statements of the Company filed under the 1933 Act covering Registrable Securities.

(k) "**Required Holders**" means, as of any given time, the holders of a majority of the Registrable Securities as of such time (excluding any Registrable Securities held by the Company or any of its Subsidiaries as of such time).

(l) "**Required Registration Amount**" the sum of (i) the number of Exchange Shares issued or issuable pursuant to the Exchange Agreement and (ii) 100% of the maximum number of Warrant Shares issued or issuable upon exercise of the Warrants (without taking into account any limitations on the exercise of the Warrants set forth therein), all subject to adjustment as provided in Section 2(e).

(m) "**Rule 144**" means Rule 144 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration.

(n) "**Rule 415**" means Rule 415 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC providing for offering securities on a continuous or delayed basis.

(o) "**SEC**" means the United States Securities and Exchange Commission or any successor thereto.

2. Registration.

(a) Mandatory Registration. The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement on Form S-3 covering the resale of all of the Registrable Securities, provided that such initial Registration Statement shall register for resale at least the number of shares of Common Stock equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC; provided further that if Form S-3 is unavailable for such a registration, the Company shall use such other form as is required by Section 2(c). The Company shall use its best efforts to have such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, declared effective by the SEC as soon as practicable (if not automatically effective), but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(b) Legal Counsel. Subject to Section 5 hereof, Kelley Drye & Warren LLP, counsel solely to the lead investor ("**Legal Counsel**") shall represent the lead investor with respect to this Agreement and any registration with respect hereto.

(c) WKSI/Ineligibility to Use Form S-3. If the Company is a Well-Known Seasoned Issuer (as defined in Rule 405 under the Securities Act) at the time of filing, the Company shall file an automatic shelf registration statement on Form S-3ASR covering the resale of the Registrable Securities. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of all Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the resale of all the Registrable Securities has been declared effective by the SEC and the prospectus contained therein is available for use.

(d) Sufficient Number of Shares Registered. In the event the number of shares available under any Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(f), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC (if not automatically effective), but in no event later than the applicable Effectiveness Deadline for such Registration Statement.

(e) Offering. Notwithstanding anything to the contrary contained in this Agreement, in the event the staff of the SEC (the "**Staff**") or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an "underwriter," then the Company shall reduce the number of shares to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall reduce the number of shares to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) unless the inclusion of shares by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC's "by or on behalf of the Company" offering position, in which event the shares held by such Investor or set of Investors shall be the only shares subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of shares by all such Investors); provided, that, with respect to such pro rata portion allocated to any Investor, such Investor may elect the allocation of such pro rata portion among the Registrable Securities of such Investor. In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an "underwriter" in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. Any reduction pursuant to this paragraph will first reduce all Registrable Securities other than those issued or issuable pursuant to the Exchange Transaction Documents. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a registration statement within twenty (20) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such registration statement in the same manner as otherwise contemplated in this Agreement for registration statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to "affiliate" status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement (it being understood that the special demand right under this sentence may be exercised by an Investor multiple times and with respect to limited amounts of Registrable Securities in order to permit the resale thereof by such Investor as contemplated above).

(f) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

3. Related Obligations.

The Company shall use its best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use its best efforts to cause such Registration Statement to become effective as soon as practicable after such filing (if not automatically effective, but in no event later than the Effectiveness Deadline). Subject to Allowable Grace Periods, the Company shall keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (i) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 2(e)) without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement (the "**Registration Period**"). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities. The Company shall submit to the SEC, within one (1) Business Day after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the Staff or that the Staff has no further comments on a particular Registration Statement (as the case may be) and (ii) the consent of Legal Counsel is obtained pursuant to Section 3(c) (which consent shall be immediately sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than twenty-four (24) hours after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) Subject to Section 3(j) of this Agreement, the Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement; provided, however, by 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 8-K, Form 10-Q or Form 10-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall, if permitted under the applicable rules and regulations of the SEC, have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel and legal counsel for each other Investor to review and comment upon (i) each Registration Statement at least five (5) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to each Registration Statement (including, without limitation, the prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel or any legal counsel for any other Investor reasonably objects. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto or to any prospectus contained therein without the prior consent of Legal Counsel, which consent shall not be unreasonably withheld. The Company shall promptly furnish to Legal Counsel and legal counsel for each other Investor, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to each Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries (as defined in the Exchange Agreement), (ii) after the same is prepared and filed with the SEC, one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference and all exhibits, if requested by an Investor, and (iii) upon the effectiveness of each Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto; provided, however, that any such item listed in the foregoing clauses (i) through (iii) which is available on the EDGAR system (or successor thereto) need not be furnished in physical form. The Company shall reasonably cooperate with Legal Counsel and legal counsel for each other Investor in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall notify Legal Counsel, legal counsel for each other Investor and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, may include an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries), and, subject to Section 3(j), promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission. The Company shall also promptly notify Legal Counsel, legal counsel for each other Investor and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel, legal counsel for each other Investor and each Investor by facsimile or e-mail on the same day of such effectiveness and by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment will be reviewed by the SEC, (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate; and (iv) of the receipt of any request by the SEC or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related prospectus. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto.

(e) The Company shall (i) use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and (ii) notify Legal Counsel, legal counsel for each other Investor and each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(f) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, to the extent reasonably requested by such Investor in connection with establishing or maintaining a due diligence defense under applicable securities laws, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(g) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection by (i) such Investor, and (ii) legal counsel for such Investor (collectively, the "**Inspectors**"), customary diligence documents for an underwritten offering (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector in connection with establishing or maintaining a due diligence defense for the Investor under applicable securities laws, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (2) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (3) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Exchange Transaction Document. Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(h) If requested by an Investor, the Company shall as soon as commercially practicable after receipt of notice from such Investor and subject to Section 3(j) hereof, (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or prospectus contained therein if reasonably requested by an Investor holding any Registrable Securities.

(i) The Company shall otherwise use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(j) Notwithstanding anything to the contrary herein (but subject to the last sentence of this Section 3(j)), at any time after the Effective Date of a particular Registration Statement, the Company may delay the disclosure of material, non-public information concerning the Company or any of its Subsidiaries the disclosure of which at the time is not, in the good faith opinion of the board of directors of the Company, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"), provided that the Company shall promptly notify the Investors in writing of the (i) existence of material, non-public information giving rise to a Grace Period (provided that in each such notice the Company shall not disclose the content of such material, non-public information to any of the Investors) and the date on which such Grace Period will begin and (ii) date on which such Grace Period ends, provided further that (I) no Grace Period shall exceed ten (10) consecutive days and during any three hundred sixty five (365) day period all such Grace Periods shall not exceed an aggregate of thirty (30) days, (II) the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period and (III) no Grace Period may exist during the sixty (60) Trading Day period immediately following the Effective Date of such Registration Statement (provided that such sixty (60) Trading Day period shall be extended by the number of Trading Days during such period and any extension thereof contemplated by this proviso during which such Registration Statement is not effective or the prospectus contained therein is not available for use) (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, such Grace

Period shall begin on and include the date the Investors receive the notice referred to in clause (i) above and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) above and the date referred to in such notice. The provisions of Section 3(e) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of each Grace Period, the Company shall again be bound by the first sentence of Section 3(d) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary contained in this Section 3(j), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Exchange Transaction Documents in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale, and delivered a copy of the prospectus included as part of the particular Registration Statement to the extent applicable, prior to such Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(k) Neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and any Holder being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Exchange Transaction Documents.

(l) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof.

(m) The Company shall use its best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(j), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel, legal counsel for each other Investor and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(n) The Company shall use its best efforts to cause all of the Common Stock covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, or other market on which similar securities issued by the Company are then listed.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor with respect to such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(e) or the first sentence of 3(d), such Investor will promptly discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or the first sentence of Section 3(d) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary in this Section 4(c), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Exchange Transaction Documents in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(e) or the first sentence of Section 3(d) and for which such Investor has not yet settled.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, FINRA filing fees (if any) and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

(a) The Company shall defend, protect, indemnify and hold harmless the Investor and its affiliates, directors and officers and each person, if any, who controls the Investor within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith, and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or based upon arising out of or based upon any untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or prospectus or necessary to make the statements in a Registration Statement or prospectus (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading (a "**Misstatement**") contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in such Registration Statement, any amendment or supplement to such Registration Statement, preliminary prospectus, final prospectus or summary prospectus, or any free writing prospectus relating to such Registration Statement, or any violation by the Company of the Securities Act or any rule or regulation promulgated thereunder applicable to the Company or any state securities (or blue sky) law, rule or regulation and relating to action or inaction required of the Company in connection with any such registration. Each Investor will, in the event that any registration of any Registrable Securities held by the Investor is being effected under the Securities Act pursuant to this Agreement and the Company has required the Investor to provide such an undertaking on the same terms, indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any), and each other person, if any, who controls such underwriter within the meaning of the Securities Act, against any Indemnified Liabilities, insofar as such Indemnified Liabilities arise out of or are based upon any Misstatement contained in any Registration Statement under which the sale of such Registrable Securities was registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained in the Registration Statement, or any amendment or supplement thereto, if the Misstatement was made (or not made, in the case of an omission) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of such Investor expressly for use therein, and shall reimburse the Company and its directors and officers for any reasonable, customary and documented out-of-pocket legal or other expenses incurred by any of them in connection with investigation or defending any such Loss; provided that such Investor shall be liable under this Section 6(a) for only that amount of a Indemnified Liabilities as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a) shall not apply to amounts paid in settlement of any Indemnified Liabilities if such settlement is effected without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnitee and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(b) Promptly after receipt by an Indemnitee under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving an Indemnified Liability, such Indemnitee shall, if a claim in respect thereof is to be made against the Company under this Section 6, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnitee; provided, however, that an Indemnitee shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the Company if: (A) the Company has agreed in writing to pay such fees and expenses; (B) the Company shall have failed promptly to assume the defense of such Indemnified Liability and to employ counsel reasonably satisfactory to such Indemnitee in any such Indemnified Liability; or (C) the named parties to any such Indemnified Liability (including any impleaded parties) include both such Indemnitee and the Company, and such Indemnitee shall have been advised by counsel that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them (in which case, if such Indemnitee notifies the Company in writing that it elects to employ separate counsel at the expense of the Company, then the Company shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Company), provided further, that in the case of clause (C) above the Company shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for the Indemnitees. The Indemnitee shall reasonably cooperate with the Company in connection with any negotiation or defense of any such action or Indemnified Liability by the Company and shall furnish to the Company all information reasonably available to the Indemnitee which relates to such action or Indemnified Liability. The Company shall keep the Indemnitee reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Company shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the Company shall not unreasonably withhold, delay or condition its consent. The Company shall not, without the prior written consent of the Indemnitee, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnitee of a release from all liability in respect to such Indemnified Liability or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnitee. Following indemnification as provided for hereunder, the Company shall be subrogated to all rights of the Indemnitee with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnitee under this Section 6, except to the extent that the Company is materially and adversely prejudiced in its ability to defend such action.

(c) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, within ten (10) days after bills are received or Indemnified Liabilities are incurred.

(d) The indemnity agreement contained herein shall be in addition to (A) any cause of action or similar right of the Indemnitee against the Company or others, and (B) any liabilities the Company may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6 of this Agreement, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144; and

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood and agreed that nothing herein shall limit any obligations of the Company under the Exchange Transaction Documents) and the filing of such reports and other documents is required for the applicable provisions of Rule 144.

9. Assignment of Registration Rights.

All or any portion of the rights under this Agreement shall be automatically assignable by each Investor to any transferee or assignee (as the case may be) of all or any portion of such Investor's Registrable Securities, Warrants, or Class C Units if: (i) such Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Exchange Transaction Documents and the Warrants (as the case may be); and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing, but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of Registrable Securities or (2) imposes any obligation or liability on any Investor without such Investor's prior written consent (which may be granted or withheld in such Investor's sole discretion). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Solely for purposes of this Agreement, a Person is deemed to be a holder of Registrable Securities whenever such Person owns, or is deemed to own, of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient's email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be:

If to the Company:

Eos Energy Enterprises, Inc.
Two Allegheny Center
Nova Tower 2
Pittsburgh, Pennsylvania 15212
Attention: Chief Financial Officer

With a copy (for informational purposes only) to:

Eos Energy Enterprises, Inc.

Attention: Chief Legal Officer
Email: legal@eose.com

With a copy (for informational purposes only) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Roshni Banker Cariello; Steven Glendon
Email: roshni.cariello@davispolk.com; steven.glendon@davispolk.com

If to the Transfer Agent:

Continental Stock Transfer & Trust Co.
1 State Street, 30^{th} Floor
New York, NY 10004
Attention: Compliance Department

E-mail: sjones@continentalstock.com

If to Legal Counsel:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone: (212) 808-7540

Attention: Michael A. Adelstein, Esq.
E-mail: madelstein@kelleydrye.com

If to a Holder, to its mailing address and/or email address set forth on the signature pages attached to the Exchange Agreement, with copies to such Holder's representatives as set forth in the Exchange Agreement, or to such other mailing address and/or email address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change, provided that Kelley Drye & Warren LLP shall only be provided notices sent to the lead investor. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof. The Company and each Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by any other party hereto and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which any party may be entitled by law or equity.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any provision of law or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in State of New York or the United States District Court for the Southern District of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Exchange Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein constitute the entire agreement among the parties hereto and thereto solely with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Exchange Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto solely with respect to the subject matter hereof and thereof; provided, however, nothing contained in this Agreement or any other Exchange Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Investor has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Investor in the Company, (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries or any rights of or benefits to any Investor or any other Person in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Investor and all such agreements shall continue in full force and effect or (iii) limit any obligations of the Company under any of the other Exchange Transaction Documents.

(g) Subject to compliance with Section 9 (if applicable), this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, their respective permitted successors and assigns and the Persons referred to in Sections 6 and 7 hereof.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(i) This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an email which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party. Notwithstanding anything to the contrary set forth in Section 10, terms used in this Agreement but defined in the other Exchange Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Exchange Transaction Documents unless otherwise consented to in writing by each Investor.

(l) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders, determined as if all of the outstanding Warrants then held by the Investors have been exercised for Registrable Securities without regard to any limitations on exercise of the Warrants.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor under this Agreement and the other Exchange Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under this Agreement or any other Exchange Transaction Document. Nothing contained herein or in any other Exchange Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Exchange Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by this Agreement or any of the other the Exchange Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Exchange Transaction Documents , and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other Exchange Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among Investors.

[signature page follows]

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Alessandro Lagi

Name: Alessandro Lagi

Title: Chief Financial Officer

IN WITNESS WHEREOF, each Holder and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

HOLDERS:

HBC MSF CAPITAL SOLUTIONS BLOCKER II LLC

By: /s/ Richard Allison
Name: Richard Allison
Title: Authorized Signatory*

Authorized Signatory Hudson Bay Capital Management LP not individually,
but solely as Investment Advisor to HBC MSF Capital Solutions Blocker II LLC

c/o Hudson Bay Capital Management LP
290 Harbor Drive, 3rd Floor
Stamford, CT 06902
Attn: Capital Solutions Team
Email: investments@hudsonbaycapital.com
(212) 571-1244

Exhibit 10.1

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

of

FRONTIER POWER USA PARENT, LLC,
a Delaware limited liability company

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. BECAUSE SUCH SECURITIES HAVE NOT BEEN REGISTERED OR QUALIFIED THEY MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS THE SECURITIES HAVE BEEN QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS. TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO THE RESTRICTIONS, TERMS AND CONDITIONS SET FORTH HEREIN.

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SCHEDULES

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF
FRONTIER POWER USA PARENT, LLC

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of Frontier Power USA Parent, LLC, a Delaware limited liability company (the "**Company**"), is entered into as of August 4, 2026 by and among the Company, the Members set forth on Schedule A hereto, and each other Person that is or shall become a Member from time to time pursuant to the provisions of this Agreement.

R E C I T A L S

WHEREAS, the Company was formed as a Delaware limited liability company by filing the Certificate with the Secretary of State of the State of Delaware on May 7, 2026;

WHEREAS, on May 7, 2026, CCM Frontier JV Holdco, LLC ("**CCM Frontier**"), as the Company's sole member, entered into that certain Limited Liability Company Agreement of the Company, dated as of May 7, 2026 (the "**Initial LLC Agreement**"), in order to provide for the governance, management and operations of the Company;

WHEREAS, the Members desire to amend and restate the Initial LLC Agreement in its entirety by this Agreement to, among other things, admit Eos Energy Enterprises Inc. ("**Eos**") and HBC MSF Capital Solutions Blocker II LLC ("**HBC**") as Members and provide for the governance, management and operations of the Company.

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

ARTICLE 1
DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement, each of the following terms shall have the meaning given such term in this Article 1.

"**Act**" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq., as amended from time to time.

"**Additional Member**" means a Person admitted to the Company as a Member pursuant to Section 10.02.

"**Affiliate**" means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person. The term "control", as used with respect to any Person, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. "Controlled" and "controlling" have meanings correlative to the foregoing. Notwithstanding the foregoing, no Member nor any of its Subsidiaries shall be considered an

Affiliate of (x) in the case of CCM Frontier Member, any portfolio operating company or investment in which CCM Frontier Member or any of its Affiliates has made a debt or equity investment (a "**Portfolio Company**") (except for purposes of the definition of "Change of Control" and the definition of "Affiliate Transaction"), (y) any Company Party or (z) another Member or any of its Subsidiaries (other than any of its Permitted Transferees), and *vice versa*. In addition, for the avoidance of doubt, no current or former operating executive, senior advisor or consultant of a Cerberus Sponsor or any of its Affiliates, shall be considered an Affiliate of the CCM Frontier Member or Eos Member (as applicable).

"**Affiliate Transaction**" means any transaction or agreement between any (i) Company Party, on the one hand, and (ii) any Member or any Affiliate of any Member, on the other hand; *provided* that "Affiliate Transactions" shall not include any transaction or agreement on arms' length terms and involving aggregate annual payments or consideration of less than $100,000.

"**Agreement**" means this Amended and Restated Limited Liability Company Agreement, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Annual Budget**" means, for any Fiscal Year, the annual operating and capital budget of the Company and its Subsidiaries prepared by the Developer and presented to, and approved by, the Board in accordance with Section 5.10(b).

"**Applicable Tax Rate**" means, for any Taxable Year, the rate equal to the sum of the highest maximum aggregate federal, state and local income Tax rates applicable to an individual Member residing in Connecticut (as determined in good faith by the Board, taking into account any factors or assumptions deemed relevant and advisable by the Board, which could include the character of such taxable income, the applicability of any "qualified business income deduction" or similar deduction, and the deductibility (or lack thereof) of state income Tax for federal income Tax purposes). For the avoidance of doubt, the same Applicable Tax Rate will apply to all Members.

"**Asset FMV**" means, as of the relevant date of determination, with respect to any asset, the fair market value of such asset as reasonably determined in good faith by the Board assuming such asset was sold in an arm's-length transaction between a willing buyer and a willing seller occurring on the date of valuation, taking into account all relevant factors determinative of value. For all purposes hereunder, the determination of the Asset FMV by the Board shall be deemed conclusive, final and binding on all Members (and shall not be subject to collateral attack for any reason).

"**Available Cash**" means all cash funds of the Company (including its Subsidiaries) from operations, financings, refinancings and other loans, asset sales, Capital Contributions or other sources, at any particular time that is not in restricted or encumbered accounts and that is available for Distribution after the Board makes reasonable provision for: (a) payment of all operating expenses of the Company and its Subsidiaries as of such time, (b) payment of all outstanding and unpaid current obligations of the Company and its Subsidiaries as of such time, (c) the sum of funds or amounts set aside or otherwise allocated for working capital, capital expenditures, to make acquisitions, repairs, replacements and renewals, and to pay taxes, insurance, debt service and future, anticipated, unforeseen or contingent obligations, and all of the other costs and expenses incident to the Company's operations or ownership of the Company's assets, in each case, as determined by the Board in its discretion from time to time, (d) any other purpose authorized by the Board, and (e) any Tax Distributions; *provided* that, for the avoidance of doubt, cash funds held by Subsidiaries shall only be included in the definition of Available Cash to the extent such amounts may be transferred, loaned, or distributed to the Company without restriction, limitation, or the need to obtain any consent or waiver under any credit facility, applicable Law, or other contractual arrangement (subject to the other requirements of this definition).

"**Award Agreement**" means an agreement with a Management Member evidencing his or her award of Incentive Units or Upstairs Incentive Units granted pursuant to the MIP.

"**Bankruptcy**" means, with respect to any Person, (a) such Person instituting or consenting to the institution of any bankruptcy proceeding or other proceedings relating to insolvency, administration, liquidation or assignment for the benefit of its creditors, (b) proceedings to have such party be adjudicated bankrupt or insolvent being instituted without the consent of such Person and continuing undismissed or unstayed for 60 days, or an order for relief being entered in any such proceeding, (c) the filing of a petition seeking, or consent to, reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief with respect to such Person or its debts under any applicable federal or state law relating to bankruptcy or insolvency, or (d) such Person seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such party or a substantial part of its properties.

"**Base Rate**" means a variable rate per annum equal to the rate of interest most recently published by *The Wall Street Journal* as the "prime rate" at large U.S. money center banks.

"**beneficial ownership**" and "**beneficially own**" and similar terms have the meaning set forth in Rule 13d-3 under the Securities Exchange Act.

"**Board**" means the Board of Managers of the Company.

"**Book Value**" means, with respect to any asset, the asset's adjusted tax basis for U.S. federal income tax purposes, except as follows:

(a) The initial Book Value of any asset contributed by a Member to the Company will be the gross fair market value of such asset at the time of contribution, as determined by the Board.

(b) The Book Value of all Company assets may, if the Board determines it would be necessary or appropriate, be adjusted to equal their respective fair market values, as determined by the Board, upon the occurrence of any of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f) (or such other times as the Board may reasonably determine to be necessary or advisable) in accordance with the rules of such Treasury Regulations and Treasury Regulations Section 1.704-1(b)(2)(iv)(g).

(c) The Book Value of any Company asset distributed to any Member will be adjusted to equal the gross fair market value of such asset on the date of distribution.

(d) The Book Value of Company assets will be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); *provided, however*, that the Book Values will not be adjusted pursuant to this subsection to the extent that the Board determines that an adjustment is required pursuant to subsection (b) above in connection with a transaction that would otherwise result in an adjustment under this subsection (d).

(e) The Book Value of any Company asset will be adjusted to reflect any cost recovery deductions claimed with respect to such asset by reference to the property's book value in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g).

"**Business Day**" means any day other than Saturday, Sunday or any day on which banks are required or authorized by Law to be closed in New York, New York.

"**Business Plan**" means the then-current operating strategy and business plan of the Company and its Subsidiaries, including the initial three-year operating strategy and business plan agreed by the Members prior to the Effective Date, as reviewed and revised by the Board from time to time in accordance with Section 5.10(a).

"**Call Closing**" has the meaning set forth in Section 8.05(d).

"**Call Notice**" has the meaning set forth in Section 8.05(c).

"**Call Price**" has the meaning set forth in Section 8.05(b).

"**Call Right**" has the meaning set forth in Section 8.05(a).

"**Capital Contributions**" means, with respect to any Member, the amount of cash, cash equivalents or the Asset FMV of other assets, securities or property (net of any liabilities) which such Member contributes or is deemed to have contributed to the Company with respect to any Unit pursuant to Section 3.01; *provided*, with respect to holders of Preferred Units, Capital Contributions (i) for purposes of this Agreement other than Section 3.02(a) shall be the amount set forth opposite such holder's name in Schedule A under the heading "Capital Contributions", as such amount may be reduced or increased in accordance with this Agreement, and (ii) for purposes of Section 3.02(a) shall be the amount set forth opposite such holder's name in Schedule A under the heading "Capital Contribution for purposes of Section 3.02(a)", as such amount may be reduced or increased in accordance with this Agreement.

"**Cause**" shall have the meaning set forth in the applicable Management Member's Employment Agreement, and if not so defined, means, with respect to a Management Member, any of the following: (i) such Management Member has committed an act constituting embezzlement, misappropriation of funds or actual and intentional fraud involving any Company Party, (ii) the willful failure by such Management Member to perform such Management Member's duties as an employee (other than as a result of Disability), which failure is detrimental to any Company Party, monetarily or otherwise, and which has not been cured within 15 days after receipt of written notice from the Board; (iii) the willful failure of such Management Member to comply in any material respect with any reasonable written direction of the Board which reasonably relates to the performance of such Management Member's duties that such Management Member is able to perform and which would not require such Management Member to perform an illegal act or breach any agreement which, in any such case, has not been cured within 15 days after receipt of written notice from the Board; (iv) the conviction of, or plea of *nolo contendere* to, any criminal act that constitutes a felony or any other crime or act that involves fraud, dishonesty, or moral turpitude; (v) repeated intoxication by alcohol or drugs while performing such Management Member's duties to any Company Party in a manner that materially and adversely affects such performance; (vi) the material violation by such Management Member of any personnel policies of any Company Party that have been approved by the Board and which has not been cured within 15 days after receipt of written notice from the Board; or (vii) the material breach by such Management Member of any of such Management Member's obligations under any agreement between such Management Member and any Company Party which has not been cured within 15 days after receipt of written notice from the Board.

"**CCM Frontier**" has the meaning set forth in the Recitals.

"**CCM Frontier Affiliated Manager**" means any Class A Manager who is employed by, or an investment professional of, the CCM Frontier Member, a Cerberus Sponsor or any of their respective controlled Affiliates; *provided*, *however*, that, for all purposes hereunder, no consultant to, and no employee of any portfolio company of Cerberus Funds shall be deemed a CCM Frontier Affiliated Manager.

"**CCM Frontier Member**" means CCM Frontier and any Permitted Transferee of Units held by CCM Frontier, in each case, for so long as such Person is the owner of a Unit.

"**Cerberus Advisory Vehicle Agreement**" means that certain Advisory Services Agreement, dated as of the Effective, by and between Cerberus Operations and Advisory Company, LLC, a Delaware limited liability company, and the Company.

"**Cerberus Funds**" means, individually or collectively, any investment fund, co-investment vehicles and/or other similar vehicles or accounts, in each case, managed, directly or indirectly, by a Cerberus Sponsor or any of its Affiliates, or any of their respective successors.

"**CTS Advisory Vehicle Agreement**" means that certain Advisory Services Agreement, dated as of the Effective, by and between Cerberus Technology Solutions, LLC, a Delaware limited liability company, and the Company.

"**Cerberus Sponsor**" means Cerberus Capital Management, L.P. or any successor thereto.

"**Certificate**" means the Certificate of Formation of the Company originally filed on May 7, 2026 with the Secretary of State of the State of Delaware in accordance with the Act, as such Certificate may be amended from time to time in accordance with the Act.

"**Certificated Units**" has the meaning set forth in Section 3.01(h).

"**Change of Control**" means the occurrence of any of the following events:

(a) the sale or disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company Parties to any "person" or "group" (as determined in accordance with Securities Exchange Act requirements but excluding, for the avoidance of doubt, any such "group" that may be deemed to be created by virtue of this Agreement), other than (i) a Cerberus Sponsor or any of its controlled Affiliates (each such Person, a "**Permitted Holder**") or (ii) any such "group" controlled, directly or indirectly, by one or more of the Permitted Holders;

(b) any person or group, determined in accordance with Securities Exchange Act requirements but excluding, for the avoidance of doubt, any such "group" that may be deemed to be created by virtue of this Agreement, other than one or more of the Permitted Holders, or any such "group" controlled, directly or indirectly, by one or more of the Permitted Holders, is or becomes the beneficial owner, directly or indirectly, of a Percentage Interest of more than 50% (or of the Equity Securities of any entity which controls the Company or which is a successor to all or substantially all of the assets of the Company), including by way of merger, recapitalization, reorganization, redemption, issuance of capital stock, consolidation, tender or exchange offer or otherwise; or

(c) a merger of the Company with or into another Person (other than one or more of the Permitted Holders) in which the Members immediately prior to such merger cease to hold at least 50% of the Units (or of the Voting Power of the surviving or successor entity or ultimate parent) immediately following such merger; *provided* that, (x) in each case under clause (b) or (c), no Change of Control shall occur unless the Permitted Holders in such transaction cease, directly or indirectly, to have the ability, without the approval of any Person who is not a Permitted Holder, to elect or designate more members of the Board (or the board of directors of the resulting entity) than any other Member or group of Affiliated Members, and (y) in each case under clause (a), (b), or (c), in no event shall a Change of Control be deemed to include any transaction effected for the purpose of changing, directly or indirectly, the form of organization or the organizational structure of any Company Party, so long as the Members immediately prior to such transaction own Equity Securities with respect to such reorganized Company Party in substantially the same proportions as their ownership of the Units immediately prior to such transaction and (z) an IPO shall not constitute a "Change of Control".

"**Class A Manager**" has the meaning set forth in Section 5.02(a)(i).

"**Class A Unit**" means a Class A-1 Unit or a Class A-2 Unit.

"**Class A-1 Unit**" means a Unit designated as a "Class A-1 Unit" and having the rights and obligations specified with respect thereto in this Agreement.

"**Class A-2 Unit**" means a Unit designated as a "Class A-2 Unit" and having the rights and obligations specified with respect thereto in this Agreement.

"**Class B Designation Threshold**" has the meaning set forth in Section 5.02(a)(ii).

"**Class B Manager**" has the meaning set forth in Section 5.02(a)(ii).

"**Class B Unit**" means a Unit designated as a "Class B Unit" and having the rights and obligations specified with respect thereto in this Agreement.

"**Class C Unit**" means a Unit designated as a "Class C Unit" and having the rights and obligations specified with respect thereto in this Agreement.

"**Class D Unit**" means a Unit designated as a "Class D Unit" and having the rights and obligations specified with respect thereto in this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company**" has the meaning set forth in the Preamble.

"**Company Bid**" has the meaning set forth in Section 8.08(b).

"**Company Party**" means the Company or any of its Subsidiaries.

"**Company Right of First Offer**" has the meaning set forth in Section 8.08(b).

"**Company Sale**" has the meaning set forth in Section 8.03(a).

"**Competitor**" means those Persons set forth on Schedule B.

"**Confidential Information**" means all confidential and proprietary information of the Company Parties.

"**Continuation Fund**" means any investment vehicle, fund, partnership or other entity established, sponsored or managed (directly or indirectly) by Cerberus Sponsor or an Affiliate thereof that is a "continuation fund" or "continuation vehicle" (as such terms are commonly used in the private equity industry) for the purpose of acquiring, holding and/or continuing the CCM Frontier Member's or any of its Affiliates' direct or indirect ownership in the Company or any of its Subsidiaries.

"**Contractual Appraisal Rights**" has the meaning set forth in Section 8.03(j).

"**Corporate Entity Interests**" has the meaning set forth in Section 8.08.

"**Corporate Holding Entity**" has the meaning set forth in Section 8.08.

"**Covered Persons**" has the meaning set forth in Section 6.05(b)(i)(A).

"**Designated Individual**" has the meaning set forth in Section 13.03(a).

"**DevCo**" means CCM Frontier Power DevCo LLC.

"**Developer**" has the meaning set forth in Section 5.09.

"**Developer Cause Event**" means any of: (a) Developer, taking or omitting to take, or causing or permitting the Company or any of the Company's Subsidiaries (such Subsidiaries, together with the Company and the Developer, the "**Developer Related Entities**") to take or omit to take, any action, or approving or authorizing the taking of any action by the Company or any of the Company's Subsidiaries, in each case, if such action or the omission to take such action constitutes a material breach (including any material default) under the Management Services Agreement that has or would reasonably be expected to have a material and adverse effect on the Company and its Subsidiaries, taken as a whole, or on the rights, preferences, privileges, obligations or liabilities of holders of Preferred Units; *provided*, that if such breach is curable and the Developer Related Entities have commenced and are diligently pursuing good-faith efforts to cure or remedy such breach following receipt of notice of such breach, the Developer Related Entities shall have 60 days following receipt of notice for such breach by any Member or its Affiliates to cure such breach; *provided, further*, that if such breach is not reasonably capable of being cured within such 60-day period, and the Developer Related Entities have commenced and is diligently pursuing good-faith efforts to cure or remedy such breach within such 60-day period, then such cure period shall be extended for such additional period as is reasonably necessary to cure or remedy such breach using diligent good-faith efforts; (b) Developer's actual, intentional fraud (excluding, for the avoidance of doubt, any implied or constructive fraud), gross negligence, bad faith or willful misconduct, in each case in this clause (b) in connection with the performance of its duties or obligations under the Management Services Agreement, as finally determined by a court of competent jurisdiction; (c) Developer undergoing a Bankruptcy; or (d) with respect to DevCo or any other Developer that is appointed by the holders of a majority of the Class A Units, CCM Frontier and its Permitted Transferees cease to hold at least 50% of the Class A Units held by CCM Frontier immediately after the Effective Date.

"**Developer Related Entities**" has the meaning set forth in the definition of "Developer Cause Event."

"**Disability**" means, with respect to a Management Member, that such Management Member is unable, by reason of *bona fide* physical or mental injury, illness or other similar cause to perform such Management Member's primary duties for a period of 270 consecutive days with reasonable accommodation, and where such injury, illness or other similar cause would prevent such Management Member from operating or functioning in a similar capacity in the future. The foregoing determination shall be made by a licensed independent physician reasonably agreed by each of the Board and such Management Member (or such Management Member's authorized representative).

"**Disqualified Person**" means (a) the United States, any state or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, (b) any organization which is exempt from tax imposed by the Code (including any former tax-exempt organization within the meaning of Section 168(h)(2)(E) of the Code and any tax-exempt controlled entity within the meaning of Section 168(h)(6)(F)(iii) of the Code if such entity has not made the election provided in Section 168(h)(6)(F)(ii) of the Code), (c) any Person who is not a United States Person (as defined in Section 7701(a)(30) of the Code), (d) any Indian tribal government described in Section 7701(a)(40) of the Code, (e) a Prohibited Foreign Entity, or (f) any partnership or other pass-through entity, any direct or indirect partner (or other holder of an equity or profits interest) of which is an organization or entity described in clauses (a)-(e); provided, however, that any Person that would otherwise be a Disqualified Person by reason of being described in clauses (a)–(d) shall not be considered a Disqualified Person to the extent that (i) the exception under Section 168(h)(1)(D) of the Code applies with respect to the income from the Company for that Person, or (ii) the Person is described within clause (c) of this definition and the exception under Section 168(h)(2)(B)(i) of the Code applies with respect to the income from the Company for that Person.

"**Distribution**" means each distribution made by the Company to a Member, whether in cash, property or securities of the Company and whether by liquidating distribution, redemption, repurchase or otherwise; *provided, however*, that none of the following shall be a Distribution: (a) any repurchase by the Company of any Units in connection with Section 8.05, or pursuant to the applicable Award Agreement or Subscription Agreement, (b) any recapitalization or exchange of Units, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units, *provided* that all Members holding Preferred Units are treated equally and proportionally in connection with any of the foregoing transactions, (c) subject to the terms of Section 5.05, any repurchase or redemption of Units pursuant to any right of first refusal or other repurchase right or obligation of the Company, (d) any repurchase or redemption of Units from any Member other than the CCM Frontier Member or any of its Affiliates that is approved by the Board, or (e) any fees, expenses or other amounts paid to a Member (or any Affiliate of any Member) that are not in respect of such Member's Units, including payments made pursuant to the Cerberus Advisory Vehicle Agreement, the CTS Advisory Vehicle Agreement, the Management Services Agreement or Section 6.04.

"**Distribution Threshold**" has the meaning set forth in Section 3.01(e)(ii).

"**Drag ROFO Notice**" has the meaning set forth in Section 8.08(f).

"**Early Purchaser**" has the meaning set forth in Section 3.01(d)(vii).

"**Effective Date**" means the date hereof.

"**Emergency Capital Need**" means an immediate capital need of the Company or any of its Subsidiaries for funds required for emergency repairs, compliance with regulatory or governmental requirements, prevention or remediation of a breach or default under any material contract, the provision of liquidity to the Company or its Subsidiaries to fund ongoing operations in the ordinary course of business in order to avoid imminent insolvency or Bankruptcy, or any substantially similar urgent need that the Board reasonably determines in good faith cannot practicably be addressed through the ordinary approval process without material adverse consequences to the Company or any of its Subsidiaries.

"**Employment Agreement**" means any employment, consulting, management, severance, retention, restrictive covenant or other similar agreement entered into between any Company Party or any Affiliate thereof, on one hand, and any Management Member, on the other hand.

"**Encumbrance**" means any lien, security interest, pledge, claim, option, right of first refusal, marital right or other encumbrance with respect to any Unit.

"**Entity Taxes**" has the meaning set forth in Section 13.04.

"**Eos**" has the meaning set forth in the Recitals.

"**Eos/HBC Election Period**" has the meaning set forth in Section 3.01(d)(vii).

"**Eos Member**" means Eos and any Permitted Transferee of Units held by Eos, in each case, for so long as such Person is the owner of a Unit.

"**Eos ROFO Bid**" has the meaning set forth in Section 8.08(f).

"**Eos ROFO Period**" has the meaning set forth in Section 8.08(f).

"**Equity Securities**" means, with regard to any Person, as applicable, (a) any capital stock, voting, partnership, membership, joint venture or other ownership or equity interests, or other share capital of such Person, (b) any securities of such Person, directly or indirectly, convertible into or exchangeable for any capital stock, partnership, membership, joint venture or other ownership or equity interests, or other share capital (whether voting or non-voting, whether preferred, common or otherwise) of such Person or containing any profit participation features with respect to such Person, (c) any rights or options directly or indirectly to subscribe for or to purchase any capital stock, partnership, membership, joint venture or other ownership or equity interests, other share capital of such Person or securities containing any profit participation features with respect to such Person or directly or indirectly to subscribe for or to purchase any securities directly or indirectly convertible into or exchangeable for any capital stock, partnership, membership, joint venture or other ownership interests, other share capital of such Person or securities containing any profit participation features with respect to such Person, (d) any share, unit or membership interest appreciation rights, phantom share rights, contingent interest or other similar rights relating to such Person, or (e) any Equity Securities of such Person issued or issuable with respect to the securities referred to in clauses (a) through (d) above in connection with a combination of shares, units or membership interests or recapitalization, exchange, merger, consolidation or other reorganization.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Exchange Agreement**" means that certain Exchange Agreement, dated as of the Effective Date, by and among the Eos Member, the HBC Member and the Company.

"**Exchange Side Letter**" means that certain letter agreement, dated as of the Effective Date, by and among the Eos Member, the CCM Frontier Member and the Company.

"**Family Member**" means, with respect to any individual, (a) such individual's current or former spouse or domestic partner or any such spouse's or domestic partner's parents, (b) a lineal descendant of such individual's parents, (c) the spouse or domestic partner of any such lineal descendant or a lineal descendant of any such spouse's or domestic partner's parents, (d) the estate of any individual described in clauses (a), (b) or (c), and (e) each custodian or guardian of any property of one or more of such Persons in the capacity as such custodian or guardian. For purposes of this definition, "lineal descendants" shall include individuals adopted prior to attaining the age of eighteen (18) years and such adopted Person's descendants.

"**Fiscal Quarter**" means each calendar quarter ending March 31, June 30, September 30 and December 31, or such other quarterly accounting period as may be established by the Board.

"**Fiscal Year**" has the meaning set forth in Section 7.04.

"**Full Tagging Person**" has the meaning set forth in Section 8.04(g).

"**Fundamental Matter**" means those matters set forth in Schedule D-2.

"**Governmental Authority**" means (a) any transnational, domestic or foreign federal, state or local governmental, regulatory or subdivision thereof (including any governmental agency, branch, department, division, official, or entity, and any court or tribunal), (b) any entity exercising or entitled to exercise executive, legislative, judicial, regulatory, taxing or administrative functions of government, including any self-regulatory organization, independent system operator or regional transmission organization, including ERCOT, ISO-NE, NYISO, and PJM, Taxing Authority, and the North American Electric Reliability Corporation and its regional entities, including the Northeast Power Coordinating Council, Inc., Reliability First Corporation, and the Texas Reliability Entity, or any successor thereof, (c) the NASDAQ, NYSE, or any other exchange or any self-regulatory organization and (d) any official or officer thereof acting in an official capacity for or on behalf of any Governmental Authority.

"**Grounds for Cause**" means after a Termination of Service other than for Cause, the Company or its applicable Subsidiary determines that it had grounds to terminate the Management Member for Cause.

"**HBC**" has the meaning set forth in the Recitals.

"**HBC Member**" means HBC and any Permitted Transferee of Units held by HBC, in each case, for so long as such Person is the owner of a Unit.

"**Incentive Call Period**" has the meaning set forth in Section 8.05(b).

"**Incentive Call Units**" has the meaning set forth in Section 8.05(b).

"**Incentive Unit**" means a non-voting Unit designated as an "Incentive Unit" and having the rights and obligations specified with respect thereto in this Agreement, the MIP and the applicable Award Agreement.

"**Indebtedness**" of any Person, means, without duplication, as of any date, all obligations of such Person for borrowed money.

"**Indemnified Liabilities**" has the meaning set forth in Section 6.04(a).

"**Indemnified Person**" has the meaning set forth in Section 6.04(a).

"**Initial Consideration**" has the meaning set forth in Section 4.01(h).

"**Initial LLC Agreement**" has the meaning set forth in the Recitals.

"**Initiating Members**" has the meaning set forth in Section 9.01(a).

"**Interim Holdback Period**" has the meaning set forth in Section 3.01(d)(v).

"**Intended Tax Treatment**" has the meaning set forth in Section 13.06.

"**IPO**" means the initial underwritten public offering by the Company (or any entity into which the Company is converted (including pursuant to Section 9.02) or that is formed to hold Units or similar Equity Securities of the Company (including pursuant to Section 9.02)) or any Subsidiary of the Company pursuant to an effective registration statement under the Securities Act, other than pursuant to a registration statement on Form S-4 or Form S-8 or any similar or successor form.

"**IPO Conversion**" has the meaning set forth in Section 9.02(a).

"**IRR**" means, with respect to each holder of Preferred Units, as of the time of determination, an actual annual pre-tax return, compounded quarterly, on the Capital Contribution made by such holder and such holder's predecessors in interest in respect of Preferred Units, taking into account all Distributions received by such holder and such holder's predecessors in interest in respect of Preferred Units pursuant to this Agreement. IRR shall be calculated (a) assuming the Capital Contributions in respect of such Preferred Units were paid on the date it was funded as set forth on Schedule A under the heading "Capital Contribution", (b) assuming all distributions in respect of such Preferred Units, pursuant to this Agreement, have been made on the date actually paid by the Company; and (c) using the XIRR function in the most recent version of Microsoft Excel or upgrades to such program (or if such program is no longer available, such other software program for calculating IRR determined by the Board).

"**Issuance Exceptions**" has the meaning set forth in Section 3.01(d)(v).

"**Issuer**" has the meaning set forth in Section 9.02(a).

"**Issuer Shares**" has the meaning set forth in Section 9.02(a).

"**KYC Requirements**" means all know-your-customer, customer due-diligence, anti-money-laundering, counter-terrorist-financing, sanctions-screening, beneficial-ownership, and similar identification, verification, and compliance requirements applicable to the Company or any of its Affiliates under any applicable Law, rule, regulation, or internal policy, including the collection, review, and verification of information and documentation relating to an investor's identity, ownership structure, source of funds, and related compliance matters.

"**Law**" means any domestic or foreign federal, state, provincial or local law, constitution, treaty, act, statute, code, rule, regulation, order, ordinance, injunction, judgment, decree, writ, award, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority in any relevant jurisdiction that is binding upon or applicable to such Person.

"**Liability**" means any liability, debt, guarantee, damage, penalty, fine, assessment, charge, cost, loss, claim, demand, expense, commitment or obligation (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) of every kind and description, including all costs and expenses related thereto.

"**Liquidation Assets**" has the meaning set forth in Section 12.02(b).

"**Liquidation FMV**" has the meaning set forth in Section 12.02(b).

"**Liquidation Statement**" has the meaning set forth in Section 12.02(b).

"**Lock-Up Period**" means the period beginning on the Effective Date and ending on the third anniversary of the Effective Date.

"**Losses**" means, with respect to any Fiscal Year or other period, the excess, if any, of items of Company loss and deduction for such Fiscal Year or other period over items of Company income and gain for such Fiscal Year or other period, in each case, determined in accordance with Section 704(b) of the Code and the Capital Account maintenance rules under Treasury Regulations Section 1.704-1(b)(2)(iv) (excluding, for the avoidance of doubt, any such items allocated pursuant to Section 4.02(b)).

"**Management Holdco**" means any aggregator vehicle that will be formed for the purposes of holding Incentive Units on behalf of any current or former officer, employee, director, independent contractor, service provider, or consultant of any Company Party or any other Person determined by the Board.

"**Management Holdco LLC Agreement**" means the limited liability company agreement of Management Holdco, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms and the terms of this Agreement.

"**Management Holdco Members**" has the meaning set forth in the definition "**Management Member**."

"**Management Member**" means (i) each Member designated as a Management Member on Schedule A hereto, (ii) any current or former officer, employee, director, independent contractor, service provider, or consultant of any Company Party who has received Incentive Units or any other equity incentive compensation arrangement approved by the Board, (iii) any Person that holds or receives any Upstairs Incentive Units of Management Holdco that correspond to the Incentive Units (such individuals described in clause (iii) the "**Management Holdco Members**"), (iv) any other Member who is designated as a "Management Member" pursuant to a Management Member Agreement or other agreement or acknowledgment, or (v) any Permitted Transferee of a party described in the foregoing clauses (i)–(iv). Notwithstanding anything to the contrary contained herein, in no event shall the term "Management Member" include the CCM Frontier Member, DevCo, the Eos Member, the HBC Member or any of their respective Affiliates or Permitted Transferees.

"**Management Member Agreement**" has the meaning set forth in Section 3.01(c)(iii).

"**Management Services Agreement**" means the management services agreement dated as of the Effective Date between the Company and DevCo.

"**Manager**" means a member of the Board, who, for purposes of the Act, will be deemed a "manager" (as defined in the Act) but will be subject to the rights, obligations, limitations and duties set forth in this Agreement.

"**Member**" means each of the Persons listed on Schedule A hereto, and any Person admitted to the Company as a Substituted Member or Additional Member, but, in each case, only for so long as such Person is the owner of Units.

"**Member Fundamental Representations**" has the meaning set forth in Section 8.03(d).

"**Member Representative**" has the meaning set forth in Section 8.03(e).

"**Membership Interest**" means a Member's entire interest in the Company consisting of an interest in the Profits and Losses (and items thereof, as applicable) and Distributions of the Company, the right, if any, to vote on or participate in the Company's management, and the right to receive information concerning the business and affairs of the Company, in each case, to the extent expressly provided in this Agreement or required by the Act.

"**Membership Schedule**" has the meaning set forth in Section 3.01(a).

"**MIP**" means the long-term management incentive compensation program established by the Company for the benefit of certain key employees, officers, directors and other service providers of the Company and its Subsidiaries.

"**MIP Pool**" has the meaning set forth in Section 3.01(e).

"**New Issue Securities**" has the meaning set forth in Section 3.01(d).

"**Offer Notice**" has the meaning set forth in Section 8.08(a).

"**Offer Notice Period**" has the meaning set forth in Section 8.08(c).

"**Offeree**" has the meaning set forth in Section 8.08(a).

"**Offeree Bid**" has the meaning set forth in Section 8.08(b).

"**Offeror**" has the meaning set forth in Section 8.08(a).

"**Officer(s)**" has the meaning set forth in Section 5.03(a).

"**Partnership Representative**" has the meaning set forth in Section 13.03(a).

"**Partnership Tax Audit Rules**" has the meaning set forth in Section 13.03(a).

"**Payment Restriction**" has the meaning set forth in Section 8.05(e).

"**Percentage Interest**" means, at any time with respect to one or more Members, a fraction, expressed as a percentage, the numerator of which is equal to the number of Preferred Units then owned by such Member(s) and the denominator of which is equal to the aggregate number of Preferred Units then outstanding.

"**Permitted Holder**" has the meaning set forth in the definition of "**Change of Control**."

"**Permitted Transferee**" means:

(a) with respect to the CCM Frontier Member, (i) a Cerberus Sponsor, (ii) any Affiliate of a Cerberus Sponsor, (iii) any Cerberus Fund or other co-investment vehicle or similar vehicle or account affiliated with or controlled by a Cerberus Sponsor or any of its Affiliates, including any Continuation Fund, or (iv) any Affiliate of any Person described in the foregoing clauses (i) through (iii);

(b) with respect to Management Holdco, each of the individuals that are or become members of Management Holdco or such Person's respective Permitted Transferees pursuant to clause (d) below as if such Person was a Member; and

(c) with respect to any other Member, (i) if such Member is not an individual, (A) any Person that would be a Permitted Transferee of such individual as described in the succeeding clause (ii), or (B) any Affiliate of such Member so long as such Person remains an Affiliate of such Member, and (ii) if such Member is an individual, (A) any Person to whom Units are Transferred from such Member (x) by will or the laws of descent and distribution or (y) by gift without consideration of any kind, in each case, to such Member's Family Member, (B) a trust or similar entity, substantially all the economic interests of which are held by or for the benefit of such Member or any of his or her Permitted Transferees described under clause (i)(A) above and which is organized to achieve the estate planning objectives of such Member, so long as such Member controls such trust and guarantees the obligations of such trust under this Agreement, or (C) any corporation, limited liability company or other legal entity, substantially all the economic interests of which are held by or for the benefit of such Member or any of his or her Permitted Transferees described under clause (i)(A) above, and so long as such Member controls such entity and guarantees the obligations of such entity under this Agreement.

"**Person**" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, association or other entity or a Governmental Authority.

"**Portfolio Company**" has the meaning set forth in the definition of "Affiliate."

"**Pre-Closing Contribution**" means the contracts, contacts, investment opportunities, subject matter expertise and other going concern value with respect to the Frontier Power platform developed by Affiliates of CCM Frontier and contributed to the Company, which shall be deemed to have an Asset FMV equal to $50,000,001, and in consideration of which CCM Frontier will receive 50,000,001 Class A-1 Units.

"**Preemptive Election Period**" has the meaning set forth in Section 3.01(d)(ii).

“**Preemptive Notice**” has the meaning set forth in Section 3.01(d)(i).

“**Preemptive Right Election Notice**” has the meaning set forth in Section 3.01(d)(ii).

“**Preemptive Rights Members**” has the meaning set forth in Section 3.01(d)(i).

“**Preferred Unit**” means a Class A Unit, a Class B Unit, a Class C Unit or a Class D Unit.

“**Pro Rata Share**” means with respect to each Member, a fraction, (a) the numerator of which is the amount such Member would receive pursuant to Section 4.01(b) if the Total Proceeds were distributed to all Members in accordance with Section 4.01(b) and (b) the denominator of which is an amount equal to the Total Proceeds, in each case, as reasonably determined in good faith by the Board.

“**Profits**” means, with respect to any Fiscal Year or other period, the excess, if any, of items of Company income and gain for such Fiscal Year or other period over items of Company loss and deduction for such Fiscal Year or other period, in each case, determined in accordance with Section 704(b) of the Code and the Capital Account maintenance rules under Treasury Regulations Section 1.704-1(b)(2)(iv) (excluding, for the avoidance of doubt, any such items allocated pursuant to Section 4.02(b)).

“**Prohibited Foreign Entity**” means a “prohibited foreign entity” as described in Section 7701(a)(51)(A)(i) of the Code.

“**Prohibited Transferee**” means any Person that (a) is a Competitor, (b) is a Sanctioned Person, (c) is a Disqualified Person, or (d) fails to provide information reasonably requested by the Company pursuant to Section 13.06.

“**Project**” means any battery energy storage project owned, developed, constructed, maintained or operated by any Company Party.

“**Proposed Third-Party Sale**” has the meaning set forth in Section 8.08(e).

“**Public Company**” means a Person that (a) has a class of equity interests registered under Section 12 of the Exchange Act, (b) is required to file reports under Section 15(d) of the Exchange Act as a result of the effectiveness of a registration statement under the Securities Act with respect to common equity securities of such Person, or (c) is a Person organized under the Laws of a jurisdiction outside of the United States that has a class of equity interests listed for trading on a stock exchange outside of the United States.

“**Public Offering**” means any underwritten sale of the Equity Securities of the Company or any of its Subsidiaries (or any successor thereto, whether by merger, conversion, consolidation, recapitalization, reorganization or otherwise), or any other Person substantially all of the assets of which constitute interests (directly or indirectly) in the Company or any of its Subsidiaries, pursuant to an effective registration statement under the Securities Act filed with the Securities and Exchange Commission on Forms S-1 or S-3 (or any successor forms adopted by the Securities and Exchange Commission).

“**Reallotment Units**” has the meaning set forth in Section 8.04(d).

“**Registration Rights Agreement**” has the meaning set forth in Section 9.03.

“**Regulatory Allocations**” has the meaning set forth in Section 4.02(b).

“**Renewable Energy Tax Credit**” means any federal, state, local or other tax credit, bonus credit, adder, tax attribute or similar incentive arising from or relating to the ownership, development, construction, operation or financing of any Project, including any credit treated as a business credit within the meaning of Section 38 of the Code.

“**Required Vote**” has the meaning set forth in Section 6.06.

“**Reserved Matter**” means those matters set forth in Schedule D-1.

“**Restrictive Covenant**” means any agreement, covenant or other provision (a) restricting or otherwise relating to the Management Member’s (i) competition, (ii) solicitation or hiring of employees or other service providers, (iii) solicitation of any suppliers, vendors, customers, clients or other business affiliates, or the interference with the business relationship with any of the foregoing, (iv) disclosure or use of confidential information or trade secrets or (v) disparagement or (b) providing for the Management Member’s assignment of intellectual property, or any other restrictions or covenants similar to those referenced in clauses (a) and (b), contained in any Employment Agreement or any relevant controlling Award Agreement, Management Member Agreement or any other agreement between the Management Member and any Company Party (or any appendix thereto).

“**Restrictive Covenant Violation**” means a Management Member’s violation or breach of any Restrictive Covenant.

“**Right of First Offer**” has the meaning set forth in Section 8.08(b).

“**Safe Harbor**” has the meaning set forth in Section 3.01(f)(i).

“**Sanctioned Person**” means any Person that (a) is listed on, or owned 50% or more or controlled by a Person listed on, any sanctions-related list maintained by the United States, including the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state or the United Kingdom, (b) is organized, resident or located in a country or territory that is the subject of comprehensive sanctions under applicable Law (at the time of this Agreement, Cuba, Iran, North Korea, the Crimea region of Ukraine, the so-called “Donetsk People’s Republic,” and the so-called “Luhansk People’s Republic”), or (c) is otherwise a target of sanctions under any applicable economic sanctions or trade controls Law.

“**Securities Act**” means the U.S. Securities Act of 1933.

“**Securities Exchange Act**” means the U.S. Securities Exchange Act of 1934.

“**Side Letter**” has the meaning set forth in Section 14.19.

“**State Acts**” has the meaning set forth in Section 3.01(h).

“**Subscription Agreement**” means an agreement with a Management Member evidencing his or her acquisition of Incentive Units or Upstairs Incentive Units.

“**Subsidiary**” means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares in the capital of, or shares of stock, entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the membership, partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person (or a Subsidiary of such Person) shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the general partner, managing member, managing director (or a board comprised of any of the foregoing) or manager of such limited liability company, partnership, association or other business entity. For purposes hereof, unless otherwise indicated, the term “**Subsidiary**” refers to a Subsidiary of the Company.

“**Substituted Member**” means a Person that is admitted as a Member to the Company pursuant to Section 10.01.

“**Tag-Along Allotment**” means, with respect to each Tagging Person in a Tag-Along Sale, an amount equal to (a) a fraction (i) the numerator of which is the consideration that would be received by such Tagging Person with respect to all of its Preferred Units if the Tag-Along Valuation of such Tag-Along Sale were Distributed in accordance with Section 4.01(b), and (ii) the denominator of which is the consideration that would be received with respect to all Preferred Units if the Tag-Along Valuation of such Tag-Along Sale were distributed in accordance with Section 4.01(b), *multiplied by* (b) the aggregate Tag-Along Sale Consideration.

“**Tag-Along Buyer**” has the meaning set forth in Section 8.04(a).

“**Tag-Along Notice**” has the meaning set forth in Section 8.04(a).

“**Tag-Along Notice Period**” has the meaning set forth in Section 8.04(d).

“**Tag-Along Offer**” has the meaning set forth in Section 8.04(a).

“**Tag-Along Portion**” means, with respect to any Member and for any Tag-Along Sale, a number of Preferred Units representing in value (based on the Tag-Along Unit Price of such Units) an amount equal to such Member’s Tag-Along Allotment in such Tag-Along Sale.

“**Tag-Along Response Notice**” has the meaning set forth in Section 8.04(d).

“**Tag-Along Right**” has the meaning set forth in Section 8.04(d).

“**Tag-Along Sale**” has the meaning set forth in Section 8.04(a).

“**Tag-Along Sale Consideration**” has the meaning set forth in Section 8.04(b).

“**Tag-Along Seller**” has the meaning set forth in Section 8.04(a).

“**Tag-Along Subject Units**” has the meaning set forth in Section 8.04(b).

“**Tag-Along Unit Price**” means, with respect to each Preferred Unit in a Tag-Along Sale, the amount of consideration that would be received with respect to such Unit if the Tag-Along Valuation were distributed in accordance with Section 4.01(b), assuming a complete liquidation of the Company, in each case, as determined in good faith by the Board.

“**Tag-Along Valuation**” means the aggregate dollar amount that a third party would pay to acquire all of the outstanding Units in an arm’s-length transaction, as implied by the Tag-Along Sale Consideration set forth in the Tag-Along Notice, assuming a complete liquidation of the Company, in each case, as reasonably determined in good faith by the Board.

“**Tag-Along Valuation Notice**” has the meaning set forth in Section 8.04(c).

“**Tagging Person**” has the meaning set forth in Section 8.04(d).

“**Tax Distribution**” has the meaning set forth in Section 4.01(c).

“**Tax Distribution Amount**” has the meaning set forth in Section 4.01(c).

“**Tax Distribution Date**” has the meaning set forth in Section 4.01(c).

“**Taxable Year**” means the calendar year.

“**Termination of Service**” means the termination of the performance of services of a Management Member with or on behalf of the Company Parties.

“**Total Proceeds**” means the aggregate net proceeds which would be received by all Members (or any Company Party on the Members’ behalf) in a Company Sale or a Tag-Along Sale.

“**Transfer**” means, with respect to any Equity Securities, including any Equity Securities of any Company Party, any sale, charge, assignment, disposition, exchange, pledge, encumbrance, hypothecation, or other transfer of such Equity Securities or any participation or interest therein, in each case whether directly or indirectly (including pursuant to a derivative transaction or through the transfer of any equity interests in any direct or indirect holding company holding Equity Securities or through the issuance and redemption by any such holding company of its securities), or any agreement or commitment to do any of the foregoing, but excluding, in the case of a Transfer of Equity Securities of any Company Party, (i) redemptions or repurchases of Equity Securities of any Company Party by the Company in accordance with Article 8, (ii) pursuant to any repurchase option or right of any Company Party pursuant to a Management Member Agreement, Award Agreement or an Employment Agreement, and (iii) a sale, transfer or issuance of Equity Securities of the CCM Frontier Member or any Cerberus Fund, intermediate holding company, co-investment vehicle or similar entity, in each case, affiliated with the CCM Frontier Member (or any successor thereto or any investment vehicle that is organized to make investments in parallel, or to co-invest, with any of the foregoing) so long as, in the case of this clause (iii), the CCM Frontier Member remains controlled by a Cerberus Sponsor after giving effect to such Transfer; *provided*, that notwithstanding the foregoing, if a Unit holder (or any Person that is a direct or indirect holder of equity interests in such Unit holder) is a Public Company, including the Eos Member, no Transfer of any equity interest or other security interest in such Unit holder (or such Person that is a direct or indirect holder of equity interests in such Unit holder) shall constitute or be deemed to be a "Transfer" hereunder. The terms "**Transferable**", "**Transferee**", "**Transferor**", "**Transferred**" and other forms of the word "**Transfer**" shall have the correlative meanings. Unless otherwise indicated or unless the context requires otherwise, all references to "Transfers" shall refer to a Transfer of Equity Securities of any Company Party.

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

"**Treasury Regulations**" means the final or temporary income tax regulations that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.

"**Unit**" means a unit of membership interest in the Company representing an interest in the Profits and Losses (and items thereof, as applicable) and Distributions of the Company and shall include, as of the Effective Date, Class A-1 Units, Class A-2 Units, Class B Units, Class C Units, Class D Units and Incentive Units.

"**Unreturned Preferred Unit Capital**" means, with respect to any Preferred Unit, an amount equal to the excess, if any, of (i) the aggregate amount of Capital Contributions made (or deemed to have been made) by the holder with respect to such Preferred Unit, over (ii) the aggregate amount of prior Distributions made by the Company with respect to such Preferred Unit pursuant to Section 4.01(a) and Section 4.01(b).

"**Unvested Incentive Units**" has the meaning set forth in Section 3.01(g).

"**Unwinding Event**" has the meaning set forth in Section 8.02(d).

"**Upstairs Incentive Unit**" means any incentive unit of Management Holdco that is held by a Management Holdco Member and corresponds to an Incentive Unit held by Management Holdco.

"**Vested Incentive Units**" has the meaning set forth in Section 3.01(g).

"**Voting Power**" means, with respect to any Person, the power to elect a majority of the members of the board of directors (or similar governing body) of such Person or, in the absence of such a body, the power to control the management of such Person.

Section 1.02. Construction. Unless otherwise expressly provided or unless the context requires otherwise, all references in this Agreement to Articles, Schedules and Sections shall mean and refer to Articles, Schedules and Sections of this Agreement; all references to statutes shall include all amendments of the same and any successor or replacement statutes and regulations promulgated thereunder, and all references to regulations shall include all amendments and any successor or replacement regulations; words using the singular or plural number also shall include the plural and singular number, respectively; references to "hereof," "herein," "hereby" and similar terms shall refer to this entire Agreement (including the schedules hereto); references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of any Governmental Authority, Persons succeeding to the relevant functions of such Person), and, in the case of any Person that is a trust, to the trustees thereof acting in their capacity as such (as the context may require to be most protective of the Company and the other Members); the terms "CCM Frontier Member", "Eos Member", "HBC Member" and "Management Member" shall each also mean, if any such Person shall have Transferred any of its Units to any of its Permitted Transferees (or any Permitted Transferee has acquired any Units pursuant to Section 3.01(d) or otherwise), such Person and its Permitted Transferees, taken together, and any right, obligation or action that may be exercised or taken at the election of such Person may be taken at the election of such Person and its Permitted Transferees; the term "including" shall mean "including, without limitation"; every covenant, term and provision of this Agreement shall be construed according to its fair meaning and not for or against any Member; all pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require; if any date on which (or by which) a Person is required to make a payment or a delivery or take any action or step pursuant to the terms hereof is not a Business Day, then such Person shall make such payment or delivery or take such action or step on or by the next succeeding Business Day; and when calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

ARTICLE 2
THE COMPANY

Section 2.01. Organization. The Company was formed as a Delaware limited liability company by filing the Certificate with the Secretary of State of the State of Delaware on May 7, 2026. This Agreement amends, restates, and supersedes the Initial LLC Agreement in its entirety.

Section 2.02. Limited Liability Company Agreement. The Company and the Members hereby execute this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Act. The Members hereby agree that, during the term of the Company set forth in Section 2.06, the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and, except where the Act provides that such rights and obligations specified in the Act shall apply "unless otherwise provided in a limited liability company agreement" or words of similar effect and such rights and obligations are set forth in this Agreement, the Act; *provided, however*, that notwithstanding the foregoing, Section 18-210 of the Act (entitled "Contractual Appraisal Rights") and Section 18-305(a) of the Act (entitled "Access to and Confidentiality of Information; Records") shall not apply to or be incorporated into this Agreement to the Members and each such Member hereby expressly waives any and all rights under such sections of the Act.

Section 2.03. Company Name. The name of the Company is "Frontier Power USA Parent, LLC" and all business of the Company shall be conducted in such name or such other name as the Board shall determine. The Company shall hold all of its property in the name of the Company and not in the name of any Member.

Section 2.04. Purpose. The purpose of the Company is to carry on any and all lawful businesses and activities permitted from time to time under the Act, including owning, investing in, developing, constructing, operating and otherwise participating in battery energy storage systems and any natural extensions thereof. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. Subject to the terms and conditions of this Agreement, the Company is specifically authorized to enter into, make, and perform all contracts and other undertakings, and engage in all other activities and transactions as the Board may deem necessary, advisable, or convenient for carrying out the purposes of the Company.

Section 2.05. Powers. The Company shall possess and may exercise all the powers and privileges granted by the Act, all other applicable Laws or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion and attainment of the business, purposes or activities of the Company approved by the Board.

Section 2.06. Term. The term of the Company shall be perpetual unless and until the Company is dissolved pursuant to the Act or as set forth herein. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate in the manner required by the Act.

Section 2.07. Filings; Agent for Service of Process.

(a) *Certificate*. The Certificate has been filed in the office of the Secretary of State of the State of Delaware in accordance with the provisions of the Act. The Officers shall take any and all other actions reasonably necessary to maintain the status of the Company under the Laws of the State of Delaware or any other state in which the Company shall do business. The Officers shall cause amendments to the Certificate to be filed whenever required by the Act. Such amendments shall be executed by an Officer or any Person authorized by the Board or any Officer.

(b) *Maintenance*. The Officers (or any of them) shall execute and cause to be filed an original or amended Certificate and shall take any and all other actions as may be determined by the Board to be reasonably necessary to perfect and maintain the status of the Company under the Laws of any other states or jurisdictions in which the Company engages in business.

(c) *Registered Agent*. The registered agent for service of process on the Company in the State of Delaware, and the address of such agent, shall initially be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Board, in its discretion, may change the registered agent and appoint successor registered agents.

(d) *Dissolution*. Upon the dissolution of the Company, the Board (or the Person responsible for the winding up and dissolution of the Company pursuant to Article 12) shall promptly execute and cause to be filed a certificate of dissolution in accordance with the Act and make any other filings required under the Laws of any other states or jurisdictions in which the Company has registered or qualified to transact business or otherwise filed a certificate or articles.

Section 2.08. Foreign Qualification. At the request of the Board or any Officer, each Member shall execute, acknowledge, swear to and deliver any or all certificates and other instruments that are necessary or appropriate to qualify, continue and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

Section 2.09. No State-Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last two sentences of this Section 2.09, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and all applicable state and local income tax purposes. Each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with the foregoing treatment.

ARTICLE 3
UNITS

Section 3.01. Units.

(a) *General*. The Membership Interests of the Members shall be represented by the Units, which are, as of the Effective Date, the Preferred Units and the Incentive Units, each of which shall have the rights and preferences in the assets of the Company and be subject to the limitations and restrictions as provided herein. The Company has, subject to the terms of this Agreement, the authority to issue (i) an unlimited number of Class A-2 Units, Class B Units, Class C Units and Class D Units, and (ii) 50,000,001 Class A-1 Units (all of which have been issued to the CCM Frontier Member and are outstanding as of the Effective Date, it being understood that the authorized number of Class A-1 Units shall not be increased, and no Class A-1 Units shall be issued, after the Effective Date). A Unit shall for all purposes be personal property. The Board shall maintain and update from time to time a Schedule of Members (the "**Membership Schedule**") to reflect changes in the Members, number of Units of each class held by the Members and their respective Capital Contributions, in each case, in accordance with the terms of this Agreement. To the maximum extent permitted by applicable Law, except in the case the Eos Member is the Member requesting a copy of the Membership Schedule, the Board may withhold and redact all or any portion of the information set forth on the Membership Schedule, except, with respect to a Member requesting a copy of the Membership Schedule, the number of Units (of each class, series or group) held by such Member and such Member's Capital Contributions and the total number of Units (of each class, series or group) outstanding and the total Capital Contributions of all Members. The Company may issue whole or fractional Units.

(b) *Capital Contributions*. Each Member has made, or shall be deemed for purposes of this Agreement to have made, the Capital Contributions reflected on the Membership Schedule. Following the Effective Date, no Member will be required to make any other Capital Contributions to the Company for any reason.

(c) *Issuance of Additional Units*.

(i) Subject to compliance with Section 5.04, Section 5.05 and Section 3.01(d), the Board shall have the right to cause the Company to create and/or issue Units (including other classes, groups or series thereof having such relative rights, powers, and/or obligations as may from time to time be established by the Board, including, subject to the terms and conditions of this Section 3.01, rights, powers, and/or obligations different from, senior to or more favorable than existing classes, groups and series of Units), including in connection with additional Capital Contributions to the Company as and when the Board determines that additional funds or other assets are necessary or appropriate for the conduct and operations of the Company and its Subsidiaries. In connection with the creation and/or issuance of any Units, the Board shall have the power to amend this Agreement and/or the Membership Schedule to reflect such additional issuances and to make any such other amendments as the Board reasonably and in good faith deems necessary to reflect such additional issuances (including, subject to the terms and conditions of this Section 3.01, amending this Agreement to increase the authorized number of Units of any class, group or series, to create and authorize a new class, group or series of Units and to add the terms of such new class, group or series of Units including economic and governance rights which may be different from, senior to or more favorable than the other existing Units), in each case without the approval or consent of any Member (subject, for the sake of clarity, to Section 3.01(c)(ii), Section 3.01(c)(iii), Section 3.01(d), Section 5.04, Section 5.05 and Section 14.03). Notwithstanding the foregoing, in no event shall any additional Class A-1 Units be issued after the Effective Date

(ii) Notwithstanding anything to the contrary herein, if the Board reasonably determines that the Company or its Subsidiaries requires immediate capital for an Emergency Capital Need, the Board may, without compliance with the Reserved Matter approval requirements, call capital and authorize the issuance of Equity Securities or authorize a loan to be made by one or more Members to the Company on arm's-length terms, in each case subject to Section 3.01(d), if applicable, and the other terms of this Agreement; *provided*, that the aggregate amount of capital called, Equity Securities issued, or loan proceeds received pursuant to this Section 3.01(c)(ii) in respect of any Emergency Capital Need shall not exceed the minimum amount reasonably necessary, as reasonably determined in good faith by the Board, to address such Emergency Capital Need (including any reasonably anticipated costs, expenses, and reserves directly related thereto); *provided*, *further*, that, within 10 Business Days following any issuance of Equity Securities or funding of a loan pursuant to this Section 3.01(c)(ii), the Board shall deliver to each Member a written notice setting forth (A) the nature of the Emergency Capital Need, (B) the aggregate amount of capital raised or borrowed, (C) the Board's good faith determination of the minimum amount reasonably necessary to address such Emergency Capital Need and the basis therefor, and (D) the terms of any Equity Securities issued or loan made in connection therewith; *provided*, *further*, for the avoidance of doubt, no Member shall be required to fund any such capital call or loan pursuant to this Section 3.01(c)(ii).

(iii) In exchange for additional Capital Contributions made by Members, additional Class D Units will be issued to existing holders of Class A Units, additional Class D Units will be issued to existing holders of Class B Units and additional Class D Units will be issued to existing holders of Class C Units, in each case, to the extent such holders made Capital Contributions to the Company, with the additional Units being issued at an equivalent price per unit (as reasonably determined by the Board in good faith). For the avoidance of doubt, no additional Class A-1 Units shall be authorized or issued after the Effective Date.

(iv) In connection with and as a condition to any issuance of Units pursuant to this Section 3.01(c), the Company shall require each Person who acquires such Units and is not already a Member to execute and deliver a joinder to this Agreement in the form attached hereto as Schedule E, accepting and agreeing to be bound by all terms and conditions, and shall require each such Person who is or will be a Management Member to enter into such other documents, instruments and agreements to effect such purchase or issuance of Units, or with respect to each such Person who is or will be a Management Holdco Member, Management Holdco shall require such Person to enter into such documents as a condition to receiving the corresponding Upstairs Incentive Units (including any subscription agreements entered into on or prior to the Effective Date by the Members, each, a "**Management Member Agreement**").

(v) The number of outstanding Incentive Units held by Management Holdco are intended to, at all times, be equal to the number of outstanding Upstairs Incentive Units. In furtherance of the foregoing:

(A) In the event that any Upstairs Incentive Units are to be repurchased by Management Holdco pursuant to the applicable terms of the Management Holdco LLC Agreement, an equal number of Incentive Units held by Management Holdco shall automatically and simultaneously be repurchased by the Company on the same terms. Notwithstanding the preceding sentence, repurchases under this Section 3.01(c)(v)(A) may, in the sole and absolute discretion of the Board, be effected by causing Management Holdco to redeem the relevant Upstairs Incentive Units in exchange for the corresponding Incentive Units, and following such redemption, causing the Company to repurchase such Incentive Units from the relevant holder pursuant to the applicable terms of this Agreement and/or the Management Holdco LLC Agreement.

(B) If and to the extent Management Holdco issues and grants Upstairs Incentive Units pursuant to, and in accordance with, the Management Holdco LLC Agreement, the MIP and any applicable Award Agreement, the Company shall issue and grant to Management Holdco, and Management Holdco shall receive and acquire from the Company, a number of Incentive Units that is equal to the number of Upstairs Incentive Units to be issued and granted by Management Holdco to such Person; *provided*, that any such Incentive Units to be issued by the Company to Management Holdco shall be subject to the same conditions as the corresponding Upstairs Incentive Units to be issued and granted by Management Holdco to such Person, and the conditions of such Upstairs Incentive Units set forth in the MIP and the applicable Award Agreement shall apply to the corresponding Incentive Units to be so issued and granted as if such conditions were set forth in this Agreement; *provided*, *further*, that to the extent any Upstairs Incentive Units are forfeited by a Management Holdco Member or otherwise cancelled, a corresponding number of Incentive Units that had been issued in connection with the issuance and grant of such Upstairs Incentive Units shall be automatically similarly forfeited or cancelled.

(d) *Preemptive Rights*. Except as otherwise provided in Section 3.01(d)(iv) below, each time the Company proposes to issue any Units or any Equity Securities of any Subsidiary of the Company to any Person (other than another Company Party) or to issue debt to any Member (in each case, except for Issuance Exceptions) (collectively, "**New Issue Securities**"), the Company shall first offer the New Issue Securities to the Members holding Preferred Units in accordance with the following provisions:

(i) The Company shall deliver a written notice (the "**Preemptive Notice**") to each Member holding Preferred Units who is an "accredited investor" as defined under Rule 401 of Regulation D of the Securities Act (the "**Preemptive Rights Members**") setting forth a statement regarding the Company's intention to issue the New Issue Securities; the amount and description of such New Issue Securities to be issued; and the purchase price (calculated as of the proposed issuance date) and the other material terms upon which the Company proposes to offer the New Issue Securities.

(ii) The delivery of the Preemptive Notice to each Preemptive Rights Member by the Company shall constitute an offer by the Company to sell to each such Preemptive Rights Member his, her or its proportionate share of the New Issue Securities (based on such Preemptive Rights Member's Percentage Interest), or any lesser number as specified by the Preemptive Rights Member, for the price and upon the terms set forth in the Preemptive Notice. For a period of 45 days after the delivery of the Preemptive Notice to each Preemptive Rights Member (the "**Preemptive Election Period**"), each such Preemptive Rights Member shall have the option, exercisable by delivering a written notice to the Company (the "**Preemptive Right Election Notice**"), to accept the Company's offer as to all or any part of such Preemptive Rights Member's proportionate share of the New Issue Securities (based on such Preemptive Rights Member's Percentage Interest), or any lesser number as specified by such Preemptive Rights Member in its Preemptive Right Election Notice, and each such Preemptive Rights Member shall also include in the Preemptive Right Election Notice the maximum number (or amount) of New Issue

Securities such Preemptive Rights Member would be willing to purchase if any other Preemptive Rights Members elect to purchase none or less than the maximum number (or amount) of the New Issue Securities that they are entitled to purchase pursuant to this Section 3.01(c)(ii). If the New Issue Securities constitute two or more types of Units or Equity Securities or the New Issue Securities are to be issued together with other types of securities, including debt securities, in a single transaction or related transactions, the rights to purchase the New Issue Securities granted to the Preemptive Rights Members under this Section 3.01(d) must be exercised to purchase the types of New Issue Securities and such other securities in the same proportion as such New Issue Securities and other securities are to be issued by the Company. If a Preemptive Rights Member fails to timely deliver a Preemptive Right Election Notice within the Preemptive Election Period, such Preemptive Rights Member shall be deemed to have irrevocably waived its rights under this Section 3.01(d) with respect to the applicable New Issue Securities.

(iii) If fewer than all of the Preemptive Rights Members elect to purchase all of the available New Issue Securities in the manner described in Section 3.01(d)(i), the under-subscribed New Issue Securities shall be allocated among such Preemptive Rights Members (*pro rata* based on their respective Percentage Interest) who have indicated in their Preemptive Right Election Notice a willingness to purchase a number of the New Issue Securities in excess of their proportionate share of the New Issue Securities (based on such Preemptive Rights Member's Percentage Interest), subject to any limitations any such Preemptive Rights Member may have indicated as to the amount of such additional New Issue Securities such Preemptive Rights Member is willing to purchase. Promptly following the expiration of the Preemptive Election Period, the Company shall notify each electing Preemptive Rights Member of the number of New Issue Securities such Preemptive Rights Member is required to purchase.

(iv) After the Preemptive Rights Members are notified in accordance with Section 3.01(d)(iii), the Company shall have 120 days thereafter to sell any or all of the remaining New Issue Securities (i.e., the New Issue Securities not to be sold to any Preemptive Rights Member) to any Person, *provided* that, if such issuance is subject to regulatory approval, such 120-day period shall be extended until the expiration of 10 Business Days after all such approvals have been received (but in no event later than 270 days from the date of the Preemptive Notice), upon terms and conditions no less favorable in the aggregate to the Company, and no more favorable in the aggregate to such Person or Persons, than those set forth in the Preemptive Notice. In the event the Company has not sold such New Issue Securities within such 120-day period (as so extended), the Company shall not thereafter issue or sell any New Issue Securities without first offering such New Issue Securities to the Preemptive Rights Members in the manner provided in this Section 3.01(d). Subject to Section 3.01(d)(vii), the purchase of New Issue Securities by the Preemptive Rights Members agreeing to purchase any such New Issue Securities pursuant to this Section 3.01(d) shall be consummated simultaneously with the closing of the sale of the remaining New Issue Securities.

(v) Notwithstanding the foregoing, unless otherwise approved by the Board, the preemptive rights set forth in this Section 3.01(d) shall not apply to the issuance of the following Units or other Equity Securities of the Company or any Subsidiary (collectively, "**Issuance Exceptions**"): issuances

(A) pursuant to the MIP;

(B) (1) in connection with the exercise, exchange, conversion, subdivision, combination, recapitalization, split, dividend or reorganization of outstanding Units or other Equity Securities which were issued not in violation of this Section 3.01(d) or were exempt from this Section 3.01(d) upon issuance, or (2) as a *pro rata* dividend or distribution in respect of outstanding Units;

(C) that are warrants or other similar securities used as "equity kickers" to any lenders in any *bona fide* customary debt financing for the benefit of the Company or any of its Subsidiaries approved by the Board;

(D) as consideration in connection with any *bona fide*, arm's-length, (A) direct or indirect, acquisition of assets or Equity Securities, joint venture or similar transaction approved by the Board with third parties (whether structured as a merger, asset purchase, stock purchase or otherwise, and whether issued in respect of a rollover or otherwise); or (B) customary debt financing, equipment leasing or real property leasing transaction approved by the Board;

(E) pursuant to an IPO;

(F) for which the holders of Preferred Units have expressly waived their rights under this Section 3.01(d);

(G) in connection with any tax equity financing, partnership flip structure, sale-leaseback, inverted lease pass-through, or similar tax-advantaged financing arrangement for the benefit of the Company or any of its Subsidiaries or any project company, in each case approved by the Board;

(H) solely to the Company or a wholly owned Subsidiary of the Company;

(I) pursuant to the Exchange Side Letter; or

(J) in connection with the consummation of the transactions contemplated to be made on the Effective Date or in connection with the execution of this Agreement.

(vi) Notwithstanding anything to the contrary contained herein, the Company shall not be obligated to consummate any proposed issuance of New Issue Securities or any other Units, nor be liable to any Preemptive Rights Member if the Company has not consummated any proposed issuance of Units pursuant to this Section 3.01(d) for whatever reason, regardless of whether it shall have delivered a Preemptive Notice or received any

Preemptive Right Election Notice from Preemptive Rights Members in respect of such proposed issuance.

(vii) Notwithstanding anything contained in this Section 3.01(d), in the case of an Emergency Capital Need as determined by the Board, the Company may issue New Issue Securities to any Person (including the CCM Frontier Member or any Affiliate thereof) (for purposes of this Section 3.01(d)(vii), the "**Early Purchaser**") without the Company first complying with the provisions of this Section 3.01(d); *provided* that the Company gives prompt written notice to each Preemptive Rights Member specifying the number and price at which the New Issue Securities were, or are to be, issued to the Early Purchaser and the other material terms of such issuance, and the Company shall, as promptly as reasonably practicable (and in any event within 30 days following the issuance of New Issue Securities to the Early Purchaser), offer such Preemptive Rights Member the option to purchase a number of New Issue Securities (of the same class and type as issued to the Early Purchaser) so as to enable such Preemptive Rights Member to purchase its proportionate share based on the number of Preferred Units owned by it relative to the aggregate number of Preferred Units owned by all such Preemptive Rights Members as of immediately prior to the issuance of the New Issue Securities to the Early Purchaser pursuant to this Section 3.01(d)(vii) at the same price per New Issue Security at which such Early Purchaser acquired such New Issue Securities pursuant to this Section 3.01(d)(vii); *provided* that, in such case, the Board may reasonably determine in good faith that, in lieu of the Company issuing such New Issue Securities to such Preemptive Rights Members pursuant to the preceding proviso, the Early Purchaser may transfer to such Preemptive Rights Members a portion of the New Issue Securities acquired by the Early Purchaser pursuant to this Section 3.01(d)(vii) or the Company may redeem a portion of the New Issue Securities issued to the Early Purchaser pursuant to this Section 3.01(d)(vii) (at the same price per New Issue Security at which such Early Purchaser acquired such New Issue Securities pursuant to this Section 3.01(d)(vii)) and reissue such portion of the New Issue Securities to such Preemptive Rights Members, in each case, to enable such Preemptive Rights Members to purchase their proportionate share based on the number of Preferred Units owned by it relative to the aggregate number of Preferred Units owned by all such Preemptive Rights Members as of immediately prior to the issuance of the New Issue Securities to the Early Purchaser pursuant to this Section 3.01(d)(vii). Notwithstanding the foregoing, the Company shall provide each of the Eos Member and the HBC Member with written notice of such issuance and a period of ten days after delivery of such notice (the "**Eos/HBC Election Period**") to elect to purchase up to its *pro rata* share of the New Issue Securities at the same time as the Early Purchaser. If the Eos Member or the HBC Member, as applicable, does not elect to participate within the Eos/HBC Election Period, the Company may proceed with the issuance to the Early Purchaser, and the Eos Member or the HBC Member, as applicable, may thereafter elect to participate in accordance with this clause (vii) like each other non-Early Purchaser. Notwithstanding anything in this Agreement to the contrary, during the period from the issuance of the New Issue Securities to the Early Purchaser and ending on the day after the requirements set forth in this Section 3.01(d)(vii) have been satisfied in full and all New Issue Securities purchased by the Preemptive Rights Members exercising their rights under this Section 3.01(d) pursuant to this Section 3.01(d)(vii) have been transferred to such Members in full (the "**Interim**

Holdback Period"), (I) such Early Purchaser shall refrain from voting or exercising any other rights as a Member solely with respect to such New Issue Securities issued to such Early Purchaser pursuant to this Section 3.01(d)(vii) and, for the avoidance of doubt, such Early Purchaser shall retain the right to vote and exercise all other rights as a Member with respect to any other Units or equity interests held by such Early Purchaser other than such New Issue Securities), (II) in no event shall any distributions or payments be made with respect to such New Issue Securities issued to such Early Purchaser during the Interim Holdback Period and (III) there shall be deemed to be no dilution to each Preemptive Rights Member's Percentage Interest or ownership interest in Units immediately prior to such issuance of New Issues Securities to such Early Purchaser, and no Preemptive Rights Member shall be deemed to lose any rights under this Agreement as a result of such issuance to such Early Purchaser, except to the extent such Preemptive Rights Member has declined to exercise or waived its rights under this Section 3.01(d) pursuant to this Section 3.01(d)(vii). During the Interim Holdback Period, Early Purchasers shall not effect any, direct or indirect, Transfer of such New Issue Securities, other than to its Permitted Transferees that agree to be bound by the obligations of the Early Purchaser under this Section 3.01(d)(vii).

(viii) The preemptive rights contained in this Section 3.01(d) shall terminate upon the consummation of an IPO.

(ix) For the avoidance of doubt and not withstanding anything to the contrary herein, in connection with the exercise of preemptive rights pursuant to this Section 3.01(d), to the extent New Issue Securities consist of Preferred Units, such New Issue Securities shall be issued as Class D Units to existing holders of Class A Units, Class D Units to existing holders of Class B Units and Class D Units to existing holders of Class C Units, in each case, with each Preemptive Rights Member entitled to purchase its proportionate share of such New Issue Securities (based on such Preemptive Rights Member's relative Percentage Interest) at an equivalent price per Unit.

(e) *Issuances of Incentive Units*.

(i) The Company may from time to time issue Incentive Units pursuant to the MIP to any person who provides services to or for the benefit of the Company, *provided* that, Incentive Units may not be issued to any person who is a CCM Frontier Affiliated Manager or any Person that is an employee of any Cerberus Funds at the time of the proposed initial grant without the approval of the Board (solely if the Eos Member holds at least 10% of the outstanding Preferred Units as of the time of determination, the approval of at least one Class B Manager will be required). Notwithstanding the foregoing, issuances of Incentive Units to any Person that is a consultant to any Cerberus Funds or a consultant or employee of any portfolio company of Cerberus Funds, shall require the approval of the Board. The total number of Incentive Units that are authorized for issuance under the MIP (the "**MIP Pool**") shall initially consist of 31,273,788 Incentive Units, which number may be increased from time to time by the Board, subject to Section 5.04. In connection with any approved issuance of Incentive Units, any recipient of such Incentive Units shall, unless already a Member, execute and deliver a joinder to this

Agreement in the form attached hereto as Schedule E, accepting and agreeing to be bound by all terms and conditions hereof, and shall enter into such other documents and instruments to effect such issuance as are required by the Board. Any recipient of an Incentive Unit who is not already a Member shall be admitted as an Additional Member pursuant Section 10.02 and shall be a Management Member. In addition, the Company may issue Incentive Units to Management Holdco in respect of services provided by Management Holdco Members to the Company or any of its Subsidiaries, in which case Management Holdco will issue corresponding Upstairs Incentive Units to the applicable Management Holdco Member pursuant to the MIP and an Award Agreement, who shall be admitted as a member to Management Holdco and shall be required to execute a counterpart of the Management Holdco LLC Agreement and agree to be bound by all terms and conditions thereof, and shall enter into such other documents and instruments to effect such issuance as are required by Management Holdco. Any issuance of Incentive Units to Management Holdco pursuant to this Section 3.01(e)(i), and any repurchase, forfeiture or cancellation thereof, shall be subject to the corresponding units provisions set forth in Section 3.01(c)(v) above.

(ii) On the date of each issuance of an Incentive Unit, the Board shall designate a series for all Incentive Units issued on such date, and establish a "**Distribution Threshold**" with respect to such series. The Distribution Threshold with respect to any Incentive Unit shall initially be equal to the liquidation value (as reasonably determined by the Board in good faith) of all outstanding Units as of the issuance date of such Incentive Unit, as further adjusted by the Board in its discretion.

(iii) The Incentive Units are intended to be "profits interests" under IRS Revenue Procedure 93-27, IRS Revenue Procedure 2001-43 and IRS Notice 2005-43 and the provisions of this Agreement shall be interpreted and applied consistently therewith. The Board may take such actions (including making appropriate adjustments to the terms of any such Incentive Unit or otherwise amending the terms of this Agreement) in order for such Incentive Unit to be treated as a "profits interest" as described in the immediately preceding sentence, including establishing the Distribution Threshold as of the date of grant of an Incentive Unit equal to at least the amount of cumulative Distributions that would be required to be made with respect to all Units (other than the applicable Incentive Unit) immediately after the date of the issuance of such Incentive Unit in order for such Incentive Unit to have a liquidation value equal to zero dollars ($0).

(iv) In connection with the issuance of any Incentive Units, the recipient Management Member shall make a timely "protective" election under Section 83(b) of the Code with respect to such Incentive Units. The Board, in its sole discretion, may condition the grant of any Incentive Unit on the timely execution and delivery of such election.

(v) This Section 3.01(e) and the Incentive Units (together with the MIP and the applicable Award Agreements) are intended to qualify as a compensatory benefit plan within the meaning of Rule 701 of the Securities Act (and any analogous basis under any applicable state securities laws) and the issuance of Incentive Units pursuant hereto is intended to qualify for the exemption from registration under the Securities Act provided by Rule 701 (and any analogous basis under any applicable state securities laws); *provided*, by Rule 701 (and any analogous basis under any applicable state securities laws); *provided, however, that the foregoing shall not restrict or limit the Company's ability to issue any Incentive Units pursuant to any other exemption from registration under the Securities Act (or any state securities laws) available to the Company.*

(f) *Section 83 Safe Harbor*. Each Member, by executing this Agreement, agrees that:

(i) when and if Proposed Regulations Section 1.83-3(l) and the proposed Revenue Procedure contained in Notice 2005-43, 2005-24 I.R.B. 1 or any substantially similar rules become effective, the Company is authorized and directed to elect the safe harbor described therein, under which the fair market value of any Incentive Unit of the Company that is transferred in connection with the performance of services will be treated as being equal to the liquidation value of that Incentive Unit (the "**Safe Harbor**");

(ii) while the election described in Section 3.01(f)(i) remains effective, the Company and each of the Members (including any Person to whom an Incentive Unit of the Company is Transferred in connection with the performance of services) shall comply with all requirements of the Safe Harbor with respect to all Incentive Units of the Company that are Transferred in connection with the performance of services; and

(iii) a Member's obligations to comply with the requirements of this Section 3.01(f) shall survive such Member's ceasing to be a Member and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this Section 3.01(f) the Company shall be treated as continuing in existence.

(g) *Vesting of Incentive Units*. Subject to Section 3.01(e), the Incentive Units shall become vested in accordance with the terms and conditions (including vesting schedule) of the MIP and the applicable Award Agreement. Incentive Units (including the corresponding Upstairs Incentive Units) that are vested per such vesting schedule or by the Board are referred to herein as "**Vested Incentive Units**" and Incentive Units (including the corresponding Upstairs Incentive Units) that are not vested per such vesting schedule, or as otherwise provided by the Board, are referred to herein as "**Unvested Incentive Units**."

(h) *Certificated Units*. The Company may (if authorized by the Board), but need not, issue certificates representing the Units ("**Certificated Units**"). The Officers designated by the Board shall have the authority to execute and deliver Certificated Units to the Members by and on behalf of the Company. In the event that Certificated Units are issued, such Certificated Units will expressly provide that each of the Certificated Units is a "security" as defined in and governed by Article 8 of the Delaware Uniform Commercial Code, and bear the following legend and any other legend as may be required by the Board in its discretion:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED AS OF AUGUST 4, 2026 HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR APPLICABLE STATE SECURITIES LAWS ("**STATE ACTS**") AND MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION

STATEMENT UNDER THE ACT OR STATE ACTS OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SALE, DELIVERY AFTER SALE, TRANSFER, PLEDGE, OR HYPOTHECATION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF FRONTIER POWER USA PARENT, LLC DATED AS OF AUGUST 4, 2026, AS AMENDED AND MODIFIED FROM TIME TO TIME."

Section 3.02. Capital Accounts.

(a) The Company will maintain a separate Capital Account for each Member in compliance with Section 704(b) of the Code and in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv). Without limiting the foregoing, the Capital Account of each Member will be adjusted, as determined by the Board: by adding any Capital Contributions made by such Member after the Effective Date in consideration for the issuance of Units or otherwise, net of any Company liabilities (within the meaning of Treasury Regulations Section 1.752-1(a)(4)) to which such Capital Contribution is subject; by deducting any amounts paid to such Member in connection with the redemption or other repurchase of Units by the Company; by adding any Profits or other items in the nature of book income or gain allocated to such Member and deducting any Losses or other items in the nature of book loss or deduction allocated to such Member; and by deducting any Distributions, net of any Company liabilities (within the meaning of Treasury Regulations Section 1.752-1(a)(4)) to which such Distributions are subject, to such Member. The terms of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b)(2)(iv) and will be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board reasonably determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations, then the Board will have the right to make such modification to the extent (i) such modification is not reasonably expected to affect any economic entitlements of the Members (unless otherwise consented by all the affected Members) or (ii) the Board reasonably determines that such modification is necessary in order to reflect the intended economic arrangement among the Members under this Agreement. The Board will make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of the Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), and make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

Section 3.03. Negative Capital Accounts. No Member will be required to pay to any other Member or the Company any deficit or negative balance that may exist from time to time in such Person's Capital Account, including upon and after dissolution of the Company. No Member will be liable to pay interest to the Company or any other Person in respect of any negative balance in such Member's Capital Account.

Section 3.04. No Withdrawal. No Person shall be entitled to withdraw or demand the return of any part of such Person's Capital Contributions or Capital Accounts or to receive any Distribution from the Company, except as expressly provided herein.

Section 3.05. Loans From Members. No Member shall be required to lend any funds to the Company or to make any additional contribution of capital to the Company, except as otherwise required by Law, this Agreement or any other agreement between such Member and the Company. Any Member may, with the approval of the Board and the requisite approval pursuant to Section 5.05 as a Fundamental Matter, make loans to the Company, and any loan by a Member to the Company shall not be considered to be a Capital Contribution. If any Member shall advance funds to the Company in excess of the amounts required hereunder to be contributed by such Member to the capital of the Company, the advance of such funds shall not result in any increase in the amount of the Capital Account of such Member. The amount of any such funds shall be debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such funds are advanced.

Section 3.06. Transfer of Capital Accounts. The original Capital Account established for each Substituted Member shall be in the same amount as the Capital Account of the Member (or portion thereof) to which such Substituted Member succeeds, at the time such Substituted Member is admitted as a Member of the Company. The Capital Account of any Member, whose interest in the Company shall be increased or decreased by means of the Transfer to such Member of all or part of the Units of another Member, or the Transfer by such Member of all or part of its Units to another Member or the repurchase or forfeiture of Units, shall be appropriately adjusted to reflect such Transfer, repurchase or forfeiture. Any reference in this Agreement to a Capital Contribution of or Distribution to any Member that has succeeded any other Member shall include any Capital Contributions or Distributions previously made by or to such other Member on account of the Units of such other Member Transferred to such Member.

Section 3.07. Reserves. Reserves in an amount reasonably determined by the Board, in good faith, may be retained out of Capital Contributions, net proceeds from sales or refinancing or net proceeds from operations. Any reserves remaining on the dissolution of the Company shall be held until the final liquidation and then distributed to the Members in accordance with the provisions of Section 12.02.

ARTICLE 4
DISTRIBUTIONS & ALLOCATIONS

Section 4.01. Distributions.

(a) *General*. The Board may (but shall not be obligated to) direct the Company to make Distributions to the Members at any time or from time to time, and in amounts of any of the Company's assets available therefor, as determined by the Board in its sole and absolute discretion to be appropriate. All Distributions, other than Distributions required to be made pursuant to Section 4.01(b) and Tax Distributions pursuant to Section 4.01(d), shall be made as follows, and, with respect to each time Distributions are being made, no Distributions shall be made pursuant to any subsequent clause below until all Distributions required under all prior clauses have been fully paid:

(i) *first*, 100% to the holders of outstanding Preferred Units, *pro rata* in proportion to the aggregate number of Preferred Units held by each such holder as of the time of such Distribution, *provided* that such distributions shall cease to be made under this clause to any holder once (i) the aggregate Unreturned Preferred Unit Capital with respect to such holder's Preferred Units has been reduced to zero dollars and (ii) there has been distributed to such holder in respect of its Preferred Units in an aggregate amount sufficient for such holder to achieve 10% IRR in respect of such holder's Preferred Units, and any amounts that would otherwise have been distributed to such holder in excess of such 10% IRR shall instead be distributed to the remaining holders of outstanding Preferred Units that have not yet satisfied clauses (i) and (ii), *pro rata* in proportion to their respective Preferred Units, until each such holder has been so satisfied;

(ii) *thereafter*, *pro rata* among all Members in proportion to the number of Units held by each such Member as of the time of such Distribution; *provided* that, for purposes of this Section 4.01(a)(ii), Incentive Units shall be entitled to a Distribution only to the extent that such Incentive Units (or the corresponding Upstairs Incentive Units) have been issued, and are Vested Incentive Units, as of the time of such Distribution; *provided, further*, that any Incentive Unit shall not be entitled to any Distribution pursuant to this Section 4.01(a)(ii) until the total amount of Distributions that have been made (on a cumulative basis) to holders of Units that were outstanding at the time of the issuance of such Incentive Unit after the date of grant of such Incentive Unit is equal to the Distribution Threshold for such Incentive Unit, and any amount not distributed in respect of an Incentive Unit as a consequence of the preceding proviso shall be distributed to the other Members pursuant to this Section 4.01(a)(ii) (applied iteratively). All proceeds distributable to Management Holdco Members pursuant to this Section 4.01(a)(ii) shall be distributed to Management Holdco, which shall in turn distribute such amounts to the applicable Management Holdco Members in accordance with the Management Holdco LLC Agreement.

(b) Distributions in connection with the liquidation, dissolution, or winding up of the Company pursuant to Section 12.02 or following any Company Sale shall be made in the following order of priority, and, with respect to each time Distributions are being made, no Distributions shall be made pursuant to any subsequent clause below until all Distributions required under all prior clauses have been fully paid:

(i) *first*, 100% to the holders of outstanding Class A-2 Units, Class C Units and Class D Units, *pro rata* in accordance with the Unreturned Preferred Unit Capital of the Class A-2 Units, Class C Units or Class D Units held by each such holder, until the aggregate Unreturned Preferred Unit Capital with respect to such Class A-2 Units, Class C Units and Class D Units has been reduced to zero dollars;

(ii) *second*, 100% to the holders of outstanding Class B Units, *pro rata* in accordance with the Unreturned Preferred Unit Capital of the Class B Units held by each such holder, until the aggregate Unreturned Preferred Unit Capital with respect to such Class B Unit has been reduced to zero dollars;

(iii) *third*, 100% to the holders of outstanding Class A-1 Units, *pro rata* in accordance with the Unreturned Preferred Unit Capital of the Class A-1 Units held by each such holder, until the aggregate Unreturned Preferred Unit Capital with respect to each such Class A-1 Unit has been reduced to zero dollars;

(iv) fourth, 100% to the holders of outstanding Preferred Units, *pro rata* in proportion to the aggregate number of Preferred Units held by each such holder as of the time of such Distribution; *provided* that distributions shall cease to be made under this clause to any holder once there has been distributed to such holder in respect of its Preferred Units an aggregate amount sufficient for such holder to achieve 10% IRR in respect of such holder's Preferred Units, and any amounts that would otherwise have been distributed to such holder shall instead be distributed to the remaining holders of outstanding Preferred Units that have not yet achieved 10% IRR in respect of their Preferred Units, *pro rata* in proportion to their respective Preferred Units, until each such holder has achieved 10% IRR in respect of its Preferred Units;

(v) *fifth*, thereafter, *pro rata* among all Members in proportion to the number of Units held by each such Member as of the time of such Distribution; *provided* that, for purposes of this Section 4.01(b)(v), Incentive Units shall be entitled to a Distribution only to the extent that such Incentive Units (or the corresponding Upstairs Incentive Units) have been issued, and are Vested Incentive Units as of the time of such Distribution; *provided, further*, that any Incentive Unit shall not be entitled to any Distributions pursuant to this Section 4.01(b)(v) until the total amount of Distributions that have been made (on a cumulative basis) to holders of Units that were outstanding at the time of the issuance of such Incentive Unit after the date of grant of such Incentive Units is equal to the Distribution Threshold for such Incentive Unit, and any amount not distributed in respect of an Incentive Unit as a consequence of the preceding proviso shall be distributed to the other Members pursuant to this Section 4.01(b)(v) (applied iteratively). All proceeds distributable to Management Holdco Members pursuant to this Section 4.01(b)(v) shall be distributed to Management Holdco, which shall in turn distribute such amounts to the applicable Management Holdco Members in accordance with the Management Holdco LLC Agreement.

Notwithstanding anything to the contrary herein, for the avoidance of doubt, (x) amounts previously distributed to the holders of Preferred Units and Incentive Units other than in connection with a liquidation, dissolution, or winding up of the Company shall be credited against amounts that would otherwise be distributable to the holders of Preferred Units and Incentive Units pursuant to this Section 4.01(b), and (y) any amounts previously treated as advances of Distributions payable to a Member pursuant to Section 4.01(a) shall reduce the amounts that would otherwise be distributed to such Member pursuant to this Section 4.01(b).

(c) *Unvested Incentive Units*. Notwithstanding anything to the contrary in this Article 4 (*Distributions & Allocations*) (but subject to Section 4.01(d)), any amount actually distributable in respect of any Incentive Unit that is an Unvested Incentive Unit shall be retained by the Company until such time as such Unvested Incentive Unit becomes a Vested Incentive Unit (at which point such amount shall be distributed to the holder of such Vested Incentive Unit only at the time of the next Distribution pursuant to Section 4.01(a) or Section 4.01(b), as applicable, and such Incentive Units shall not have any right to such amounts prior to a Distribution) or such Unvested Incentive Unit is forfeited (or otherwise becomes incapable of vesting) (at which point such amount shall be distributed pursuant to Section 4.01(a) or Section 4.01(b) at the time of the next Distribution pursuant to Section 4.01(a) or Section 4.01(b), as applicable).

(d) *Tax Distributions*. Subject to any restrictions set forth in any loan agreement or other contractual obligation of the Company or any of its Subsidiaries, at least ten days prior to the date on which federal quarterly estimated tax payments are due for corporations or individuals (whichever is earlier) (each, a "**Tax Distribution Date**"), the Board will cause the Company to make Distributions, to the extent of the Company's and its Subsidiaries' Available Cash to each Member of an amount of cash (each, a "**Tax Distribution**") that is at least equal to such Member's Tax Distribution Amount. The "**Tax Distribution Amount**" in respect of a Member means an amount equal to the product of the Applicable Tax Rate multiplied by commencing with the Effective Date, the cumulative net taxable income of the Company allocated in respect of (or reasonably estimated to be allocable to) such Member through the preceding taxable quarter, in excess of any cumulative net taxable loss, deductions or credits of the Company allocated in respect of (or reasonably estimated to be allocated to) such Member through the preceding taxable quarter less commencing with the Effective Date, any amounts distributed or previously distributed in respect of such Member. For purposes of determining the Tax Distribution Amount of each Member, in calculating taxable income, loss, deduction or credits allocable in respect of a Member, any adjustment of the tax basis of the Company's assets pursuant to Code Section 743(b) shall not be taken into account, allocations of income, gain, loss, or deduction under Section 704(c) shall be taken into account, amounts treated as compensation or guaranteed payments (determined pursuant to Code Section 707) shall not be taken into account, items of loss, deduction or credit shall only be taken into account to the extent such loss, deduction or credit would be available under the Code to offset income of the Members (or as appropriate, the direct or indirect partners or members of the Members) determined as if income, gain, loss or deduction from the Company were the only income, gain, loss and deduction of the Members (or, as appropriate, the direct or indirect partners or members of the Members) in such period and all prior periods, and taking into account the limitation on the usability of any such loss, deduction or credit by a Member with respect to taxable period, as determined in the reasonable discretion of the Board, and in no event shall the Tax Distribution Amount include income in respect of any taxable period ending on or prior to the Effective Date. If the Company does not make a Tax Distribution in accordance with the timing set forth in this Section 4.01(d) due to insufficient Available Cash, the Board shall cause the Company to make up such missed Tax Distribution on or prior to the end of the applicable Taxable year so long as the Board determines that the Company has sufficient Available Cash to make such make-up Tax Distribution and such make-up Tax Distribution would not constitute a violation of the terms of any loan documents to which the Company is a party or by which the Company is bound. The amounts in respect of Tax withholding on payments to or from the Company for which Members (or as appropriate, the direct or indirect partners or members of the Members) are credited under applicable Tax law shall be treated as Tax Distributions paid to such Members. The amount of all Tax Distributions under this Section 4.01(d) will be treated as advances of any Distributions payable to the Members pursuant to Section 4.01(a)(ii) or Section 4.01(b)(v), as applicable, and shall reduce the amounts that would subsequently otherwise be distributed to the Members pursuant to Section 4.01(a)(ii) or Section 4.01(b)(v), as applicable. Prior to making any

Tax Distributions, the Company shall provide each Member with reasonable advance notice of the amount of such Member's Tax Distribution and such Member may elect, by notifying the Company in writing, to waive all or any portion of such upcoming Tax Distribution.

(e) *Withholding*.

(i) If the Company is required by Law to pay any tax that is specifically attributable to a Member (or the status of a Member), including U.S. federal or state withholding taxes, then such Member shall indemnify and reimburse the Company the amount of such tax (including any interest or penalties). The Company may offset Distributions to any Member that it is otherwise entitled to receive under this Agreement against such Member's obligation and such offset amounts shall be treated as distributed to such Member for all purposes of this Agreement. A Member's obligation to indemnify and reimburse the Company under this provision shall survive the Member's Transfer of its Units in the Company and the termination, dissolution, liquidation or winding up of the Company. The Company may pursue remedies against any Member, including instituting a lawsuit to collect such indemnification and reimbursement with interest calculated at a rate equal to the Base Rate *plus* three percentage points per annum (but not in excess of the highest rate per annum permitted by Law), compounded on the last day of each Fiscal Quarter so long as such amount remains unpaid.

(ii) The Company is authorized to withhold from payments and distributions to the Members any amounts required to be withheld under Law. All amounts withheld with respect to a Member shall be treated as if such amounts were distributed to such Member under this Agreement. Neither the Company nor the Board shall be liable for any over-withholding in respect of any Member, and, in the event of any such over-withholding, a Member's sole recourse shall be as provided under Law.

(f) *Debt Restrictions*. Notwithstanding anything herein to the contrary, the Board shall not make any Distributions to the Members hereunder that would violate applicable restrictions, if any, on such Distributions contained in the debt financing agreements of the Company and its Subsidiaries.

(g) *Distributions In-Kind*. Subject to compliance with securities Laws, to the extent that the Company distributes property in-kind to the Members, the Company shall be treated as making a distribution equal to the Asset FMV of such property for purposes of this Section 4.01 (*Distributions*) and such property shall be treated as if it were sold for an amount equal to its Asset FMV, and any resulting gain or loss shall be allocated to the Members' Capital Accounts in accordance with Section 4.02.

(h) *Certain Understandings Regarding a Company Sale*. In the event of a Company Sale, if any portion of the consideration is payable directly to the Members in respect of their Units and/or if any portion of the consideration that is payable to the Members is placed into escrow (or otherwise held back) and/or is payable to the Members subject to contingencies, the principal transaction agreement shall provide that (x) the portion of such consideration that is not placed in escrow (or otherwise held back) and not subject to any contingencies (the "**Initial Consideration**") shall be allocated among the holders of Units, and distributed, in accordance with Section 4.01(b) as if the Initial Consideration were the only consideration payable in connection with such Company Sale and (y) any additional consideration that becomes payable to the Members upon release from escrow or satisfaction of contingencies shall be allocated among the holders of Units, and distributed, in accordance with Section 4.01(b) after taking into account the previous distribution of the Initial Consideration as part of the same transaction. Notwithstanding anything to the contrary in this Agreement, upon a Company Sale, each Member shall receive the same form of consideration (including cash, securities, or the opportunity to roll over or invest in equity of the buyer or its affiliates) in respect of their Units payable to the such Members in such Company Sale as would be provided pursuant to Section 8.03 (*Drag-Along Rights*), regardless of whether the drag-along rights are actually exercised in connection with such Company Sale. In the event that a Company Sale is structured as a sale of Units by the Members rather than a sale of the Company's assets (including via a sale of a Subsidiary of the Company) and a Distribution of proceeds by the Company, the Board shall cause the purchase agreement, merger agreement or other transaction agreement governing such sale to include provisions which replicate the economic result which would have been attained under Section 4.01(b) had the Company Sale been structured as a sale of the Company's assets and a Distribution of proceeds thereof.

Section 4.02. Allocations.

(a) *Allocations*. Except as otherwise provided in this Agreement, for each Fiscal Year or other taxable period of the Company, after adjusting each Member's Capital Account for all Distributions made during such Fiscal Year or period and all Regulatory Allocations pursuant to Section 4.02(b) with respect to such Fiscal Year or other period, all remaining Profits and Losses of the Company (and, in the reasonable discretion of the Board, individual items of income, gain, loss or deduction of the Company) will be allocated, as determined by the Board among the Members in such a manner as to reduce or eliminate, to the extent possible, any difference, as of the end of such Fiscal Year or other period, between the sum of the Capital Account of each Member, such Member's share of minimum gain as determined according to Treasury Regulations Section 1.704-2(g), and such Member's partner nonrecourse debt minimum gain (as defined in Treasury Regulations Section 1.704-2(i)(2)), and the respective net amounts that would be distributed to the Members, determined as if the Company were to sell the assets of the Company on hand at the end of such Fiscal Year or other period for an amount of cash equal to their Book Value and satisfy all liabilities of the Company in cash in accordance with their terms (limited in the case of non-recourse liabilities to the Book Value of the property securing such liabilities), and distribute the proceeds of such liquidation pursuant to Section 4.01(b) and Section 12.02.

(b) *Regulatory Allocations*. If necessary, the Company will make special allocations to comply with the Company's minimum gain chargeback provisions of Treasury Regulations Section 1.704-2(f), the partner nonrecourse debt minimum gain chargeback provisions of Treasury Regulations Section 1.704-2(i), the qualified income offset provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d), and the forfeiture allocation provisions of Proposed Treasury Regulations Section 1.704-1(b)(4)(xii)(c) or any successor provision or guidance. The allocations set forth in the prior sentence (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations under Section 704 of the Code. Notwithstanding any other provisions of this Article 4, the Board is authorized to make supplementary allocations of Company income, gain, loss or deduction in order to offset Regulatory Allocations made so that, to the extent permissible under the Code, the net amount of allocations of Profits and Losses and the Regulatory Allocations (including Regulatory Allocations that, although not yet made, are reasonably expected to be made in the future) to each Member will equal the net amount of allocations that would have been allocated to such Member if the Regulatory Allocations had not been made.

(c) *Section 704(c) Allocations*. Each item of income, gain, loss, deduction and credit of the Company with respect to any property contributed to the capital of the Company will, solely for Tax purposes, be allocated among the Members in accordance with Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such asset for U.S. federal income Tax purposes at the time of contribution and its initial Book Value. In addition, if the Book Value of any Company asset is adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e) or (f), then subsequent allocations of items of income, gain, loss, deduction and credit with respect to such asset will take account of any variation between the adjusted basis of such asset for U.S. federal income Tax purposes and its Book Value in the same manner as under Section 704(c) of the Code. The Board will determine all allocations pursuant to this Section 4.02(c) using any permissible method under Treasury Regulations Section 1.704-3, as determined by the Board; *provided*, that, the Company shall adopt the "traditional method" as set forth in Treasury Regulations Section 1.704-3(b) with respect to the Pre-Closing Contribution.

(d) Preferred Return. The Company and Members intend that, prior to the dissolution or liquidation of the Company pursuant to Section 12.01 or Section 12.02, to the extent permitted by applicable Law, the accrual of the 10% IRR in respect of the Preferred Units shall not be treated as giving rise to a guaranteed payment or taxable capital shift to the holders of Preferred Units.

ARTICLE 5
MANAGEMENT

Section 5.01. General Authority. Subject to the terms, conditions and limitations set forth herein, the business and affairs of the Company shall be managed by, or under the direction of, the Board, the Board shall have all power and authority to manage and to direct the management of the business and affairs of the Company and to make all decisions to be made by or on behalf of the Company and the powers of the Board shall include all powers, statutory or otherwise, possessed by or permitted to managers of a limited liability company under the Laws of the State of Delaware and the Act.

Section 5.02. The Board of Managers.

(a) The Board shall initially consist of seven Managers, and the composition of the Board shall be as follows:

(i) the holders of a majority of the Class A-2 Units shall have the right to appoint four Managers (each, a "**Class A Manager**");

(ii) the holders of a majority of the Class B Units shall have the right to appoint (A) three Managers (each, a "**Class B Manager**") for so long as the Class B Units (together with any Class D Units issued, or Class C Units transferred, in each case to holders of Class

B Units) represent at least 30% of the outstanding Preferred Units, (B) two Class B Managers for so long as the Class B Units (together with any Class D Units issued, or Class C Units transferred, in each case to holders of Class B Units) represent at least 20% but less than 30% of the outstanding Preferred Units, and (C) one Class B Manager for so long as the Class B Units (together with any Class D Units issued, or Class C Units transferred, in each case to holders of Class B Units) represent at least 10% (the foregoing 10%, the "**Class B Designation Threshold**") but less than 20% of the outstanding Preferred Units; *provided*, for the avoidance of doubt, under no circumstances there shall be more than three Class B Managers.

(iii) for the avoidance of doubt, if, at any time, the Class B Designation Threshold is not met, the holders of the Class B Units shall not have the right to appoint any Managers to the Board; and

(iv) as of the Effective Date, the Class A Managers shall be Jacob Hansen and Nick Robinson, and the Class B Managers shall be Joe Mastrangelo and Jeff Bornstein.

(b) *Regular Meetings*. Regular meetings of the Board shall be held at least quarterly on such dates, at such times and at such places as the Board shall from time to time determine. Meetings of the Board shall be presided over by the Chairman, or in his or her absence by a Chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the Chairman may appoint any person to act as secretary of the meeting. For the avoidance of doubt, a Manager shall not be considered to be an Officer solely by virtue of holding the position of Chairman, and the Chairman shall not have a casting vote.

(c) *Special Meetings*. Special meetings of the Board may be called at any time by any Class A Manager upon at least two Business Days' notice (unless exigent circumstances require a shorter notice period) given to each Manager and to the Company. Each special meeting shall be held at such date, time and place, as shall be fixed by the Person or Persons calling the meeting. In addition, for so long as the Eos Member continues to own at least 20% of the outstanding Preferred Units, any Class B Manager shall have the right to call a special meeting of the Board on five Business Days' notice (unless exigent circumstances require a shorter notice period).

(d) *Notice of Meetings and Business to be Discussed*. Written notice of each meeting of the Board shall be given to each Manager which shall state the date, time and place of the meeting. The written notice of any meeting shall be given at least two Business Days prior to such meeting (unless exigent circumstances require a shorter notice period), which notice may be waived in writing or by a Manager attending such meeting (and (i) a waiver by any Class A Manager appointed pursuant to Section 5.02(a)(i) shall be deemed a waiver by all Class A Managers and (ii) a waiver by any Class B Manager appointed pursuant to Section 5.02(a)(ii) shall be deemed a waiver by all Class B Managers).

(e) *Telephonic Meetings Permitted*. Managers, or members of any committee designated by the Board, may participate in a meeting of the Board, or of such committee, by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this Agreement shall constitute presence in person at such meeting.

(f) *Quorum.* Subject to this Section 5.02(f), a quorum of the Board shall consist of a majority of voting power the Managers then serving (taking into account Section 5.02(h)(ii)); *provided*, that such quorum must include at least one Class A Manager for so long as CCM Frontier and its Permitted Transferees own at least 50% of the Class A Units held by CCM Frontier and its Affiliates as of the Effective Date and at least one Class B Manager for so long as the Eos Member owns at least 30% of the outstanding Preferred Units. If a meeting of the Board is adjourned because the foregoing class-specific quorum requirement is not satisfied, then at the reconvened meeting called on at least two Business Days' prior written notice with the same agenda, a quorum shall consist of a majority of the Managers then serving, whether or not any Class A Manager or Class B Manager whose absence caused the adjournment is present.

(g) *Action of the Board.* Except as otherwise set forth in this Agreement, all actions of the Board shall require the affirmative vote of a majority of the Board at a meeting at which a quorum is present, taking into account the right of a Class A Manager to vote on behalf of or represent another Class A Manager and the right of a Class B Manager to vote on behalf of or represent another Class B Manager and Section 5.02(h)(ii). Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all Managers then serving on the Board taking into account the right of a Class A Manager to consent on behalf of another Class A Manager and the right of a Class B Manager to consent on behalf of another Class B Manager and Section 5.02(h)(ii). A copy of any such written consent will be kept in the books and records of the Company and shall be provided to any Manager promptly upon request.

(h) *Voting.*

(i) Subject to Section 5.02(h)(ii), Each Manager shall have one vote on any vote of the Board or any committee thereof at a meeting of the Board or any committee (or in a written consent in lieu thereof) and shall be entitled to count as one Manager for quorum purposes.

(ii) Notwithstanding anything to the contrary herein, the Class A Manager(s) and the Class B Manager(s) shall be entitled to such number of votes at any meeting of the Board or any committee thereof or action by written consent of the Board or any committee thereof as necessary for the Class A Managers(s) or Class B Managers Manager(s) (as applicable) then serving or present at the relevant meeting or providing such written consent to cast the number of votes or deliver a number of written consents equal to the number of Managers the holders of a majority of the Class A-2 Units or the holders of a majority of the Class B Units (as applicable) is entitled to designate pursuant to Section 5.02(a)(i) and Section 5.02(a)(ii), respectively (e.g., if the holders of a majority of Class A-2 Units are entitled to appoint four members to the Board, and two Class A Managers attend a meeting of the Board or committee thereof, such Class A Managers shall be entitled to cast a total of four votes, or if one Class A Manager attends a meeting of the Board or committee thereof, such Class A Manager shall be entitled to cast a total of four votes).

(i) *Committees; Subsidiary Boards*. The Board may create executive, compensation, audit and such other committees as it may determine. The CCM Frontier Member shall be entitled to majority representation on any committee created by the Board and on the board of Managers or similar governing body of any other Company Party. One Class B Manager shall be entitled to (i) sit on each committee created by the Board (other than any committee created by the Board for the purpose of addressing any conflicts of interest involving the Eos Member or any of their respective Affiliates) and (ii) sit on the board of directors, board of managers or similar governing body of each other Company Party (and any committee thereof) so long as, in the case of this clause (ii), (A) the Eos Member continues to hold at least 15% of the outstanding Preferred Units, and (B) a designee of the CCM Frontier Member also sits on such governing body of such Company Party.

(j) *Proxy.* Any member of the Board or committee thereof may be represented at a meeting of the Board or committee thereof, as applicable, by proxy, which proxy must be notified to the Board by letter or facsimile, signed by the member of the Board or committee thereof, as applicable, giving the proxy, addressed to the Board or committee thereof, and delivered prior to the commencement of the meeting; *provided* that, each member of the Board may only grant such proxy to another Manager.

(k) *Vacancies*. If, as a result of death, disability, retirement, resignation, removal (with or without Cause) or otherwise, there shall exist or occur any vacancy on the Board, the Member(s) entitled under Section 5.02(a) to designate such Manager whose death, disability, retirement, resignation or removal resulted in such vacancy, subject to the provisions of Section 5.02, may designate another individual to fill such vacancy and serve as a Manager.

(l) *Removal*. The Member(s) entitled to designate a Manager pursuant to Section 5.02(a) shall have the sole and exclusive right to remove, with or without cause, and replace any Manager designated by such Member(s) at any time and in their sole discretion by delivering written notice to the Company and the other Members. If any such Member(s) cease to have the right to designate a Manager to the Board pursuant to Section 5.02, such Member shall cause each Manager designated by such Member to tender his or her resignation to the Board.

(m) *Compensation and Reimbursement*. No Manager shall receive any compensation from the Company or any of its Subsidiaries for serving in such capacity as a Manager. The Company shall reimburse, or shall cause one of its Subsidiaries to reimburse, the reasonable out-of-pocket costs and expenses incurred by each Manager in the course of his or her service as such.

(n) *Delegation of Authority*. The Board may, from time to time, delegate to one or more committees established by the Board or, subject to Section 5.03, Officers such authority and duties as the Board may deem advisable. Any delegation pursuant to this Section 5.02 may be revoked at any time by the Board.

Section 5.03. Officers.

(a) *Election of Officers and Term of Office*. The Board may from time to time as it deems advisable appoint officers of the Company to act on behalf of the Company and assign in writing titles (each, an "**Officer**" and collectively, the "**Officers**"), which Officers may include a Chief Executive Officer, President, Treasurer, Chief Financial Officer, Secretary, one or more Vice Presidents and such other Officers as the Board may, from time to time determine, subject to the limitations imposed by, and the authority of, the Board. As of the Effective Date, the Company's Officers are Jacob Hansen, as President, and Kurt Wasserman, as Vice President. Each Officer, subject to the terms of any written agreement between the Company and such Officer, shall hold office until a successor shall have been duly elected or appointed and shall have qualified or until such Officer's death, resignation or removal in the manner provided hereinafter. An Officer may, but need not, be a resident of the State of Delaware, a Manager or a Member. Any one Person may hold more than one office. The authority and responsibility of the Officers shall include, but not be limited to, the carrying out of the Company's business and affairs on a day-to-day basis (subject to the authority of the Board) and such other duties as the Board may, from time to time, delegate to them. Subject to the terms and conditions of this Agreement, the Chief Executive Officer may, in his or her reasonable discretion, further delegate the authority granted to him or her by the Board to other members of management of the Company; *provided*, that the Chief Executive Officer shall not be entitled to delegate any authority with respect to actions requiring the approval of the Board.

(b) *Resignation; Removal; Vacancies*. Any Officer may be removed as such, either with or without Cause, by the Board in its discretion at any time; *provided*, *however*, that such removal shall be without prejudice to the contract rights, if any, of the individual so removed. The designation of an individual as an Officer shall not of itself create any contract or employment rights. Any vacancy occurring in any office of the Company may be filled by the Board and shall remain vacant until filled by the Board.

(c) *Salaries*. The salaries or other compensation, if any, of the Officers shall, subject to the terms of any written agreement between any Company Party and such applicable Officer, be fixed from time to time by the Board.

(d) *Duties of Officers Generally*. The Officers, in the performance of their duties as such, shall owe to the Company duties of loyalty and due care of the type owed by the officers of a corporation to such corporation and its equity holders under the Laws of the State of Delaware.

Section 5.04. Reserved Matters. Notwithstanding anything to the contrary in this Agreement, for so long as the Eos Member holds at least 20% of the outstanding Preferred Units, the Company shall not, and shall cause its Subsidiaries not to, directly or indirectly take any action set forth on Schedule D-1 (*Reserved Matters*) without the approval of at least one Class B Manager.

Section 5.05. Fundamental Matters. Notwithstanding anything to the contrary in this Agreement, the Company shall not, and shall cause its Subsidiaries not to, directly or indirectly take any action set forth on Schedule D-2 (*Fundamental Matters*) without the approval of each of the Eos Member and the CCM Frontier Member for so long as such Member holds at least 10% of the total outstanding Preferred Units.

Section 5.06. Deadlock. If a deadlock arises among the Board or Members with respect to any approval matter, the Board or disputing Members, as applicable, shall meet in good faith for a period of 10 Business Days to seek to resolve the dispute. If the Members do not agree during such period, the disputed matter shall remain unapproved.

Section 5.07. Certain VCOC Matters. The parties hereto agree that any rights granted to the CCM Frontier Member under this Agreement may be directly exercisable or enforceable by either of the Cerberus Funds as if such right had been directly granted to such Cerberus Fund instead of having been granted to the CCM Frontier Member and the rights granted to each of the Cerberus Funds under this Agreement are intended to enable each Cerberus Fund's indirect investment in the Company to qualify as a "venture capital investment" within the meaning of the United States Department of Labor Regulation published at 29 C.F.R. Section 2510.3-101(d)(3)(i), and this Agreement shall be interpreted accordingly.

Section 5.08. Termination of Governance Rights. The provisions of this Article 5 shall terminate upon the consummation of an IPO.

Section 5.09. Developer; Management Services Agreement.

(a) *Appointment of Initial Developer*. Subject to the oversight and authority of the Board and the terms of the Management Services Agreement, day-to-day oversight of the Company's development projects shall be delegated to and performed by a Person initially appointed by the holders of a majority of the Class A Units (such Person, the "**Developer**"), which Developer shall initially be DevCo.

(b) *Resignation or Removal or Replacement of Developer.*

(i) Developer may resign as Developer at any time.

(ii) If Developer is DevCo or an Affiliate of CCM Frontier Member, Developer may be removed by (A) the holders of a majority of the Class A Units at any time, with or without a Developer Cause Event or (B) the holders of a majority of the Class B Units solely for a Developer Cause Event; *provided* that, at least ten Business Days prior to any removal for a Developer Cause Event, the holders of a majority of the Class B Units shall notify the Developer of the occurrence of such Developer Cause Event (with such notice providing reasonable detail of such Developer Cause Event) and such removal may proceed only if such Developer Cause Event remains uncured after the end of such notice period.

(iii) If Developer is not an Affiliate of any CCM Frontier Member, Developer may be removed by an action of the Board.

(iv) In the event of the resignation or removal of Developer pursuant to Section 5.09(b)(i) or Section 5.09(b)(ii)(A), a replacement Developer shall be designated by the holders of a majority of the Class A Units.

(v) In the event of the removal of Developer pursuant to (a) Section 5.09(b)(iii), a replacement Developer shall be designated by the Board, or (b) Section 5.09(b)(ii)(B), a replacement Developer shall be designated by the holders of a majority of the Class B Units; *provided*, that such replacement Developer shall be subject to consent of the holders of a majority of the Class A Units (not to be unreasonably withheld, conditioned or delayed).

(vi) The appointment of such successor Developer shall be subject to the successor Developer having accepted and agreed in writing to be bound by this Agreement and the Management Services Agreement from and after the date of such appointment. The Members shall use commercially reasonable efforts to cause a replacement Developer to be appointed as promptly as practicable following the effective date of removal of the previous Developer. During any interim period between the effective date of removal or resignation (or other replacement) of a Developer and the appointment of a replacement Developer (unless otherwise directed by the Board), the previous Developer shall continue to act as Developer and take all actions required under and in accordance with the terms of the Management Services Agreement as if it were still the Developer thereunder as reasonably requested by the Board, including using commercially reasonable efforts to take all Transition Actions (as defined in the Management Services Agreement). If for any reason a Developer ceases to serve as Developer prior to the election of a successor Developer in accordance with this Section 5.09(b), (A) in the case of removal or resignation pursuant to Section 5.09(b)(i) or Section 5.09(b)(ii)(A), CCM Frontier, (B) in the event of the removal of Developer pursuant to (a) Section 5.09(b)(iii), a designee of the Board, or (C) in the event of the removal of Developer pursuant to Section 5.09(b)(ii)(B), the holders of a majority of the Class B Units shall nominate an interim Developer, subject to the consent of a majority of the Class A Units (not to be unreasonably withheld, conditioned or delayed), to serve as the Developer until another Person is duly elected as Developer in accordance with this Section 5.09(b).

(c) *Survival of Liabilities*. The removal or resignation of the Developer shall not relieve the previous Developer from any liabilities incurred or accrued prior to the effective date of such removal or resignation under the terms of this Agreement or the Management Services Agreement (including any limitations or waivers applicable thereto).

(d) *No Implication of Fiduciary Duties*. Notwithstanding anything in this Section 5.09 to the contrary, nothing in the definition of Developer Cause Event shall be deemed to impose fiduciary duties (or any other implied duties) on the Developer or otherwise to modify or limit the standard of care set forth in Section 6.01.

(e) *Developer Cause Event*. In the event that the Company or any Member becomes aware of a Developer Cause Event, the Company or such Member shall promptly notify the Board and the Members.

Section 5.10. Business Plan; Annual Budget.

(a) Following the Effective Date, the Board shall adopt an initial three-year operating strategy and business plan for the Company and its Subsidiaries (the "**Business Plan**"). The Board shall review and, as it reasonably deems appropriate in good faith, revise the Business Plan from time to time, but no less frequently than annually. For so long as the Class B Designation Threshold is met, the Board shall consider the comments of the Class B Managers in good faith prior to approving any Business Plan; *provided*, that, for the avoidance of doubt, neither approval of such Class B Managers nor acceptance of such comments of the Class B Manager shall be required to approve any revision to the Business Plan.

(b) Following the Effective Date, the Board shall adopt an initial Annual Budget. Following the Effective Date, the Developer shall prepare and present to the Board a proposed Annual Budget for future Fiscal Years on an annual basis for approval. For so long as the Class B Designation Threshold is met, the Board shall consider the comments of such Class B Managers in good faith prior to approving any Annual Budget; *provided*, that, for the avoidance of doubt, neither approval of such Class B Managers nor acceptance of such comments of the Class B Manager shall be required to approve any Annual Budget.

ARTICLE 6
LIMITATION OF LIABILITY; INDEMNIFICATION; RIGHTS AND OBLIGATIONS OF MEMBERS

Section 6.01. No Fiduciary Duties; Limitation of Liability.

(a) Except as otherwise provided herein or in any agreement entered into by such Person and the Company and to the maximum extent permitted by the Act, no Member, Manager or Officer acting in his, her or its capacity as Member, Manager or Officer shall be liable to the Company, its Subsidiaries or any Member for any loss or damage sustained by the Company, its Subsidiaries or any Member, unless the loss or damage shall have been the result of fraud, bad faith, gross negligence, willful misconduct or a breach of this Agreement by the Member, Manager or Officer in question or in the case of an Officer, the result of a breach of such Officer's duties pursuant to Section 5.03(c). In performing his or her duties, each Member, Manager or Officer shall be entitled to rely in good faith on the provisions of this Agreement and on information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the Company or any facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid) of the following other Persons or groups: one or more Officers or employees of the Company, any attorney, independent accountant, any appraiser or other expert or professional employed or engaged by or on behalf of the Company or the Board, in each case as to matters which such Member, Manager or Officer reasonably believes to be within such other Person's competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in accordance with Section 18-406 of the Act. None of the Members, Managers or Officers of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the Company or its Subsidiaries, whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a Member, Manager or Officer of the Company or any combination of the foregoing.

(b) *Good Faith and Other Standards*. Without limiting the waivers of fiduciary duties set forth herein, including under Section 5.09(d), Section 6.01 and Section 6.05, each Manager shall perform his or her duties in good faith and in a manner reasonably believed by such Manager to be in the best interests of the Company, taking into account the express terms, priorities, risk allocations, rights and interests set forth in this Agreement and the definitive agreements contemplated hereby. Whenever in this Agreement or any other agreement contemplated herein or to which the Company is a party, the Board is permitted or required to take any action or to make a decision or determination in its "good faith" or under another express standard, each

Manager shall act in good faith or under such express standard and, to the extent permitted by Law, shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein or to which the Company is a party, and, notwithstanding anything contained herein to the contrary, so long as such Manager acts in good faith and in accordance with such other express standard, if any, and does not commit actual and intentional common-law fraud, the resolution, action or terms so made, taken or provided by the Board shall not impose liability upon such Manager or any of such Manager's Affiliates, employers, employees, agents or representatives. Whenever in this Agreement or any other agreement contemplated herein, the Board is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, each Manager shall be entitled to consider such interests and factors as he or she desires, including his or her own interests, and shall, to the maximum extent permitted by Law, have no duty or obligation to give any consideration to any interests or factors affecting any Member.

(c) *Limitation of Duties; Conflict of Interest*. To the maximum extent permitted by Law, the provisions of this Agreement, the Company and each Member hereby waives any claim or cause of action against each other Member (other than any Officer or Management Member in their capacities as such), and their respective Affiliates, employers, employees, agents and representatives (including any Manager), for any breach of any fiduciary duty to the Company Parties or their members, partners or shareholders by any such Person, including as may result from a conflict of interest between the Company Parties or their members, partners or shareholders and such Person or otherwise. No Member or Manager (in its capacity as such and without limiting the duties of an Officer or Management Member in their capacities as such) shall have any duty to the Company, Developer, any of their Subsidiaries or any other Member or Manager, except as expressly set forth herein or in other written agreements between such Member, the Company, Developer, their Subsidiaries and/or any other Member. No Member or Manager (other than the Officers and the Management Members in their capacities as such) shall be obligated to recommend or take any action in his or her capacity as a Member or Manager that prefers the interests of the Company Parties or their members, partners or shareholders over the interests of such Person or its Affiliates, employers, employees, agents or representatives, and each of the Company Parties and each Member hereby waives the fiduciary duty, if any, of such Person to the Company Parties and/or their members, partners and shareholders, including in the event of any conflict of interest or otherwise. For the avoidance of doubt, the term "good faith" as used in this Agreement does not imply or include any fiduciary relationship, duty, arrangement or similar obligation.

(d) This Section 6.01 shall not in any way affect, limit or modify any Person's liabilities, obligations, duties or responsibilities under this Agreement, any Award Agreement, Management Member Agreement, Employment Agreement or any other agreement with any of the Company Parties.

Section 6.02. No Liability for Company Obligations. Except as otherwise provided by the Act, Section 6.01 or Section 6.03 below, no Member, Manager or Officer shall be liable or obligated personally for the debts, obligations and liabilities of any Company Party, whether arising in contract, tort, judgment of a court or otherwise, whether to any Company Party, to any of the other Members, to the creditors of any Company Party or for any losses of any Company

Party, solely by reason of being a Member or acting as a Manager or Officer. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members (including any Manager) for liabilities of the Company.

Section 6.03. Lack of Authority. No Member in its capacity as such or by virtue of being a Member is an agent of the Company or has the authority or power to act for or on behalf of the Company in any manner or way, to bind the Company, or do any act that would be (or could be construed as) binding on the Company, in any manner or way, or to make any expenditures on behalf of the Company, and the Members hereby consent to the exercise by the Board of the powers conferred on it by Law and this Agreement. This Section 6.03 supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds or purports to bind the Company in violation of this Section 6.03 shall be solely responsible for any loss or expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to such loss or expense.

Section 6.04. Indemnification.

(a) *Generally*. The Company hereby agrees to indemnify and hold harmless any Person (each an "**Indemnified Person**") to the fullest extent permitted by the Laws of the State of Delaware, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment, substitution or replacement), against all actions, causes of action, suits, claims, liabilities, losses, damages and costs and expenses (including attorney fees, judgments, fines, excise taxes and penalties) (collectively, the "**Indemnified Liabilities**") incurred or suffered by such Person (or one or more of such Person's Affiliates) by reason of the fact that such Person (x) is or was a Member, (y) is or was a partner, shareholder, member, Affiliate, principal, director, officer, fiduciary, manager, controlling person, employee, representative or agent of a Member or a partner, shareholder, member, Affiliate, principal, director, officer, fiduciary, manager, controlling person, employee, representative, and agent of any of the foregoing, or (z) is or was serving as a Manager is or was an officer or director (or equivalent) of any Company Party (other than the Company) or is or was serving at the request of the Company as a managing member, manager, officer, director, principal, member, employee, agent or representative of another corporation, partnership, joint venture, limited liability company, trust or other enterprise, each of whom in clauses (x) through (z) is an intended third party beneficiary of this Agreement and may specifically enforce the Company's obligations under this Article 6; *provided* that, if and to the extent that the foregoing undertaking may be unavailable or unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under Law; *provided, further*, that no Indemnified Person shall be indemnified for any Indemnified Liabilities suffered to the extent such Indemnified Liabilities are attributable to (x) such Indemnified Person's fraud, bad faith, gross negligence, willful misconduct or breach of this Agreement, (y) in the case of an Officer, any act or omission by such Officer in his or her capacity as such for which a corporation organized under the laws of the State of Delaware would not be able to indemnify its officers under the laws of the State of Delaware, or (z) any present or future willful breaches of any representations, warranties or covenants by such Indemnified Person or its Affiliates (excluding, for purposes hereof, the Company Parties), employers, employees, agents or representatives contained herein or in any other agreement with any Company Party; *provided, further*, that no Person shall be entitled to indemnification hereunder with respect to a proceeding initiated by such Person (other than a proceeding to enforce such Person's rights under this Section 6.04). Expenses, including attorneys' fees and expenses, incurred by any such Indemnified Person in defending a proceeding (but not a proceeding initiated by such Indemnified Person, other than a proceeding to enforce such Indemnified Person's rights under this Section 6.04) shall be paid by the Company, or the Company shall cause one of its Subsidiaries to pay, in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) *Nonexclusively of Rights; Priority of Company Indemnification*. The rights of any Indemnified Person to indemnification hereunder will be in addition to any other rights any such person has under any other agreement or instrument referenced above or any other agreement or instrument to which such Indemnified Person is or becomes a party or is or otherwise becomes a beneficiary or under Law or regulation and shall extend to such Indemnified Person's heirs, successors and assigns. The Company hereby agrees that it is the indemnitor of first resort (*i.e.*, its obligations to any Indemnified Person under this Agreement are primary and any obligation of any Member (or any Affiliate thereof (other than the Company)) to provide advancement or indemnification for the same Indemnified Liabilities (including all interest, assessment and other charges paid or payable in connection with or in respect of such Indemnified Liabilities) incurred by such Indemnified Person are secondary), and if any Member (or any Affiliate thereof, other than the Company) pays or causes to be paid, for any reason, any amounts otherwise indemnifiable hereunder or under any other indemnification agreement (whether pursuant to any contract, any organizational documents or otherwise) with any Indemnified Person, then such Member or Affiliate shall be fully subrogated to all rights of such Indemnified Person with respect to such payment, and the Company shall reimburse such Member (or such other Affiliate) for the payments actually made. The Company hereby unconditionally and irrevocably waives, relinquishes and releases (and covenants and agrees not to exercise, and to cause each other Company Party not to exercise), any claims or rights that the Company may now have or hereafter acquire against any Indemnified Person (in any capacity) that arise from or relate to the existence, payment, performance or enforcement of the Company's obligations under this Section 6.04 or under any indemnification obligation (whether pursuant to any other contract, any organizational document or otherwise), including any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of any Indemnified Person against any Indemnified Person, whether such claim, remedy or right arises in equity or under contract, statute, common law or otherwise, including any right to claim, take or receive from any Indemnified Person, directly or indirectly, in cash or other property or by set-off or in any other manner, any payment or security or other credit support on account of such claim, remedy or right.

(c) *Insurance*. The Company may maintain insurance, at its expense, to protect any Indemnified Person against any expense, liability or loss described in this Section 6.04 whether or not the Company would have the power to indemnify such Indemnified Person against such expense, liability or loss under the provisions of this Section 6.04.

(d) *Limitation*. Notwithstanding anything contained herein to the contrary (including in this Section 6.04), any indemnity by the Company relating to the matters covered in this Section 6.04 shall be provided out of and to the extent of the Company's assets only, and no Member (unless such Member otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity of the Company.

(e) *Survival*. Neither the amendment nor repeal of this Section 6.04, nor the adoption of any other provision to this Agreement, nor, to the fullest extent permitted by the Act, any modification of Law, shall eliminate or reduce the effect of this Section 6.04 in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

Section 6.05. Reservation of Other Business Opportunities.

(a) *General*. Except as otherwise expressly set forth in any Employment Agreement, Award Agreement, Management Member Agreement, consulting agreement, confidentiality agreement, other restrictive covenant agreement or other agreement with any Company Party, and unless the Board otherwise agrees in writing, during the term of his or her employment or service by any Company Party, each Management Member shall, and shall cause each of his or her Affiliates to, bring all investment or business opportunities to the Company of which such Management Member or such Affiliate becomes aware and which are competitive with the business of any Company Party. For the avoidance of doubt, this Section 6.05(a) applies only to Management Members in their capacities as employees or service providers and shall not impose any duty or obligation on the CCM Frontier Member, the Eos Member, the HBC Member, any other Member that is not a Management Member, or any of their respective Affiliates, Permitted Transferees, Managers, designees or representatives.

(b) *Business Opportunities*. Notwithstanding any duty otherwise existing at Law or in equity, to the fullest extent permitted by Law, and subject only to the provisions of this Section 6.05, the Members expressly acknowledge and agree that:

(i) each Member (other than the Management Members), its Affiliates and Portfolio Companies, including any directors, managers and officers of any Company Party affiliated with or designated by such Member (collectively, "**Covered Persons**"), have the right to, and shall have no duty (fiduciary, contractual or otherwise) not to, directly or indirectly engage or invest in the same or similar business activities or lines of business as any of the Company Parties, on its own account, or in partnership with, or as an employee, officer, director, manager, shareholder or member of any other Person, including those lines of business deemed to be competing with any of the Company Parties, and shall have no obligation to refrain from competition with any Company Party; none of the Company Parties or any other Member shall have any rights in and to the business ventures of any Covered Persons, or the income or profits derived therefrom; each Covered Person may do business with any potential or actual customer or supplier of any of the Company Parties or may employ or otherwise engage any officer or employee of any of the Company Parties; and in the event that any Covered Person acquires knowledge of a potential transaction or matter that may be an opportunity for any of the Company Parties or any other Member, such Covered Person shall have no fiduciary duty or other duty (contractual or otherwise) to communicate or present such opportunity to any of the Company Parties or any other Member and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to any of the Company Parties or any other Member (and their respective Affiliates) for breach of any fiduciary duty or other duty (contractual or otherwise) by reason of the fact that such Covered Person directly or indirectly pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present such opportunity to any Company Party or any other Member;

(ii) in the event of any conflict of interest between any Company Party, on the one hand, and any Covered Person, its Affiliates or Portfolio Companies, on the other hand, such Covered Person may act in such Covered Person's best interest and none of the Covered Persons acting in their capacity as Managers shall be obligated (x) to reveal to any Company Party confidential information belonging to or relating to the business of such Covered Person or (y) to recommend or take any action in its capacity as such Member or Manager, as the case may be, that prefers the interest of any Company Party over the interest of such Covered Person; and

(iii) no Covered Person or any Affiliate or Portfolio Company thereof or associated therewith shall have any fiduciary duty or other duty (contractual or otherwise) to disclose any actual or potential conflict of interest (whether known or unknown) between such Covered Person, Affiliate or Portfolio Company, on the one hand, and any Company Party, on the other hand, and it is further understood and agreed that such Covered Person shall have no duty of inquiry with respect to, and shall not be deemed to be conflicted solely as a result of, existing or potential conflicts of interest involving such Covered Person or its Affiliates or Portfolio Companies.

(c) This Section 6.05 shall not in any way affect, limit or modify any rights, liabilities, obligations, duties or responsibilities of any Person under any Employment Agreement, Award Agreement, Management Member Agreement, consulting agreement, confidentiality agreement, other restrictive covenant agreement or any other agreement with any of the Company Parties or their respective Affiliates and/or with any other Member(s) or their Affiliates.

(d) In addition, nothing in this Agreement shall prevent any Member or any of its Affiliates, including the CCM Frontier Member and its Affiliates, from evaluating or consummating a possible investment in, or otherwise engaging in or providing services or financing to, any company or other Person whose business is similar to or competitive with the business of the Company or its Subsidiaries, or from acting as a financing source to any third party.

Section 6.06. No Right to Vote. To the fullest extent permitted by Law, except as otherwise expressly provided in this Agreement, the Members shall have no right to vote in respect of any Units on any matter and do hereby expressly waive any right to vote that can be waived in respect of such Units, and to the extent applicable Law expressly and specifically requires the approval of Members with respect to any matter, the affirmative vote of the Members holding at least a majority of the Preferred Units (the "**Required Vote**") shall be the act of the Members. A meeting of the Members may be called by the Board or by Members holding the Required Vote on at least two Business Days' prior written notice to all other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is called. A quorum shall be present at a meeting of Members if Members holding the Required Vote are represented at the meeting in person or by proxy. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all Members that would be entitled to vote on such action at a meeting at which all Members entitled to vote thereon were present and voted. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof. Notwithstanding anything else herein to the contrary, no non-voting Units may be issued to the CCM Frontier Member, the Eos Member or the HBC Member without the prior written consent of such Member.

Section 6.07. Approval of Merger. Notwithstanding any other provision of this Agreement or the Act to the contrary, but subject to Section 5.04, the Company may merge with, or consolidate into, another limited liability company or other business entity (as defined in Section 18-209(a) of the Act), including pursuant to Section 18-209(a) of the Act, upon solely the approval of the Board, and without any further act, vote or approval of any director, any other Member or any other Person.

Section 6.08. No Right of Partition. No Member shall have the right to seek or obtain partition by court decree or operation of law of any of the Company's property, or the right to own or use particular or individual assets of the Company. All property of the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually, shall have any direct ownership interest in such property.

Section 6.09. Logo of the Company and its Subsidiaries. Each of the Company, Eos Member, CCM Frontier Member and HBC Member grants to the other party and its Affiliates permission to use such granting party's and its Subsidiaries' names and logos solely in the marketing materials of the receiving party or its Affiliates. The receiving party or its Affiliates, as applicable, shall include a trademark attribution notice giving notice of the Company's, Eos Member's, CCM Frontier Member's and HBC Member's or their Subsidiaries' ownership of its trademarks in the marketing materials in which such granting party's names and logos appear.

Section 6.10. Confidentiality.

(a) Each Member recognizes and acknowledges that it has and may in the future receive certain Confidential Information of the Company Parties (including their predecessors), including confidential information of the Company Parties (and their predecessors) regarding identifiable, specific and discrete business opportunities being pursued by the Company Parties. Except as otherwise consented to by the Board, each Member (on behalf of itself and, to the extent that such Member would be responsible for the acts of the following Persons under principles of agency law, its managers, directors, officers, members, shareholders, partners, employees and agents) agrees that it will not, during or after the term of this Agreement, whether directly or indirectly through an Affiliate or otherwise, take commercial or proprietary advantage of or profit from any Confidential Information or disclose Confidential Information to any Person for any reason or purpose whatsoever, except disclosure to authorized directors, officers, representatives, agents and employees of the Company Parties and as otherwise may be proper in the course of enforcing such Member's rights, under this Agreement and the agreements expressly contemplated hereby; in the case of the CCM Frontier Member, as part of such Member's or such Member's Affiliates' normal reporting, rating or review procedure (including normal credit rating and pricing process), or in connection with the CCM Frontier Member's or its Affiliate's ordinary course fund raising, marketing, informational or reporting activities, or to such Member's (or any of its Affiliates') or the CCM Frontier Member's Affiliates, auditors, accountants, attorneys or other agents in the normal course of the performance of their duties, in each case, on a confidential basis and in a customary level of detail; to any *bona fide* prospective purchaser of the equity or assets of such Member or its Affiliates or the Units held by such Member, or prospective merger partner of such Member or its Affiliates, ***provided*** that such purchaser or merger partner agrees to be bound by the provisions of this Section 6.10 or other confidentiality agreement containing terms no less restrictive than those contained in this Section 6.10; as is required to be disclosed by order of a court of competent jurisdiction, administrative body or governmental body, or by subpoena, summons or legal process (including complying with any oral or written questions, interrogatories, requests for information or documents, civil investigative demand or similar process to which such Member or any of its Affiliates is subject), or by Law, rule or regulation, or by any listing agreement with any national securities exchange, ***provided*** that the Member required to make such disclosure pursuant to this clause (iv) shall provide to the Company to the extent practicable and legally permissible, prompt notice of such disclosure to enable the Company to seek an appropriate protective order or confidential treatment (except with respect to any disclosure required by Law, rule or regulation or by any listing agreement with any national securities exchange and to any matters covered by clause (vii) below); to any actual or potential sources of debt or equity financing to such Member (so long as such financing source is advised of the confidential nature of such information and is bound by a confidentiality agreement no less restrictive than those contained in this Section 6.10); in the case of the Management Members, in the performance of their duties for and/or on behalf of any Company Party; (vii) to any regulatory authority or agency (including any rating agency) that has jurisdiction over or with which such Member or its Affiliates has regular dealings, as long as such authority or agency is advised of the confidential nature of such information; and (viii) each Member is permitted to disclose to any Persons, without limitation of any kind, the tax treatment and tax structure of the Company and all materials of any kind (including opinions or other tax analyses) that are provided to such Member relating to such tax treatment and tax structure. For purposes of this Section 6.10, the term "**Confidential Information**" shall not include any information which such Person learns on a non-confidential basis, from a source other than the Company or its Subsidiaries, or any of their respective representatives, employees, agents or other service providers, and in each case who is not known by such Person to be bound by a confidentiality obligation, is generally available and known to the public (other than through a breach by a party of this Agreement or its obligations under this Agreement), or is independently developed by the disclosing Member without violating any requirement hereunder. Nothing in this Section 6.10 shall in any way limit or otherwise modify any confidentiality obligations owed by any Member to any Company Party pursuant to any other agreement entered into by such Member and any Company Party and this Section 6.10 shall be in addition to such other agreement.

(b) Without limiting the foregoing, each of the Class A Managers and Class B Managers shall, subject to applicable Law, be permitted to communicate Confidential Information received by such Class A Manager or Class B Managers, as applicable, in his or her capacity as a Manager to, in the case of such Class A Manager, the CCM Frontier Member as long as the CCM Frontier Member keeps such Confidential Information confidential pursuant to this Section 6.10, and, in the case of the Class B Manager, the Eos Member so long as the Eos Member keeps such Confidential Information confidential pursuant to this Section 6.10. For the avoidance of doubt, the provisions of this Section 6.10(b) shall include any Confidential Information received by the Class B Managers in respect of any determination of fair market value in connection with the issuance of any Units pursuant to Section 3.01(c).

Section 6.11. Information Rights.

(a) Upon reasonable advance notice, the Company shall, and shall cause its Subsidiaries to, provide the CCM Frontier Member, the Eos Member, the HBC Member for so long as the HBC Member and its Permitted Transferees hold at least 50% of the Preferred Units held by the HBC Member immediately after the Effective Date and each other Member holding at least 10% of the issued and outstanding Preferred Units with reasonable access, during normal business hours and in a manner that does not unreasonably interfere with the business of the Company or its Subsidiaries, to the books and records, officers and other relevant personnel, properties, data, processes, financial information, policies and systems of the Company and its Subsidiaries as such Member may reasonably request in connection with investment monitoring, internal audits, compliance reviews, risk assessments, financial reporting, tax reporting or the exercise of rights under this Agreement; *provided*, that the Company may withhold or restrict access to the extent the Board reasonably determines in good faith that providing such access would reasonably be expected to violate applicable Law, jeopardize attorney-client privilege or other legal privilege, breach confidentiality obligations owed to third parties or disclose information to a Competitor; *provided*, *however*, that, except in the case providing such access would reasonably be expected to disclose information to a Competitor, the Company shall use commercially reasonable efforts to provide alternative means of disclosing and providing access to such information.

(b) The Company shall furnish to the CCM Frontier Member, the Eos Member, the HBC Member for so long as the HBC Member and its Permitted Transferees hold at least 50% of the Preferred Units held by the HBC Member immediately after the Effective Date and each other Member holding at least 10% of the issued and outstanding Preferred Units:

(i) within 180 days after the end of the first Fiscal Year and 150 days after the end of each Fiscal Year thereafter, the audited consolidated financial statements of the Company Parties as of the end of and for such Fiscal Year, all in reasonable detail prepared in accordance with GAAP in all material respects applied on a basis consistently maintained throughout the periods involved and reported on by the Company's independent public accountants;

(ii) within 90 days after the end of each of the first and second Fiscal Quarters and 60 days after the end of each Fiscal Quarter thereafter, unaudited consolidated financial statements of the Company Parties as of the end of and for such Fiscal Quarter and for the period from the beginning of the Fiscal Year to the end of such Fiscal Quarter, prepared in accordance with GAAP;

(iii) within thirty days after the end of each month, unaudited consolidated financial statements of the Company Parties as of the end of such month and for the portion of the Fiscal Year ending at the end of such month; and

(iv) such other information with respect to the Company Parties as may be reasonably requested by such Member for purposes of monitoring its investment and the financial condition, operations and prospects of the Company Parties, including budget-to-actual variance reports, cash flow and liquidity reports, project development and financing reports, compliance and risk reports, material litigation, regulatory and commercial developments and copies of Board and committee meeting materials and presentations.

Notwithstanding anything in this Section 6.11(b) to the contrary, in the event that any such Member is a Competitor, or an officer, director, employee, equityholder or Affiliate of any Competitor, the Company shall not be required to deliver to such Member any of the information otherwise required by this Section 6.11(b).

(c) Each Member agrees to hold any information regarding the Company or its Subsidiaries received pursuant to this Agreement and the information rights in this Section 6.11 in confidence in accordance with Section 6.10; *provided* that, the Company shall not be required to provide all or any portion of the foregoing information to any Member who, in the good faith judgment of the Board, is a Competitor. Except as expressly provided in this Agreement, no Member shall be entitled to obtain any information relating to the Company described in Section 18-305 of the Act.

(d) Each Member agrees to, and shall cause its Affiliates and representatives to, reasonably cooperate with the Company and provide the Company, upon reasonable request, with all information reasonably necessary for the purpose of complying with all requirements (including disclosure, reporting and KYC Requirements) under applicable Law.

(e) The provisions of this Section 6.11 shall terminate upon the consummation of an IPO.

ARTICLE 7
BOOKS AND RECORDS

Section 7.01. Books and Records. The Company shall keep appropriate books and records pertaining to the business of the Company. The books and records of the Company shall be kept at the principal office of the Company or at such other place, within or without the State of Delaware, as the Board shall reasonably from time to time determine.

Section 7.02. Tax Reports. The Company shall deliver or cause to be delivered (and shall use commercially reasonable efforts to so deliver or cause to be delivered within 90 days after the end of each Taxable Year), to each Person who was a Member at any time during such Taxable Year, a reasonable estimate of such Member's United States federal, state and local income tax liability in respect of such Member's Units for such Taxable Year. The Company shall use commercially reasonable efforts to deliver or cause to be delivered, within 180 days after the end of each Taxable Year, to each Person who was a Member at any time during such Taxable Year, the Company's United States federal income tax return and Form K-1 for such Taxable Year and all other information necessary for the preparation of such Person's United States federal, state and local income tax returns.

Section 7.03. Determination by Board. All matters concerning the determination of the relative amount of allocations and distributions among the Members pursuant to Article 3 (*Units*) and Article 4 (*Distributions & Allocations*), and accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be reasonably determined by the Board in good faith, whose determination shall be final and conclusive as to all of the Members absent fraud or manifest clerical error.

Section 7.04. Fiscal Year. The fiscal year of the Company shall begin on the first day of January and end on the last day of December each year or such other annual accounting period as may be established by the Board as required under the Code ("**Fiscal Year**").

ARTICLE 8
TRANSFER OF UNITS

Section 8.01. General Restrictions on Transfers.

(a) During the Lock-Up Period, except as otherwise expressly permitted by this Article 8 (*Transfer of Units*), no Member may Transfer or permit the Transfer of any of its Units; *provided* that such prohibition shall not apply to Transfers (i) to Permitted Transferees in accordance with Section 8.02 (*Permitted Transferees*), (ii) in connection with a Company Sale in accordance with Section 8.03 (*Drag-Along Rights in Connection with a Company Sale*), (iii) pursuant to Section 8.05 (*Call Right*), (iv) to the Company as required by Law, regulation or any order of a court or Governmental Authority, (v) following approval by the Board, by any Management Member to Management Holdco, (vi) pursuant to Section 8.06 (*Pledges by Members*), (vii) Transfers pursuant to the Exchange Agreement or the Exchange Side Letter.

(b) Following the expiration of the Lock-Up Period, any Member may freely Transfer its Units to any Person without Board approval, subject to the other provisions of this Agreement (including this Section 8.01 (*General Restrictions on Transfers*), Section 8.04 (*Tag-Along Rights*), and Section 8.08 (*Rights of First Offer*)). Notwithstanding the foregoing, in no event shall any Management Member Transfer or permit the Transfer of any of such Management Member's Units without the approval of the Board, other than Transfers (i) to Permitted Transferees in accordance with Section 8.02 (*Permitted Transferees*), (ii) in connection with a Company Sale in accordance with Section 8.03 (*Drag-Along Rights in Connection with a Company Sale*), (iii) pursuant to Section 8.05 (*Call Right*), (iv) to the Company as required by Law, regulation or any order of a court or Governmental Authority, or (v) following approval by the Board, by any Management Member to Management Holdco.

(c) The parties hereto acknowledge that the limitations on Transfers of Units set forth in this Article 8 are reasonable and are in addition to any restrictions imposed by Law. Any direct Transferee of Units (including Permitted Transferees of any Member) shall be required, at the time of and as a condition to such Transfer, to become a party to this Agreement (if not already a party hereto) by executing and delivering a joinder to this Agreement in the form attached hereto as Schedule E to make such Person a party hereto, whereupon such Transferee will be treated as a Member for all purposes of this Agreement and to deliver to the Company an IRS Form W-9 or W-8, as applicable.

(d) Any purported Transfer of Units, other than in accordance with this Agreement, shall be null and void, and the Company shall refuse to recognize any such Transfer for any purpose and shall not reflect in its records any change in record ownership of Units pursuant to any such Transfer.

(e) Except as expressly provided in this Agreement or as consented to by the Board and except for the Exchange Agreement and the Exchange Side Letter, no Member shall enter into any agreements or arrangements of any kind with any Person with respect to any Units inconsistent with the provisions of this Agreement, including agreements or arrangements with respect to the acquisition, Transfer or voting (if applicable) of any Units.

(f) No Member shall Transfer, or suffer or permit the Transfer of, any Units or any other rights of such Member under this Agreement (including to an Affiliate) at any time unless the Board is reasonably satisfied that such Transfer would not:

(i) violate the Securities Act or any state (or other jurisdiction) securities or “Blue Sky” laws applicable to the Company or the Units;

(ii) cause the Company to become subject to the registration requirements of the Investment Company Act of 1940;

(iii) cause the Company to become subject to the registration requirements of Section 12(g) of the Securities Act;

(iv) reasonably likely to cause the Company to be treated as a “publicly traded partnership” under Section 7704 of the Code;

(v) be a non-exempt “prohibited transaction” under ERISA or the Code or cause all or any portion of the assets of the Company to constitute “plan assets” under ERISA or Section 4975 of the Code;

(vi) be reasonably likely to cause the Company or any of its Subsidiaries to lose eligibility for, or suffer any disallowance, recapture, clawback or similar adverse consequence with respect to, any Renewable Energy Tax Credit, or

(vii) be made to a Prohibited Transferee.

(g) Any Member that proposes to Transfer, or suffer or permit the Transfer of, Units in accordance with the terms and conditions hereof shall be responsible for any expenses incurred by the Company in connection with such Transfer.

(h) Other than a Transfer pursuant to the Exchange Agreement or the Exchange Side Letter, any Member that Transfers, or suffers or permits the Transfer of, Units shall indemnify, defend and hold harmless the Company, its Subsidiaries and the other Members from and against any losses, claims, damages, liabilities, costs and expenses arising out of or resulting from such Transfer causing the Company or any of its Subsidiaries to lose eligibility for, or suffer any disallowance, recapture, clawback or similar adverse consequence with respect to, any Renewable Energy Tax Credit, except to the extent such consequence results from facts or circumstances not attributable to such Member, its Transferee or such Transfer.

(i) The provisions of this Section 8.01 shall terminate upon the consummation of an IPO, *provided* that this shall not limit a Member's obligations to be subject to a lock-up in connection with an IPO, including pursuant to Section 9.03 or as provided in a Registration Rights Agreement, each Member shall be subject to the black-out or lock-up periods provided in the Registration Rights Agreement or set forth in any lock-up agreement entered into in connection with any offering effected under the Registration Rights Agreement and with respect to a Management Member, such Management Members must comply with any applicable terms in such Management Member's Employment Agreement and such management equity interest ownership guidelines as are adopted from time to time in connection with or after an IPO.

Section 8.02. Permitted Transferees.

(a) Subject to Section 8.01(f), any Member may at any time Transfer, or suffer or permit the Transfer of, any or all of its Units to a Permitted Transferee without the consent of any Person, so long as, in the case of a direct Transfer, such Permitted Transferee (if not already a party to this Agreement) shall have agreed in writing to be bound by the terms of this Agreement by executing and delivering a joinder to this Agreement in the form attached hereto as Schedule E; *provided* that no holder of Unvested Incentive Units shall be entitled to Transfer his or her Unvested Incentive Units (other than Permitted Transferees by will or by the laws of descent and distribution); *provided, further*, that any Transfer of any Vested Incentive Units (other than Permitted Transferees by will or by the laws of descent and distribution) shall be subject to the approval of the Board.

(b) Such Member shall deliver a written notice to the Company of any proposed Transfer to a Permitted Transferee at least 15 days prior to the consummation of such proposed Transfer, which notice shall set forth the name of such Transferee, the number and class of Units proposed to be Transferred to such Permitted Transferee, and the consideration per each Unit proposed to be paid by such Transferee, together with a copy of a joinder to this Agreement in the form attached hereto as Schedule E agreeing to be bound by the terms and conditions hereof duly executed by such Permitted Transferee.

(c) Such Member shall, and shall cause its Affiliates and representatives to, reasonably cooperate with the Company, and provide the Company with all information reasonably requested by the Company, for the purpose of complying with all requirements (including disclosure and reporting requirements and KYC Requirements) under applicable Law.

(d) If, while a Permitted Transferee holds any Units, such Permitted Transferee ceases to qualify as a Permitted Transferee in relation to the initial Transferor Member from whom or which such Permitted Transferee or any previous Permitted Transferee of such initial Transferor Member received such Units (an "**Unwinding Event**"), then the relevant initial transferor Member:

(i) shall forthwith notify the Company of the pending occurrence of such Unwinding Event; and

(ii) shall take all actions reasonably necessary prior to such Unwinding Event to effect a Transfer of all the Units held by the relevant Permitted Transferee either back to such Member or, pursuant to this Section 8.02 (*Permitted Transferees*), to another Person which qualifies as a Permitted Transferee of such initial Transferring Member.

Section 8.03. Drag-Along Rights in Connection with a Company Sale.

(a) *Members' Obligations*. If the holders of a majority of the Class A Units approve a *bona fide* transaction involving a Change of Control with a third party (other than, for the avoidance of doubt, a transaction with a Member or Permitted Transferee or other Affiliate of any Member) or an IPO (together, a "**Company Sale**"), the holders of a majority of the Class A Units shall provide notice thereof (setting forth the terms and conditions of such Company Sale) to the Company, and each Member and each Member shall, subject to compliance with the limitations set forth in this Section 8.03, vote for, consent to and raise no objections against such Company Sale; *provided*, that if the Company Sale occurs prior to the third anniversary of the Effective Date, the price at which the Company is sold or the price implied by such Company Sale shall be required to result in the holders of Class B Units receiving, in respect of such Class B Units (taking into account all prior Distributions received by such holders in respect of such Class B Units pursuant to Section 4.01), aggregate proceeds sufficient to reduce the Unreturned Preferred Unit Capital with respect to each such Class B Unit to zero and to achieve a 10% IRR in respect of such Class B Units, in each case calculated as if the proceeds of such Company Sale were distributed in accordance with Section 4.01(b).

(b) If the Company Sale is structured as a merger or consolidation, each Member shall waive any dissenters' rights, appraisal rights or similar rights in connection with such merger or consolidation (to the extent any such rights exist under applicable Law) or sale of equity, each Member shall be obligated hereby to agree to sell up to all of its Units as required by the holders of a majority of the Class A Units on the terms and conditions approved by the holders of a majority of the Class A Units (*provided* that in the case of a sale of less than all of the issued and outstanding Units, the Units to be sold by each Member will be equal to its Pro Rata Share of the total number of Units being sold in the Company Sale, treating the Units Transferred in such Company Sale as the only Units issued and outstanding for purposes of such determination (as reasonably determined by the Board in good faith)). The allocation and Distribution to the Members of any proceeds (whether cash, securities or otherwise) from a Company Sale shall be made in accordance with Section 4.01(b) hereof (treating the Units Transferred in the Company Sale as the only Units issued and outstanding).

(c) Subject to the limitations set forth in this Section 8.03, each Member shall take all reasonably necessary actions in connection with the consummation of the Company Sale as requested by the holders of a majority of the Class A Units and that are taken by the holders of Class A Units, including the execution of such agreements and such instruments and other actions reasonably necessary to execute the transfer documents negotiated by the Company or the holders of a majority of the Class A Units (including executing and delivering any and all agreements, instruments, consents, waivers and other documents executed by the Company, including any applicable purchase agreement, stockholders agreement and/or indemnification and/or contribution agreement, and delivering any certificates representing the Units), in each case, only to the extent executed by the holders of Class A Units.

(d) The Members acknowledge and agree that such transfer documents are expected to provide customary representations, warranties, indemnities, and escrow arrangements relating to such Company Sale; *provided* that no Member shall be required to make any representations, warranties or indemnities in such Company Sale other than (a) representations and warranties that such Member holds all right, title and interest in and to the Units that such Member purports to hold, free and clear of all Encumbrances, the obligations of such Member in connection with the transaction have been duly authorized, if applicable, the documents to be entered into by such Member have been duly executed by such Member and delivered to the acquiror and are enforceable against such Member in accordance with their respective terms and neither the execution and delivery of documents to be entered into in connection with the transaction, nor the performance of such Member's obligations thereunder, will cause a breach or violation of the terms of any material agreement to which it is a party, law or judgment, order or decree of any court or Governmental Authority applicable to such Member (collectively, the "**Member Fundamental Representations**") and (b) representations and warranties concerning the business or condition of the Company and its Subsidiaries which shall be made on a several basis.

(e) If the holders of a majority of the Class A Units, in connection with a Company Sale, appoints in good faith a representative (the "**Member Representative**") with respect to matters affecting the Members under the applicable definitive transaction agreements following consummation of a Company Sale, each Member agrees (x) to consent to the appointment of such Member Representative, the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and the payment of such Members' pro rata portion (from the applicable escrow or expense fund) of any and all reasonable and documented fees and expenses to such Member Representative in connection with such Member Representative's service and duties in connection with such Company Sale and its related service as the representative of the Members and (y) not to assert any claim or commence any suit against the Member Representative in connection with its service as the Member Representative absent fraud or other basis permitted under the applicable definitive transaction agreements for such Company Sale.

(f) Subject to the limitations set forth in this Section 8.03, in connection with any such Company Sale, if required by the holders of a majority of the Class A Units, each Member shall agree to become party to the agreement between the Company and the buyer that the holders of Class A Units are also a party to and on the same terms as the holders of Class A Units, which agreement shall be in form and substance as agreed by the Company, and pursuant to which each Member shall make his, her or its Member Fundamental Representations contained therein; and be obligated to join in his, her or its Pro Rata Share of any indemnification or other obligations that the Company agrees to provide in connection with such Transfer (other than any such obligations that relate specifically to a particular Member such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of Units).

(g) Notwithstanding anything in this Section 8.03 to the contrary, in the event that the Members are required to make any representations, warranties, covenants or indemnities in connection with a Company Sale, then (i) no Member shall be liable for the breach of any representation, warranty or covenant made by any other Person in connection with such Company Sale, other than those made by the Company, (ii) such representations, warranties and indemnities shall be several and not joint, (iii) all representations, warranties and indemnities made by a Member in respect of such Member's Fundamental Representations shall be the sole responsibility of such Member and no other Member shall be liable therefor, (iv) each Member's liability in respect of any indemnification claim (other than any such obligations that relate specifically to a particular Member such as indemnification with respect to such Member's Member Fundamental Representations except in the case of fraud by such Member) shall be limited to such Member's proportionate share of the aggregate cash proceeds derived from the Company Sale, and shall in no event (except in the case of fraud by such Member) exceed the aggregate cash proceeds actually received by such Member from the Company Sale, and (v) a Member's obligation to provide indemnification shall not exceed his, her or its aggregate cash proceeds actually received from the Company Sale (except in the case of fraud by such Member). No Member shall be required to bear more than such Member's pro rata portion of any escrow, holdbacks or adjustment, in each case, based on the amount of consideration received by such Member in the Company Sale. In connection with any such Company Sale, each Member shall agree to be bound by customary restrictive covenants, including non-competition, non-solicitation/hire, non-interference, non-disparagement, confidentiality, releases, and similar matters; *provided*, *that*, notwithstanding the foregoing, no Member other than a Management Member shall be required to agree to be bound by any restrictive covenants, other than customary non-disparagement, employee non-solicitation, confidentiality and releases (limited to matters relating to the Company and its Subsidiaries and the ownership by such Member of interests in the Company and its Subsidiaries), in each case, that are no more restrictive in scope and duration than such restrictive covenants that the CCM Frontier Member and its Affiliates and Permitted Transferees agreed to be bound by in the applicable Company Sale.

(h) In connection with any Company Sale: all forms and amounts of consideration (whether cash, securities or otherwise) payable upon consummation of such Company Sale to all Members shall be allocated among the Members based upon the Pro Rata Share of each such Member, upon the consummation of such Company Sale, each Member shall receive (or shall have the option to receive) the same form of consideration and with respect to a particular class or series of Units, the same proportionate amount of consideration for such class or series of Units; *provided* that, in the event that any securities are part of the consideration payable to the Members, each Member that is not an "accredited investor" as such term is defined under the Securities Act may, in the discretion of the Board, receive, and hereby agrees to accept, in lieu of such securities, cash consideration with an equivalent value to such securities as determined by the Board; *provided, further*, that, the fact that, in connection with a Company Sale, (x) certain Management Members may receive additional and reasonable consideration in their capacity as employees or service providers of the Company Parties for entering into restrictive covenants in favor of a purchaser or one of its Affiliates or (y) the CCM Frontier Member, the Eos Member, the HBC Member or Management Members may obtain the right, or be subject to the obligation, to make a debt or equity investment in a purchaser or one of its Affiliates (whether directly or through a contribution of Units or other Equity Securities) shall not constitute a failure to satisfy any of the conditions set forth in Section 8.03(a) or this Section 8.03(h); *provided* that if the CCM Frontier Member or its Affiliates shall obtain the right to make a debt or equity investment (or receive "rollover" equity) in connection with such drag-along sale, then the Eos Member and the HBC Member shall be given the same right and on the same terms; *provided, further*, notwithstanding the foregoing, the Eos Member or the HBC Member, as applicable, shall receive cash consideration equal to the Asset FMV of such "rollover" equity and not be entitled to make any such debt or equity investment or receive "rollover" equity to the extent that the Eos Member's participation or the HBC Member's participation, as applicable, therein would reasonably be expected to result in any delay, impediment or failure to obtain any required governmental or regulatory approval in connection with such Company Sale, or would otherwise prevent or delay the consummation of such Company Sale.

(i) Solely for purposes of this Section 8.03 and in order to secure the performance of each Member's obligations under this Section 8.03, with respect to any Company Sale, each Member (other than the Eos Member) hereby irrevocably appoints the Company as the attorney-in-fact and proxy of such Member with full power of substitution, to vote, provide a written consent or take any other action with respect to its Units as required by this Section 8.03 (with such appointment becoming effective only upon such Member's failure to comply with any of his, her or its obligations under this Section 8.03). Such proxy shall be irrevocable and coupled with an interest, and each such Person (other than, for the avoidance of doubt, the Eos Member) shall take such further action and execute such other instruments as may be necessary to effectuate the intent of this proxy and hereby revoke any proxy previously granted by it with respect to the matters set forth in this Section 8.03 with respect to the Units owned by such Person.

(j) In no manner shall this Section 8.03 be construed to grant to any Member any dissenters rights or appraisal rights or give any Member any right to vote in any transaction structured as a merger or consolidation (it being understood that the Members hereby expressly waive rights under Section 18-210 of the Act (entitled "**Contractual Appraisal Rights**") in connection with any Company Sale or any other transaction of the Company that would give rise to such rights, and, except as set forth in Section 5.04, the Members hereby grant to the Board the sole right to approve or consent to any merger or consolidation of the Company whatsoever without approval or consent of the Members, whether or not such merger or consolidation is a Company Sale).

(k) Each Member acknowledges and agrees that the consideration payable to such Member in a Company Sale may be reduced by such Member's Pro Rata Share of any reasonable and documented out-of-pocket costs incurred by or on behalf of the Company, in each case, for the benefit of all Members in connection with a Company Sale to the extent such costs are not otherwise paid by the Company or the acquiring party. Costs incurred by any Member (including the CCM Frontier Member) on its own behalf in connection with a Company Sale shall not be considered costs of a Company Sale.

(l) Any Company Sale shall occur within 120 days (which period shall be extended automatically to the extent necessary to obtain required governmental approvals until the expiration of 5 Business Days after all such approvals have been received, but in no event shall the as-extended period exceed 270 days) following delivery of notice of such Company Sale pursuant to Section 8.03(a). If, at the end of such period, such Company Sale shall not have been completed on substantially the same terms and conditions set forth in the notice delivered to the Members pursuant to Section 8.03(a), (i) the Company shall return to the Members any certificates evidencing Units, limited powers-of-attorney and any other documents in the possession of the Company executed by the Members in connection with the proposed Company Sale received by the Company and (ii) all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to the Units shall continue in effect.

(m) Notwithstanding anything contained in this Section 8.03, there shall be no liability on the part of the holders of a majority of the Class A Units to the other Members (other than the obligation of the Company to return any certificates evidencing Units, limited powers-of-attorney and any other documents in the possession of the Company executed by the Members in connection with the proposed Company Sale received by the Company) or any other Person hereunder if the Company Sale pursuant to this Section 8.03 is not consummated for whatever reason. Whether to effect a Transfer of Units pursuant to this Section 8.03 in the sole and absolute discretion of the holders of a majority of the Class A Units.

(n) For the avoidance of doubt, any Unvested Incentive Units that are not vested as of the date of a Company Sale and do not vest in connection with such Company Sale will be immediately forfeited.

(o) The provisions of this Section 8.03 shall terminate upon the consummation of an IPO.

Section 8.04. Tag-Along Rights.

(a) Except (x) the rights to Transfer, or suffer or permit the Transfer of, Units to Permitted Transferees in accordance with Section 8.02, (y) in the case of any Transfer of Units pursuant to the Exchange Agreement or the Exchange Side Letter, and subject in all cases to Section 8.04(j), if any holder of Preferred Units or any Permitted Transferee thereof (the "**Tag-Along Seller**") proposes to Transfer, in a single transaction or a series of related transactions, to any third party (the "**Tag-Along Buyer**") Preferred Units representing more than 50% of the Preferred Units held by such Tag-Along Seller and its Permitted Transferees as of immediately prior to such Transfer (a "**Tag-Along Sale**"), the Tag-Along Seller shall provide to the Company and to each other Member holding Preferred Units written notice of the terms and conditions of such proposed Transfer (the "**Tag-Along Notice**") and offer each such other Member the opportunity to participate in such Transfer in accordance with this Section 8.04 (the "**Tag-Along Offer**"). For the avoidance of doubt, a Transfer made to Permitted Transferee in accordance with Section 8.02 (*Permitted Transferees*) or a Transfer of Units pursuant to the Exchange Agreement or the Exchange Side Letter shall not constitute a Tag-Along Sale and shall be subject only to the terms and conditions of Section 8.01, if applicable, and not to the terms and conditions of this Section 8.04.

(b) The Tag-Along Notice shall specify the number of Preferred Units proposed to be sold by the Tag-Along Seller (the "**Tag-Along Subject Units**"), and the total aggregate consideration that the proposed transferee proposes to pay for the Tag-Along Subject Units (the "**Tag-Along Sale Consideration**"), as well as the form and amount of per Preferred Unit consideration for which the Transfer is proposed to be made, and all other material terms and conditions of the Tag-Along Offer, including the form of the proposed agreement, if any.

(c) Within five (5) Business Days following receipt of such Tag-Along Notice, the Company shall deliver a written notice (a "**Tag-Along Valuation Notice**") to the Tag-Along Seller and each other Member holding Preferred Units setting forth the Board's reasonable and good faith determination of, with respect to such Tag-Along Sale, the proposed Tag-Along Valuation, the proposed Tag-Along Unit Price of each Preferred Unit in such Tag-Along Sale, and with respect to each Member holding Preferred Units other than the Tag-Along Seller, such Member's proposed Tag-Along Allotment in such Tag-Along Sale. The Tag-Along Valuation, Tag-Along Unit Price, and Tag-Along Allotment shall be calculated by applying the Tag-Along Valuation through Section 4.01(b) as if all Preferred Units were sold for the Tag-Along Valuation, in each case as reasonably determined by the Board in good faith.

(d) Each Member holding Preferred Units (each such Member that exercises its, his or her rights in accordance with this Section 8.04(d), a "**Tagging Person**") shall have the right (a "**Tag-Along Right**"), exercisable by written notice (a "**Tag-Along Response Notice**") given to the Tag-Along Seller within 15 Business Days after its receipt of the Tag-Along Valuation Notice (the "**Tag-Along Notice Period**"), to request that the Tag-Along Seller include in the proposed Transfer up to a number of Preferred Units representing such Tagging Person's Tag-Along Portion; *provided* that each Tagging Person shall be entitled to include in the Tag-Along Sale no more than its Tag-Along Portion of Units, and the Tag-Along Seller shall be entitled to include the number of Preferred Units proposed to be Transferred by the Tag-Along Seller as set forth in the Tag-Along Notice (reduced, to the extent necessary, so that each Tagging Person shall be able to include its Tag-Along Portion and such additional Preferred Units as permitted by Section 8.04(g)). The price that the Tag-Along Seller and each Tagging Person shall receive in respect of Preferred Units shall be equal to the Tag-Along Unit Price for such particular class of Preferred Unit (it being understood that the Tag-Along Seller and each Tagging Person shall receive the same amount and type of consideration for each Preferred Unit of the same class). Each Tag-Along Response Notice shall include wire transfer or other instructions for payment of the consideration for the Units being transferred in such Tag-Along Sale. Each Tagging Person shall also deliver to the Tag-Along Seller, together with its Tag-Along Response Notice, the certificates or other applicable instruments, if any, representing the Preferred Units of such Tagging Person to be included in the Tag-Along Sale, together with (except in the case of the CCM Frontier Member and the Eos

Member) a notarized, limited power-of-attorney authorizing the Tag-Along Seller or its representative to Transfer such Preferred Units on the terms set forth in the Tag-Along Notice. Delivery of the Tag-Along Response Notice with such certificates, if any, and limited power-of-attorney shall constitute an irrevocable acceptance of the Tag-Along Offer by such Tagging Person, subject to the provisions of this Section 8.04. If at the termination of the Tag-Along Notice Period any Member shall not have elected to participate in the Tag-Along Sale, or shall have elected to participate in the Tag-Along Sale to a lesser extent than its Tag-Along Portion, such Member shall be deemed to have waived its rights under this Section 8.04 with respect to the Transfer of its Preferred Units (or the Transfer of its Preferred Units for the portion of its Tag-Along Portion for which it did not elect to participate) pursuant to such Tag-Along Sale. The provisions of Sections 8.03(b) and 8.03(f) shall apply *mutatis mutandis* to any Tag-Along Sale.

(e) If at the end of a 120-day period after delivery of such Tag-Along Notice (which 120-day period shall be extended if any of the transactions contemplated by the Tag-Along Offer are subject to regulatory approval and such regulatory approval is required by the binding, definitive agreement entered into to give effect to such transactions until the expiration of five Business Days after all such approvals have been received, but in no event later than 210 days following receipt of the Tag-Along Notice by the Tag-Along Seller), the Tag-Along Seller has not completed the Transfer to the Tag-Along Buyer of all Preferred Units proposed to be sold by the Tag-Along Seller and all Tagging Persons (it being understood that the Tag-Along Seller shall not sell any Preferred Units unless and until, simultaneously with such sale, the Tag-Along Buyer purchases the Preferred Units proposed to be sold by all Tagging Persons at the applicable Tag-Along Unit Price), the Tag-Along Seller shall return to each Tagging Person the limited power-of-attorney and all certificates and other applicable instruments, if any, representing the Preferred Units that such Tagging Person delivered for Transfer pursuant to this Section 8.04 and any other documents in the possession of the Tag-Along Seller executed by the Tagging Persons in connection with the proposed Tag-Along Sale, and all the restrictions on Transfer contained in this Agreement or otherwise applicable at such time with respect to such Preferred Units shall continue in effect. In the event that no Member holding Preferred Units exercises the Tag-Along Right with respect to the proposed Tag-Along Sale, any Tag-Along Subject Units that the Tag-Along Seller desires to Transfer following compliance with this Section 8.04 may be sold to the Tag-Along Buyer only during the period specified in this Section 8.04(e) and only on terms no more favorable to the Tag-Along Seller than those contained in the Tag-Along Notice. In the event that the Tag-Along Sale is not consummated within the period required by this Section 8.04(e), any Transfer of Preferred Units pursuant to such Tag-Along Sale shall be in violation of the provisions of this Agreement unless the Tag-Along Seller sends a new Tag-Along Notice and once again complies with the provisions of this Section 8.04 with respect to such Tag-Along Sale.

(f) Promptly after the consummation of the Tag-Along Sale, the Tag-Along Seller shall notify the Tagging Persons thereof, remit to the Tagging Persons the total consideration for the Preferred Units of the Tagging Persons Transferred pursuant thereto (with each Unit sold in such Tag-Along Sale at a price equal to the Tag-Along Unit Price for such Unit), *less* the Tagging Persons' pro rata share of any escrows, holdbacks or adjustments in purchase price and any transaction expenses (in each case as determined in accordance with the aggregate purchase price to be received by the Tag-Along Seller in such Tag-Along Sale), with the cash portion of the purchase price paid by wire transfer of immediately available funds in accordance with the wire transfer instructions in the applicable Tag-Along Response Notices and furnish such other evidence of the completion and the date of completion of such transfer and the terms thereof as may be reasonably requested by the Tagging Persons. The Tag-Along Seller shall promptly remit to the Tagging Persons any additional consideration payable upon the release of any escrows, holdbacks or adjustments in purchase price.

(g) If any Member declines to exercise its Tag-Along Rights or any Tagging Person elects to exercise its Tag-Along Rights with respect to less than such Tagging Person's Tag-Along Portion, the Tag-Along Seller shall give notice to each Tagging Person who has elected to fully exercise its Tag-Along Rights (each such Person, a "**Full Tagging Person**"), of the right to sell in the Tag-Along Sale additional Preferred Units for which a Member did not elect to exercise its Tag-Along Rights (such Preferred Units, the "**Reallotment Units**"), in a number equal to such Tagging Person's *pro rata* portion of the Reallotment Units (based on the percentage equal to (x) the number of such Tagging Person's Preferred Units held as of immediately prior to the Tag-Along Sale, *divided by* (y) the number of Preferred Units held by the Tag-Along Seller and the Tagging Persons who have elected to fully exercise their Tag-Along Rights, in the aggregate, as of immediately prior to the Tag-Along Sale). Each such Full Tagging Person shall have at least three Business Days to notify the Tag-Along Seller of its election to exercise its rights to sell all or any portion of the Reallotment Units pursuant to this Section 8.04(g).

(h) Notwithstanding anything contained in this Section 8.04, there shall be no liability on the part of the Tag-Along Seller to the Tagging Persons (other than the obligation to return any certificates evidencing Preferred Units and limited powers-of-attorney received by the Tag-Along Seller) or any other Person hereunder if the Transfer of Preferred Units by the Tag-Along Seller pursuant to this Section 8.04 is not consummated for whatever reason. Whether to effect a Transfer of Preferred Units pursuant to this Section 8.04 by the Tag-Along Seller is in the sole and absolute discretion of the Tag-Along Seller.

(i) The Members acknowledge and agree that the transfer documents required to be executed by the Tagging Persons in connection with a Tag-Along Sale are expected to provide customary representations, warranties, indemnities, and escrow arrangements relating to such Tag-Along Sale; *provided* that (i) no Tagging Person shall be required to make any representations, warranties, covenants or indemnities in such Tag-Along Sale that are different than those made by the Tag-Along Seller in such Tag-Along Sale and (ii) each Tagging Person shall be required to make such Tagging Person's Member Fundamental Representations and representations and warranties concerning the business or condition of the Company and its Subsidiaries which shall be made on a several basis. If the Tag-Along Seller, in connection with a Tag-Along Sale, appoints in good faith a Member Representative with respect to matters affecting the Members under the applicable definitive transaction agreements following consummation of a Tag-Along Sale, each Tagging Person agrees (x) to consent to (i) the appointment of such Member Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of such Members' pro rata portion (from the applicable escrow or expense fund) of any and all reasonable and documented fees and expenses to such Member Representative in connection with such Member Representative's service and duties in connection with such Tag-Along Sale and its related service as the representative of the Tagging Persons, and (y) not to assert any claim or commence any suit against the Member Representative in connection with its service as the Member Representative absent fraud or other basis permitted under the applicable definitive transaction agreements for such Tag-Along Sale.

(j) Subject to the limitations set forth in this Section 8.04, in connection with any such Tag-Along Sale, if required by the Tag-Along Seller, each Tagging Person shall agree to become party to the agreement between the Tag-Along Seller and the buyer on the same terms as the Tag-Along Seller, which agreement shall be in form and substance as agreed by the Tag-Along Seller, and pursuant to which each Tagging Person shall make his, her, or its Member Fundamental Representations and agree to be subject to the same covenants and other agreements as the Tag-Along Seller; and be obligated to join in his, her or its share (based on such Member's proportionate share of the proceeds of such Tag-Along Sale) of any indemnification or other obligations that the Tag-Along Seller agrees to provide in connection with such Transfer (other than any such obligations that relate specifically to a particular Member such as indemnification with respect to such Member's Fundamental Representations). Notwithstanding anything in this Section 8.04 to the contrary, in connection with a Tag-Along Sale (i) no Tagging Person shall be required to make any representations, warranties, covenants or indemnities that are different than those made by the Tag-Along Seller and no Tagging Person shall be required to make any representations or warranties other than such Tagging Person's Member Fundamental Representations and representations and warranties concerning the business or condition of the Company and its Subsidiaries which shall be made on a several basis, (ii) no Tagging Person shall be liable for the breach of any representation, warranty or covenant made by any other Person in connection with such Tag-Along Sale, (iii) such representations, warranties and indemnities shall be several and not joint, (iv) all representations, warranties and indemnities made by a Member in respect of such Member's Fundamental Representations shall be the sole responsibility of such Member and no other Member shall be liable therefor, (v) each Tagging Person's liability in respect of any indemnification claim (other than any such obligations that relate specifically to a particular Tagging Person such as indemnification with respect to such Tagging Person's Member Fundamental Representations except in the case of fraud by such Tagging Person) shall be limited to such Tagging Person's proportionate share of the aggregate cash proceeds derived from the Tag-Along Sale, and shall in no event (except in the case of fraud by such Tagging Person) exceed the aggregate cash proceeds actually received by such Tagging Person from the Tag-Along Sale, and (vi) a Tagging Person's obligation to provide indemnification shall not exceed his, her or its aggregate cash proceeds actually received from the Tag-Along Sale (except in the case of fraud by such Tagging Person). No Tagging Person shall be required to bear more than such Tagging Person's pro rata portion of any escrow, holdbacks or adjustment, in each case, based on the amount of consideration received by such Tagging Person in the Tag-Along Sale. In connection with any Tag-Along Sale, the Eos Member shall not be required to agree to be bound by any restrictive covenants, including non-competition, non-solicitation/hire, non-interference, non-disparagement, confidentiality, releases, and similar matters.

(k) If the Company issues any class or series of Units other than Preferred Units or Incentive Units to any Person and the CCM Frontier Member, the Eos Member and the HBC Member, as applicable, and any Member (other than the CCM Frontier Member, the Eos Member and the HBC Member) acquires such Units through the exercise of its pre-emptive rights under Section 3.01(d), such Member will be granted tag-along rights with respect to such Units that are substantially similar to the Tag-Along Right set forth herein with respect to the Units and this Agreement will be modified accordingly (it being understood that in no event shall Incentive Units be granted tag-along rights under this Section 8.04).

(l) The provisions of this Section 8.04 shall not apply to any proposed Transfer of Units by the Tag-Along Seller in a Company Sale pursuant to Section 8.03, to a Permitted Transferee or pursuant to the Exchange Agreement or the Exchange Side Letter. The provisions of this Section 8.04 shall terminate upon the consummation of an IPO.

Section 8.05. Call Right.

(a) *Incentive Unit Call Right.* Subject to the terms and conditions hereof, the MIP and the applicable Award Agreement governing the Incentive Units, in the event of a Management Member's Restrictive Covenant Violation or Termination of Service for any reason (including with or without Cause, or as a result of the Management Member's resignation for any reason, retirement, death or disability), the Company shall have the right (but not the obligation) (the "**Call Right**") to purchase all or any portion (as determined by the Board from time to time during the Incentive Call Period) of the Incentive Units held by the Management Member (the "**Incentive Call Units**"). The "**Incentive Call Period**" shall mean the period commencing on (x) the date of the Management Member's Termination of Service (or if after a Termination of Service other than for Cause, the date Company or its applicable Subsidiary determines Grounds for Cause), or (y) the date of the Restrictive Covenant Violation (or if later, the date that the Board has knowledge of such Restrictive Covenant Violation) and, in each case, ending 12 months thereafter.

(b) *Call Price*. The purchase price for the Incentive Call Units (the "**Call Price**") shall be determined as follows:

(i) If the Call Right has been exercised in connection with a Management Member's Termination of Service by a Company Party for Cause or a Management Member's Restrictive Covenant Violation, or if a Call Right was previously exercised under the circumstances described in clause (ii) of this Section 8.05(b) but a Restrictive Covenant Violation or Grounds for Cause has subsequently occurred or been discovered, the Call Price shall be $0.00 with respect to any Incentive Call Units.

(ii) If the Call Right has been exercised in any circumstances other than as described in clause (i) of this Section 8.05(b), the Call Price shall be the fair market value of such Units on the date of the Management Member's Termination of Service, as reasonably determined by the Board in good faith.

(c) *Call Notice; Delivery Procedures*. To exercise a Call Right, the Company shall send written notice during the applicable Incentive Call Period (which may be exercised on more than one occasion during such call period) to the Management Member (or his or her Permitted Transferees) of its intention to exercise the Call Right, which notice (the "**Call Notice**") shall specify the number of Incentive Call Units subject to the Call Notice, the Call Price (as calculated by the Board in accordance with Section 8.05(b)) and the closing date of the purchase (the "**Call Closing**"); *provided* that, subject to the provisions of this Section 8.05(c), the Call Closing shall take place at the principal office of the Company (or such other reasonable location as determined by the Board) on a date not less than 15 nor more than 180 days after the date of the Call Notice. The exact date and time of the Call Closing shall be specified by the Company. At the Call Closing, the Management Member (or his or her Permitted Transferees) shall deliver certificates for the Incentive Call Units, if any, to be sold to the Company duly endorsed, or accompanied by written instruments of transfer in form reasonably satisfactory to the Company duly executed, by such transferor, free and clear of any Encumbrances.

(d) *Payment of Call Price.* Payment of the Call Price shall be made, first, by the cancellation of any *bona fide* indebtedness arising under any written agreement, if any, owing from the Management Member to any Company Party and then, by the Company's delivery of a check or wire transfer of immediately available funds to the Management Member's account as reflected in the records of the Company Parties (for the remainder of the Call Price, if any). Notwithstanding anything to the contrary contained herein, payment of all or any portion of the purchase price for the Incentive Call Units may be deferred by the Company with prior written notice to the Management Member, to the extent that the Company would be unable to make such payment due to the Company having insufficient cash on hand or restrictions under any applicable law or any *bona fide* contractual arrangements of the Company or any of its Subsidiaries (each, a "**Payment Restriction**"). Any amount so deferred will be paid to the Management Member by no later than the earlier of (x) 90 days after the applicable Payment Restriction lapses, and (y) the consummation of a Change of Control, and accrue interest at the prime lending rate in effect as of the date that the applicable Call Notice is delivered.

(e) Notwithstanding anything to the contrary, if with respect to the Company's exercise of the Call Right relating to any Incentive Units the Call Price for such Incentive Units is $0.00 or the Management Member fails to take the actions required to facilitate the Company's exercise of the Call Right, the Company may take any and all actions appropriate to exercise the Call Right in accordance with the terms hereof (including the tendering of payment or deferral of payment of the applicable Call Price as provided above) and, upon completion of such actions, the relevant Incentive Units may be unilaterally redeemed and cancelled by the Company (even if no amounts are paid for such Incentive Units).

(f) If the Board becomes aware that any Management Member has committed a Restrictive Covenant Violation or if the Board determines in good faith that Grounds for Cause existed at the time of such Management Member's Termination of Service, any proceeds that such Management Member previously received from the sale of any Incentive Units in connection with the Company's previous exercise of a Call Right in excess of the amount prescribed in Section 8.05(b)(i) shall be promptly, and in any event within five Business Days after the Board provides notice to such Management Member of such Restrictive Covenant Violation or Grounds for Cause, as applicable, repaid to the Company.

Section 8.06. Pledges By Members. Notwithstanding anything in this Agreement to the contrary, any Member may grant, or suffer or permit the grant of, a security interest in, or pledge, mortgage, or subject to a charge any or all of its Units on customary terms to any institutional lender, infrastructure debt fund, insurance company, the U.S. Department of Energy, the Federal Financing Bank, any instrumentality of the United States government, or other independent third party financial institution of recognized standing to secure bona fide Indebtedness for borrowed money. Distributions payable pursuant to Section 4.01(a) or Section 4.01(b) with respect to such pledged Units may be directed to the pledgee only upon written instruction from the pledging Member and subject to the Company's reasonable procedures (including KYC Requirements). In the event of a default under the applicable definitive documentation with respect to such Indebtedness that is continuing beyond any applicable cure period, the pledgee may foreclose upon (or cause a Transfer in lieu of foreclosure), or otherwise acquire legal and beneficial ownership of, the pledged Units; *provided* that (i) such pledgee (or any Transferee in connection with such foreclosure) shall not be a Prohibited Transferee, (ii) in the case of a direct foreclosure or Transfer, such pledgee (or Transferee) shall, as a condition to such foreclosure or acquisition, execute a joinder to this Agreement in the form attached hereto as Schedule E and agree to be bound by all terms and conditions hereof (including, for the avoidance of doubt, the transfer restrictions set forth in this Article 8), (iii) such foreclosure or Transfer shall comply with the requirements under Section 8.01(f), (iv) the pledgee (or Transferee) shall comply with any applicable KYC Requirements, and (v) such pledgee (or Transferee) shall not acquire any governance, voting, or Board-designation rights with respect to such Units other than the economic and transfer rights attendant thereto, unless and until such pledgee (or Transferee) otherwise qualifies for such rights pursuant to the express terms of this Agreement. For the avoidance of doubt, (x) the pledging Member shall provide the Company with at least 10 Business Days' prior written notice of any proposed foreclosure or Transfer in lieu of foreclosure (to the extent such Member has knowledge thereof) and (y) the provisions of Section 8.08 shall apply to any proposed Transfer of Units by a pledgee following or in lieu of foreclosure as if such pledgee were the Offeror thereunder. Furthermore, each Member shall indemnify, defend, and hold harmless the Company, its officers, directors, managers, and agents, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from any pledge, security interest, mortgage, or charge of Units by such Member, including but not limited to any claim asserted by any pledgee or third party in connection with such pledge or any enforcement or attempted enforcement thereof.

Section 8.07. Blocker Sales. To the extent applicable, the Company shall effectuate any Transfer of Units held directly or indirectly by the Cerberus Funds through an entity treated as a corporation for U.S. federal income tax purposes (in either case, a "**Corporate Holding Entity**") by a direct or indirect Transfer of equity interests issued by such Corporate Holding Entity (which represent an indirect beneficial interest in the Units to be transferred) (as applicable, "**Corporate Entity Interests**"), and the applicable owners of such Corporate Holding Entity shall be entitled to the same amount and type of consideration for the Transfer of such Corporate Entity Interests that such Corporate Holding Entity would have received if such Corporate Holding Entity had transferred the Units directly (except adjusted to reflect any assets (other than any value attributable to tax attributes of the Corporate Holding Entity) or liabilities of such Corporate Holding Entity other than the Units at the time of such Transfer); *provided* that the Corporate Holding Entity shall make customary representations to the applicable purchaser of the Corporate Entity Interests that it has no material assets or liabilities at the time of the Transfer and no material business operations, other than the Units and cash and other than liabilities arising from owning a direct or indirect interest in the Units.

Section 8.08. Rights of First Offer.

(a) Other than in respect of any Transfer of Units (i) pursuant to a Transfer made to Permitted Transferees in accordance with Section 8.02 (*Permitted Transferees*), (ii) pursuant to the Exchange Agreement or the Exchange Side Letter, (iii) in connection with a Company Sale in accordance with Section 8.03 (*Drag-Along Rights in Connection with a Company Sale*), other than the Right of First Offer of the Eos Member as expressly provided in Section 8.08(f) notwithstanding the foregoing exclusion, (iv) in connection with a Tag-Along Sale in accordance with Section 8.04 (*Tag-Along Rights*), (v) to the Company as required by Law, regulation or any order of a court or Governmental Authority or, following approval by the Board, by any Management Member to Management Holdco, or (vi) pursuant to Section 8.06 (*Pledges By Members*), no Member may Transfer any Units to any Person without first offering to sell, pursuant to this Section 8.08, all of such Member's Units to (i) each other Member holding Preferred Units (each, an "**Offeree**") and, (ii) if no such Offeree elects to exercise its Right of First Offer, to the Company. Any Member wishing to so Transfer any Units to any non-affiliated third party (the "**Offeror**") shall deliver a written notice (an "**Offer Notice**") to each Offeree.

(b) The Offer Notice shall describe in reasonable detail the Units being offered. Upon receipt of an Offer Notice, each Offeree shall have the right (a "**Right of First Offer**"), exercisable by delivery of written notice to the Offeror within 30 Business Days after its receipt of the Offer Notice, to make a binding offer to the Offeror to purchase all of the Units of the Offeror (an "**Offeree Bid**"). The Offeree Bid shall state the price that such Offeree is willing to pay the Offeror for the Offeror's Units and shall include all other material terms and conditions of such offer. If no Offeree delivers an Offeree Bid within the 30-Business Day period following receipt of the Offer Notice, or if the Offeror elects not to accept any Offeree Bid in accordance with Section 8.08(c), the Company shall have the right (the "**Company Right of First Offer**"), exercisable by delivery of written notice to the Offeror within 30 Business Days after the expiration of the initial 30-Business Day Offeree exercise period or, if applicable, within 30 Business Days after receipt of the Offeror's notice declining all Offeree Bids, to make a binding offer to the Offeror to purchase all of the Units of the Offeror (a "**Company Bid**"). The Company Bid shall state the price that the Company is willing to pay the Offeror for the Offeror's Units and shall include all other material terms and conditions of such offer.

(c) No later than 30 days after its receipt of any Offeree Bid or Company Bid, as applicable (the "**Offer Notice Period**"), the Offeror shall notify the applicable Offeree or the Company, as the case may be, of its decision with respect to its Offeree Bid. The Offeror shall not sell such Units prior to the earlier of (i) the expiration of the Offer Notice Period (including, if applicable, the period for the Company to deliver a Company Bid and the Offeror's decision period with respect thereto) and (ii) the communication to each Offeree that has made an Offeree Bid or the Company, as the case may be, of the decision by the Offeror not to sell such Units pursuant to such Offeree Bid or a Company Bid.

(d) If the Offeror elects, in its sole discretion, to accept an Offeree Bid or a Company Bid, then the Offeror and the applicable Offeree or the Company shall, subject to Section 8.08(e), arrange a mutually convenient time (not later than 30 days after the date of applicable acceptance) to execute and deliver a binding agreement with respect to such purchase and sale of the applicable Units. If an Offeree or the Company, as applicable, defaults on its obligation to purchase the Units described in the applicable Offer Notice after entering into a binding agreement with the Offeror with respect to such purchase and sale, such Offeree or the Company, as applicable, shall lose any further or future Right of First Offer or Company Right of First Offer, respectively, with respect to such Offer Notice and any other Offer Notices delivered by any Member pursuant to this Section 8.08.

(e) If (i) no Offeree has delivered an Offeree Bid for the Units described in the Offer Notice within the 30-Business Day period following its receipt of the Offer Notice and the Company has not delivered a Company Bid within the applicable period set forth in Section 8.08(b), or (ii) the Offeror elects, in its sole discretion, to not accept any of the Offeree Bids or the Company Bid, as applicable, with respect to such Units on or prior to the end of the Offer Notice Period, then the Offeror may, during the succeeding 120 days (provided, that if such Transfer is subject to regulatory approvals, such 120-day period shall be extended (so long as the Offeror and its Transferee have executed and delivered a binding sale agreement in accordance with this Section 8.08 and are using commercially reasonable efforts to obtain such regulatory approval) until the date that is 5 Business Days after all such approvals have been received, but, in any event, no later than 270 days following the end of the Offer Notice Period), Transfer such Units to a third party (and, in the event that the Offeror has elected to not accept any Offeree Bid or Company Bid, such sale shall be on pricing and other terms and conditions, taken as a whole, more favorable to the Offeror than the pricing and other terms and conditions specified in the most favorable (to the Offeror) Offeree Bid or Company Bid (disregarding for this purpose any representations and warranties, indemnities and other covenants in respect thereof)) (any such proposed sale a "**Proposed Third-Party Sale**"). If, at the end of such 120-day period (as extended pursuant to the first sentence of this Section 8.08(e), if applicable), the Offeror has not completed such Proposed Third-Party Sale, then the Offeror shall not Transfer any of its Units without again complying with this Section 8.08.

(f) Prior to approving any Company Sale pursuant to Section 8.03, the holders of a majority of the Class A Units shall deliver written notice (a "**Drag ROFO Notice**") to the Eos Member describing in reasonable detail the proposed Company Sale, the material terms then known to the holders of a majority of the Class A Units (including the expected form and amount of aggregate consideration), and the identity of the proposed acquiror (to the extent then known); *provided* that if the proposed Company Sale is an IPO, the Drag ROFO Notice shall state the implied equity valuation of the Company based on such IPO and the implied value per Class A Unit determined as the amount a holder of Class A Units would receive in respect of a Class A Unit pursuant to Section 4.01(b) if an amount equal to such implied equity value was distributed to the Members in accordance with Section 4.01(b). The Eos Member shall have 30 Business Days after receipt of the Drag ROFO Notice (as may be extended pursuant to this Section 8.08(f), the "**Eos ROFO Period**") to deliver to the holders of a majority of the Class A Units a bona fide, binding offer (an "**Eos ROFO Bid**") to purchase the Company or the Units or assets proposed to be sold in such Company Sale (which, in the case such proposed Company Sale is an IPO, shall be deemed to be all of the issued and outstanding Units), on terms no less favorable in the aggregate to the holders of Class A Units than the terms described in the Drag ROFO Notice (it being understood that, in the case the proposed Company Sale is an IPO, an offer price that is equal to or greater than the implied equity value set forth in the Drag ROFO Notice shall be deemed to be on terms no less favorable to the holders of Class A Units); *provided*, the ROFO Period shall automatically be extended for an additional period of 30 days, upon the Board's receipt of reasonable supporting documentation (which may be financing term sheet) from the Eos Member that a longer period is required purposes of financing an Eos ROFO Bid and that the Eos Member is diligently pursuing such financing in good faith. No later than 30 days after its receipt of an Eos ROFO Bid, the holders of a majority of the Class A Units shall notify the Eos Member of their decision with respect to the Eos ROFO Bid, which they may accept or reject in their sole discretion. If the holders of a majority of the Class A Units accept the Eos ROFO Bid, then the holders of Class A Units shall cause the Company or assets proposed to be purchased by the Eos Member to be sold to the Eos Member for the price set forth in the Eos ROFO Bid, or, if the transaction is structured as a sale of Units, the Members shall sell to the Eos Member the Units proposed to be purchased by the Eos Member at a price per Unit equal to the amount that would be received in respect of such Unit pursuant to Section 4.01(b) if an amount equal to the aggregate offered purchase price as set forth in the Eos ROFO Bid was distributed to the Members in accordance with Section 4.01(b), in each case, as promptly as reasonably practicable and the terms of Section 8.03 shall apply, *mutatis mutandis*, to any such transaction. If the holders of a majority of the Class A Units reject the Eos ROFO Bid, or if the Eos Member does not deliver an Eos ROFO Bid within the Eos ROFO Period, the holders of a majority of the Class A Units may proceed with the Company Sale in accordance with Section 8.03; *provided*, to the extent an Eos ROFO Bid was delivered, such Company Sale shall be consummated at a price and other terms and conditions that are, in the aggregate, no less favorable than what is contained in the Eos ROFO Bid; *provided*, *further*, that if the Company Sale is not consummated within the 120-day period (subject to extension) set forth in Section 8.03(l), the holders of a majority of the Class A Units shall not approve such Company Sale (or any Company Sale on materially different terms) without again complying with this Section 8.08(f). For the avoidance of doubt, (A) no Member other than the Eos Member shall have the Right of First Offer in connection with a Company Sale, (B) the procedures set forth in Section 8.08(b) through (e) shall not apply to the Eos Member's Right of First Offer under this Section 8.08(f) (which shall be governed solely by the procedures set forth in this Section 8.08(f)), and (C) the Company shall not have a Company Right of First Offer in connection with a Company Sale. The provisions of this Section 8.08(f) shall terminate upon the consummation of an IPO.

ARTICLE 9
IPO; REGISTRATION RIGHTS

Section 9.01. Initial Public Offering.

(a) Subject to Section 8.03 and Section 8.08(f), the holders of a majority of the Class A Units (the "**Initiating Members**") may elect to cause the Company to effect, as soon as practicable, an IPO as a Company Sale in accordance with Section 8.03 and this Section 9.01, and each of the Members shall cause the Managers designated by such Member to take such reasonable and customary actions as are required to give effect to such IPO; *provided* that, for the avoidance of doubt, if the IPO occurs prior to the third anniversary of the Effective Date, the price of such IPO shall be required to result in an implied equity value of the Company that would result in the holders of Class B Units receiving, in respect of such Class B Units (taking into account all prior Distributions received by such holders in respect of such Class B Units pursuant to Section 4.01), aggregate proceeds sufficient to reduce the Unreturned Preferred Unit Capital with respect to each such Class B Unit to zero and to achieve a 10% IRR in respect of such Class B Units, in each case calculated as if an amount equal to such equity value was distributed to the Members in accordance with Section 4.01(b). The written notice delivered pursuant to Section 8.03(a) shall specify a nationally recognized underwriter that the Initiating Members desire to be the managing underwriter for the IPO. Promptly following receipt of such written notice, the Company shall engage such nationally recognized managing underwriter listed in such notice. The Board shall, by a majority vote, make all other decisions regarding the IPO, including the terms and conditions of the IPO, the pricing of Equity Securities to be offered by the Issuer in the IPO, the size of the IPO and the hiring of underwriters (other than the managing underwriter) and advisors and the drafting of documentation. The engagement of the underwriters shall be on financial and other terms customary for an IPO in the industry, and all reasonable and documented fees and expenses shall be borne by the Company. The Company agrees and acknowledges that it shall be the indemnitor of first resort with respect to the IPO.

(b) At any time prior to the consummation of the IPO, the Initiating Members may, by notice to the Company, elect to terminate the IPO. Nothing in this Agreement shall constitute any underwriter as a third-party beneficiary entitled to receive any fees or expenses in connection with an IPO terminated pursuant to this Section 9.01.

(c) If the Initiating Members request that any of their Issuer Shares be registered in an IPO pursuant to Section 8.03 and this Section 9.01, then the Eos Member shall be entitled to have registered its Issuer Shares in such IPO on a proportionate basis based on the number of Units held by the Eos Member relative to the Initiating Member, or does not request that any of their Issuer Shares be registered in an IPO pursuant to Section 8.03 and this Section 9.01, then the Eos Member shall not be entitled to register its Issuer Shares in such IPO.

(d) The provisions of this Section 9.01 shall terminate upon the consummation of a Company Sale.

Section 9.02. Conversion to Corporate Form upon an IPO.

(a) In connection with any IPO initiated pursuant to Section 8.03 and Section 9.01, the Board, at the Company's expense, shall use commercially reasonable efforts to take such actions as are necessary to structure the IPO in the manner determined appropriate by the Initiating Members, including effecting a conversion of the Company to corporate form or causing the public offering of the stock of an existing or newly formed Affiliate of the Company (an "**IPO Conversion**"). In connection with or in anticipation of any such IPO, each Member shall, at the request of the Initiating Members and subject to the limitations set forth in Section 8.03, take all actions reasonably necessary or reasonably required to effect or facilitate such IPO Conversion (including any transfers of assets or securities, conversions of securities or interests, mergers or consolidations or recapitalizations or reorganizations of securities or interests to effect or facilitate such IPO Conversion); *provided* that in connection with such IPO Conversion, (x) each Member holding Units shall be entitled to receive a number of shares of common stock or other Equity Securities (together with any securities exercisable, exchangeable or convertible into such shares or Equity Securities, the "**Issuer Shares**") of the issuer thereof in the IPO (the "**Issuer**") such that if the Company liquidated and distributed its assets in accordance with Article 12 immediately following such IPO based on the price per Issuer Share sold by the underwriters in such IPO, such

Member would, in the aggregate in respect of such Units or other Equity Securities of the Issuer, be entitled to receive the same percentage of the total proceeds as it would have been entitled to receive in a liquidation and distribution of the Company's assets pursuant to Article 12 immediately prior to such IPO (determined without giving effect to any actions or steps taken to effect or facilitate such IPO pursuant to this Section 9.02); and (y) except as otherwise provided in this Agreement with respect to specific economic entitlements or vesting (or other contingencies) applicable to particular classes or series of Units, the IPO Conversion shall be effected in a manner that treats all Members identically on a per Unit basis and otherwise treats the CCM Frontier Member, the Eos Member and the HBC Member identically, and if any holders of a particular class or series of Units are given an option as to the type or amount of securities to be received, each such holder shall be given the same option on an equal basis, or if the CCM Frontier Member is given an option as to the type or amount of securities to be received, each of the Eos Member and the HBC Member shall be given the same option on an equal basis. In connection with the occurrence of any IPO, each Member agrees to reasonably cooperate, including taking such actions and executing such documents as may reasonably be requested by the CCM Frontier Member, in order to allow CCM Frontier Member to be combined with the corporation undertaking such IPO in a tax-efficient manner prior to the consummation of the IPO; *provided* that (i) the CCM Frontier Member makes customary representations to such corporation that it has no material assets or liabilities at the time of such combination and no material business operations, other than the Units and cash and other liabilities arising from owning a direct interest in the Units and (ii) such combination does not materially prejudice the commercial or tax position of the Company or such Member.

Section 9.03. Registration Rights. In connection with any IPO, the Company, the Issuer, the CCM Frontier Member, the Eos Member, the HBC Member and the other Members meeting certain customary applicable ownership thresholds shall negotiate and enter into a registration rights agreement (the "**Registration Rights Agreement**") containing customary demand, shelf and piggyback registration rights with respect to the registration under the Securities Act of Issuer Shares for the benefit of the Members; *provided* that such registration rights shall, at a minimum, provide that following the time the Issuer Shares are no longer subject to a lock-up in connection with such IPO, subject to an ownership threshold of 10% of the registrable shares, the CCM Frontier Member, the Eos Member and the HBC Member shall have unlimited demand registration rights and, at any time following the IPO when the Issuer is eligible to file a registration statement on Form S-3, subject to CCM Frontier Member, the Eos Member and HBC Member meeting an ownership threshold of 10% of the registrable shares, unlimited shelf registration requests and take-down requests, subject to reasonable and customary notice to the Company and the Members (*provided* that once the Issuer is so eligible, the Issuer shall use commercially reasonable efforts to file and maintain an effective registration statement on Form S-3); each Member shall have customary piggyback registration rights, including in connection with any registration initiated by the CCM Frontier Member, the Eos Member or the HBC Member pursuant to the foregoing clause (a) (which piggyback registration rights shall not, for the avoidance of doubt, apply to any IPO initiated pursuant to Section 9.01 unless the IPO shall also contemplate a concurrent secondary Public Offering of Issuer Shares or as otherwise consented to by the CCM Frontier Member); if the number of Issuer Shares to be registered in any Public Offering pursuant to the piggyback registration rights referred to in the foregoing clause (b) is limited, based on the good faith determination of the managing investment banker underwriting such Public Offering, to a number that is less than the aggregate number of Issuer Shares that the Member would otherwise have elected to register and sell, the CCM Frontier Member, the Eos Member and the HBC Member shall have their respective number of Issuer Shares to be registered in such Public Offering cut back on a pari passu basis; *provided* that the amount of Issuer Shares of any Management Member proposed to be registered may be subject to further cutbacks as may be determined by the CCM Frontier Member; and the Issuer and, if requested by the managing investment banker underwriting such Public Offering, each Member shall agree to a customary lock-up on the terms agreed to by the Issuer, in the case of a Public Offering that is primarily a primary offering, or by the CCM Frontier Member, the Eos Member or the HBC Member, as applicable, in the case of a Public Offering that is primarily a secondary offering; *provided* that in any event, any such lock-up shall apply to the CCM Frontier Member, the Eos Member and the HBC Member equally and ratably; *provided* that if the managing investment banker underwriting such Public Offering agrees to waive any such lock-up applicable to the CCM Frontier Member, the Eos Member or the HBC Member, such lock-up shall also be waived equally and ratably for the CCM Frontier Member, the Eos Member and the HBC Member.

ARTICLE 10
ADMISSION OF SUBSTITUTED AND ADDITIONAL MEMBERS; WITHDRAWAL

Section 10.01. Substituted Member. In connection with the Transfer of Units of a Member (the "**Transferor**") permitted under the terms of this Agreement, the Management Member Agreements (if applicable), and the other agreements contemplated hereby and thereby, the Transferee shall become a Substituted Member on the later of the effective date of such Transfer, and the date on which the Board approves such Transferee as a Substituted Member, and such admission shall be shown on the books and records of the Company; *provided, however*, in connection with the Transfer of Units of a Member to a Permitted Transferee permitted under the terms of this Agreement, the Management Member Agreements (if applicable), and the other agreements contemplated hereby and thereby, the Transferee shall become a Substituted Member on the effective date of such Transfer; *provided* that no Transferee shall become a Substituted Member until such Transferee furnishes to the Company an executed joinder to this Agreement in the form attached hereto as Schedule E, and such other documents or instruments as may be deemed necessary or appropriate by the Board to effect such Person' s admission as a Member. The Board shall classify each Substituted Member as a Management Member to the extent such classification was applicable to the Member transferring the Units and, upon such classification, such Substituted Member shall for all purposes be a Management Member under this Agreement; *provided, however*, that the applicable Management Member Agreement relating to non-competition, non-solicitation or confidentiality shall continue to apply as though the Unit has not been transferred and continues to be held by the Transferor.

Section 10.02. Additional Members. A Person may be admitted to the Company as an Additional Member only as contemplated under Section 3.01 and only upon furnishing to the Company an executed joinder to this Agreement in the form attached hereto as Schedule E, and such other documents or instruments as may be deemed necessary or appropriate by the Board to effect such Person's admission as a Member. Such admission shall become effective on the date on which the Board determines that such conditions have been satisfied and when any such admission is shown on the books and records of the Company. The Board shall classify each

Additional Member as a Management Member to the extent such classification is applicable to such Additional Member and, upon such classification, such Additional Member shall for all purposes be a Management Member under this Agreement.

ARTICLE 11
WITHDRAWAL AND RESIGNATION OF MEMBERS

Section 11.01. No Withdrawal of Members. No Member shall have the power or right to withdraw or otherwise resign from the Company prior to the dissolution and winding up of the Company pursuant to Article 12 (*Dissolution and Liquidation*), without the prior written consent of the Board (which consent may be withheld by the Board in its sole and absolute discretion), except as otherwise expressly permitted by this Agreement. Upon a Transfer of all of a Member's Units in a Transfer permitted by this Agreement, and (if applicable) the Management Member Agreements, such Member shall cease to be a Member and a Management Member, as the case may be. Notwithstanding that payment on account of a withdrawal may be made after the effective time of such withdrawal, any completely withdrawing Member will not be considered a Member for any purpose after the effective time of such complete withdrawal and, in the case of a partial withdrawal, such Member's Capital Account (and corresponding voting and other rights) shall be reduced for all other purposes hereunder upon the effective time of such partial withdrawal.

ARTICLE 12
DISSOLUTION AND LIQUIDATION

Section 12.01. Dissolution. The Company shall not be dissolved by the admission of Additional Members or Substituted Members. The Company shall dissolve and its affairs shall be wound up upon the first of the following to occur:

(a) liquidation and the affirmative vote of the Board and the applicable Members pursuant to Section 5.05 approving such dissolution; and

(b) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act.

Except as otherwise set forth in this Article 12, the Company is intended to have perpetual existence. The death, retirement, resignation, expulsion, Bankruptcy or dissolution of a Member, or the occurrence of any other event that terminates the continued membership of a Member in the Company, shall not cause a dissolution of the Company, and the Company shall continue in existence subject to the terms and conditions of this Agreement.

Section 12.02. Liquidation and Termination. On the dissolution of the Company, the Board shall act as liquidator or may appoint one or more representatives, Members or other Persons as liquidator(s). The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne by the Company as an expense. Until final distribution the liquidators shall continue to operate the Company's properties with all of the power and authority of the Board. The steps to be accomplished by the liquidators are as follows:

(a) The liquidators shall pay, satisfy or discharge from the Company's funds all of the debts, liabilities and obligations of the Company (including all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine).

(b) As promptly as practicable after dissolution, the liquidators shall determine the Asset FMV (the "**Liquidation FMV**") of the Company's remaining assets (the "**Liquidation Assets**"), determine the amounts to be distributed to each Member in accordance with Section 4.01(b), and deliver to each Member a statement (the "**Liquidation Statement**") setting forth the Liquidation FMV and the amounts and recipients of such Distributions, which Liquidation Statement shall be final and binding on all Members.

(c) As soon as the Liquidation FMV and the proper amounts of Distributions have been determined in accordance with Section 12.02(b) above, the liquidators shall promptly distribute the Liquidation Assets to the Members in accordance with Section 4.01(b).

(d) In making such distributions, the liquidators shall allocate each type of Liquidation Assets (*i.e.*, cash or cash equivalents, equity securities, etc.) among the Members ratably based upon the aggregate amounts to be distributed with respect to the Units held by each such Member.

(e) The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.02 shall constitute a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its interest in the Company and all of the Company's property and constitutes a compromise to which all Members have consented within the meaning of the Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

Section 12.03. Securityholders Agreement. To the extent that Equity Securities of any Subsidiary of the Company are distributed to any Member in connection with the distribution of the Company's assets as provided herein, each of the Members shall, to the extent requested by the Board, enter into a securityholders agreement with respect to such Subsidiary's Equity Securities which agreement shall contain provisions regarding the Transfer of such Equity Securities (including those provisions relating to restrictions on Transfer, a Company Sale, and rights of Members to participate in certain Transfers by other Members) and other provisions (including with respect to the governance and control of such Subsidiary) in form and substance as nearly identical as practicable to the provisions set forth herein (including in Section 3.01(d), Article 5 and Article 8).

Section 12.04. Cancellation of Certificate. On completion of the distribution of the Company's assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the Board (or such other Person or Persons as the Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 12.04.

Section 12.05. Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 12.02 in order to minimize any losses otherwise attendant upon such winding up.

Section 12.06. Return of Capital. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from the Company's assets).

ARTICLE 13
TAX MATTERS

Section 13.01. Preparation of Tax Returns. The Company shall prepare and file all necessary federal, state, local and non-U.S. Tax returns, including making the elections described in Section 8.02. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's Tax returns to be prepared and filed.

Section 13.02. Tax Elections. Except as expressly set forth in this Agreement, the Board shall have sole discretion to determine whether to make or revoke any available election pursuant to the Code; *provided* that the Company shall make an election pursuant to Section 754 of the Code for the taxable year that includes the Effective Date and all future Taxable Years in which the election is available.

Section 13.03. Tax Audits.

(a) The CCM Frontier Member shall act as the partnership representative ("**Partnership Representative**") for purposes of said Sections 6221 through 6241 of the Code and any corresponding state, local or non-U.S. tax laws (the "**Partnership Tax Audit Rules**"). The Partnership Representative shall select an individual to act on behalf of the Partnership Representative (the "**Designated Individual**"). The Designated Individual shall have the same rights and obligations as the Partnership Representative under this Section 13.03. Each Member hereby consents to the CCM Frontier Member serving as the Partnership Representative and agrees upon request of the CCM Frontier Member to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such further documents as may be necessary or appropriate to evidence such consent.

(b) Subject to Section 13.02 (*Tax Elections*), Section 5.04 (*Reserved Matters*), Section 5.05 (*Fundamental Matters*), and Section 13.05 (*Class B, Class C and Class D Consent Rights for Prior-Year Tax Matters*), the Partnership Representative shall oversee and handle all matters relating to the taxation of the Company and shall have the right to take all actions related to tax matters. The Partnership Representative shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to make any elections it deems necessary in connection with any audit or other proceeding (including an election under Section 6226) with the consent of the Board, sign consents, enter into settlement and other agreements with such authorities with respect to any such examinations or proceedings and expend the Company's funds for professional services incurred in connection therewith.

(c) Each Member agrees to cooperate with the Partnership Representative to provide tax and other information reasonably requested by the Partnership Representative, do or refrain from doing any or all things reasonably requested by the Partnership Representative in connection with any tax proceeding (including any audit, examination or investigation) of the Company, keep the Partnership Representative informed of each material development with respect to any tax matter of the Member relating to or affecting the Company and make related documents available to the Partnership Representative before submission to any taxing authority or court and take any action reasonably requested by the Partnership Representative (or refrain from taking action so requested) in order to satisfy any requirement under the Partnership Tax Audit Rules, including taking into account any allocation or adjustment of taxes, interest and penalties determined by the Partnership Representative under the Partnership Tax Audit Rules, including in each case in connection with (x) a modification of any proposed "imputed underpayment" under the Partnership Tax Audit Rules (including the "pull-in" procedure), (y) an election under Section 6226 of the Code, or (z) any other action taken by the Partnership Representative.

(d) The Company shall indemnify and reimburse the Partnership Representative for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred by it, in its capacity as the Partnership Representative, in connection with any administrative or judicial proceeding with respect to the tax liability of the Company or the Members. The taking of any action and the incurring of any expense by the CCM Frontier Member in its capacity as the Partnership Representative, in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Partnership Representative and the provisions on protection and indemnification set forth in Section 6.04 above will be fully applicable to the CCM Frontier Member when acting in its capacity as the Partnership Representative.

Section 13.04. Entity Taxes and Member Taxes.

(a) If the Company or any of its Subsidiaries is required by law to, or as part of a closing agreement with a governmental entity does, make any payment to a governmental entity that is specifically attributable to a Member (including income allocable to such Member) or a Member's status as such (including federal or state withholding taxes, state personal property taxes, state unincorporated business taxes and Taxes arising under the Partnership Tax Audit Rules ("**Entity Taxes**")), then such Member shall indemnify the Company in full for (and shall contribute to the Company) the entire amount paid (including interest, penalties and related expenses). Such contribution shall not increase such Member's Capital Contribution, and no additional Units will be issued to such Member in respect thereof. The Board may offset Distributions to which a Member is otherwise entitled under this Agreement against such Member's obligation to indemnify the Company under this Section 13.04(a). A Member's obligation to indemnify and make contributions to the Company under this Section 13.04(a) shall survive any Transfer (including by way of redemption) of a Member's Units and the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 13.04(a), the Company shall be treated as continuing in existence. For the avoidance of doubt, any Entity Taxes, penalties, and interest payable under the Partnership Tax Audit Rules by the Company or any fiscally transparent entity in which the Company owns an interest shall be treated as specifically attributable to the Members, and the Board shall use commercially reasonable efforts to allocate the burden of (or any diminution in distributable proceeds resulting from) any such Taxes, penalties or interest to those Members to whom such amounts are specifically attributable (whether as a result of their status, actions, inactions or otherwise), as reasonably determined by the Board in good faith.

(b) Notwithstanding anything to the contrary in this Agreement, each Member shall be responsible for, and shall hold each other Member and the Company harmless against, such Member's own tax liabilities. A Member's obligation to indemnify the other Members and the Company shall survive any Transfer (including by way of redemption) of a Member's Units.

Section 13.05. Class B, Class C and Class D Consent Rights for Prior-Year Tax Matters. Notwithstanding anything to the contrary in this Agreement, the Company shall not, and shall cause each of its Subsidiaries that is classified as a partnership for U.S. federal income tax purposes not to, amend, amend and restate, supplement, modify or otherwise change any income tax return of the Company or any such Subsidiary for any prior Taxable Year, or settle or otherwise compromise any tax proceeding relating to any such prior Taxable Year, if taking such action would reasonably be expected to disproportionately and adversely affect the holders of Class B Units, Class C Units or Class D Units in any material respect, in each case without the prior written consent of the holders of Class B Units, the holders of Class C Units or the holders of Class D Units, respectively, such consent not to be unreasonably withheld, conditioned or delayed. The consent rights set forth in this Section 13.05 (*Class B, Class C and Class D Consent Rights for Prior-Year tax Matters*) shall survive the dissolution of the Company and the termination of a holder of Class B Units' status as a Member, the termination of a holder of Class C Units' status as a Member and the termination of a holder of Class D Units' status as a Member.

Section 13.06. Tax-Exempt Use Property and Prohibited Foreign Entities. In the event the Company or one of its Subsidiaries is required to provide, or has provided, a reasonable representation or warranty to or is required to enter into, or has entered into, a reasonable covenant with a third party with respect to the direct or indirect owners of the Company in relation to the treatment of property owned directly or indirectly by the Company (or one of its Subsidiaries) and such third party as "tax exempt use property" pursuant to Section 168(h)(6) of the Code or as property described in Section 50(b)(3) or Section 50(b)(4) of the Code, or the status of any direct or indirect owner of the Company as a "prohibited foreign entity" under Section 7701(a)(51)(A)(i) of the Code, each Member shall use reasonable efforts to provide a corresponding representation or warranty to, or enter into a corresponding covenant with, the Company (solely with respect to such investment).

Section 13.07. Intended Tax Treatment.

(a) Intended Tax Treatment. The Members agree that, for federal and applicable state and local income tax purposes, the issuance of the Class A-2 Units and Class C Units to the Members shall be treated as a bargain purchase of the Units by the Members and not giving rise to a taxable capital shift (the "**Intended Tax Treatment**"). Each Member shall file all tax returns and reports consistent with the Intended Tax Treatment unless otherwise required by a final determination (within the meaning of Section 1313 of the Code).

ARTICLE 14
MISCELLANEOUS

Section 14.01. Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member, and each Transferee of Units shall be deemed to represent and warrant to the Company and each other Member, upon the Transfer of Units to such Transferee, that:

(a) such Member is acquiring the Units being acquired by it for investment and not with a view to distributing all or any part thereof in any transactions which would constitute a "distribution" within the meaning of the Securities Act;

(b) such Member acknowledges that the Units have not been registered under the Securities Act or any state securities Law, and the Company is under no obligation to file a registration statement with the Securities and Exchange Commission or any state securities commission with respect to the Units;

(c) such Member is able to bear the complete loss of his, her or its investment in the Units;

(d) except as may be set forth in such Member's Management Member Agreement, such Member or entity is an "accredited investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act);

(e) such Member understands that the exemption from registration afforded by Rule 144 (the provisions of which are known to such person or entity) promulgated by the Securities and Exchange Commission under the Securities Act depends upon the satisfaction of various conditions, that such exemption is currently not available and that, if applicable, Rule 144 may in many instances afford the basis for sales only in limited amounts;

(f) such Member, in making his, her or its decision to invest in the Units, has relied upon an independent investigation made by such Member and his, her or its representatives (including financial, tax and legal advisors) to the extent believed to be appropriate by such Member and has been given the opportunity to examine all documents and to ask questions of, and receive answers from, the Company and its representatives concerning the business of the Company and the terms and conditions of such Member's purchase of his, her or its Units;

(g) such Member is duly authorized to join in this Agreement and the Person executing this Agreement on its behalf is duly authorized to do so;

(h) such Member is not a Disqualified Person;

(i) the execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound; and

(j) this Agreement is valid, binding and enforceable against such Member (including, in the case of a Member that is a trust, the trust property) in accordance with its terms.

Section 14.02. Power of Attorney. Each Member (other than CCM Frontier Member, the Eos Member and the HBC Member) hereby constitutes and appoints the Board and the liquidators, and their respective designees, with full power of substitution, as his, her or its true and lawful agent and attorney in fact, with full power and authority in his or its name, place and stead, to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices all certificates and other instruments in accordance with the terms of this Agreement which the Board deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; all instruments which the Board deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement effected in accordance with Section 14.03; all conveyances and other instruments or documents which the Board and/or the liquidators deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including a certificate of cancellation; and all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Article 10 or Article 11. The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, Bankruptcy, insolvency or termination of any Member (other than the CCM Frontier Member, the Eos Member and the HBC Member) and the Transfer of all or any portion of his, her or its Units and shall extend to such Member's heirs, successors, assigns and personal representatives.

Section 14.03. Amendment; Waiver. Subject to Sections 5.04 and 5.05, any provision of this Agreement may at any time be amended, waived or supplemented by the Board pursuant to a written instrument making specific reference to this Agreement that identifies itself as an amendment, modification or supplement to this Agreement and that is executed by the Company; *provided* that, without limiting the rights of the Board pursuant to Section 3.01(c) and Section 8.04(j) to amend this Agreement in connection with the issuance of Units without the prior written approval of any Member, (i) any amendment or modification of, or supplement to, this Agreement shall require the written consent of the CCM Frontier Member, and (ii) any amendment or modification of, or supplement to, this Agreement that, by its terms, disproportionately adversely affects any Management Member as compared to the other Management Members shall not be effective against such Management Member unless executed by such Management Member; *provided*, that in the case of the foregoing clause (ii), if such disproportionate impact is consented to in writing by holders of a majority of the Units who are also disproportionately impacted, then no such prior written approval of such Management Members will be required; *provided*, *further*; that, notwithstanding anything in this Agreement to the contrary, no amendment, amendment and restatement, supplement, modification or waiver of this Agreement or any other organizational documents of the Company may adversely affect the holders of any class of Preferred Units' interest in the Company in a manner disproportionate to the effect on holders of any other class of Preferred Units, reduce, eliminate, or adversely affect any Member's right to appoint a Manager, any Manager's voting rights, or any requirement that the affirmative vote or consent of any Manager or Member be obtained for any Reserved Matter, Fundamental Matter, or other action for which such vote or consent is expressly required hereunder, in each case other than by application of the express ownership thresholds set forth herein, reduce, eliminate, or adversely affect any right specifically negotiated herein with respect to a particular Member, including such Member's Transfer rights including those rights set forth in Section 8.03, Section 8.04, and Section 8.08 and those rights hereunder relating to the Exchange Agreement and the Exchange Side Letter, and the rights set forth in the Exchange Agreement and the Exchange Side Letter, or require any Member to contribute capital to the Company, in each case, without the prior written consent of the affected Members. No consideration shall be offered or paid to any Member to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration is also offered to all of the Members. For the avoidance of doubt the provisions of the immediately foregoing sentence constitute a separate right granted to each Member by the Company and is intended for the Company to treat the Members as a class and shall not in any way be construed as the Members acting in concert or as a group with respect to the purchase, disposition or voting of securities or otherwise.

(a) The parties hereto may not waive any provision of this Agreement, except pursuant to a written instrument signed by the party or parties hereto against whom enforcement of such waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party hereto, constitutes a waiver by the party taking such action of compliance with any provision of this Agreement. The waiver by any party hereto of any provision of this Agreement is effective only in the instance and only for the purpose that it is given and does not operate and is not to be construed as a further or continuing waiver of such provision or as a waiver of any other provision. Any failure by any party at any time to enforce any of the provisions of this Agreement, or single or partial enforcement of any rights, powers or remedies conferred by this Agreement, shall not be construed as a waiver of such provision or any other provisions hereof, or preclude any other or further exercise thereof.

Section 14.04. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally; one Business Day after sending if such notice is sent with a reputable overnight courier service or by verified delivery by certified or registered mail to the applicable address set forth on Schedule C attached hereto or in the applicable agreement to be bound hereby; or immediately after being sent by electronic mail so long as a receipt of such e-mail is requested and received; *provided* that any copy sent to counsel shall not constitute notice.

Section 14.05. Binding Effect. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, permitted Transferees and permitted assigns; *provided* that neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any Member, except pursuant to a Transfer of Units to a Permitted Transferee that complies with the terms of this Agreement.

Section 14.06. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforced by any creditor of the Company or any Member.

Section 14.07. Remedies Cumulative. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at Law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

Section 14.08. Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

Section 14.09. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

Section 14.10. Incorporation by Reference. Every schedule attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

Section 14.11. Further Action. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents which may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

Section 14.12. GOVERNING LAW AND CHOICE OF FORUM.

(a) ALL MATTERS RELATING TO THE INTERPRETATION, CONSTRUCTION, VALIDITY AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE.

(b) EACH OF THE PARTIES SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CHANCERY COURT OF THE STATE OF DELAWARE AND ANY STATE APPELLATE COURT THEREFROM WITHIN THE STATE OF DELAWARE (OR, IF THE CHANCERY COURT OF THE STATE OF DELAWARE DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, ANY STATE OR FEDERAL COURT WITHIN THE STATE OF DELAWARE) IN ANY ISSUE, CLAIM, DEMAND, ACTION, CAUSE OF ACTION, SUIT OR PROCEEDING ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, AGREES THAT ALL CLAIMS IN RESPECT OF THE ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT (AND THE APPROPRIATE APPELLATE COURTS THEREFROM IN ANY SUCH CLAIM, ACTION, SUIT OR PROCEEDING) AND AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF, OR RELATING TO, BASED ON OR IN CONNECTION WITH THIS AGREEMENT IN ANY OTHER COURT. EACH OF THE PARTIES WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING SO BROUGHT AND WAIVES ANY BOND, SURETY OR OTHER SECURITY THAT MIGHT BE REQUIRED OF ANY OTHER PARTY WITH RESPECT THERETO. EACH PARTY AGREES THAT SERVICE OF SUMMONS AND COMPLAINT OR ANY OTHER PROCESS THAT MIGHT BE SERVED IN ANY ACTION OR

PROCEEDING MAY BE MADE ON SUCH PARTY BY SENDING OR DELIVERING A COPY OF THE PROCESS TO THE PARTY TO BE SERVED AT THE ADDRESS OF THE PARTY AND IN THE MANNER PROVIDED FOR THE GIVING OF NOTICES IN SECTION 14.04 (*NOTICES*). NOTHING IN THIS SECTION, HOWEVER, SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. EACH PARTY AGREES THAT A FINAL JUDGMENT IN ANY ACTION OR PROCEEDING SO BROUGHT SHALL BE CONCLUSIVE AND MAY BE ENFORCED BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

Section 14.13. Counterpart Execution. This Agreement may be executed and delivered in any number of counterparts, any one of which need not contain the signatures of all the parties hereto, with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures delivered by electronic means shall constitute original signatures for all purposes of this Agreement.

Section 14.14. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY IRREVOCABLY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, CAUSE OF ACTION, SUIT OR PROCEEDING ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 14.14 (*Waiver of Jury Trial*) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

Section 14.15. Entire Agreement. This Agreement and those documents expressly referred to herein embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 14.16. Certain Acknowledgments. Upon execution and delivery of a counterpart to this Agreement or a joinder to this Agreement, each Member (including each Substituted Member and each Additional Member) shall be deemed to acknowledge to the Company and to every other Member as follows: the determination of such Member to acquire Units in connection with this Agreement or any other agreement has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of such purchase or as to the properties, business, prospects or condition (financial or otherwise) of the Company which may have been made or given by any other Member or by any agent or employee of any other Member and no other Member has acted as an agent of such Member in connection with making its investment hereunder and that no other Member shall be acting as an agent of such Member in connection with monitoring its investment hereunder.

Section 14.17. No Third-Party Beneficiaries. Except as set forth in Section 6.04 (*Indemnification*), this Agreement is not intended and shall not be construed as granting any rights, benefits or privileges to any Person not a party to this Agreement; *provided, however*, that the Cerberus Funds shall be third-party beneficiaries to, and each Cerberus Fund shall be able to directly enforce its rights under, Section 5.02 (*The Board Managers*) and Section 5.04 (*Reserved Matters*) hereof. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time.

Section 14.18. Injunctive Relief. The parties hereto acknowledge and agree that a violation of any of the terms of this Agreement will cause the other parties irreparable injury for which adequate remedy at law is not available. Accordingly, it is agreed that each of the parties hereto shall be entitled to seek an injunction, restraining order or other equitable relief to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts provided by Section 14.12 (*Governing Law and Choice of Forum*) in addition to any other remedy to which it may be entitled at law or equity, without the posting of any bond.

Section 14.19. Side Letters. The parties hereto acknowledge that the Company shall not, without the prior written consent of the CCM Frontier Member, the Eos Member and the HBC Member, enter into other agreements with any Members (each, a "**Side Letter**"), which has the effect of establishing rights under, or altering or supplementing the terms of, this Agreement. The parties hereto agree that any terms contained in a Side Letter entered into in accordance with this Section 14.19 to or with any Member shall govern with respect to such Member notwithstanding any other provision of this Agreement. For the avoidance of doubt, each of the CCM Frontier Member, the EOS Member and HBC Member hereby consent to the Exchange Agreement and the Exchange Side Letter, and the transactions contemplated thereby and no further action shall be required prior to the parties entering into the Exchange Agreement or the Exchange Side Letter.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties have entered into this Amended and Restated Limited Liability Company Agreement as of the date first set forth above:

COMPANY

FRONTIER POWER USA PARENT, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title:President

[*Signature Page to Amended and Restated Limited Liability Company Agreement*]

CCM FRONTIER MEMBER

CCM FRONTIER JV HOLDCO, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

[*Signature Page to Amended and Restated Limited Liability Company Agreement*]

EOS MEMBER

EOS ENERGY ENTERPRISES INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer

[*Signature Page to Amended and Restated Limited Liability Company Agreement*]

HBC MEMBER

HBC MSF CAPITAL SOLUTIONS BLOCKER II LLC

By: /s/ Richard Allison

Name: Richard Allison

Title: Authorized Signatory*

Authorized Signatory Hudson Bay Capital Management LP
not individually but solely as Investment Advisory to
HBC MSF Capital Solutions Blocker II LLC

[*Signature Page to Amended and Restated Limited Liability Company Agreement*]

Schedule A
List of Members

Member Name	Class A-1 Units	Class A-2 Units	Class B Units	Class C Units	Class D Units	Capital Contribution[1]	Capital Contribution for purposes of Section 3.02(a)
CCM Frontier JV Holdco, LLC	50,000,001	100,000,000	0	0	0	$150,000,001	Record separately maintained by the Company.
Eos Energy Enterprises Inc.	0	0	112,637,879	0	0	$112,637,878.86	Record separately maintained by the Company.
HBC MSF Capital Solutions Blocker II LLC	0	0	0	50,000,000	0	$50,000,000	Record separately maintained by the Company.

[1] All capital contributions made (or deemed to have been made) as of August 4, 2026.

Schedule B
Competitors

Fluence
Tesla
ESS
Invinity
Form
Peak Energy
Energy Vault
Energy Dome
Flex Gen
BYD
CATL
LG
Samsung
Sungrow
Hithium

Schedule C
Member Contact Information

CCM Frontier Member

Cerberus European Capital Advisors, LLP
5 Savile Row
London W1S 3PB
E-mail: amaczonis@cerberusuk.com

and

Cerberus Operations and Advisory Company, LLC
875 3rd Avenue
New York, NY 10022
E-mail: OGC@cerberus.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Ave
New York, NY 10017
Attention: Kyle Smit; David Bumgardner
E-mail: kyle.smit@stblaw.com; david.bumgardner@stblaw.com

Eos Member

c/o Eos Energy Storage, LLC
Two Allegheny Center, Nova
Tower 2
Pittsburgh, PA 15212
Attention: Nathan Kroeker, Chief Commercial Officer
Email: nkroeker@eose.com

with a copy (which shall not constitute notice) to:

Eos Energy Enterprises, Inc.
Attention: Law Department
Email: legal@eose.com

with a copy (which shall not constitute notice) to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Roshni Banker Cariello; Lee Hochbaum
Email: roshni.cariello@davispolk.com; lee.hochbaum@davispolk.com

HBC Member

c/o Hudson Bay Capital Management LP
290 Harbor Dr, 3rd Floor
Stamford, CT 06902
Attention: Investments Team
E-mail: investments@hudsonbaycapital.com

with a copy (which shall not constitute notice) to:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Attention: Michael Adelstein
E-mail: madelstein@kelleydrye.com

Schedule D-1

Reserved Matters

a) incur, guaranty or become liable for any indebtedness in excess of $5 million annually (other than (i) indebtedness incurred in the ordinary course of business in connection with the Company's ownership, development, construction or maintenance of any Project, (ii) indebtedness solely among (x) the Company, on the one hand, and any of its wholly-owned Subsidiaries, on the other hand, or (y) between and among any Subsidiaries of the Company, in each case, with the same direct or indirect equity holders holding the same proportional equity interest in such subsidiary, or (iii) indebtedness incurred in accordance with the Annual Budget);

b) make any capital expenditures in excess of $5 million annually in the aggregate, other than capital expenditures in the ordinary course of business in connection with the Company's ownership, development, construction or maintenance of Projects or in accordance with the Annual Budget;

c) make any loan to any person or entity in excess of $2.5 million annually other than loans in the ordinary course of business in connection with the Company's ownership, development, construction or maintenance of Projects or in accordance with the Annual Budget;

d) authorize or approve, or increase the number of equity interests reserved or issuable under, any management incentive plan, including the MIP;

e) convert the Company to an entity other than a limited liability company or other limited liability entity;

f) (i) changing the Company's tax treatment as a partnership or the treatment of any Subsidiary of the Company as a partnership or disregarded entity, as applicable, in each case, for U.S. federal income tax purposes, or (ii) to the extent doing so would be disproportionately adverse to holders of Class B Units, otherwise making any material tax election by the Company or any of its Subsidiaries (which for the avoidance of doubt shall not include the filing of tax returns in the ordinary course of business);

g) declare or pay any dividend or distribution that is not, with respect to the Company, in accordance with the waterfall, other than in respect of tax distributions by the Company (for the avoidance of doubt, any such tax distributions will be treated as advances of, and will reduce on a dollar-for-dollar basis, amounts otherwise distributable to the relevant Member);

h) commence, authorize or consummate any merger, consolidation, amalgamation, scheme of arrangement, spin-off or sale of the Company or any of its subsidiaries or sale of all or substantially all of its assets, other than a Company Sale;

i) commence or authorize any public offering or direct listing of the securities of the Company or any of its subsidiaries, other than a Company Sale;

j) commence or authorize any acquisition (including by merger or consolidation), purchase or sale, mortgage, transfer or divestiture by, or license to or from, the Company or any of its Subsidiaries of any business, company or securities or tangible or intangible assets or property, in each case having a book or fair market value greater than $10 million in the aggregate, other than any purchase or sale, mortgage, transfer or divestiture by, or license to or from, the Company or any of its Subsidiaries of any Project or any of its tangible or intangible assets or property, in each case, in the ordinary course of business or in accordance with the Annual Budget or Business Plan approved by the Board;

k) commence or settle any legal proceeding, other than any legal proceeding that (i) does not involve a claim or allegation of criminal liability, (ii) does not involve a claim for equitable or injunctive relief, (iii) does not relate to an Affiliate Transaction and (iv) has a total claim amount (including legal costs) that is not reasonably expected to exceed $10 million;

l) issue or sell Equity Securities (or securities exercisable for or convertible into Equity Securities), other than (i) by a wholly-owned Subsidiary to another wholly-owned Subsidiary or (ii) in respect of the Issuance Exceptions; or

m) enter into any contract or arrangement agreeing to take any of the foregoing actions set forth in clauses a) through l) above.

Schedule D-2

Fundamental Matters

a) redeem or repurchase any equity interests of the Company or any of its Subsidiaries, other than with respect to (i) a *pro rata* redemption or repurchase of all Preferred Units at the same price per Unit, (ii) the Right of First Offer, or (iii) Incentive Units in accordance with this Agreement;

b) enter into, amend, modify, or terminate any Affiliate Transaction, renew, or extend the term of any Affiliate Transaction, or waive any material rights or obligations under any Affiliate Transaction, other than: (i) additional capital contributions to the extent permitted as described in this Agreement; (ii) renewals or extensions of the term of any Affiliate Transactions pursuant to express provisions set forth in the applicable contract establishing the terms of such Affiliate Transaction that was approved as a Fundamental Matter; (iii) entry into Affiliate Transactions approved by the applicable Members as a Fundamental Matter in accordance with Section 5.05 with Cerberus Operations and Advisory Company, LLC, Cerberus Technology Solutions, LLC, or any other Affiliates providing advisory services; (iv) entry into, and compliance with the Company's obligations under, the Management Services Agreement, the Cerberus Advisory Vehicle Agreement or the CTS Advisory Vehicle Agreement; or (v) with respect to Affiliate Transactions between (1) any Company Party and (2) Eos or any of its Affiliates;

c) make any changes to the rights of the Members to designate members of the Board;

d) dissolve, liquidate or wind up the Company or any of its Subsidiaries, take any voluntary action to cause the Company or any of its Subsidiaries to become bankrupt, commence bankruptcy proceedings (other than by involuntary action) or consent to the appointment of a receiver;

e) the Company or any of its Subsidiaries entering into a new line of business or engaging in any activities prohibited by, or inconsistent with, the purposes of owning, investing in or operating battery energy storage systems and any natural extensions thereof (*provided*, that it is understood and agreed that none of the following activities shall require consent: (i) repowers or (ii) any battery energy storage system co-located at any of the projects of the Company, in each case, as long as such activities have been approved in the then applicable Business Plan approved by the Board and then current annual operating and capital budget of the Company and its subsidiaries approved by the Board);

f) make any distributions in-kind; or

g) enter into any contract or arrangement agreeing to take any of the foregoing actions set forth in clauses a) through f) above.

Schedule E

FORM OF
JOINDER AGREEMENT

Reference is hereby made to the Amended and Restated Limited Liability Company Agreement of Frontier Power USA Parent, LLC (the "Company"), dated as of August 4, 2026 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "LLC Agreement"), by and among the Company, the Members set forth on Schedule A thereto, and each other Person that is or shall become a Member from time to time pursuant to the provisions thereof. All capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the LLC Agreement.

The undersigned acknowledges, agrees and confirms, by execution hereof, to become and to be deemed a party to, to adhere to and to be bound by the terms and provisions of the LLC Agreement as a Member party thereto and to have all of the rights and obligations of a member thereunder as of the date of this Joinder Agreement.

[The undersigned further acknowledges, agrees and confirms, that by execution hereof, the undersigned shall be deemed to be [a CCM Frontier Member / an Eos Member / an HBC Member / a Management Member] for all purposes under the LLC Agreement.]

[Remainder of page intentionally left blank; signatures appear on the following page(s).]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement as of _______________ _______, 20__.

If an individual:
Print Name:

____

Signature:

____

Address for Notices:

____

If an entity:
Entity Name:

____

Authorized Signatory's Signature:

____

Authorized Signatory's Name and Title:

____

Address for Notices:

____

Acknowledged and agreed by:

FRONTIER POWER USA PARENT, LLC

By: ______________________________
Name:
Title:

Exhibit 10.2

CONTRIBUTION AND WARRANTS ISSUANCE AGREEMENT

This CONTRIBUTION AND WARRANTS ISSUANCE AGREEMENT (this "Agreement") dated as of August 4, 2026, is entered into by and between Eos Energy Enterprises, Inc., a Delaware corporation (the "Contributor"), and Frontier Power USA Parent, LLC, a Delaware limited liability company (the "Company"). The Contributor and the Company are referred to herein collectively as the "Parties" and each, a "Party."

WHEREAS, the Company has been formed as a limited liability company under the Delaware Limited Liability Company Act and is currently governed by that certain Limited Liability Company Agreement of Frontier Power USA Parent, LLC, dated as of May 7, 2026 (the "Original Company Agreement");

WHEREAS, the Contributor desires to (i) contribute to the Company $112,637,878.86 in cash (the "Cash Contribution"), (ii) issue to the Company certain warrants to purchase 20,017,772 shares of common stock of the Contributor ("Eos Common Shares") at the exercise price of $5.481 per Eos Common Share (such warrants, the "CCM Warrants"), and (iii) issue to the Company certain warrants to purchase 10,008,886 Eos Common Shares at the exercise price of $5.481 per Eos Common Share (such warrants, the "HBC Warrants", and, together with the CCM Warrants, the "Warrants"), as capital contribution (the contribution of the Cash Contribution and issuance of the Warrants by the Contributor to the Company are hereinafter collectively referred to as the "Contribution");

WHEREAS, the Warrants shall be governed by that certain Warrant Agreement, dated as of August 4, 2026, by and between the Contributor and Continental Stock Transfer & Trust Company, a New York corporation, as warrant agent (the "Warrant Agreement");

WHEREAS, the Company desires to accept the Contribution from the Contributor and, as consideration therefor, issue to the Contributor 112,637,879 Class B Units (as defined in the Company Agreement (as defined below)) of the Company (the "Class B Units" and the "Contribution Units");

WHEREAS, the Contributor desires to make the Contribution to the Company in exchange for the issuance by the Company of the Contribution Units, in each case upon the terms and subject to the conditions set forth herein;

WHEREAS, immediately following the consummation of the transactions contemplated herein, pursuant to that certain Contribution and Warrant Purchase Agreement, by and between CCM Frontier JV Holdco, LLC ("CCM Frontier") and the Company, dated as of the date hereof (the "CCM Contribution Agreement"), CCM Frontier will, among other things, pay to the Company the Capital Contribution and the Warrant Value (each as defined therein) and will receive (i) 50,000,001 Class A-1 Units of the Company and 100,000,000 Class A-2 Units of the Company and (ii) the CCM Warrants;

WHEREAS, contemporaneously with the consummation of the transactions contemplated in the CCM Contribution Agreement, and pursuant to that certain Contribution and Warrants Purchase Agreement, by and between HBC MSF Capital Solutions Blocker II LLC ("HBC") and the Company, dated as of the date hereof (the "HBC Contribution Agreement"), HBC will pay to the Company $50,000,000 in cash and will receive (i) 50,000,000 Class C Units of the Company and (ii) the HBC Warrants; and

WHEREAS, in connection with the transactions contemplated by this Agreement, the CCM Contribution Agreement, and the HBC Contribution Agreement, the Original Company Agreement will be amended and restated in its entirety pursuant to that certain Amended and Restated Limited Liability Company Agreement of the Company, to be dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Company Agreement").

NOW, **THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

1. **Contribution and Issuances**. Upon the terms and subject to the conditions set forth in this Agreement, at the closing of the transactions contemplated hereby (the "Closing"): (a) the Contributor shall contribute, transfer and deliver to the Company the Cash Contribution in cash by wire transfer of immediately available funds to an account specified by the Company; (b) the Contributor shall issue, assign, transfer, convey and deliver to the Company the Warrants as a capital contribution, or cause the Warrants to be registered in the name of the Company on the books and records of the Contributor in accordance with the Warrant Agreement; and (c) the Company shall issue to the Contributor 112,637,879 Class B Units in exchange for the Contribution.

2. **No Other Consideration**. Except for the issuance of the Contribution Units, no other consideration shall be payable by the Company in respect of the Contribution.

3. **Closing**. The Closing shall take place on the date hereof. At the Closing, (a) the Company Agreement shall have been duly executed and delivered by the parties thereto, (b) the Contributor shall make the Cash Contribution and deliver the Warrants in accordance with Section 1, or cause the Warrants to be registered in the name of the Company on the books and records of Eos in accordance with the Warrant Agreement, and (c) the Company shall issue the Contribution Units to the Contributor, free and clear of all liens, preemptive rights, restrictions on transfer, rights of first refusal and similar restrictions, other than those set forth in the Company Agreement or arising under applicable securities laws and regulations, and make the book and record entries contemplated by this Agreement.

4. **Representations and Warranties of the Contributor**. To induce the Company to issue the Contribution Units to the Contributor as herein provided, the Contributor represents and warrants to the Company, each and all of which shall survive the consummation of the transactions contemplated herein, that (a) the Contributor is duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, (b) the Contributor has all requisite corporate power and authority to execute and deliver this Agreement and the Company Agreement and to consummate the transactions contemplated hereby and thereby, (c) this Agreement has been duly authorized, executed and delivered by the Contributor and constitutes the legal, valid and binding obligation of the Contributor, enforceable against it in accordance with its terms, subject

to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity, (d) except for waivers or consents that have been obtained or are in full force and effect, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby violates the organizational documents of the Contributor, applicable law or any material agreement binding on the Contributor or any of its material assets, (e) no action is pending or, to the actual knowledge of the Contributor, threatened against the Contributor that challenges or could reasonably be expected to prevent, delay, make illegal or otherwise interfere with the transactions contemplated by this Agreement, (f) the Contributor has not incurred or become liable for any broker's commission or finder's fee relating to the transactions contemplated by this Agreement, (g) the Contributor has, or at Closing will have, sufficient cash in immediately available funds to make the Cash Contribution in accordance with this Agreement, and such funds are not subject to any lien, claim or other encumbrance that would impair the Contributor's ability to transfer such funds to the Company, (h) the Contribution Units to be acquired by the Contributor pursuant to this Agreement are being acquired for the Contributor's own account, not as a nominee or agent for any other person, and without a view to the distribution of such Contribution Units or any interest therein in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws, and (i) the Warrants to be issued to the Company pursuant to this Agreement are duly authorized, validly issued and constitute the legal, valid and binding obligation of the Contributor, enforceable against the Contributor in accordance with the Warrant Agreement, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity.

5. **Representations and Warranties of the Company**. The Company represents and warrants to the Contributor, each and all of which shall survive the consummation of the transactions contemplated herein, that (a) the Company is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation, (b) the Company has all requisite limited liability company power and authority to execute and deliver this Agreement and the Company Agreement and to consummate the transactions contemplated hereby and thereby, (c) this Agreement has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws affecting creditors' rights generally and to general principles of equity, (d) the execution and delivery of the Agreement and the consummation of the transactions contemplated by the Agreement by the Company, will not (1) conflict with or result in a breach of or a default under any of the terms or provisions of, (A) the Company's certificate of formation or Company Agreement in effect as of the date of the Agreement, or (B) of any material provision of any indenture, mortgage, deed of trust or other material agreement or instrument to which the Company is a party or by which it or any of its material properties or assets is bound, (2) result in a violation of any provision of any applicable law, statute, rule, regulation, or any existing applicable decree, judgment or order by any court, federal or state regulatory body, administrative agency, or other governmental body having jurisdiction over the Company, or any of its material properties or assets, or (3) result in the creation or imposition of any material lien, charge or encumbrance upon any material property or assets of the Company or any of its subsidiaries pursuant to the terms of any agreement or instrument to which any of them is a party or by which any of them may be bound or to which any of their material properties or assets is subject, except

in the case of clauses (1)(B), (2) or (3) for any such conflicts, breaches, or defaults or any liens, charges, or encumbrances which would not have a Material Adverse Effect (as defined below), (e) except for waivers or consents that have been obtained or are in full force and effect, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby violates the organizational documents of the Company, applicable law or any material agreement binding on the Company or any of its material assets, (f) no action is pending or, to the actual knowledge of the Company, threatened against the Company that challenges or could reasonably be expected to prevent, delay, make illegal or otherwise interfere with the transactions contemplated by this Agreement, (g) the Company has not incurred or become liable for any broker's commission or finder's fee relating to the transactions contemplated by this Agreement, (h) when issued in accordance with this Agreement, the Contribution Units will be duly authorized, validly issued, fully paid and non-assessable, and free and clear of all liens, preemptive rights, restrictions on transfer, rights of first refusal and similar restrictions, other than those set forth in the Company Agreement or arising under applicable securities laws and regulations, (i) the Company understands that the Warrants are being issued in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Contributor is relying in part upon the truth and accuracy of, and the Company's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Company set forth herein in order to determine the availability of such exemptions and the eligibility of the Company to acquire the Warrants, (j) the Company will acquire the Warrants for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof in violation of applicable securities laws, except pursuant to sales registered or exempted under the Securities Act; provided, however, by making the representations herein, the Company does not agree, or make any representation or warranty, to hold any of the Warrants for any minimum or other specific term and reserves the right to dispose of the Warrants at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act; the Company does not presently have any agreement or understanding, directly or indirectly, with any person to distribute any of the Warrants in violation of applicable securities laws; (k) the Company is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D; (l) the Company and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Contributor and materials relating to the Warrants that have been requested by the Company; (m) the Company and its advisors, if any, have been afforded the opportunity to ask questions of the Contributor; (n) neither such inquiries nor any other due diligence investigations conducted by the Company or its advisors, if any, or its representatives shall modify, amend or affect the Company's right to rely on the Contributor's representations and warranties contained herein; (o) the Company understands that its investment in the Warrants involves a high degree of risk; (p) the Company has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Warrants; (q) the Company understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Warrants or the fairness or suitability of the investment in the Warrants nor have such authorities passed upon or endorsed the merits of the Warrants; (r) the Company understands that the Warrants have not been and are not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, pledged, assigned or transferred other than pursuant to (A) an effective registration statement under the Securities Act, or (B) Rule 144 promulgated under the Securities Act (or a successor rule thereto) or (C) pursuant to another exemption available under applicable securities laws; (s) the Company acknowledges and agrees that the Company is receiving the Warrants directly from the Contributor; (t) the Company became aware of the transaction contemplated hereby solely by means of direct contact from the Contributor as a result of a pre-existing, substantive relationship with the Contributor and/or its advisors (including, without limitation, attorneys, accountants, bankers, consultants and financial advisors), agents, control persons, representatives, affiliates, directors, officers, managers, members, and/or employees, and/or the representatives of such persons; (u) none of the Contributor and/or its representatives acted as investment advisor, broker or dealer to the Company; (v) the Company is not acquiring the Warrants as a result of any general or public solicitation or general advertising, or publicly disseminated advertisement, article, notice or other communication regarding the Warrants published in any newspaper, magazine or similar media or broadcast over television, radio or the internet or presented at any seminar or any other general solicitation or general advertisement, including any of the methods described in Section 502(c) of Regulation D under the Securities Act; and (w) contemporaneously with the consummation of the transactions contemplated under this Agreement, the transactions contemplated under the CCM Contribution Agreement, the HBC Contribution Agreement, the Rights Offering (as defined in that certain binding term sheet, by and between Eos, the Contributor, CCM Frontier, and the other parties thereto, dated as of June 30, 2026 (the "Term Sheet")) shall have been or will be consummated in accordance with the terms thereof. For purposes of this Agreement, "Material Adverse Effect" shall mean any material adverse effect on the business, operations, properties, prospects, or financial condition of the Company and its subsidiaries and/or any condition, circumstance, or situation that would prohibit or otherwise materially interfere with the ability of the Company to perform any of its obligations under this Agreement in any material respect.

6. **Compliance with Laws**. Each Party represents and warrants that such Party is not, and in the last five years has not been, (a) in violation of any applicable anti-money laundering, anti-bribery or anti-corruption laws or regulations, (b) a person that is the target of any economic sanctions enforced or administered by the United States, including the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Kingdom, the European Union or any of its member states (collectively, "Sanctions"), (c) a person that has been determined by competent authority to be subject to Sanctions, or (d) owned or controlled by, or acting for or on behalf of, any person that is the target of Sanctions or has been determined by competent authority to be subject to Sanctions. The Contributor further represents and warrants that the funds used to make the Cash Contribution have not been derived from unlawful activity, do not constitute proceeds of crime and have been maintained in material compliance with applicable Sanctions and applicable anti-money laundering laws.

7. **Consequential Damages**. No Party shall be liable under this Agreement for punitive, special, consequential or exemplary damages, except to the extent actually awarded to a third party in connection with a third-party claim.

8. **Records; Admission**. Promptly following the Closing, the Company will record in its books and records and register of members the issuance of the Contribution Units to the Contributor and the receipt of the Contribution. No certificates will be issued with respect to the Contribution Units unless otherwise required by the Company Agreement. Effective as of the

Closing, the Contributor shall be admitted to the Company as a member thereof and shall be bound by all of the terms and provisions of the Company Agreement.

9. **Restrictions**. The Contributor acknowledges and agrees that (a) the issuance of the Contribution Units is intended to be exempt from registration under the Securities Act, (b) none of the Contribution Units have been registered under the Securities Act or any securities or "blue sky" laws of any state, (c) there is no existing public or other market for the Contribution Units, and there can be no assurance that the Contributor will be able to dispose of the Contribution Units, (d) none of the Contribution Units may be transferred, pledged, hypothecated or otherwise assigned unless such Contribution Units are registered under the Securities Act or an exemption from such registration is available, in each case in accordance with any applicable securities or "blue sky" laws of any state, and (e) upon issuance to the Contributor, the Contribution Units will be subject to the transfer restrictions and the other terms and conditions of the Company Agreement.

10. **Further Assurances**. From time to time, the Parties shall cooperate with one another and execute and deliver, or cause to be executed and delivered, all such further instruments and agreements and take such further acts and actions as may be reasonably necessary or desirable to consummate and give effect to the transactions contemplated by this Agreement, including any assignments, wire confirmations, consents, approvals, filings, certificates, tax forms, Company record updates, amendments, joinders to the Company Agreement, warrant transfer documentation, and other instruments necessary or advisable to evidence or implement the Contribution, the issuance of the Contribution Units, the transactions contemplated under the CCM Contribution Agreement and the HBC Contribution Agreement.

11. **Tax Treatment**. The Parties intend that the Contribution be treated for U.S. federal and applicable state and local income tax purposes as an exchange of the Contribution for the Contribution Units described in Section 721(a) of the Code in which no gain or loss is recognized, and each Party shall file all tax returns and reports consistently with such treatment unless otherwise required by applicable law.

12. **Expenses**. Except as otherwise expressly set forth in this Agreement or the Company Agreement, all costs and expenses incurred in connection with this Agreement, the Company Agreement and the transactions contemplated hereby and thereby shall be paid by the Party incurring such cost or expense.

13. **Succession and Assignment**. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party, and any attempted assignment in violation of this Section shall be null and void.

14. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Signatures delivered by an electronic signature program, by facsimile or by email transmission in portable document format shall be deemed delivery of an original executed counterpart and shall be binding on each Party.

15. **Headings**. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning and interpretation of this Agreement.

16. **Third Party Beneficiaries**. Nothing herein, express or implied, is intended to or shall be construed to confer upon or give to any person or entity other than the Parties and their respective successors and permitted assigns any rights, remedies or other benefits under or by reason of this Agreement.

17. **Recitals**. The recitals set forth at the beginning of this Agreement are true and correct and incorporated into this Agreement by this reference.

18. **Entire Agreement; Amendments; Waivers**. This Agreement, together with the Company Agreement, the Warrant Agreement, and any instruments delivered in connection herewith, constitutes the full and complete agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, whether written or oral, with respect to such subject matter. This Agreement may be amended, modified or supplemented only by a written instrument executed by each Party. No waiver of any provision of this Agreement shall be effective unless set forth in a writing executed by the Party against whom such waiver is sought to be enforced, and no waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition hereunder shall operate as a waiver of, or estoppel with respect to, any other provision or of the same provision on any other occasion.

19. **Severability**. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provision of this Agreement, and the Parties shall negotiate in good faith to replace such provision with a valid, legal and enforceable provision that, to the greatest extent possible, preserves the original intent and economic effect of such provision and permits the transactions contemplated hereby to be consummated as originally contemplated to the fullest extent possible.

20. **Governing Law**. This Agreement, and any legal or judicial proceeding that may be based upon, arise out of or relate to this Agreement or the transactions contemplated hereby, or the negotiation, execution or performance of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of Delaware without regard to conflict of laws principles that would result in the application of the laws of any other jurisdiction.

21. **Submission to Jurisdiction**. Any legal or judicial proceeding that may be based upon, arise out of or relate to this Agreement or the transactions contemplated hereby, or the negotiation, execution or performance of this Agreement, shall be exclusively brought in the Court of Chancery of the State of Delaware or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or any other Delaware state court, and each Party irrevocably submits to the exclusive jurisdiction of such courts, waives any objection to venue or to convenience of forum, agrees that all claims in respect of any such proceeding shall be heard and determined only in such courts and agrees not to bring any such proceeding in any other court; provided that a judgment rendered by such Delaware courts may be enforced in any court having competent jurisdiction.

22. **WAIVER OF JURY TRIAL**. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.

23. **Specific Performance**. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with its terms and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the performance of the terms and provisions hereof, without proof of actual damages and without the necessity of posting any bond or other security, in addition to any other remedy to which they are entitled at law or in equity.

24. **Non-Recourse**. This Agreement may only be enforced against, and any claim or cause of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the persons that are expressly named as Parties hereto and then only with respect to the specific obligations set forth herein with respect to such Party.

25. **Effectiveness**. This Agreement shall become effective when each Party has received a counterpart hereof signed by the other Party, and the transactions contemplated hereby shall be consummated at the Closing.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

CONTRIBUTOR:

EOS ENERGY ENTERPRISES, INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer

COMPANY:

FRONTIER POWER USA PARENT, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

Signature Page to Contribution and Warrants Issuance Agreement

Private and Strictly Confidential

August 4, 2026

CCM Frontier JV Holdco, LLC
Cerberus European Capital Advisors, LLP
5 Savile Row
London W1S 3PB
E-mail: amaczonis@cerberusuk.com

Cerberus Operations and Advisory Company, LLC
875 3rd Avenue
New York, NY 10022
E-mail: OGC@cerberus.com

Ladies and Gentlemen:

This letter agreement, dated as of August 4, 2026 (this "Agreement"), is entered into by and among Eos Energy Enterprises, Inc., a Delaware corporation ("Eos"), CCM Frontier JV Holdco, LLC, a Delaware limited liability company ("CCM Frontier"), and Frontier Power USA Parent, LLC, a Delaware limited liability company (the "Company").

WHEREAS, Eos, CCM Frontier and HBC MSF Capital Solutions Blocker II LLC ("HBC") are parties to that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of August 4, 2026 (as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Company LLC Agreement"), by and among the Members set forth on Schedule A thereto and each other Person that is or shall become a Member from time to time pursuant to the provisions thereof;

WHEREAS, Eos and HBC have entered into that certain Exchange Agreement, dated as of August 4, 2026 (as may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Exchange Agreement"), pursuant to which, among other things, Eos has granted the right to HBC to, from time to time, exchange (the "Exchange Right" and each such exchange, an "Exchange") all, or any part, of the HBC Company Units (as defined below) as designated by HBC for shares (the "Exchange Shares") of common stock of Eos, in accordance with the terms, and subject to the conditions, set forth in the Exchange Agreement; and

WHEREAS, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. Definitions. For purposes of this Agreement:

   1.1 "Agreement" has the meaning set forth in the preamble.

   1.2 "Call Units" has the meaning set forth in Section 2.

   1.3 "CCM Frontier" has the meaning set forth in the preamble.

   1.4 "Company" has the meaning set forth in the preamble.

   1.5 "Company LLC Agreement" has the meaning set forth in the preamble.

1.6 "Eos" has the meaning set forth in the preamble.

1.7 "Exchange" has the meaning set forth in the preamble.

1.8 "Exchange Agreement" has the meaning set forth in the preamble.

1.9 "Exchange Call Right" has the meaning set forth in Section 2.

1.10 "Exchange Right" has the meaning set forth in the preamble.

1.11 "Exchange Shares" has the meaning set forth in the preamble.

1.12 "Exchange Units" means, with respect to an Exchange, the total number of HBC Company Units actually transferred to Eos in connection with such Exchange pursuant to the terms of the Exchange Agreement (for the avoidance of doubt, excluding any Holder Units the exchange of which is cancelled or voided pursuant to Section 2.3.4 of the Exchange Agreement or otherwise not effected).

1.13 "HBC" has the meaning set forth in the preamble, which shall also include any permitted successors and assigns of HBC under the Exchange Agreement (including any Affiliate (as defined in the Exchange Agreement) of HBC to which the Exchange Right has been transferred in accordance with Section 15.1 of the Exchange Agreement).

1.14 "HBC Company Units" means the Class C Units of the Company held by HBC as of the date hereof (including any share capital into which such Class C Units shall have been changed or any share capital resulting from a reclassification of such Class C Units or such other share capital).

Capitalized terms used but not defined in this Agreement have the respective meanings ascribed to them in the Company LLC Agreement.

2. Exchange Call Right.

2.1 In the event that, from time to time, HBC exercises its Exchange Right, then CCM Frontier shall have the right, but not the obligation, to acquire any or all of the Exchange Units transferred by HBC to Eos in the applicable Exchange that remain outstanding and held by Eos after giving effect to the cancellation and reissuance contemplated by Section 2.2, in accordance with this Section 2 (the "Exchange Call Right"). Eos shall promptly, and in any event no later than five (5) Business Days following the consummation of an Exchange, provide written notice to CCM Frontier and the Company of such Exchange, specifying the number of Exchange Units transferred by HBC to Eos in connection therewith (the "Exchange Notice").

2.2 Upon the consummation of an Exchange, a number of Exchange Units equal to ten percent (10%) of the Exchange Units subject to such Exchange shall automatically be cancelled by the Company, and concurrently with such cancellation the Company shall issue to CCM Frontier a number of Class C Units equal to the number of Exchange Units so cancelled. For the avoidance of doubt such, CCM Frontier shall be deemed to have made a Capital Contribution (as defined in the LLC Agreement) of $1.00 in respect of each Class C Unit received under this Section 2.2.

2.3 If CCM Frontier desires to exercise its Exchange Call Right with respect to an Exchange, then CCM Frontier shall deliver written notice thereof to Eos, no later than ten (10) Business Days following CCM Frontier's receipt of the Exchange Notice, specifying the number of Exchange Units CCM Frontier desires to acquire (which may be any or all of the Exchange Units remaining outstanding and held by Eos after giving effect to the cancellation and reissuance contemplated by Section 2.2) (the "Call Units"), which notice shall be irrevocable. Upon receipt of such written notice, Eos shall be required to sell to CCM Frontier, and CCM Frontier shall be required to purchase from Eos, such Call Units for a purchase price in cash equal to $1.00 per Call Unit. The consummation of such transfer and sale shall take place as soon as reasonably practicable on a date mutually agreeable to CCM Frontier and Eos (but no later than 15 Business Days following the delivery by CCM Frontier to Eos of written notice exercising the Exchange Call Right), and Eos shall transfer the Call Units to CCM Frontier free and clear of all liens, claims and encumbrances (other than restrictions under applicable securities Laws and the Company LLC Agreement), in accordance with the terms of the Company LLC Agreement against payment by CCM Frontier of the aggregate purchase price payable therefor by wire transfer of immediately available funds to an account designated by Eos.

2.4 In the event that, after the date hereof, HBC's Exchange Right is amended or modified in accordance with Section 15.12 of the Exchange Agreement, then Eos, CCM Frontier and the Company shall negotiate in good faith appropriate amendments to this Agreement to give effect to the economic intent of the parties hereunder.

2.5 During the period from the consummation of an Exchange until the earlier of (x) CCM Frontier's exercise of its Exchange Call Right with respect to such Exchange and (y) the expiration of the applicable exercise period set forth in Section 2.3, Eos shall not sell, transfer, assign, pledge, hypothecate, encumber, or otherwise dispose of any Exchange Units received by Eos in connection with such Exchange (other than pursuant to Section 2.2), and shall hold such Exchange Units solely for the purpose of satisfying its obligations under this Section 2. The purchase price set forth in Section 2.3 and the other terms of the Exchange Call Right shall be subject to equitable adjustment in the event of any unit split, unit dividend, distribution, recapitalization, consolidation, merger, reclassification, or other similar event affecting the HBC Company Units (in the same manner as the Unit Value is adjusted under Section 1.1 of the Exchange Agreement), to give effect to the economic intent of the parties hereunder.

3. Indemnification by Eos .

3.1 Eos shall indemnify, defend and hold harmless CCM Frontier Member, the Company and its subsidiaries, and their respective managers, officers, employees, agents and representatives (collectively, the "**Frontier Indemnified Parties**") from and against any and all losses, damages, liabilities, claims, actions, judgments, settlements, costs and expenses (including reasonable attorneys' fees and disbursements) (collectively, "**Losses**") incurred by any Frontier Indemnified Party arising out of or resulting from (i) any breach by Eos of any representation, warranty, covenant or obligation of Eos under the Exchange Agreement, (ii) any failure by Eos to timely issue Exchange Shares or to comply with its obligations under the Exchange Documents, (iii) any third-party claims (including claims by stockholders of Eos) arising from or relating to the issuance of Exchange Shares, (iv) any tax liabilities (or a portion thereof) imposed on the Company or any of its subsidiaries as a result of or in connection with any Exchange, solely to the extent attributable to actions or omissions of Eos, and (v) any securities law violations by Eos in connection with any Exchange or the issuance of Exchange Shares.

3.2 The parties to the Exchange Agreement acknowledge and agree that CCM Frontier Member is an intended third-party beneficiary of this Section 3 and shall have the right to enforce the obligations of Eos set forth in this Section 3 as if it were a party thereto.

4. Miscellaneous.

4.1 Sections 14.04, 14.05, 14.07, 14.08, 14.09, 14.12, 14.13, 14.14, 14.17 and 14.18 of the Company LLC Agreement are incorporated by reference herein as if set forth herein *mutatis mutandis*.

4.2 Termination. This Agreement shall terminate immediately upon the later of (a) termination of the Exchange Agreement in accordance with its terms and (b) the date that is fifteen (15) Business Days following the consummation of the final Exchange under the Exchange Agreement; *provided*, that any Exchange Call Right that has been exercised but not yet consummated as of the date of termination shall survive until the consummation thereof. Notwithstanding any termination of this Agreement, Sections 1, 4.3, 4.4, 4.5, 4.6, 4.7 and 4.8 shall survive any such termination.

4.3 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of Eos, CCM Frontier and the Company, and any such amendment, waiver or other modification to this Agreement shall be in writing and duly executed by each of the parties. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such term, condition, or provision.

4.4 Entire Agreement. This Agreement, together with the Company LLC Agreement and the Exchange Agreement, constitutes the entire agreement among the parties hereto and supersedes all prior agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof.

4.5 Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power, or remedy of such nonbreaching or nondefaulting party, nor shall it be construed to be a waiver of or acquiescence to any such breach or default, or to any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies, whether under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

4.6 Non-Recourse. This Agreement may only be enforced against, and any claim, action, suit, or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution, or performance of this Agreement, may only be brought against the Persons that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present, or future director, officer, employee, incorporator, manager, member, general or limited partner, shareholder, equity holder, controlling person, Affiliate, portfolio company, agent, attorney, or other representative of any party hereto or thereto or any of their successors or permitted assigns or any direct or indirect director, officer, employee, incorporator, manager, member, general or limited partner, shareholder, equity holder, controlling person, Affiliate, portfolio company, agent, attorney, representative, successor, or permitted assign of any of the foregoing that is not party to this Agreement (each, a "Non-Recourse Party") shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim or action based on, in respect of, or by reason of the transactions contemplated hereby or in respect of any written or oral representations made or alleged to be made in connection herewith (whether in tort, contract, or otherwise). Notwithstanding anything to the contrary, nothing in this Section 4.6 shall derogate from any rights or obligations under any other agreement to which an applicable person is party.

4.7 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor. Accordingly, each party shall be entitled to an injunction or injunctions, specific performance, or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case without proof of damages or the posting of any bond or other security, this being in addition to any other remedy to which such party is entitled at law or in equity. Each party further agrees not to assert that a remedy of specific performance is unenforceable, invalid, contrary to law, or inequitable for any reason

4.8 Tax Treatment. The parties intend that, for U.S. federal and applicable state and local income tax purposes, each cancellation of Exchange Units by the Company and concurrent issuance of Class C Units to CCM Frontier pursuant to Section 2.2 be treated as a contingent adjustment to the sharing ratios of the Company (the "Intended Tax Treatment"). In connection with and immediately prior to each such cancellation and issuance, the Company shall revalue its property and adjust the Members' capital accounts in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) so that unrealized appreciation and loss arising before such transaction is allocated among the Members in accordance with their liquidation values after the cancellation and conurrent issuance of Class C Units. Each party shall file all tax returns and reports, and otherwise act, consistently with the Intended Tax Treatment and shall promptly notify the other parties of any challenge thereto by a taxing authority. No party shall take any position inconsistent with the Intended Tax Treatment in any tax return, refund claim, audit, examination, or administrative or judicial proceeding without the prior written consent of the other party except to the extent required by a final determination within the meaning of Section 1313(a) of the Code. The parties intend that this Agreement is part of the Company LLC Agreement for U.S. federal income tax purposes.

[*Signature pages follow*]

Sincerely,

EOS ENERGY ENTERPRISES INC.

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: Chief Executive Officer

[*Signature Page to Letter Agreement*]

Agreed to and accepted:

CCM FRONTIER JV HOLDCO, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

Agreed to and accepted:

FRONTIER POWER USA PARENT, LLC

By: /s/ Jake Hansen
Name: Jake Hansen
Title: President

Exhibit 10.4

THIRD AMENDMENT TO LOAN GUARANTEE AGREEMENT

This **THIRD AMENDMENT TO LOAN GUARANTEE AGREEMENT**, dated August 4, 2026 (this "**Amendment**"), is made by and between the UNITED STATES DEPARTMENT OF ENERGY, an agency of the United States of America ("**DOE**") and EOS ENERGY ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Delaware (the "**Borrower**" and together with DOE, each a "**Party**" and collectively the "**Parties**").

RECITALS

WHEREAS, the Borrower and DOE entered into that certain Loan Guarantee Agreement, dated as of November 26, 2024 (as amended, restated, supplemented or otherwise modified from time to time, including by that certain Amendment to Loan Guarantee Agreement dated as of March 25, 2025; that certain Limited Consent to Loan Guarantee Agreement dated as of May 28, 2025; that certain Limited Consent to Loan Guarantee Agreement dated as of July 25, 2025; that certain Limited Consent to Loan Guarantee Agreement dated as of October 16, 2025; that certain Limited Consent to Loan Guarantee Agreement dated as of November 18, 2025; that certain Second Amendment to Loan Guarantee Agreement dated February 13, 2026; that certain Limited Consent to Loan Guarantee Agreement dated as of April 1, 2026 (the "**Thorn Hill Lease Limited Consent**"); that certain Second Limited Consent to Loan Guarantee Agreement dated as of June 26, 2026 (the "**Second Limited Consent**"); and that certain Third Limited Consent to Loan Guarantee Agreement dated as of June 29, 2026 (the "**Third Limited Consent**", and together with the Second Limited Consent, the "**Frontier Limited Consents**") (each of the foregoing amendments and consents, collectively the "**Existing Loan Agreement**");

WHEREAS, pursuant to the Existing Loan Agreement, (a) the Turtle Creek Project Site is the Real Property on which Line 1 and Line 2 are to be situated, as further described in Schedule G (*Project Sites*) thereunder, (b) the Project is defined to mean 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 (c) Schedule G (*Project Sites*) of the Existing Loan Agreement identifies the Borrower's Real Property interests in the Project Sites, which include the Turtle Creek Project Site and Duquesne Project Site;

WHEREAS, under the Thorn Hill Lease Limited Consent, subject to the terms and conditions therein, DOE consented to the Borrower's relocation of Line 2 and the other Property related to Line 2 to the Thorn Hill Project Site;

WHEREAS, pursuant to the Frontier Limited Consents, subject to the terms and conditions therein, DOE consented to the Borrower’s (a) investment into an investment vehicle to be jointly owned by the Borrower and one or more vehicles owned, controlled, sponsored or managed by Cerberus, known as Frontier Power USA Parent, LLC ("**Frontier**") in consideration for the issuance of Equity Interests in Frontier in an amount equal to approximately 49% of the Equity Interests in Frontier on a fully diluted basis (the "**Frontier Joint Venture Investment**") and (b) entry into the limited liability company agreement of Frontier and a subscription agreement in respect of the Frontier Joint Venture Investment (the "**Frontier Investment Documents**") related to the Frontier Joint Venture Investment, each of (a) and (b) as further described in the Frontier Limited Consent (collectively, the "**Frontier Transaction**");

WHEREAS, the Borrower requests to amend the Existing Loan Agreement in connection with, among other things, (a) the Borrower's development of Line 2, and to the extent Lines 3 and 4 are built, Lines 3 and 4, at the Thorn Hill Project Site, instead of the originally intended location of such Line(s) at the Duquesne Project Site (as defined in the Existing Loan Agreement) and (b) the Frontier Transaction;

WHEREAS, pursuant to Section 11.01(c) of the Existing Loan Agreement, neither the Loan Agreement nor any provision thereof may be changed, waived, discharged or terminated, unless such change, waiver, discharge or termination is in writing and executed by the Borrower and DOE;

WHEREAS, subject to the terms and conditions set forth herein, DOE is willing to amend the Existing Loan Agreement as set forth herein;

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:

Section 1. Defined Terms. Capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Existing Loan Agreement.

Section 2. Amendment to the Loan Agreement and Schedules. On the terms of this Amendment and subject to the satisfaction (or waiver in writing by DOE) of the conditions precedent set forth in Section 3 below, effective as of the Third Amendment Effective Date (as defined below):

(a) The Existing Loan Agreement is hereby amended as set forth on Annex A to this Amendment. Language being inserted into the applicable section of the Existing Loan Agreement is evidenced by **bold and underline formatting**. Language being deleted from the applicable section of the Existing Loan Agreement is evidenced by ~~strike-through formatting~~.

(b) Schedule G (Project Sites) to the Existing Loan Agreement is hereby amended by deleting the existing schedule in its entirety and replacing it with the updated schedule set forth in Annex B hereto.

The Existing Loan Agreement, as amended pursuant to this Section 2, the "**Loan Agreement**".

Section 3. Conditions Precedent. This Amendment shall become effective upon the first date on which each of the following conditions have been satisfied (or waived in writing by DOE) (such date, the "**Third Amendment Effective Date**"), and the Borrower hereby certifies that each of the conditions set forth in Section 3(b) and (c) below are satisfied as of the Third Amendment Effective Date:

(a) This Amendment shall have been duly executed and delivered by each of the Parties hereto.

(b) No Default, Event of Default, Event of Force Majeure or Event of Loss shall have occurred and be continuing as of the Third Amendment Effective Date.

(c) Each of the representations and warranties made (or deemed to be made) by any Borrower Entity 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).

Section 4. Representations and Warranties.

The Borrower hereby represents and warrants to and in favor of DOE, on and as of the date hereof, that:

(a) it has duly authorized, executed and delivered this Amendment, and none of: (a) its execution and delivery hereof, and (b) its consummation of the transactions contemplated hereby nor its compliance with the terms of hereof, in each case, do or will (i) contravene its Organizational Documents or any Applicable Laws or Governmental Approval; (ii) contravene or result in any breach or constitute any default under any Governmental Judgment; (iii) contravene or result in any breach, constitute any default, or result in or require the creation of any Lien upon any property of any Borrower Entity under any Transaction Document or any other agreement or instrument to which any Borrower Entity 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;

(b) this Amendment is a legal, valid and binding obligation of the Borrower, enforceable against the Borrower 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);

(c) no Default, Event of Default, Event of Force Majeure or Event of Loss has occurred and is continuing or will occur as of the date hereof as a result of the execution, delivery and performance of this Amendment.

Section 5. Limited Amendment.

(a) The Borrower acknowledges and agrees that this Amendment is provided in full reliance on the relevant information provided by the Borrower and the Borrower's representations and warranties herein.

(b) Except as expressly provided for herein, the terms and conditions of the Existing Loan Agreement and the other Financing Documents shall continue unchanged and shall remain in full force and effect and are hereby ratified and confirmed. This Amendment is limited in effect and shall apply solely to the matters set forth herein and to the extent expressly set forth herein and shall not be deemed or construed as an amendment, waiver or consent of any other matters. Except as expressly provided for herein, nothing herein shall be construed as or deemed to be a waiver or consent by DOE of any past, present or future breach or non-compliance with any terms or provisions contained in any Financing Document, and nothing herein shall abrogate, prejudice, diminish or otherwise affect any powers, rights, remedies or obligations of any Person arising before the date of this Amendment. Except as provided for herein, nothing herein shall be deemed to entitle any Borrower Entity to a further consent to, or a further waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Loan Agreement or any other Financing Document in similar or different circumstances. This Amendment shall be applicable solely with respect to the matters expressly provided therein and not with respect to any other similar transactions of any of the Parties, and no other amendments, waivers or consents may be construed or implied.

Section 6. Costs and Expenses. The Borrower agrees to pay on demand all costs and expenses of DOE and the other Secured Parties in connection with the preparation, execution, delivery and administration, modification and amendment of this Amendment and the other instruments and documents to be delivered hereunder (including, without limitation, the fees and expenses of counsel to any such Person) in accordance with the terms of the Financing Documents.

Section 7. Reference to the Effect on the Financing Documents. On and after the date hereof, each reference in the Existing Loan Agreement to "this Agreement," "hereunder," "hereof," "herein," "hereby" or words of like import, and each reference in the other Financing Documents to the "Loan Guarantee Agreement," "thereunder," "thereof," "therein," "thereby" or words of like import referring to the Loan Agreement, as applicable, shall mean and be a reference to the Loan Agreement as amended hereby.

Section 8. Governing Law; Waiver of Jury Trial.

(a) THIS AMENDMENT 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 AMENDMENT 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 AMENDMENT 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 AMENDMENT, 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 AMENDMENT AND THE OTHER FINANCING DOCUMENTS.

Section 9. Miscellaneous.

(a) On and after the Third Amendment Effective Date, this Amendment is a Financing Document for all purposes.

(b) Sections 11.14 (*Submission to Jurisdiction; Etc.*) and 11.18 (*Counterparts; Electronic Signatures*) of the Existing Loan Agreement are hereby incorporated by reference as if fully set forth herein, *mutatis mutandis*.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, all as of the day and year first above mentioned.

EOS ENERGY ENTERPRISES INC.
as Borrower

By: /s/ Joe Mastrangelo
Name: Joe Mastrangelo
Title: CEO

U.S. DEPARTMENT OF ENERGY,
an agency of the federal government of the United States of America

By: /s/ Rupinder Kaur
Name: Rupinder Kaur
Title: Director, Portfolio Management Division Office of Energy Dominance Financing

Annex A

Amended Loan Guarantee Agreement

LOAN GUARANTEE AGREEMENT

originally dated as of November 26, 2024 and amended pursuant to the Amendment to Loan Guarantee Agreement dated as of March 25, 2025 ~~and~~, Second Amendment to Loan Guarantee Agreement, dated as of February 13, 2026, and Third Amendment to Loan Guarantee Agreement, dated as of August 4, 2026

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

Conformed copy includes amendments from Amendment to Loan Guarantee Agreement, dated as of March 25, 2025 ~~and~~, Second Amendment to Loan Guarantee Agreement, dated as of February 13, 2026, and Third Amendment to Loan Guarantee Agreement, dated as of August 4, 2026.

CONTENTS

ANNEXES, SCHEDULES AND EXHIBITS

Annex

Schedules

Exhibits

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. The loan extended hereunder shall be 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*):

(a) the first Tranche in a Maximum Tranche Commitment Amount not to exceed ninety million nine hundred forty-five thousand Dollars ($90,945,000) ("**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~~2.00 Gwh ("**Line 1**");

a second Tranche in a Maximum Tranche Commitment Amount not to exceed one hundred six million seven hundred thirty-three thousand Dollars ($106,733,000) ("**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~~2.00 Gwh ("**Line 2**");

a third Tranche in a Maximum Tranche Commitment Amount not to exceed sixty-seven million five hundred twenty-nine thousand Dollars ($67,529,000) ("**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~~2.00 Gwh ("**Line 3**"); and

(b) a fourth Tranche in a Maximum Tranche Commitment Amount not to exceed twelve million two hundred ninety thousand Dollars ($12,290,000) ("**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~~2.00 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:

(c) 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;

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

(e) 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

(f) 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

(g) 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.

(h) 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.

(i) 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

(j) 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:

(i) 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

(ii) 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.

(k) Consequences***(l)***. 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

(m) 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).

(n) 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.

(o) 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.

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

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

(ii) 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;

(iii) 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

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

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

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

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

(vii) 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

(viii) 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:

(r) the sum of:

(i) 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,

(ii) the Aggregate Capitalized Interest,

shall not exceed eighty percent (80%) of the sum of:

(iii) 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

(iv) the Aggregate Capitalized Interest;

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

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

(u) 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.

(a) 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.

(b) 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 exceed the Maximum Capitalized Interest Amount and 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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).

(l) 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.

(m) 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.

(n) 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:

(i) 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

(ii) 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:

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

(ii) 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

(iii) 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.

(o) 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**"):

(i) 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;

(ii) 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);

(iii) [Reserved];

(iv) 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;

(v) 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));

(vi) 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.

(vii) [Reserved];

(viii) 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;

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

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

(xi) 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;

(xii) 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

(xiii) 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)).

(p) 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.

(q) 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.

(r) 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.

(s) 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*).

(t) 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:

(a) 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

(b) 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:

(c) 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;

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

(i) 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);

(ii) 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;

(iii) 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);

(iv) 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

(v) 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

(e) 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:

(f) 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;

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

(h) 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;

(i) 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;

(j) 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;

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

(l) 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;

(m) 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;

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

(o) 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;

(p) 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;

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

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

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

(t) 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:

(u) 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;

(v) 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;

(w) 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;

(x) 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;

(y) 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;

(z) 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;

(aa) 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;

(bb) 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;

(cc) 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;

(dd) 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;

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

(ff) 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*):

(gg) 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);

(hh) 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

(ii) 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.

CONDITIONS PRECEDENT

Section 4.06 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:

(jj) 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;

(kk) 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 and (C) with respect to the First Advance of Tranche 2, Frontier (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

(ll) 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:

(mm) the Independent Engineer;

(nn) the Market Consultant;

(oo) the Financial Advisor; and

(pp) the Insurance Consultant.

(d) Transaction Documents. Receipt by DOE of:

(qq) 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

(rr) 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:

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

(ii) 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);

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

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

(e) Intercreditor Arrangements. Receipt by DOE of:

(ss) 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

(tt) 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:

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

(ii) 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);

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

(iv) 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:

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

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

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

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

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

(zz) 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:

(aaa) 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

(bbb) 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:

(ccc) 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

(ddd) 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:

(eee) 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

(fff) 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(i). Receipt by DOE of the Business Continuity Plan.

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

(ggg) 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*);

(hhh) 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:

(jjj) 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

(kkk) evidence that:

(i) 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

(ii) 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:

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

(mmm) 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:

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

(ooo) 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:

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

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

(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 each such Required Approval has been satisfied.

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

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

(qqq) 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 (rrr) (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:

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

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

(uuu) 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:

(vvv) 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**");

(www) 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**");

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

(yyy) 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:

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

(aaaa) 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:

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

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

(dddd) the apportionment of the Credit Subsidy Cost.

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

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

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

(gggg) 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~~[Reserved].

(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 4.07 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 4.08 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:

(hhhh) 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);

(iiii) 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

(jjjj) 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:

(i) 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

(ii) 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:

(kkkk) the Independent Engineer;

(llll) the Market Consultant;

(mmmm) the Financial Advisor;

(nnnn) the Insurance Consultant; and

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

(g) Base Case Financial Model(pppp). 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:

(qqqq) 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;

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

(ssss) an updated Sales Plan;

(tttt) [Reserved]; and

(uuuu) 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:

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

(i) 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;

(ii) (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;

(iii) 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);

(iv) 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;

(v) 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

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

(wwww) as of the Tranche ~~3~~2 First Advance Date, with respect to the ~~Duquesne~~Thorn Hill Project Site:

(vii) a Mortgage over the tenant's leasehold interest in the ~~Duquesne~~Thorn Hill 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;

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

(ix) evidence that all easements, rights-of-way, zoning compliances, and other land rights necessary for the ~~Duquesne~~Thorn Hill 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);

(x) 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~~Thorn Hill Project Site; (C) no part of the improvements shall be located beyond the boundaries of the area subject to the environmental review under NEPA;

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

(xii) evidence that the Mortgaged Lease for the ~~Duquesne~~Thorn Hill 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.

(xxxx) [Reserved];

(yyyy) with respect to ~~the tenant's~~Borrower's leasehold interest in the ~~Duquesne~~Thorn Hill 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)~~required by DOE, in an amount ~~equal to six million Dollars ($6,000,000) in the aggregate~~reasonably satisfactory to DOE, 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 Thorn Hill Mortgage creates a legal, valid and enforceable First Priority Lien on the ~~tenant's~~Borrower's leasehold interest in the ~~Duquesne~~Thorn Hill 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 Thorn Hill Mortgage subject only to Permitted Liens;

(zzzz) [Reserved];

(aaaaa) 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~~

either (A) a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination indicating that the Thorn Hill Project Site is not in located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a "special flood hazard area" or (B) evidence that the Borrower maintains flood insurance in amounts acceptable to DOE;

if the landlord's interest in the Thorn Hill Project Site is encumbered by a fee mortgage, an executed subordination, non-disturbance and attornment agreement or a similar

agreement, in form and substance acceptable to DOE ("**SNDA**") among the Borrower, the Thorn Hill Landlord and the applicable fee mortgagee acceptable to DOE; and

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

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

(bbbbb) 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;

(ccccc) 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(ddddd). 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:

(eeeee) 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;

(fffff) 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;

(ggggg) 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~~

(hhhhh) all fees and duties in connection with such filing, registration or recording have been paid in full~~.~~; and

with respect to the First Advance of Tranche 2, the Collateral Agent shall have a legal, valid, enforceable and perfected First Priority Lien in the Borrower's Equity Interests in Frontier.

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~~.~~; and

receipt by DOE of, as of the Tranche 2 First Advance Date, fully executed copies of (A) each Frontier Supply Agreement then in effect and (B) each Frontier Transaction Document.

(n) Intellectual Property. Receipt by DOE of:

(iiiii) 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

(jjjjj) evidence that:

(i) 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;

(ii) 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

(iii) 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:

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

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

(mmmmm) 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:

(nnnnn) 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;

(ooooo) 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;

(ppppp) 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

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

(q) Accounting Compliance Plan(rrrrr). 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:

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

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

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

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

(vvvvv) 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~~2, DOE shall have completed its review and related consultations under NEPA with respect to the Guaranteed Loan and the ~~Duquesne~~Thorn Hill Project Site.

(u) Environmental Reports. With respect to the First Advance of Tranche ~~3~~2, receipt by DOE of: (A) an updated Phase I Environmental Site Assessment for the ~~Duquesne~~Thorn Hill 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~~Thorn Hill 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*).

ARCO Agreement. With respect to the First Advance of Tranche 2, receipt by DOE of fully executed originals (in sufficient counterparts for each of DOE, FFB and the Collateral Agent), or copies thereof if permitted by DOE, of the ARCO Agreement and each other document required to be delivered in connection therewith, including a Direct Agreement.

Section 4.09 **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:

(wwwww) 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

(xxxxx) 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:

(yyyyy) 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;

(zzzzz) 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;

(aaaaaa) 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;

(bbbbbb) 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

(cccccc) 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:

(dddddd) 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;

(eeeeee) 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

(ffffff) 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:

(gggggg) 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

(hhhhhh) 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:

(iiiiii) 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;

(jjjjjj) 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;

(kkkkkk) for each Advance after the Tranche ~~3~~2 First Advance Date, an ALTA 33-06 endorsement to the ALTA extended coverage loan policy of title insurance for the ~~Duquesne~~Thorn Hill Project Site issued on the Tranche ~~3~~2 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~~Thorn Hill 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

(llllll) 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:

(mmmmmm) 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);

(nnnnnn) 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*);

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

(pppppp) 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:

(qqqqqq) 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

(rrrrrr) 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:

(ssssss) 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;

(tttttt) 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

(uuuuuu) 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 4.10 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 4.11 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 4.12 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 V

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 5.01 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:

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

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

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

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

Section 5.02 **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 5.03 **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 5.04 **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 5.05 **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 5.06 **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 5.07 **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 5.08 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 5.09 Indebtedness. No Borrower Entity has any outstanding Indebtedness other than Permitted Indebtedness.

Section 5.10 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 5.11 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 5.12 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 5.13 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 5.14 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 5.15 Property.

(a) Title to Collateral

(e) Schedule G (*Project Sites*) identifies the Borrower's Real Property interests in the Project Sites.

(f) 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.

(g) 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 5.16 Project Milestone Schedule, Project Budgets and Plans.

(a) The Project Budgets and Plans:

(h) are complete and based on reasonable assumptions;

(i) are consistent with the provisions of the Project Documents;

(j) have been prepared in good faith and with due care; and

(k) 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:

(l) is complete and based on reasonable assumptions;

(m) is substantially consistent with the material provisions of the Project Documents;

(n) has been prepared in good faith and with due care;

(o) fairly represents the Borrower's expectation as to the matters covered thereby; and

(p) 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 5.17 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 5.18 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 5.19 **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 5.20 **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 5.21 **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 5.22 **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 5.23 **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:

(q) 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;

(r) to secure an unlawful or improper advantage; or

(s) 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 5.24 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 5.25 Employment and Labor Contracts.

(a) Except as set forth on Schedule M (*Employment and Labor Contracts*), as of the Execution Date:

(t) 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

(u) 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 5.26 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 5.27 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 5.28 **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 5.29 **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 5.30 **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 5.31 **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 5.32 **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 5.33 **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 5.34 **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 5.35 **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 5.36 **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 5.37 **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 5.38 **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 5.39 **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 5.40 **Insurance**. From and after the Execution Date, all Required Insurance is in full force and effect with Acceptable Insurers.

Section 5.41 **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 5.42 **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 5.43 **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 5.44 **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 5.45 **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 VI

AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, until the Release Date, it shall cause that:

Section 6.01 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 6.02 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:

(a) 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:

(i) 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

(ii) 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

(b) 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 6.03 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 6.04 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 6.05 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 6.06 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 6.07 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 6.08 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 6.09

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 6.10 **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 6.11 **Books, Records and Inspections**.

(a) The Borrower shall:

(c) 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;

(d) 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:

(i) for overseeing the financial operations of each Borrower Entity, including its cash management, accounting and financial reporting;

(ii) for overseeing the Borrower's relationship with DOE and the Independent Auditor;

(iii) for promptly identifying any Cost Overruns;

(iv) 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

(v) for compliance with securities, corporate and other Applicable Law regarding adoption of a code of ethics and auditor independence; and

(e) 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:

(f) consult and cooperate with Secured Parties and the Secured Party Advisors regarding the Project upon DOE's request;

(g) 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;

(h) 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;

(i) afford proper facilities for such inspections, and make copies (at the Borrower's expense) of any records that are subject to such inspection; and

(j) 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:

(k) 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

(l) 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:

(m) 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

(n) 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 6.12 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:

(o) 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

(p) 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 6.13 **Compliance with Program Requirements**. The Borrower shall comply with all Program Requirements in connection with the Project.

Section 6.14 **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 6.15 **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 6.16 **Sales Agreements**.

(a) The Borrower shall enter into Sales Agreements in accordance with Sales Plan or otherwise with DOE prior written consent.

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 6.17 **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 6.18 **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:

(i) 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

(ii) 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 6.19 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 6.20 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:

(q) 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

(r) 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 6.21 SAM Registration. The Borrower shall maintain its SAM database registration at all times.

Section 6.22 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 6.23 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 March 31, 2027, 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 March 31, 2027, June 30, 2027, and September 30, 2027, 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 March 31, 2027, 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 March 31, 2027, June 30, 2027, and September 30, 2027, 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 6.24 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:

do not involve the Project or the financing thereof by DOE;

(c) are required by Applicable Law or national stock exchange rules; or

(d) are routinely made to Governmental Authorities.

Section 6.25 [Reserved].

Section 6.26 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 6.27 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 6.28 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 6.29 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 6.30 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 6.31 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 6.32 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**"),~~SNDAs, 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 6.33 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 6.34 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 6.35 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~~the Turtle Creek 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 VII

INFORMATION COVENANTS

The Borrower hereby agrees that until the Release Date:

Section 7.01 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:

(a) audited Financial Statements of the Borrower for such Fiscal Year and including each Borrower Entity on a consolidated basis;

(b) a Compliance Certificate required by Section 8.01(c) (*Compliance Certificates*);

(c) a report on such Financial Statements of the Independent Auditor which report shall:

(i) be unqualified as to going concern and scope of audit;

(ii) 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);

(iii) 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

(iv) 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:

(d) 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;

(e) each Compliance Certificate required by Section 8.01(c) (*Compliance Certificates*); and

(f) 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:

(g) 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;

(h) 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);

(i) 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;

(j) 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;

(k) 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

(l) in the case of each Compliance Certificate delivered concurrently with annual Financial Statements pursuant to Section 8.01(a) (*Annual Financial Statements*):

(i) 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;

(ii) 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

(iii) 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 7.02 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:

(m) 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;

(n) (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;

(o) the Safety Report with respect to the Safety Audit for such Fiscal Year;

(p) 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;

(q) such other information as DOE may reasonably request; and

(r) (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.

(s) 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:

(i) a progress report as against the Sales Plan delivered under the Omnibus Annual Report, including the current backlog-to-sale ratio;

(ii) 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;

(iii) 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:

(i) 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

(ii) 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;

(iv) 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

(v) the aggregate amount of Cost of Goods Sold in the twelve (12) month period ended on the last day of such Fiscal Quarter.

(t) 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:

(u) 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*);

(v) 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*); and

~~(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:

(w) 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;

(x) 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;

(y) 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

(z) 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:

(iii) 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;

(iv) 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;

(v) 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

(vi) 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.

(aa) 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.

(bb) 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.

(cc) 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~~the Turtle Creek 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 7.03 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:

(dd) 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;

(ee) the occurrence of any Mandatory Prepayment Event;

(ff) 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);

(gg) 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;

(hh) 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*);

(ii) any change to the board of directors of any Borrower Entity;

(jj) any change in the information provided prior to the Execution Date that would result in a change to the list of KYC Parties;

(kk) any rejected shipment of or warranty or liquidated damages claims for Products from the Project;

(ll) 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:

(i) breach or non-performance of, or any default under, a contractual Obligation of any Borrower Entity;

(ii) any dispute, litigation, investigation, proceeding or suspension between any Borrower Entity and any Governmental Authority;

(iii) the commencement of, or any material development in, any litigation or proceeding affecting any Borrower Entity, including pursuant to any applicable Environmental Laws; or

(iv) 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;

(mm) 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;

(nn) 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;

(oo) 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;

(pp) 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:

(v) that could be expected to have a Material Adverse Effect;

(vi) that seeks damages in excess of two million five hundred thousand Dollars ($2,500,000);

(vii) 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;

(viii) 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);

(ix) where any Governmental Authority alleges substantial criminal misconduct by any Borrower Entity or its Affiliates; or

(x) 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;

(qq) any actual or proposed termination, revocation, rescission, cancellation, withdrawal, suspension, discharge (otherwise than by performance), amendment, supplement, modification, waiver or breach of:

(xi) any Major Project Document or Required Approval; or

(xii) 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;

(rr) any information that representations made with respect to Debarment Regulations were erroneous when made or have become erroneous by reason of changed circumstances;

(ss) the occurrence of any Emergency; and

(tt) 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 7.04 **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 7.05 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 (provided that, notwithstanding anything to the contrary, the below deliverables will not be required for Frontier Supply Agreements entered into consistent with Section 9.01(c)(v) of this Agreement):

(uu) ~~To~~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

(vv) 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 (provided that, with respect to the Frontier Transaction Documents, a Direct Agreement will not be required with respect to the Frontier Operating Agreement and Frontier Subscription Agreement).

(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.

(ww) 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.

(xx) 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 7.06 **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 7.07 **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:

(yy) 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;

(zz) 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

(aaa) 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 VIII

NEGATIVE COVENANTS

The Borrower hereby agrees that until the Release Date, it shall cause that:

Section 8.01 **Restrictions on Operations**.

(a) Ordinary Course of Conduct; No Other Business. No Borrower Entity shall:

(a) 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;

(b) 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);

(c) change its name or take any other action that might adversely affect the Liens created by the Security Documents; or

(d) fail to maintain its existence and its right to carry on its business.

(b) Other Transactions. No Borrower Entity shall, directly or indirectly:

(e) 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;

(f) 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;

(g) 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

(h) 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:

(i) 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;

(ii) 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:

(i) delay the occurrence of each Line Commercial Operation Date beyond the corresponding Line Commercial Operation Longstop Date; or

(ii) otherwise have a Material Adverse Effect;

(iii) any Governmental Approval or other Required Approval, the effect of which could reasonably be expected to have a Material Adverse Effect;

(iv) any Financing Documents;

(v) the Cerberus Financing Documents to the extent prohibited by the Intercreditor Agreement;

(vi) any Convertible Notes;

(vii) the Trinity Loan;

(viii) the Atlas Side Letter; or

(ix) 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;

(j) 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;

(k) 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~~

(l) 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*)~~.~~; or

enter into or permit to exist any Frontier Supply Agreement other than in the Ordinary Course of Business and on an arm's-length basis consistent with market terms for similar transactions, as determined by DOE; *provided* that if such Frontier Supply Agreement is entered into on terms consistent with the requirements of the FPCCRA or the Frontier Guidelines, as applicable, such Frontier Supply Agreement will be deemed to be on an arm's length basis and consistent with market terms for similar transactions.

(d) Commissions. No Borrower Entity shall pay:

(m) 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

(n) 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:

(o) any single Adverse Proceeding in excess of two million five hundred thousand Dollars ($2,500,000); or

(p) 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:

(q) to its officers, directors or employees in the Ordinary Course of Business; or

(r) in connection with Permitted Liens and Permitted Indebtedness.

Section 8.02 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 8.03 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 8.04 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:

(s) 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;

(t) 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);

(u) 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;

(v) 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*);

(w) 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*);

(x) 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~~

so long as no Default or Event of Default shall have occurred and be continuing or shall result therefrom, the Borrower shall be permitted to make scheduled payments of principal and interest pursuant to the terms of, and payments of cash in lieu of fractional shares upon conversion of, any Specified Refinancing Indebtedness; 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 8.05 **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 8.06 **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 8.07 **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 8.08 **Hedging Agreements**. No Borrower Entity shall enter into any Hedging Agreements except Permitted Hedging Agreements.

Section 8.09 **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 8.10 **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 8.11 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 8.12 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 8.13 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 8.14 Prohibited Person. No Borrower Entity shall become (whether through a transfer or otherwise) a Prohibited Person.

Section 8.15 Restrictions on Indebtedness and Certain Capital Transactions.

(a) Indebtedness. No Borrower Entity shall, or shall agree to, directly or indirectly:

(y) incur, create, guarantee, assume, permit to exist or otherwise become liable for any Indebtedness, except for Permitted Indebtedness; ~~and~~

(z) without the prior written consent of DOE, incur any Indebtedness to third parties in order to sell (including pursuant to any contract) Product~~.~~; or

(A) incur, create, guarantee, assume, permit to exist or otherwise become liable for any Indebtedness for or on behalf of, or for the benefit of, Frontier or any of its Subsidiaries, or for any cross-default, funding obligations or similar credit support with respect to such Indebtedness of Frontier or any of its Subsidiaries, or (B) provide any Person with any claim, subrogation right or other right or remedy against or other recourse to any Borrower Entity for obligations and/or liabilities of Frontier or any of its Subsidiaries, in each case, except as expressly contemplated under the Frontier Transaction Documents or pursuant to commercial arrangements (other than Indebtedness for Borrowed Money) entered into in the Ordinary Course of Business with terms that are no less favorable to the applicable Borrower Entity than those that might be obtained in a comparable arm's length transaction (including, but not limited to, pursuant to agreements entered into by the Borrower Entity to provide development, design, engineering, procurement, construction, startup and commissioning, battery installation, testing, repair, management, maintenance, asset management, operation, or similar services to Frontier or an affiliate thereof).

(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 8.16 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 8.17 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:

(aa) except in accordance with: (A) the Intercreditor Agreement; and (B) Project IP Agreements;

(bb) to any Prohibited Person;

(cc) without providing advance written notice of such assignment or transfer to the Secured Parties;

(dd) except as permitted under Section 9.03(b) (*Merger; Disposition; Transfer or Abandonment*); and

(ee) without requiring such assignee or transferee to:

(i) comply with Section 7.02(g) (*Source Code Escrow*);

(ii) 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;

(iii) demonstrate the technical experience and financial ability to maintain and develop the Project IP as required for the Project; and

(iv) 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 8.18 **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 8.19 **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 8.20 **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 8.21 **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 8.22 **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 8.23 **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 (A) net cash proceeds received by the Borrower from ~~the~~a substantially concurrent issuance and sale of the Borrower's common stock and/or (B) the net cash proceeds received from, and Specified Refinancing Indebtedness issued in connection with, a Specified Refinancing Transaction, (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 8.24 **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 8.25 **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 8.26 **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 IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.01 **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):

(a) 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

(b) 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.

(c) 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.

(d) 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

(e) 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.

(f) 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 neither the conversion of Convertible Notes or Specified Refinancing Indebtedness in accordance with their terms ~~shall not~~, nor the occurrence of any event that allows for such a conversion, shall 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:

(g) 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;

(h) 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

(i) 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

(j) 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.

(k) 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*).

(l) 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:

(m) 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;

(n) the Project Completion Date shall not have occurred by the Project Completion Longstop Date;

(o) 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;

(p) 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;

(q) 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;

(r) 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;

(s) 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

(t) 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.

(u) 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.

(v) 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:

(w) 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

(x) 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 9.02 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:

(y) 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;

(z) 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;

(aa) 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;

(bb) (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);

(cc) 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;

(dd) 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;

(ee) 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

(ff) 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 9.03 **<u>Accelerated Advances</u>**. 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 X

MISCELLANEOUS

Section 10.01 **<u>Waiver and Amendment</u>**.

(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 10.02 **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 10.03 **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 10.04 **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 10.05 **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 10.06 **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 10.07 **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 10.08 **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 10.09 **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 10.10 **[Reserved]**.

Section 10.11 **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 10.12 **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 10.13 **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 10.14 **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 10.15 **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 10.16 **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 10.17 **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 10.18 **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 10.19 **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 10.20 **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 10.21 **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:
Name:
Title:

[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:
Name:
Title:

"**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 FFB_Admin@treasury.gov; 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.

"**ARCO Agreement**" means that certain design-build contract, dated as of March 23, 2026 in relation to the Project by and between Hi-Power, LLC and ARCO DB Companies, Inc.

"**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, including, for the avoidance of doubt, any net income generated from the sales and services provided by the Borrower or any of its Affiliates to Frontier or 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 or any Specified Refinancing Indebtedness, the earliest of the maturity date (or equivalent term) and the date on which any such Convertible Note or Specified Refinancing Indebtedness, as applicable, 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, excluding any notes issued in connection with a Specified Refinancing Transaction, 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 a mount 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;

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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 (a) 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*) and/or (b) cash received from the Specified Refinancing Transaction, 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*).

"**FPCCRA**" means that certain Purchase Commitment and Capacity Reservation Agreement, dated as of May 11, 2026, by and between Frontier, as buyer, and Eos Energy Storage LLC, as seller, as amended from time to time in accordance with the terms hereof.

"**Frontier**" means Frontier Power USA Parent, LLC, a Delaware limited liability company, or any replacement or successor thereof.

"**Frontier Guidelines**" means the Frontier Commercial Framework Guidelines by and between Frontier, as buyer, and Eos Energy Storage LLC, as seller, in form and substance acceptable to DOE, as amended from time to time in accordance with the terms hereof.

"**Frontier Operating Agreement**" means that certain Amended and Restated Limited Liability Company Agreement of Frontier, entered into in form and substance acceptable to DOE, as amended from time to time in accordance with the terms hereof.

"**Frontier Subscription Agreement**" means that certain contribution agreement executed by the Borrower in favor of Frontier in form and substance acceptable to DOE, as amended from time to time in accordance with the terms hereof.

"**Frontier Supply Agreement**" means each master supply agreement, purchase order, long term services agreement and/or related documentation and agreements entered into from time to time in connection with the Frontier Transaction, consistent with the Frontier Guidelines.

"**Frontier Transaction**" means the transactions contemplated under the Operating Agreement of Frontier.

"**Frontier Transaction Document**" means each of (a) the Frontier Operating Agreement; (b) the Frontier Subscription Agreement; (c) the FPCCRA; (d) the Frontier Guidelines, and (e) each Frontier Supply Agreement.

"**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~~B (*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 (solely to the extent the Lines 3 and 4 Commencement Date has occurred with respect thereto), September 1, 2027; and

(c) Line 4 (solely to the extent the Lines 3 and 4 Commencement Date has occurred with respect thereto), 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*).~~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.

"**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 Frontier Transaction Document;

(j) ~~(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;

(k) ~~(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

(l) ~~(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~~(a) with respect to the Turtle Creek Project Site, the Open-End Leasehold Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents~~, and~~ dated February 10, 2026 and made by Hi-Power, LLC in favor of the Collateral Agent on behalf of the Secured Parties and (b) with respect to the Thorn Hill Project Site, Open-End Leasehold Mortgage, Security Agreement ~~by each applicable~~, Fixture Filing and Assignment Of Leases and Rents dated April 8, 2026 by the 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, as amended on December 9, 2024, April 14, 2025 and January 22, 2026 (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, as amended on December 9, 2024 and January 22, 2026; (c) ~~a~~the lease ~~or similar agreement~~ in respect of the ~~Duquesne~~Thorn Hill Project Site ~~to be entered into on or prior to the First Advance Date~~dated as of October 20, 2025 by and between the Borrower and McKnight Thornhill, LP ("**Thorn Hill Landlord**"); 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*), in each case, 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~~.~~ and (e) with respect to any Specified Refinancing Transaction, the Cash proceeds thereof, net of all customary fees, commissions, costs, underwriting discounts and other fees and expenses incurred by Borrower in connection therewith.

"**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~~.~~; and

(s) Specified Refinancing Indebtedness.

"**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) Investments made by a Borrower Entity in Frontier or an affiliate thereof or pursuant to a Frontier Transaction Document, in each case, consistent with the terms of the Frontier Transaction Documents; and

(l) ~~(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~~Thorn Hill Project Site (for Line 2, and to the extent Line 3 and Line 4 are built, 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~~Thorn Hill 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~~November 30, 2026;

(b) Line 3 (to the extent being built), January 1, 2027; and

(c) Line 4 (to the extent being built), 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.

"**Specified Refinancing Indebtedness**" means any Indebtedness issued in connection with the Specified Refinancing Transaction; provided, that such Indebtedness shall (a) mature not less than the date that is five (5) years from the issuance date thereof, (b) not require any prepayments to be made prior to such maturity date other than in connection with a "fundamental change" or other similar event), (c) be unsecured, (d) not include any guarantees, restrictive covenants (other than a customary merger covenant) or any other credit support, (e) permit the Borrower to settle conversions entirely in shares of its Capital Stock (other than Disqualified Capital Stock) and cash in lieu of fractional shares, and (f) be subject to terms and conditions that are customary for issuances of convertible notes by a public company pursuant to Rule 144A under the Securities Act as of May 28, 2025.

"**Specified Refinancing Transaction**" means a transaction or series of transactions that (i) results in Borrower receiving net cash proceeds from the issuance and sale of common stock of Borrower and/or convertible notes of Borrower on terms and conditions satisfactory to DOE in its sole discretion, (ii) results in not less than $50,000,000 of the net cash proceeds referred to in the foregoing clause (i) being applied to repay the obligations under the Cerberus Credit Agreement in accordance with Section 2.10(c)(ii) thereof, (iii) occurs on or prior to July 26, 2025 and (iv) results in the Koch Convertible Notes being repurchased, tendered, redeemed, exchanged or otherwise refinanced or retired in full, in exchange for a combination of cash and Specified Refinancing Indebtedness (issued at par) in an aggregate amount not to exceed the principal amount thereof plus accrued and unpaid interest thereon; provided that the cash component of such consideration shall not exceed $115,000,000; provided further that, for the avoidance of doubt, any purchase of Specified Refinancing Indebtedness by Wood River Capital, LLC, a wholly-owned, indirect subsidiary of Koch Industries, Inc., and the repurchase by Borrower of an equal aggregate principal amount of Koch Convertible Notes in one or more transactions, shall be considered an exchange for Specified Refinancing Indebtedness (issued at par) for the purposes of clause (iii).

"**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.

"**Thorn Hill Project Site**" means the Real Property described in Schedule G (*Project Sites*) as the Thorn Hill Project Site, as the same may be updated pursuant to Section 6.15(c) (*Project Sites*).

"**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~~is 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.

Schedule Q

Minimum Consolidated Revenue and EBITDA

Part A-1

Minimum Consolidated EBITDA

Lines 1 and 2

Four Fiscal Quarters Ending[1]	Minimum Consolidated EBITDA
3/31/2027	($21,500,000.00)[2]
6/30/2027	$0.00[3]
9/30/2027	($5,600,000.00)[4]
12/31/2027	($500,000.00)
3/31/2028	$45,300,000.00
6/30/2028	$51,800,000.00
9/30/2028	$99,000,000.00
12/31/2028	$165,600,000.00
3/31/2029	$169,100,000.00
6/30/2029	$183,000,000.00
9/30/2029	$188,500,000.00
12/31/2029	$168,100,000.00
3/31/2030	$181,300,000.00
6/30/2030	$178,800,000.00
9/30/2030	$171,600,000.00
12/31/2030	$159,300,000.00
3/31/2031	$148,700,000.00
6/30/2031	$141,800,000.00
9/30/2031	$133,400,000.00
12/31/2031	$125,100,000.00
3/31/2032	$116,700,000.00
6/30/2032	$108,200,000.00
9/30/2032	$101,300,000.00
12/31/2032	$94,400,000.00
3/31/2033	$86,800,000.00
6/30/2033	$77,500,000.00
9/30/2033	$68,200,000.00
12/31/2033	$59,000,000.00
3/31/2034	$60,100,000.00

[1] Unless otherwise indicated herein.
[2] Based on the last fiscal quarter ending.
[3] Based on the last two fiscal quarters ending.
[4] Based on the last three fiscal quarters ending.

Part A-2

Minimum Consolidated EBITDA

Lines 1 through 4

Four Fiscal Quarters Ending[5]	Minimum Consolidated EBITDA
3/31/2027	$43,300,000.00[6]
6/30/2027	$127,200,000.00[7]
9/30/2027	$186,800,000.00[8]
12/31/2027	$254,200,000.00
3/31/2028	$298,700,000.00
6/30/2028	$309,100,000.00
9/30/2028	$357,600,000.00
12/31/2028	$428,300,000.00
3/31/2029	$437,300,000.00
6/30/2029	$455,100,000.00
9/30/2029	$464,700,000.00
12/31/2029	$447,300,000.00
3/31/2030	$453,300,000.00
6/30/2030	$444,500,000.00
9/30/2030	$431,200,000.00
12/31/2030	$413,100,000.00
3/31/2031	$396,000,000.00
6/30/2031	$383,000,000.00
9/30/2031	$368,500,000.00
12/31/2031	$354,200,000.00
3/31/2032	$339,600,000.00
6/30/2032	$324,700,000.00
9/30/2032	$311,600,000.00
12/31/2032	$298,600,000.00
3/31/2033	$282,200,000.00
6/30/2033	$263,700,000.00
9/30/2033	$245,200,000.00
12/31/2033	$225,500,000.00
3/31/2034	$228,300,000.00

[5] Unless otherwise indicated herein.
[6] Based on the last fiscal quarter ending.
[7] Based on the last two fiscal quarters ending.
[8] Based on the last three fiscal quarters ending.

Part B-1

Minimum Consolidated Revenue

Lines 1 and 2

Four Fiscal Quarters Ending[9]	Minimum Consolidated Revenue
3/31/2027	$142,600,000.00[10]
6/30/2027	$321,200,000.00[11]
9/30/2027	$470,900,000.00[12]
12/31/2027	$627,500,000.00
3/31/2028	$664,700,000.00
6/30/2028	$670,900,000.00
9/30/2028	$715,600,000.00
12/31/2028	$783,000,000.00
3/31/2029	$784,100,000.00
6/30/2029	$795,400,000.00
9/30/2029	$798,700,000.00
12/31/2029	$774,800,000.00
3/31/2030	$795,400,000.00
6/30/2030	$799,700,000.00
9/30/2030	$799,300,000.00
12/31/2030	$793,400,000.00
3/31/2031	$789,300,000.00
6/30/2031	$789,600,000.00
9/30/2031	$789,800,000.00
12/31/2031	$790,000,000.00
3/31/2032	$790,100,000.00
6/30/2032	$790,300,000.00
9/30/2032	$790,400,000.00
12/31/2032	$790,500,000.00
3/31/2033	$790,600,000.00
6/30/2033	$790,600,000.00
9/30/2033	$790,700,000.00
12/31/2033	$790,700,000.00
3/31/2034	$790,800,000.00

[9] Unless otherwise indicated herein.

[10] Based on the last fiscal quarter ending.

[11] Based on the last two fiscal quarters ending.

[12] Based on the last three fiscal quarters ending.

Part B-2

Minimum Consolidated Revenue

Lines 1 through 4

Four Fiscal Quarters Ending[13]	Minimum Consolidated Revenue
3/31/2027	$321,500,000.00[14]
6/30/2027	$692,500,000.00[15]
9/30/2027	$1,031,500,000.00[16]
12/31/2027	$1,374,600,000.00
3/31/2028	$1,422,200,000.00
6/30/2028	$1,430,900,000.00
9/30/2028	$1,479,000,000.00
12/31/2028	$1,552,600,000.00
3/31/2029	$1,560,000,000.00
6/30/2029	$1,575,200,000.00
9/30/2029	$1,582,200,000.00
12/31/2029	$1,559,400,000.00
3/31/2030	$1,580,800,000.00
6/30/2030	$1,586,100,000.00
9/30/2030	$1,586,300,000.00
12/31/2030	$1,581,000,000.00
3/31/2031	$1,577,400,000.00
6/30/2031	$1,578,100,000.00
9/30/2031	$1,578,700,000.00
12/31/2031	$1,579,200,000.00
3/31/2032	$1,579,600,000.00
6/30/2032	$1,580,000,000.00
9/30/2032	$1,580,300,000.00
12/31/2032	$1,580,600,000.00
3/31/2033	$1,580,800,000.00
6/30/2033	$1,581,000,000.00
9/30/2033	$1,581,200,000.00
12/31/2033	$1,581,300,000.00
3/31/2034	$1,581,400,000.00

[13] Unless otherwise indicated herein.

[14] Based on the last fiscal quarter ending.

[15] Based on the last two fiscal quarters ending.

[16] Based on the last three fiscal quarters ending.

Schedule R

Capex Required Amount

Part A

Lines 1 and 2

Period	Capex Required Amount
6/30/2024	$2,700,000.00
7/31/2024	$6,140,000.00
8/31/2024	$6,800,000.00
9/30/2024	$13,390,000.00
10/31/2024	$21,060,000.00
11/30/2024	$30,020,000.00
12/31/2024	$38,190,000.00
1/31/2025	$48,540,000.00
2/28/2025	$66,540,000.00
3/31/2025	$85,450,000.00
4/30/2025	$98,070,000.00
5/31/2025	$104,460,000.00
6/30/2025	$109,540,000.00
7/31/2025	$115,690,000.00
8/31/2025	$122,290,000.00
9/30/2025	$131,000,000.00
10/31/2025	$134,000,000.00
11/30/2025	$142,820,000.00
12/31/2025	$147,460,000.00

1/31/2026	$151,650,000.00
2/28/2026	$154,860,000.00
3/31/2026	$156,950,000.00
4/30/2026	$157,950,000.00
5/31/2026	$158,170,000.00
6/30/2026	$158,700,000.00
7/31/2026	$158,920,000.00
8/31/2026	$159,140,000.00
9/30/2026	$159,360,000.00
10/31/2026	$159,580,000.00
11/30/2026	$159,810,000.00
12/31/2026	$160,030,000.00
1/31/2027	$160,250,000.00
2/28/2027	$160,470,000.00
3/31/2027	$160,690,000.00
4/30/2027	$160,920,000.00
5/31/2027	$161,140,000.00
6/30/2027	$161,360,000.00
7/31/2027	$161,580,000.00
8/31/2027	$161,800,000.00
9/30/2027	$162,030,000.00
10/31/2027	$162,250,000.00
11/30/2027	$162,470,000.00
12/31/2027	$162,690,000.00
1/31/2028	$162,910,000.00

2/29/2028	$163,140,000.00
3/31/2028	$163,360,000.00
4/30/2028	$163,580,000.00
5/31/2028	$163,800,000.00
6/30/2028	$164,020,000.00
7/31/2028	$164,250,000.00
8/31/2028	$164,470,000.00
9/30/2028	$164,690,000.00
10/31/2028	$164,910,000.00
11/30/2028	$165,130,000.00
12/31/2028	$165,360,000.00
For each Fiscal Quarter thereafter until the Maturity Date	$165,360,000.00

Part B

Lines 1 through 4

Period	Capex Required Amount
6/30/2024	$2,700,000.00
7/31/2024	$6,140,000.00
8/31/2024	$6,800,000.00
9/30/2024	$13,390,000.00
10/31/2024	$21,060,000.00
11/30/2024	$30,020,000.00
12/31/2024	$38,190,000.00
1/31/2025	$48,540,000.00
2/28/2025	$66,540,000.00
3/31/2025	$85,450,000.00
4/30/2025	$98,070,000.00
5/31/2025	$104,460,000.00
6/30/2025	$109,540,000.00
7/31/2025	$115,690,000.00
8/31/2025	$122,290,000.00
9/30/2025	$133,440,000.00
10/31/2025	$138,940,000.00
11/30/2025	$151,290,000.00
12/31/2025	$162,090,000.00
1/31/2026	$170,900,000.00
2/28/2026	$179,400,000.00
3/31/2026	$190,240,000.00

4/30/2026	$203,240,000.00
5/31/2026	$208,750,000.00
6/30/2026	$219,490,000.00
7/31/2026	$227,060,000.00
8/31/2026	$230,560,000.00
9/30/2026	$237,340,000.00
10/31/2026	$247,120,000.00
11/30/2026	$256,240,000.00
12/31/2026	$260,370,000.00
1/31/2027	$271,350,000.00
2/28/2027	$277,450,000.00
3/31/2027	$284,290,000.00
4/30/2027	$287,580,000.00
5/31/2027	$293,310,000.00
6/30/2027	$294,150,000.00
7/31/2027	$297,370,000.00
8/31/2027	$298,070.000.00
9/30/2027	$298,290,000.00
10/31/2027	$298,510,000.00
11/30/2027	$298,730,000.00
12/31/2027	$298,960,000.00
1/31/2028	$299,180,000.00
2/29/2028	$299,400,000.00
3/31/2028	$299,620,000.00
4/30/2028	$299,840,000.00

5/31/2028	$300,070,000.00
6/30/2028	$300,290,000.00
7/31/2028	$300,510,000.00
8/31/2028	$300,730,000.00
9/30/2028	$300,950,000.00
10/31/2028	$301,180,000.00
11/30/2028	$301,400,000.00
12/31/2028	$301,620,000.00
For each Fiscal Quarter thereafter until the Maturity Date	$301,620,000.00

Annex B

Schedule G (Project Sites)

See attached.