

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

**FORM 10-Q**

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

For the quarterly period ended June 30, 2023

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-16383



**CHENIERE ENERGY, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**95-4352386**

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

**700 Milam Street, Suite 1900**

**Houston, Texas 77002**

(Address of principal executive offices) (Zip Code)

**(713) 375-5000**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
<b>Common Stock, \$ 0.003 par value</b>	<b>LNG</b>	<b>NYSE American</b>

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

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

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

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

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

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

As of July 27, 2023, the issuer had 240,623,212 shares of Common Stock outstanding.

**CHENIERE ENERGY, INC.**  
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## DEFINITIONS

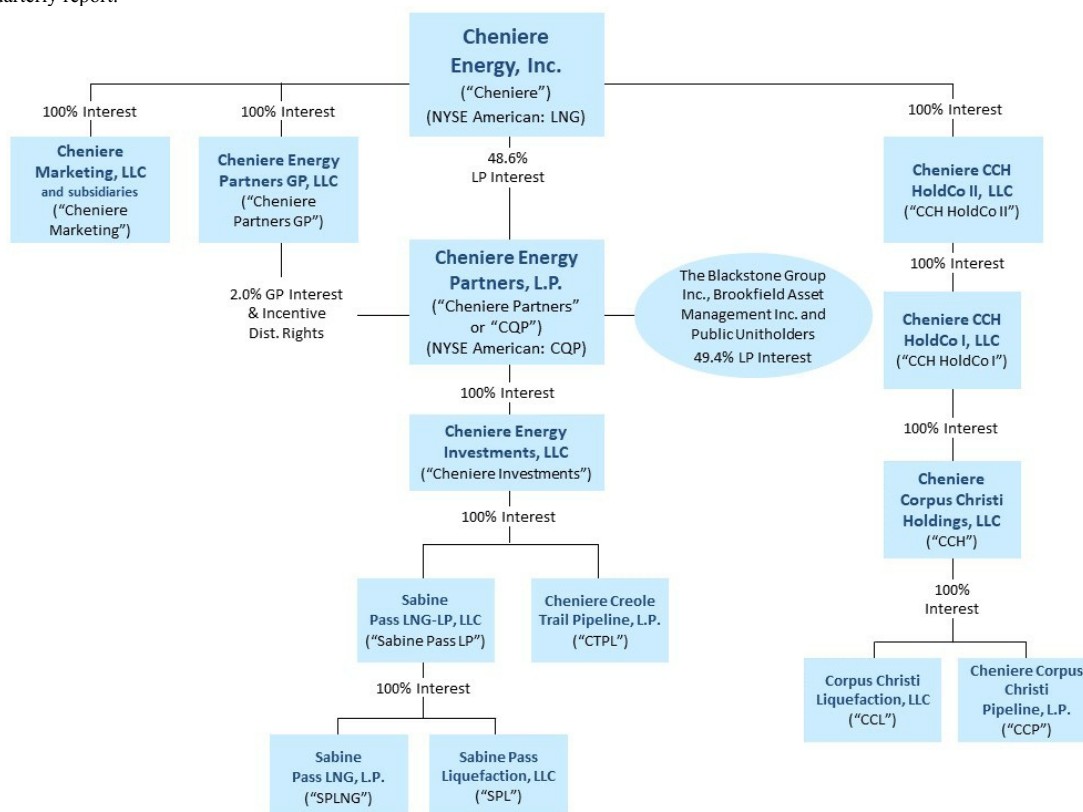
As used in this quarterly report, the terms listed below have the following meanings:

### Common Industry and Other Terms

ASU	Accounting Standards Update
Bcf	billion cubic feet
Bcf/d	billion cubic feet per day
Bcf/yr	billion cubic feet per year
Bcfe	billion cubic feet equivalent
DOE	U.S. Department of Energy
EPC	engineering, procurement and construction
FASB	Financial Accounting Standards Board
FERC	Federal Energy Regulatory Commission
FID	final investment decision
FTA countries	countries with which the United States has a free trade agreement providing for national treatment for trade in natural gas
GAAP	generally accepted accounting principles in the United States
Henry Hub	the final settlement price (in USD per MMBtu) for the New York Mercantile Exchange's Henry Hub natural gas futures contract for the month in which a relevant cargo's delivery window is scheduled to begin
IPM agreements	integrated production marketing agreements in which the gas producer sells to us gas on a global LNG index price, less a fixed liquefaction fee, shipping and other costs
LIBOR	London Interbank Offered Rate
LNG	liquefied natural gas, a product of natural gas that, through a refrigeration process, has been cooled to a liquid state, which occupies a volume that is approximately 1/600th of its gaseous state
MMBtu	million British thermal units; one British thermal unit measures the amount of energy required to raise the temperature of one pound of water by one degree Fahrenheit
mtpa	million tonnes per annum
non-FTA countries	countries with which the United States does not have a free trade agreement providing for national treatment for trade in natural gas and with which trade is permitted
SEC	U.S. Securities and Exchange Commission
SOFR	Secured Overnight Financing Rate
SPA	LNG sale and purchase agreement
TBtu	trillion British thermal units; one British thermal unit measures the amount of energy required to raise the temperature of one pound of water by one degree Fahrenheit
Train	an industrial facility comprised of a series of refrigerant compressor loops used to cool natural gas into LNG
TUA	terminal use agreement

## Abbreviated Legal Entity Structure

The following diagram depicts our abbreviated legal entity structure as of June 30, 2023, including our ownership of certain subsidiaries, and the references to these entities used in this quarterly report:



Unless the context requires otherwise, references to "Cheniere," the "Company," "we," "us" and "our" refer to Cheniere Energy, Inc. and its consolidated subsidiaries, including our publicly traded subsidiary, CQP.

**PART I. FINANCIAL INFORMATION**
**ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS**

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in millions, except per share data)  
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues				
LNG revenues	\$ 3,919	\$ 7,873	\$ 11,010	\$ 15,213
Regasification revenues	33	68	67	136
Other revenues	150	66	335	142
Total revenues	4,102	8,007	11,412	15,491
Operating costs and expenses (recoveries)				
Cost (recovery) of sales (excluding items shown separately below)	912	5,752	(627)	13,088
Operating and maintenance expense	487	419	931	808
Selling, general and administrative expense	87	77	194	173
Depreciation and amortization expense	297	276	594	547
Other	11	6	21	11
Total operating costs and expenses	1,794	6,530	1,113	14,627
Income from operations	2,308	1,477	10,299	864
Other income (expense)				
Interest expense, net of capitalized interest	(291)	(357)	(588)	(706)
Gain (loss) on modification or extinguishment of debt	(2)	(28)	18	(46)
Interest rate derivative gain (loss), net	—	(1)	—	2
Interest income	55	7	89	8
Other income (expense), net	—	(4)	3	—
Total other expense	(238)	(383)	(478)	(742)
Income before income taxes and non-controlling interest	2,070	1,094	9,821	122
Less: income tax provision (benefit)	363	181	1,679	(10)
Net income	1,707	913	8,142	132
Less: net income attributable to non-controlling interest	338	172	1,339	256
Net income (loss) attributable to common stockholders	\$ 1,369	\$ 741	\$ 6,803	\$ (124)
Net income (loss) per share attributable to common stockholders—basic (1)	\$ 5.65	\$ 2.92	\$ 27.99	\$ (0.49)
Net income (loss) per share attributable to common stockholders—diluted (1)	\$ 5.61	\$ 2.90	\$ 27.79	\$ (0.49)
Weighted average number of common shares outstanding—basic	242.3	253.6	243.1	253.8
Weighted average number of common shares outstanding—diluted	243.8	255.9	244.8	253.8

(1) Earnings per share in the table may not recalculate exactly due to rounding because it is calculated based on whole numbers, not the rounded numbers presented.

The accompanying notes are an integral part of these consolidated financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**
**CONSOLIDATED BALANCE SHEETS (1)**  
**(in millions, except share data)**

	June 30, 2023	December 31, 2022
ASSETS	(unaudited)	
Current assets		
Cash and cash equivalents	\$ 4,529	\$ 1,353
Restricted cash and cash equivalents	640	1,134
Trade and other receivables, net of current expected credit losses	709	1,944
Inventory	404	826
Current derivative assets	93	120
Margin deposits	36	134
Other current assets	129	97
Total current assets	6,540	5,608
Property, plant and equipment, net of accumulated depreciation	31,821	31,528
Operating lease assets	2,487	2,625
Derivative assets	282	35
Goodwill	77	77
Deferred tax assets	36	864
Other non-current assets, net	560	529
Total assets	\$ 41,803	\$ 41,266
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 100	\$ 124
Accrued liabilities	1,037	2,679
Current debt, net of discount and debt issuance costs	1,796	813
Deferred revenue	130	234
Current operating lease liabilities	598	616
Current derivative liabilities	1,215	2,301
Other current liabilities	37	28
Total current liabilities	4,913	6,795
Long-term debt, net of premium, discount and debt issuance costs	23,380	24,055
Operating lease liabilities	1,863	1,971
Finance lease liabilities	483	494
Derivative liabilities	3,740	7,947
Deferred tax liabilities	731	—
Other non-current liabilities	201	175
Stockholders' equity (deficit)		
Preferred stock: \$0.0001 par value, 5.0 million shares authorized, none issued	—	—
Common stock: \$0.003 par value, 480.0 million shares authorized; 277.7 million shares and 276.7 million shares issued at June 30, 2023 and December 31, 2022, respectively	1	1
Treasury stock: 36.8 million shares and 31.2 million shares at June 30, 2023 and December 31, 2022, respectively, at cost	(3,162)	(2,342)
Additional paid-in-capital	4,363	4,314
Accumulated income (deficit)	1,666	(4,942)
Total Cheniere stockholders' equity (deficit)	2,868	(2,969)
Non-controlling interest	3,624	2,798
Total stockholders' equity (deficit)	6,492	(171)
Total liabilities and stockholders' equity (deficit)	\$ 41,803	\$ 41,266

- (1) Amounts presented include balances held by our consolidated variable interest entity ("VIE"), CQP, as further discussed in [Note 7—Non-controlling Interest and Variable Interest Entity](#). As of June 30, 2023, total assets and liabilities of CQP were \$19.3 billion and \$20.5 billion, respectively, including \$1.8 billion of cash and cash equivalents and \$241 million of restricted cash and cash equivalents.

The accompanying notes are an integral part of these consolidated financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**  
(in millions)  
(unaudited)

**Three and Six Months Ended June 30, 2023**

	<b>Total Stockholders' Equity (Deficit)</b>							
	<b>Common Stock</b>		<b>Treasury Stock</b>					
	<b>Shares</b>	<b>Par Value Amount</b>	<b>Shares</b>	<b>Amount</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Income (Deficit)</b>	<b>Non-controlling Interest</b>	<b>Total Equity (Deficit)</b>
Balance at December 31, 2022	245.5	\$ 1	31.2	\$ (2,342)	\$ 4,314	\$ (4,942)	\$ 2,798	\$ (171)
Vesting of share-based compensation awards	1.0	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	43	—	—	43
Issued shares withheld from employees related to share-based compensation, at cost	(0.2)	—	0.2	(26)	(29)	—	—	(55)
Shares repurchased, at cost	(3.1)	—	3.1	(453)	—	—	—	(453)
Net income attributable to non-controlling interest	—	—	—	—	—	—	1,001	1,001
Distributions to non-controlling interest	—	—	—	—	—	—	(261)	(261)
Dividends declared (\$0.33 per common share)	—	—	—	—	—	(98)	—	(98)
Net income attributable to common stockholders	—	—	—	—	—	5,434	—	5,434
Balance at March 31, 2023	243.2	1	34.5	(2,821)	4,328	394	3,538	5,440
Share-based compensation	—	—	—	—	36	—	—	36
Issued shares withheld from employees related to share-based compensation, at cost	—	—	—	—	(1)	—	—	(1)
Shares repurchased, at cost	(2.3)	—	2.3	(341)	—	—	—	(341)
Net income attributable to non-controlling interest	—	—	—	—	—	—	338	338
Distributions to non-controlling interest	—	—	—	—	—	—	(252)	(252)
Dividends declared (\$0.395 per common share)	—	—	—	—	—	(97)	—	(97)
Net income attributable to common stockholders	—	—	—	—	—	1,369	—	1,369
Balance at June 30, 2023	240.9	\$ 1	36.8	\$ (3,162)	\$ 4,363	\$ 1,666	\$ 3,624	\$ 6,492

**Three and Six Months Ended June 30, 2022**

	<b>Total Stockholders' Deficit</b>							
	<b>Common Stock</b>		<b>Treasury Stock</b>					
	<b>Shares</b>	<b>Par Value Amount</b>	<b>Shares</b>	<b>Amount</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Deficit</b>	<b>Non-controlling Interest</b>	<b>Total Deficit</b>
Balance at December 31, 2021	253.6	\$ 1	21.6	\$ (928)	\$ 4,377	\$ (6,021)	\$ 2,538	\$ (33)
Vesting of share-based compensation awards	1.3	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	38	—	—	38
Issued shares withheld from employees related to share-based compensation, at cost	(0.3)	—	0.3	(35)	(18)	—	—	(53)
Shares repurchased, at cost	(0.2)	—	0.2	(25)	—	—	—	(25)
Adoption of ASU 2020-06, net of tax	—	—	—	—	(153)	4	—	(149)
Net income attributable to non-controlling interest	—	—	—	—	—	—	84	84
Distributions to non-controlling interest	—	—	—	—	—	—	(171)	(171)
Dividends declared (\$0.33 per common share)	—	—	—	—	—	(85)	—	(85)
Net loss attributable to common stockholders	—	—	—	—	—	(865)	—	(865)
Balance at March 31, 2022	254.4	1	22.1	(988)	4,244	(6,967)	2,451	(1,259)
Vesting of share-based compensation awards	0.1	—	—	—	—	—	—	—
Share-based compensation	—	—	—	—	34	—	—	34
Issued shares withheld from employees related to share-based compensation, at cost	—	—	—	(1)	(1)	—	—	(2)
Shares repurchased, at cost	(4.1)	—	4.1	(540)	—	—	—	(540)
Net income attributable to non-controlling interest	—	—	—	—	—	—	172	172
Dividends declared (\$0.33 per common share)	—	—	—	—	—	—	(256)	(256)
Distributions to non-controlling interest	—	—	—	—	—	(85)	—	(85)
Net income attributable to common stockholders	—	—	—	—	—	741	—	741
Balance at June 30, 2022	250.4	\$ 1	26.2	\$ (1,529)	\$ 4,277	\$ (6,311)	\$ 2,367	\$ (1,195)

The accompanying notes are an integral part of these consolidated financial statements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in millions)  
(unaudited)

	Six Months Ended June 30,	
	2023	2022
Cash flows from operating activities		
Net income	\$ 8,142	\$ 132
Adjustments to reconcile net income to net cash provided by operating activities:		
Unrealized foreign currency exchange gain, net	(2)	—
Depreciation and amortization expense	594	547
Share-based compensation expense	85	79
Amortization of debt issuance costs, premium and discount	23	29
Reduction of right-of-use assets	315	280
Loss (gain) on modification or extinguishment of debt	(18)	46
Total losses (gains) on derivative instruments, net	(5,411)	4,530
Net cash used for settlement of derivative instruments	(102)	(487)
Deferred taxes	1,581	(32)
Repayment of paid-in-kind interest related to repurchase of convertible notes	—	(13)
Other, net	6	6
Changes in operating assets and liabilities:		
Trade and other receivables	1,249	(445)
Inventory	418	(44)
Margin deposits	98	596
Other current assets	(36)	40
Accounts payable and accrued liabilities	(1,551)	278
Total deferred revenue	(78)	9
Total operating lease liabilities	(305)	(286)
Other, net	(8)	(93)
Net cash provided by operating activities	5,000	5,172
Cash flows from investing activities		
Property, plant and equipment, net	(1,044)	(1,023)
Investment in equity method investment	(18)	—
Other, net	(6)	(10)
Net cash used in investing activities	(1,068)	(1,033)
Cash flows from financing activities		
Proceeds from issuances of debt	1,397	1,015
Redemptions, repayments and repurchases of debt	(1,098)	(2,715)
Debt issuance and other financing costs	(27)	(43)
Debt modification or extinguishment gains (costs)	26	(30)
Distributions to non-controlling interest	(513)	(427)
Payments related to tax withholdings for share-based compensation	(56)	(55)
Repurchase of common stock	(774)	(565)
Dividends to stockholders	(195)	(170)
Payments of finance lease liabilities	(13)	—
Net cash used in financing activities	(1,253)	(2,990)
Effect of exchange rate changes on cash, cash equivalents and restricted cash and cash equivalents	3	—
Net increase in cash, cash equivalents and restricted cash and cash equivalents	2,682	1,149
Cash, cash equivalents and restricted cash and cash equivalents—beginning of period	2,487	1,817
Cash, cash equivalents and restricted cash and cash equivalents—end of period	\$ 5,169	\$ 2,966

**Balances per Consolidated Balance Sheet:**

	June 30, 2023
Cash and cash equivalents	\$ 4,529
Restricted cash and cash equivalents	640
Total cash, cash equivalents and restricted cash and cash equivalents	\$ 5,169

The accompanying notes are an integral part of these consolidated financial statements.



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(unaudited)**

**NOTE 1—NATURE OF OPERATIONS AND BASIS OF PRESENTATION**

We operate two natural gas liquefaction and export facilities located in Cameron Parish, Louisiana at Sabine Pass and near Corpus Christi, Texas (respectively, the “Sabine Pass LNG Terminal” and “Corpus Christi LNG Terminal”).

CQP owns the Sabine Pass LNG Terminal, which has natural gas liquefaction facilities consisting of six operational Trains, for a total production capacity of approximately 30 mtpa of LNG (the “SPL Project”). The Sabine Pass LNG Terminal also has operational regasification facilities that include five LNG storage tanks, vaporizers and three marine berths. Additionally, the Sabine Pass LNG Terminal includes a 94-mile pipeline owned by CTPL, a subsidiary of CQP, that interconnects our facilities with a number of large interstate and intrastate pipelines. As of June 30, 2023, we owned 100% of the general partner interest and a 48.6% limited partner interest in CQP.

The Corpus Christi LNG Terminal currently has three operational Trains for a total production capacity of approximately 15 mtpa of LNG, three LNG storage tanks and two marine berths. Additionally, we are constructing an expansion of the Corpus Christi LNG Terminal (the “Corpus Christi Stage 3 Project”) for up to seven midscale Trains with an expected total production capacity of over 10 mtpa of LNG. Through our subsidiary CCP, we also own a 21.5-mile natural gas supply pipeline that interconnects the Corpus Christi LNG Terminal with several interstate and intrastate natural gas pipelines (the “Corpus Christi Pipeline” and together with the Corpus Christi LNG Terminal and the Corpus Christi Stage 3 Project, the “CCL Project”).

We have increased available liquefaction capacity at the SPL Project and the CCL Project (collectively, the “Liquefaction Projects”) as a result of debottlenecking and other optimization projects. We hold significant land positions at both the Sabine Pass LNG Terminal and the Corpus Christi LNG Terminal which provide opportunity for further liquefaction capacity expansion. In March 2023, certain of our subsidiaries submitted an application with the FERC under the Natural Gas Act for an expansion adjacent to the CCL Project consisting of two midscale Trains with an expected total production capacity of approximately 3 mtpa of LNG. In May 2023, certain subsidiaries of CQP entered the pre-filing review process with the FERC under the National Environmental Policy Act for an expansion adjacent to the SPL Project consisting of up to three Trains with an expected total production capacity of approximately 20 mtpa of LNG (the “SPL Expansion Project”). The development of these sites or other projects, including infrastructure projects in support of natural gas supply and LNG demand, will require, among other things, acceptable commercial and financing arrangements before we make a positive FID.

**Basis of Presentation**

The accompanying unaudited Consolidated Financial Statements of Cheniere have been prepared in accordance with GAAP for interim financial information and in accordance with Rule 10-01 of Regulation S-X and reflect all normal recurring adjustments which are, in the opinion of management, necessary for a fair statement of the financial results for the interim periods presented. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements and should be read in conjunction with the Consolidated Financial Statements and accompanying notes included in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#).

Results of operations for the three and six months ended June 30, 2023 are not necessarily indicative of the results of operations that will be realized for the year ending December 31, 2023.

**Recent Accounting Standards**

**ASU 2020-04**

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This guidance primarily provides temporary optional expedients which simplify the accounting for contract modifications to existing contracts expected to arise from the market transition from LIBOR to alternative reference rates. The temporary optional expedients under the standard became effective March 12, 2020 and will be available until December 31, 2024 following a subsequent amendment to the standard.

As further detailed in [Note 9—Debt](#), our existing credit facilities include a variable interest rate indexed to SOFR, incorporated through amendments or replacements of previous credit facilities subsequent to the effective date of ASU

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

2020-04. We elected to apply the optional expedients as applicable to certain modified or replaced facilities; however, the impact of applying the optional expedients was not material, and the transition to SOFR did not have a material impact on our cash flows.

**NOTE 2—RESTRICTED CASH AND CASH EQUIVALENTS**

Restricted cash and cash equivalents consisted of the following (in millions):

	June 30, 2023	December 31, 2022
Restricted cash and cash equivalents		
SPL Project	\$ 241	\$ 92
CCL Project	152	738
Cash held by our subsidiaries that is restricted to Cheniere	247	304
Total restricted cash and cash equivalents	<u>\$ 640</u>	<u>\$ 1,134</u>

Pursuant to the accounts agreements entered into with the collateral trustees for the benefit of SPL's debt holders and CCH's debt holders, SPL and CCH are required to deposit all cash received into reserve accounts controlled by the collateral trustees. The usage or withdrawal of such cash is restricted to the payment of liabilities related to the Liquefaction Projects and other restricted payments. The majority of the cash held by our subsidiaries that is restricted to Cheniere relates to advance funding for operation and construction needs of the Liquefaction Projects.

**NOTE 3—TRADE AND OTHER RECEIVABLES, NET OF CURRENT EXPECTED CREDIT LOSSES**

Trade and other receivables, net of current expected credit losses consisted of the following (in millions):

	June 30, 2023	December 31, 2022
Trade receivables		
SPL and CCL	\$ 282	\$ 922
Cheniere Marketing	369	917
Other receivables	58	105
Total trade and other receivables, net of current expected credit losses	<u>\$ 709</u>	<u>\$ 1,944</u>

**NOTE 4—INVENTORY**

Inventory consisted of the following (in millions):

	June 30, 2023	December 31, 2022
LNG in-transit	\$ 82	\$ 356
LNG	94	212
Materials	194	194
Natural gas	31	60
Other	3	4
Total inventory	<u>\$ 404</u>	<u>\$ 826</u>

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**NOTE 5—PROPERTY, PLANT AND EQUIPMENT, NET OF ACCUMULATED DEPRECIATION**

Property, plant and equipment, net of accumulated depreciation consisted of the following (in millions):

	June 30, 2023	December 31, 2022
LNG terminal		
Terminal and interconnecting pipeline facilities	\$ 33,918	\$ 33,815
Site and related costs	452	451
Construction-in-process	2,446	1,685
Accumulated depreciation	(5,542)	(4,985)
Total LNG terminal, net of accumulated depreciation	31,274	30,966
Fixed assets and other		
Computer and office equipment	35	33
Furniture and fixtures	20	20
Computer software	123	121
Leasehold improvements	55	48
Land	1	1
Other	20	19
Accumulated depreciation	(198)	(191)
Total fixed assets and other, net of accumulated depreciation	56	51
Assets under finance leases		
Marine assets	529	533
Accumulated depreciation	(38)	(22)
Total assets under finance lease, net of accumulated depreciation	491	511
Property, plant and equipment, net of accumulated depreciation	\$ 31,821	\$ 31,528

The following table shows depreciation expense and offsets to LNG terminal costs (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Depreciation expense	\$ 295	\$ 274	\$ 591	\$ 544
Offsets to LNG terminal costs (1)	—	—	—	204

- (1) We recognize offsets to LNG terminal costs related to the sale of commissioning cargoes because these amounts were earned or loaded prior to the start of commercial operations of the respective Trains of the Liquefaction Projects during the testing phase for its construction.

**NOTE 6—DERIVATIVE INSTRUMENTS**

We have entered into the following derivative instruments:

- commodity derivatives consisting of natural gas and power supply contracts, including those under our IPM agreements, for the development, commissioning and operation of the Liquefaction Projects and associated economic hedges (collectively, “Liquefaction Supply Derivatives”);
- LNG derivatives in which we have contractual net settlement and economic hedges on the exposure to the commodity markets in which we have contractual arrangements to purchase or sell physical LNG (collectively, “LNG Trading Derivatives”); and
- foreign currency exchange (“FX”) contracts to hedge exposure to currency risk associated with cash flows denominated in currencies other than United States dollar (“FX Derivatives”), associated with both LNG Trading Derivatives and operations in countries outside of the United States.

We recognize our derivative instruments as either assets or liabilities and measure those instruments at fair value. None of our derivative instruments are designated as cash flow or fair value hedging instruments, and changes in fair value are recorded within our Consolidated Statements of Operations to the extent not utilized for the commissioning process, in which case such changes are capitalized.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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The following table shows the fair value of our derivative instruments that are required to be measured at fair value on a recurring basis (in millions):

	Fair Value Measurements as of							
	June 30, 2023				December 31, 2022			
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Liquefaction Supply Derivatives asset (liability)	\$ 23	\$ 47	\$ (4,611)	\$ (4,541)	\$ (66)	\$ (29)	\$ (9,924)	\$ (10,019)
LNG Trading Derivatives asset (liability)	(8)	(27)	—	(35)	1	(47)	—	(46)
FX Derivatives liability	—	(4)	—	(4)	—	(28)	—	(28)

We value our Liquefaction Supply Derivatives and LNG Trading Derivatives using a market or option-based approach incorporating present value techniques, as needed, using observable commodity price curves, when available, and other relevant data. We value our FX Derivatives with a market approach using observable FX rates and other relevant data.

The fair value of our Liquefaction Supply Derivatives and LNG Trading Derivatives are predominantly driven by observable and unobservable market commodity prices and, as applicable to our natural gas supply contracts, our assessment of the associated events deriving fair value, including, but not limited to, evaluation of whether the respective market exists from the perspective of market participants as infrastructure is developed.

We include a significant portion of our Liquefaction Supply Derivatives as Level 3 within the valuation hierarchy as the fair value is developed through the use of internal models which incorporate significant unobservable inputs. In instances where observable data is unavailable, consideration is given to the assumptions that market participants would use in valuing the asset or liability. This includes assumptions about market risks, such as future prices of energy units for unobservable periods, liquidity and volatility.

The Level 3 fair value measurements of our natural gas positions within our Liquefaction Supply Derivatives could be materially impacted by a significant change in certain natural gas and international LNG prices. The following table includes quantitative information for the unobservable inputs for our Level 3 Liquefaction Supply Derivatives as of June 30, 2023:

	Net Fair Value Liability (in millions)	Valuation Approach	Significant Unobservable Input	Range of Significant Unobservable Inputs / Weighted Average (1)
Liquefaction Supply Derivatives	\$(4,611)	Market approach incorporating present value techniques	Henry Hub basis spread	\$(1.733) - \$0.660 / \$(0.054)
		Option pricing model	International LNG pricing spread, relative to Henry Hub (2)	83% - 484% / 191%

(1) Unobservable inputs were weighted by the relative fair value of the instruments.

(2) Spread contemplates U.S. dollar-denominated pricing.

Increases or decreases in basis or pricing spreads, in isolation, would decrease or increase, respectively, the fair value of our Liquefaction Supply Derivatives.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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The following table shows the changes in the fair value of our Level 3 Liquefaction Supply Derivatives and LNG Trading Derivatives (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Balance, beginning of period	\$ (5,426)	\$ (7,423)	\$ (9,924)	\$ (4,036)
Realized and change in fair value gains (losses) included in net income (loss) (1):				
Included in cost of sales, existing deals (2)	635	(1,407)	4,518	(4,482)
Included in cost of sales, new deals (3)	3	—	9	—
Purchases and settlements:				
Purchases (4)	—	90	—	(242)
Settlements (5)	175	278	780	298
Transfers in and/or out of level 3				
Transfers out of level 3 (6)	2	—	6	—
Balance, end of period	\$ (4,611)	\$ (8,462)	\$ (4,611)	\$ (8,462)
Favorable (unfavorable) changes in fair value relating to instruments still held at the end of the period	\$ 638	\$ (1,407)	\$ 4,527	\$ (4,482)

- (1) Does not include the realized value associated with derivative instruments that settle through physical delivery, as settlement is equal to contractually fixed price from trade date multiplied by contractual volume. See settlements line item in this table.
- (2) Impact to earnings on deals that existed at the beginning of the period and continue to exist at the end of the period.
- (3) Impact to earnings on deals that were entered into during the reporting period and continue to exist at the end of the period.
- (4) Includes any day one gain (loss) recognized during the reporting period on deals that were entered into during the reporting period which continue to exist at the end of the period, in addition to any derivative contracts acquired from entities at a value other than zero on acquisition date, such as derivatives assigned or novated during the reporting period and continuing to exist at the end of the period.
- (5) Roll-off in the current period of amounts recognized in our Consolidated Balance Sheets at the end of the previous period due to settlement of the underlying instruments in the current period.
- (6) Transferred out of Level 3 as a result of observable market for the underlying natural gas purchase agreements.

All existing counterparty derivative contracts provide for the unconditional right of set-off in the event of default. We have elected to report derivative assets and liabilities arising from those derivative contracts with the same counterparty and the unconditional contractual right of set-off on a net basis. The use of derivative instruments exposes us to counterparty credit risk, or the risk that a counterparty will be unable to meet its commitments, in instances when our derivative instruments are in an asset position. Additionally, counterparties are at risk that we will be unable to meet our commitments in instances where our derivative instruments are in a liability position. We incorporate both our own nonperformance risk and the respective counterparty's nonperformance risk in fair value measurements depending on the position of the derivative. In adjusting the fair value of our derivative contracts for the effect of nonperformance risk, we have considered the impact of any applicable credit enhancements, such as collateral postings, set-off rights and guarantees.

#### Commodity Derivatives

SPL and CCL hold Liquefaction Supply Derivatives which are primarily indexed to the natural gas market and international LNG indices. The terms of the Liquefaction Supply Derivatives range up to approximately 15 years, some of which commence upon the satisfaction of certain events or states of affairs.

Cheniere Marketing has historically entered into, and may from time to time enter into, LNG transactions that provide for contractual net settlement. Such transactions are accounted for as LNG Trading Derivatives along with financial commodity contracts in the form of swaps or futures. The terms of LNG Trading Derivatives range up to approximately one year.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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The following table shows the notional amounts of our Liquefaction Supply Derivatives and LNG Trading Derivatives (collectively, “Commodity Derivatives”):

	June 30, 2023		December 31, 2022	
	Liquefaction Supply Derivatives (1)	LNG Trading Derivatives	Liquefaction Supply Derivatives	LNG Trading Derivatives
Notional amount, net (in TBtu)	13,947	10	14,504	50

(1) Excludes notional amounts associated with extension options that were uncertain to be taken as of June 30, 2023.

The following table shows the effect and location of our Commodity Derivatives recorded on our Consolidated Statements of Operations (in millions):

	Consolidated Statements of Operations Location (1)	Gain (Loss) Recognized in Consolidated Statements of Operations			
		Three Months Ended June 30,		Six Months Ended June 30,	
		2023	2022	2023	2022
LNG Trading Derivatives	LNG revenues	\$ (46)	\$ 30	\$ 15	\$ (217)
LNG Trading Derivatives	Recovery (cost) of sales	(3)	17	(87)	107
Liquefaction Supply Derivatives (2)	LNG revenues	(1)	16	(6)	11
Liquefaction Supply Derivatives (2)	Recovery (cost) of sales	826	(1,039)	5,497	(4,500)

(1) Fair value fluctuations associated with commodity derivative activities are classified and presented consistently with the item economically hedged and the nature and intent of the derivative instrument.

(2) Does not include the realized value associated with Liquefaction Supply Derivatives that settle through physical delivery.

#### FX Derivatives

Cheniere Marketing holds FX Derivatives to protect against the volatility in future cash flows attributable to changes in international currency exchange rates. The FX Derivatives economically hedge the foreign currency exposure arising from cash flows expended for both physical and financial LNG transactions that are denominated in a currency other than the United States dollar. The terms of FX Derivatives range up to approximately one year.

The total notional amount of our FX Derivatives was \$414 million and \$619 million as of June 30, 2023 and December 31, 2022, respectively.

The following table shows the effect and location of our FX Derivatives recorded on our Consolidated Statements of Operations (in millions):

	Consolidated Statements of Operations Location	Gain (Loss) Recognized in Consolidated Statements of Operations			
		Three Months Ended June 30,		Six Months Ended June 30,	
		2023	2022	2023	2022
FX Derivatives	LNG revenues	\$ (6)	\$ 39	\$ (8)	\$ 67

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**Fair Value and Location of Derivative Assets and Liabilities on the Consolidated Balance Sheets**

The following table shows the fair value and location of our derivative instruments on our Consolidated Balance Sheets (in millions):

<b>June 30, 2023</b>				
<b>Consolidated Balance Sheets Location</b>	<b>Liquefaction Supply Derivatives (1)</b>	<b>LNG Trading Derivatives (2)</b>	<b>FX Derivatives</b>	<b>Total</b>
Current derivative assets	\$ 67	\$ 26	\$ —	\$ 93
Derivative assets	282	—	—	282
Total derivative assets	349	26	—	375
Current derivative liabilities	(1,150)	(61)	(4)	(1,215)
Derivative liabilities	(3,740)	—	—	(3,740)
Total derivative liabilities	(4,890)	(61)	(4)	(4,955)
Derivative liability, net	\$ (4,541)	\$ (35)	\$ (4)	\$ (4,580)

<b>December 31, 2022</b>				
<b>Consolidated Balance Sheets Location</b>	<b>Liquefaction Supply Derivatives (1)</b>	<b>LNG Trading Derivatives (2)</b>	<b>FX Derivatives</b>	<b>Total</b>
Current derivative assets	\$ 36	\$ 84	\$ —	\$ 120
Derivative assets	35	—	—	35
Total derivative assets	71	84	—	155
Current derivative liabilities	(2,143)	(130)	(28)	(2,301)
Derivative liabilities	(7,947)	—	—	(7,947)
Total derivative liabilities	(10,090)	(130)	(28)	(10,248)
Derivative liability, net	\$ (10,019)	\$ (46)	\$ (28)	\$ (10,093)

- (1) Does not include collateral posted with counterparties by us of \$3 million and \$111 million as of June 30, 2023 and December 31, 2022, respectively, which are included in margin deposits on our Consolidated Balance Sheets, and collateral posted by counterparties to us of \$3 million and zero as of June 30, 2023 and December 31, 2022, respectively, which are included in other current liabilities on our Consolidated Balance Sheets.
- (2) Does not include collateral posted with counterparties by us of \$33 million and \$23 million, as of June 30, 2023 and December 31, 2022, respectively, which are included in margin deposits on our Consolidated Balance Sheets, and collateral posted by counterparties to us of \$2 million and zero as of June 30, 2023 and December 31, 2022, respectively, which are included in other current liabilities on our Consolidated Balance Sheets.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**Consolidated Balance Sheets Presentation**

The following table shows the fair value of our derivatives outstanding on a gross and net basis (in millions) for our derivative instruments that are presented on a net basis on our Consolidated Balance Sheets:

	Liquefaction Supply Derivatives	LNG Trading Derivatives	FX Derivatives
<b>As of June 30, 2023</b>			
Gross assets	\$ 468	\$ 28	\$ —
Offsetting amounts	(119)	(2)	—
Net assets	<u>\$ 349</u>	<u>\$ 26</u>	<u>\$ —</u>
Gross liabilities	\$ (5,020)	\$ (69)	\$ (4)
Offsetting amounts	130	8	—
Net liabilities	<u>\$ (4,890)</u>	<u>\$ (61)</u>	<u>\$ (4)</u>
<b>As of December 31, 2022</b>			
Gross assets	\$ 76	\$ 87	\$ —
Offsetting amounts	(5)	(3)	—
Net assets	<u>\$ 71</u>	<u>\$ 84</u>	<u>\$ —</u>
Gross liabilities	\$ (10,436)	\$ (132)	\$ (29)
Offsetting amounts	346	2	1
Net liabilities	<u>\$ (10,090)</u>	<u>\$ (130)</u>	<u>\$ (28)</u>

**NOTE 7—NON-CONTROLLING INTEREST AND VARIABLE INTEREST ENTITY**

CQP is accounted for as a consolidated VIE. We own a 48.6% limited partner interest in CQP in the form of 239.9 million common units, with the remaining non-controlling limited partner interest held by Blackstone Inc., Brookfield Asset Management Inc. and the public. We also own 100% of the general partner interest and the incentive distribution rights in CQP.



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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The following table presents the summarized assets and liabilities (in millions) of CQP, which are included in our Consolidated Balance Sheets. The assets in the table below may only be used to settle obligations of CQP. In addition, there is no recourse to us for the consolidated VIE's liabilities. The assets and liabilities in the table below include third party assets and liabilities of CQP only and exclude intercompany balances between CQP and Cheniere that eliminate in the Consolidated Financial Statements of Cheniere.

	June 30, 2023	December 31, 2022
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 1,834	\$ 904
Restricted cash and cash equivalents	241	92
Trade and other receivables, net of current expected credit losses	189	627
Other current assets	240	269
Total current assets	2,504	1,892
Property, plant and equipment, net of accumulated depreciation	16,463	16,725
Other non-current assets, net	301	288
Total assets	\$ 19,268	\$ 18,905
<b>LIABILITIES</b>		
Current liabilities		
Accrued liabilities	\$ 561	\$ 1,384
Current debt, net of discount and debt issuance costs	1,796	—
Current derivative liabilities	366	769
Other current liabilities	171	191
Total current liabilities	2,894	2,344
Long-term debt, net of premium, discount and debt issuance costs	15,595	16,198
Derivative liabilities	1,936	3,024
Other non-current liabilities	117	98
Total liabilities	\$ 20,542	\$ 21,664

**NOTE 8—ACCRUED LIABILITIES**

Accrued liabilities consisted of the following (in millions):

	June 30, 2023	December 31, 2022
Natural gas purchases	\$ 416	\$ 1,621
Derivative settlements	6	7
Interest costs and related debt fees	201	383
LNG terminals and related pipeline costs	154	240
Compensation and benefits	88	245
LNG purchases	31	88
Other accrued liabilities	141	95
Total accrued liabilities	\$ 1,037	\$ 2,679

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**NOTE 9—DEBT**

Debt consisted of the following (in millions):

	June 30, 2023	December 31, 2022
<b>SPL:</b>		
Senior Secured Notes:		
5.75% due 2024 (the “2024 SPL Senior Notes”) (1)	\$ 1,800	\$ 2,000
5.625% due 2025	2,000	2,000
5.875% due 2026	1,500	1,500
5.00% due 2027	1,500	1,500
4.200% due 2028	1,350	1,350
4.500% due 2030	2,000	2,000
4.746% weighted average rate due 2037	1,782	1,782
Total SPL Senior Secured Notes	11,932	12,132
Working capital revolving credit and letter of credit reimbursement agreement (the “SPL Working Capital Facility”)	—	—
Revolving credit and guaranty agreement (the “SPL Revolving Credit Facility”)	—	—
<b>Total debt - SPL</b>	11,932	12,132
<b>CQP:</b>		
Senior Notes:		
4.500% due 2029	1,500	1,500
4.000% due 2031	1,500	1,500
3.25% due 2032	1,200	1,200
5.95% due 2033 (the “2033 CQP Senior Notes”)	1,400	—
Total CQP Senior Notes	5,600	4,200
Credit facilities (the “CQP Credit Facilities”)	—	—
Revolving credit and guaranty agreement (the “CQP Revolving Credit Facility”)	—	—
<b>Total debt - CQP</b>	5,600	4,200
<b>CCH:</b>		
Senior Secured Notes:		
7.000% due 2024 (the “2024 CCH Senior Notes”)	—	498
5.875% due 2025	1,491	1,491
5.125% due 2027	1,201	1,271
3.700% due 2029	1,125	1,361
3.788% weighted average rate due 2039	2,539	2,633
Total CCH Senior Secured Notes	6,356	7,254
Term loan facility agreement (the “CCH Credit Facility”)	—	—
Working capital facility agreement (the “CCH Working Capital Facility”) (2)	—	—
<b>Total debt - CCH</b>	6,356	7,254
<b>Cheniere:</b>		
4.625% Senior Notes due 2028	1,500	1,500
Revolving credit agreement (the “Cheniere Revolving Credit Facility”)	—	—
<b>Total debt - Cheniere</b>	1,500	1,500
<b>Cheniere Marketing: trade finance facilities (2)</b>	—	—
<b>Total debt</b>	25,388	25,086
Current portion of long-term debt	(1,796)	(813)
Long-term portion of unamortized premium, discount and debt issuance costs, net	(212)	(218)
<b>Total long-term debt, net of premium, discount and debt issuance costs</b>	\$ 23,380	\$ 24,055

- (1) In July 2023, SPL redeemed \$1.4 billion aggregate principal amount outstanding of the 2024 SPL Senior Notes using contributed proceeds from the 2033 CQP Senior Notes and cash on hand.
- (2) These debt instruments are classified as short-term debt as we are required to reduce the aggregate outstanding principal amount of the CCH Working Capital Facility to zero for a period of five consecutive business days at least once each year, and the borrowings under the Cheniere Marketing trade finance facilities are required to be repaid within 90 days.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**Credit Facilities**

Below is a summary of our committed credit facilities outstanding as of June 30, 2023 (in millions):

	<b>SPL Revolving Credit Facility (1)</b>	<b>CQP Revolving Credit Facility (1)</b>	<b>CCH Credit Facility</b>	<b>CCH Working Capital Facility</b>	<b>Cheniere Revolving Credit Facility (2)</b>
Total facility size	\$ 1,000	\$ 1,000	\$ 3,260	\$ 1,500	\$ 1,250
Less:					
Outstanding balance	—	—	—	—	—
Letters of credit issued	329	—	—	155	—
Available commitment	\$ 671	\$ 1,000	\$ 3,260	\$ 1,345	\$ 1,250
Priority ranking	Senior secured	Senior unsecured	Senior secured	Senior secured	Unsecured
	SOFR plus credit spread adjustment of 0.1%, plus margin of 1.0% - 1.75% or base rate plus 0.0% - 0.75%	SOFR plus credit spread adjustment of 0.1%, plus margin of 1.125% - 2.0% or base rate plus 0.125% - 1.0%	SOFR plus credit spread adjustment of 0.1%, plus margin of 1.5% or base rate plus 0.5%	SOFR plus credit spread adjustment of 0.1%, plus margin of 1.0% - 1.5% or base rate plus 0.0% - 0.5%	SOFR plus credit spread adjustment of 0.1%, plus margin of 1.075% - 2.20% or base rate plus 0.115% - 0.365%
Interest rate on available balance (3)					
Commitment fees on undrawn balance (3)	0.075% - 0.30%	0.10% - 0.30%	0.525%	0.10% - 0.20%	0.115% - 0.365% (4)
Maturity date	June 23, 2028	June 23, 2028	(5)	June 15, 2027	October 28, 2026

- (1) In June 2023, CQP and SPL refinanced and replaced the CQP Credit Facilities and the SPL Working Capital Facility with the CQP Revolving Credit Facility and the SPL Revolving Credit Facility, respectively, resulting in extended maturity dates, revised borrowing capacities, reduced rate of interest and commitment fees applicable thereunder and certain other changes to terms and conditions.
- (2) In June 2023, we amended the Cheniere Revolving Credit Facility to update the indexed interest rate to SOFR.
- (3) The margin on the interest rate and the commitment fees is subject to change based on the applicable entity's credit rating.
- (4) In April 2023, the commitment fees for the Cheniere Revolving Credit Facility were reduced as a result of achieving certain ESG metrics.
- (5) The CCH Credit Facility matures the earlier of June 15, 2029 or two years after the substantial completion of the last Train of the Corpus Christi Stage 3 Project.

The refinancing and the replacement of the CQP Credit Facilities and the SPL Working Capital Facility resulted in an aggregate of \$ million of debt extinguishment and modification costs.

**Restrictive Debt Covenants**

The indentures governing our senior notes and other agreements underlying our debt contain customary terms and events of default and certain covenants that, among other things, may limit us, our subsidiaries' and its restricted subsidiaries' ability to make certain investments or pay dividends or distributions. SPL and CCH are restricted from making distributions under agreements governing their respective indebtedness generally until, among other requirements, appropriate reserves have been established for debt service using cash or letters of credit and a historical debt service coverage ratio and projected debt service coverage ratio of at least 1.25:1.00 is satisfied.

As of June 30, 2023, each of our issuers was in compliance with all covenants related to their respective debt agreements.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
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**Interest Expense**

Total interest expense, net of capitalized interest, consisted of the following (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Total interest cost	\$ 319	\$ 370	\$ 640	\$ 742
Capitalized interest	(28)	(13)	(52)	(36)
Total interest expense, net of capitalized interest	<u>\$ 291</u>	<u>\$ 357</u>	<u>\$ 588</u>	<u>\$ 706</u>

**Fair Value Disclosures**

The following table shows the carrying amount and estimated fair value of our senior notes (in millions):

	June 30, 2023		December 31, 2022	
	Carrying Amount	Estimated Fair Value (1)	Carrying Amount	Estimated Fair Value (1)
Senior notes	\$ 25,388	\$ 24,044	\$ 25,086	\$ 23,500

- (1) As of both June 30, 2023 and December 31, 2022, \$3.0 billion of the fair value of our senior notes included an illiquidity adjustment, which qualified as a Level 3 fair value measurement. The remainder of our senior notes are classified as Level 2, based on prices derived from trades or indicative bids of the instruments or instruments with similar terms, maturities and credit standing.

The estimated fair value of our credit facilities approximates the principal amount outstanding because the interest rates are variable and reflective of market rates and the debt may be repaid, in full or in part, at any time without penalty.

**NOTE 10—LEASES**

Our leased assets consist primarily of LNG vessels leased under time charters (“vessel charters”) and additionally include tug vessels, office space and facilities and land sites. All of our leases are classified as operating leases except for certain of our vessel charters and tug vessels, which are classified as finance leases.

The following table shows the classification and location of our right-of-use assets and lease liabilities on our Consolidated Balance Sheets (in millions):

	Consolidated Balance Sheets Location	June 30, 2023	December 31, 2022
Right-of-use assets—Operating	Operating lease assets	\$ 2,487	\$ 2,625
	Property, plant and equipment, net of accumulated depreciation	491	511
Right-of-use assets—Financing		<u>2,978</u>	<u>3,136</u>
Total right-of-use assets			
Current operating lease liabilities	Current operating lease liabilities	\$ 598	\$ 616
Current finance lease liabilities	Other current liabilities	32	28
Non-current operating lease liabilities	Operating lease liabilities	1,863	1,971
Non-current finance lease liabilities	Finance lease liabilities	483	494
Total lease liabilities		<u>\$ 2,976</u>	<u>\$ 3,109</u>

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

The following table shows the classification and location of our lease costs on our Consolidated Statements of Operations (in millions):

	Consolidated Statements of Operations Location	Three Months Ended June 30,		Six Months Ended June 30,	
		2023	2022	2023	2022
Operating lease cost (a)	Operating costs and expenses (1)	\$ 185	\$ 189	\$ 398	\$ 391
Finance lease cost:					
Amortization of right-of-use assets	Depreciation and amortization expense	11	1	24	2
Interest on lease liabilities	Interest expense, net of capitalized interest	7	3	16	5
Total lease cost		<u>\$ 203</u>	<u>\$ 193</u>	<u>\$ 438</u>	<u>\$ 398</u>
(a) Included in operating lease cost:					
Short-term lease costs		\$ 2	\$ 23	\$ 25	\$ 64
Variable lease costs		2	—	14	9

(1) Presented in cost of sales, operating and maintenance expense or selling, general and administrative expense consistent with the use of the asset under lease.

Future annual minimum lease payments for operating and finance leases as of June 30, 2023 are as follows (in millions):

Years Ending December 31,	Operating Leases	Finance Leases
2023	\$ 338	\$ 32
2024	674	66
2025	554	71
2026	421	75
2027	324	77
Thereafter	524	427
Total lease payments (1)	2,835	748
Less: Interest	(374)	(233)
Present value of lease liabilities	<u>\$ 2,461</u>	<u>\$ 515</u>

(1) Does not include approximately \$4.4 billion of legally binding minimum payments primarily for vessel charters executed as of June 30, 2023, but will commence in future periods with fixed minimum lease terms of up to 15 years.

The following table shows the weighted-average remaining lease term and the weighted-average discount rate for our operating leases and finance leases:

	June 30, 2023		December 31, 2022	
	Operating Leases	Finance Leases	Operating Leases	Finance Leases
Weighted-average remaining lease term (in years)	5.7	10.2	5.9	10.6
Weighted-average discount rate (1)	4.3%	7.7%	4.2%	7.8%

(1) The weighted average discount rate is impacted by certain finance leases that commenced prior to the adoption of the current leasing standard under GAAP. In accordance with previous accounting guidance, the implied rate is based on the fair value of the underlying assets.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

The following table includes other quantitative information for our operating and finance leases (in millions):

	Six Months Ended June 30,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 359	\$ 324
Operating cash flows from finance leases	18	5
Financing cash flows from finance leases	13	—
Right-of-use assets obtained in exchange for operating lease liabilities	177	433
Right-of-use assets obtained in exchange for finance lease liabilities	5	—

*LNG Vessel Subcharters*

We sublease certain LNG vessels under charter to third parties while retaining our existing obligation to the original lessor. All of our sublease arrangements have been assessed as operating leases. The following table shows the sublease income recognized in other revenues on our Consolidated Statements of Operations (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Fixed income	\$ 97	\$ 34	\$ 231	\$ 66
Variable income	13	6	36	25
Total sublease income	\$ 110	\$ 40	\$ 267	\$ 91

Future annual minimum sublease payments to be received from LNG vessel subcharters as of June 30, 2023 are as follows (in millions):

Years Ending December 31,	Sublease Payments
2023	\$ 140
2024	108
2025	—
2026	—
2027	—
Thereafter	—
Total sublease payments	\$ 248

**NOTE 11—REVENUES**

The following table represents a disaggregation of revenue earned (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenues from contracts with customers				
LNG revenues	\$ 3,972	\$ 7,788	\$ 11,009	\$ 15,352
Regasification revenues	33	68	67	136
Other revenues	42	26	70	51
Total revenues from contracts with customers	4,047	7,882	11,146	15,539
Net derivative gain (loss) (1)	(53)	85	1	(139)
Other (2)	108	40	265	91
Total revenues	\$ 4,102	\$ 8,007	\$ 11,412	\$ 15,491

(1) See [Note 6—Derivative Instruments](#) for additional information about our derivatives.

(2) Includes revenues from LNG vessel subcharters. See [Note 10—Leases](#) for additional information about our subleases.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

**Contract Assets and Liabilities**

The following table shows our contract assets, net of current expected credit losses, which are classified as other current assets and other non-current assets, net on our Consolidated Balance Sheets (in millions):

	June 30, 2023	December 31, 2022
Contract assets, net of current expected credit losses	\$ 196	\$ 186

The following table reflects the changes in our contract liabilities, which we classify as deferred revenue and other non-current liabilities on our Consolidated Balance Sheets (in millions):

	Six Months Ended June 30, 2023
Deferred revenue, beginning of period	\$ 320
Cash received but not yet recognized in revenue	239
Revenue recognized from prior period deferral	(320)
Deferred revenue, end of period	\$ 239

**Transaction Price Allocated to Future Performance Obligations**

Because many of our sales contracts have long-term durations, we are contractually entitled to significant future consideration which we have not yet recognized as revenue. The following table discloses the aggregate amount of the transaction price that is allocated to performance obligations that have not yet been satisfied:

	June 30, 2023		December 31, 2022	
	Unsatisfied Transaction Price (in billions)	Weighted Average Recognition Timing (years) (1)	Unsatisfied Transaction Price (in billions)	Weighted Average Recognition Timing (years) (1)
LNG revenues	\$ 113.0	9	\$ 112.0	9
Regasification revenues	0.7	3	0.8	4
Total revenues	\$ 113.7		\$ 112.8	

(1) The weighted average recognition timing represents an estimate of the number of years during which we shall have recognized half of the unsatisfied transaction price.

We have elected the following exemptions which omit certain potential future sources of revenue from the table above:

- (1) We omit from the table above all performance obligations that are part of a contract that has an original expected duration of one year or less.
- (2) The table above excludes substantially all variable consideration under our SPAs and TUAs. We omit from the table above all variable consideration that is allocated entirely to a wholly unsatisfied performance obligation or to a wholly unsatisfied promise to transfer a distinct good or service that forms part of a single performance obligation when that performance obligation qualifies as a series. The amount of revenue from variable fees that is not included in the transaction price will vary based on the future prices of the underlying variable index, primarily Henry Hub, throughout the contract terms, to the extent customers elect to take delivery of their LNG, and adjustments to the consumer price index. Certain of our contracts contain additional variable consideration based on the outcome of contingent events and the movement of various indexes. We have not included such variable consideration in the transaction price to the extent the consideration is considered constrained due to the uncertainty of ultimate pricing and receipt. Additionally, we have excluded variable consideration related to contracts where there is uncertainty that one or both of the parties will achieve certain milestones. Approximately 64% and 74% of our LNG revenues from contracts included in the table above during the three months ended June 30, 2023 and 2022, respectively, and approximately 73% and 70% of our LNG revenues from contracts included in the table above during the six months ended June 30, 2023 and 2022, respectively, were related to variable consideration received from customers. During the three and six months ended June 30, 2023, approximately 7% of our regasification revenues were related to variable consideration received from customers and during the three and six months ended June 30, 2022, approximately 6%, of our regasification revenues were related to variable consideration received from customers.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

We may enter into contracts to sell LNG that are conditioned upon one or both of the parties achieving certain milestones such as reaching FID on a certain liquefaction Train, obtaining financing or achieving substantial completion of a Train and any related facilities. These contracts are considered completed contracts for revenue recognition purposes and are included in the transaction price above when the conditions are considered probable of being met.

**NOTE 12—RELATED PARTY TRANSACTIONS**

Below is a summary of our related party transactions, all in the ordinary course of business, as reported on our Consolidated Statements of Operations (in millions):

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
<b>LNG Revenues</b>				
Natural Gas Transportation and Storage Agreements with a related party through Brookfield Asset Management, Inc. ("Brookfield") (1)	\$ —	\$ 4	\$ —	\$ 4
<b>Other revenues</b>				
Operation and Maintenance Services Agreements with Midship Pipeline Company, LLC ("Midship Pipeline") (2)	2	2	5	4
<b>Cost of sales</b>				
Natural Gas Transportation and Storage Agreements with a related party through Brookfield (1)	—	1	—	1
<b>Operating and maintenance expense</b>				
Natural Gas Transportation and Storage Agreements with Midship Pipeline (2)	2	3	4	5
Natural Gas Transportation and Storage Agreements with a related party through Brookfield (1)	14	15	30	27

- (1) This related party is partially owned by Brookfield, who indirectly owns a portion of CQP's limited partner interests.
- (2) Midship Pipeline is a subsidiary of Midship Holdings, LLC, which we recognize as an equity method investment.

Below is a summary of our related party balances, all in the ordinary course of business, as reported on our Consolidated Balance Sheets (in millions):

	<b>June 30,</b>	<b>December 31,</b>
	<b>2023</b>	<b>2022</b>
Trade and other receivables, net of current expected credit losses	\$ 2	\$ 1
Accrued liabilities	5	1

**NOTE 13—INCOME TAXES**

We recorded an income tax provision of \$363 million and \$1.7 billion during the three and six months ended June 30, 2023, respectively, and an income tax provision (benefit) of \$181 million and \$(10) million for the same periods of 2022, which was calculated using the annual effective tax rate method.

Our effective tax rate was 17.5% and 17.1% for the three and six months ended June 30, 2023, respectively, as compared to 16.5% and (8.2)% for the same periods of 2022. The effective tax rate for the periods was lower than the statutory tax rate of 21% primarily due to CQP income that is not taxable to us. The effective tax rate for the six months ended June 30, 2022 was also impacted by discrete tax benefits primarily related to stock-based compensation awards.



**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

We are not subject to the 15% corporate alternative minimum tax (“CAMT”) in 2023 based on enacted law and regulatory guidance; however, our CAMT status for 2023 could change in the future, depending on new regulations or regulatory guidance issued by the U.S. Department of the Treasury.

**NOTE 14—NET INCOME (LOSS) PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS**

The following table reconciles basic and diluted weighted average common shares outstanding and common stock dividends declared (in millions, except per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net income (loss) attributable to common stockholders	\$ 1,369	\$ 741	\$ 6,803	\$ (124)
Weighted average common shares outstanding:				
Basic	242.3	253.6	243.1	253.8
Dilutive unvested stock	1.5	2.3	1.7	—
Diluted	243.8	255.9	244.8	253.8
Net income (loss) per share attributable to common stockholders—basic (1)	\$ 5.65	\$ 2.92	\$ 27.99	\$ (0.49)
Net income (loss) per share attributable to common stockholders—diluted (1)	\$ 5.61	\$ 2.90	\$ 27.79	\$ (0.49)
Dividends paid per common share	\$ 0.395	\$ 0.33	\$ 0.790	\$ 0.66

(1) Earnings per share in the table may not recalculate exactly due to rounding because it is calculated based on whole numbers, not the rounded numbers presented.

On July 28, 2023, we declared a quarterly dividend of \$0.395 per share of common stock that is payable on August 16, 2023 to stockholders of record as of the close of business on August 9, 2023.

Potentially dilutive securities that were not included in the diluted net income (loss) per share computations because their effects would have been anti-dilutive were as follows (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Unvested stock (1)	—	—	—	2.1
4.25% Convertible Senior Notes due 2045 (the “2045 Cheniere Convertible Senior Notes”) (2)	—	—	—	0.3
Total potentially dilutive common shares	—	—	—	2.4

(1) Includes the impact of unvested shares containing performance conditions to the extent that the underlying performance conditions are satisfied based on actual results as of the respective dates.

(2) The 2045 Cheniere Convertible Senior Notes were redeemed or converted in cash on January 5, 2022. However, the adoption of ASU 2020-06 on January 1, 2022 required a presumption of share settlement for the purpose of calculating the impact to diluted earnings per share during the period the notes were outstanding in 2022. Such impact was anti-dilutive as a result of the reported net loss attributable to common stockholders during the 2022 period.

**CHENIERE ENERGY, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—CONTINUED**  
(unaudited)

**NOTE 15—SHARE REPURCHASE PROGRAMS**

On September 7, 2021, our board of directors (our “Board”) authorized a reset in the previously existing share repurchase program to \$1.0 billion, inclusive of any amounts remaining under the previous authorization as of September 30, 2021, for an additional three years beginning on October 1, 2021. On September 12, 2022, our Board authorized an increase in the existing share repurchase program by \$4.0 billion for an additional three years, beginning on October 1, 2022. The following table presents information with respect to common stock repurchased under our share repurchase program (in millions, except per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Total shares repurchased	2.30	4.13	5.36	4.37
Weighted average price paid per share	\$ 146.56	\$ 130.64	\$ 146.90	\$ 129.20
Total cost of repurchases (1)	\$ 337	\$ 540	\$ 788	\$ 565

(1) Amount excludes associated commission fees and excise taxes incurred, which are excluded costs under the repurchase program.

As of June 30, 2023, we had approximately \$2.8 billion remaining under our share repurchase program.

**NOTE 16—CUSTOMER CONCENTRATION**

The concentration of our customer credit risk in excess of 10% of total revenues and/or trade and other receivables, net of current expected credit losses and contract assets, net of current expected credit losses was as follows:

	Percentage of Total Revenues from External Customers				Percentage of Trade and Other Receivables, Net and Contract Assets, Net from External Customers	
	Three Months Ended June 30,		Six Months Ended June 30,		June 30,	December 31,
	2023	2022	2023	2022	2023	2022
Customer A	*	*	*	*	17%	*
Customer B	*	*	*	*	13%	*

\* Less than 10%

**NOTE 17—SUPPLEMENTAL CASH FLOW INFORMATION**

The following table provides supplemental disclosure of cash flow information (in millions):

	Six Months Ended June 30,	
	2023	2022
Cash paid during the period for interest on debt, net of amounts capitalized	\$ 685	\$ 669
Cash paid for income taxes, net	54	11
Non-cash investing activity:		
Unpaid purchases of property, plant and equipment, net	53	189
Share-based compensation capitalized to property, plant and equipment	3	2
Transfers of property, plant and equipment in exchange for other non-current assets	—	17
Non-cash financing activity:		
Unpaid dividends declared on unvested common stock	2	2
Unpaid repurchases of treasury stock inclusive of excise taxes	19	—

See [Note 10—Leases](#) for supplemental cash flow information related to our leases.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Information Regarding Forward-Looking Statements

This quarterly report contains certain statements that are, or may be deemed to be, “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements, other than statements of historical or present facts or conditions, included herein or incorporated herein by reference are “forward-looking statements.” Included among “forward-looking statements” are, among other things:

- statements that we expect to commence or complete construction of our proposed LNG terminals, liquefaction facilities, pipeline facilities or other projects, or any expansions or portions thereof, by certain dates, or at all;
- statements regarding future levels of domestic and international natural gas production, supply or consumption or future levels of LNG imports into or exports from North America and other countries worldwide or purchases of natural gas, regardless of the source of such information, or the transportation or other infrastructure or demand for and prices related to natural gas, LNG or other hydrocarbon products;
- statements regarding any financing transactions or arrangements, or our ability to enter into such transactions;
- statements relating to Cheniere's capital deployment, including intent, ability, extent, and timing of capital expenditures, debt repayment, dividends, share repurchases and execution on the capital allocation plan;
- statements regarding our future sources of liquidity and cash requirements;
- statements relating to the construction of our Trains and pipelines, including statements concerning the engagement of any EPC contractor or other contractor and the anticipated terms and provisions of any agreement with any EPC or other contractor, and anticipated costs related thereto;
- statements regarding any SPA or other agreement to be entered into or performed substantially in the future, including any revenues anticipated to be received and the anticipated timing thereof, and statements regarding the amounts of total LNG regasification, natural gas liquefaction or storage capacities that are, or may become, subject to contracts;
- statements regarding counterparties to our commercial contracts, construction contracts and other contracts;
- statements regarding our planned development and construction of additional Trains or pipelines, including the financing of such Trains or pipelines;
- statements that our Trains, when completed, will have certain characteristics, including amounts of liquefaction capacities;
- statements regarding our business strategy, our strengths, our business and operation plans or any other plans, forecasts, projections, or objectives, including anticipated revenues, capital expenditures, maintenance and operating costs and cash flows, any or all of which are subject to change;
- statements regarding legislative, governmental, regulatory, administrative or other public body actions, approvals, requirements, permits, applications, filings, investigations, proceedings or decisions;
- statements regarding our anticipated LNG and natural gas marketing activities; and
- any other statements that relate to non-historical or future information.

All of these types of statements, other than statements of historical or present facts or conditions, are forward-looking statements. In some cases, forward-looking statements can be identified by terminology such as “may,” “will,” “could,” “should,” “achieve,” “anticipate,” “believe,” “contemplate,” “continue,” “estimate,” “expect,” “intend,” “plan,” “potential,” “predict,” “project,” “pursue,” “target,” the negative of such terms or other comparable terminology. The forward-looking statements contained in this quarterly report are largely based on our expectations, which reflect estimates and assumptions made by our management. These estimates and assumptions reflect our best judgment based on currently known market conditions and other factors. Although we believe that such estimates are reasonable, they are inherently uncertain and involve a number of risks and uncertainties beyond our control. In addition, assumptions may prove to be inaccurate. We caution that the forward-looking statements contained in this quarterly report are not guarantees of future performance and that such

statements may not be realized or the forward-looking statements or events may not occur. Actual results may differ materially from those anticipated or implied in forward-looking statements as a result of a variety of factors described in this quarterly report and in the other reports and other information that we file with the SEC, including those discussed under “Risk Factors” in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#). All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by these risk factors. These forward-looking statements speak only as of the date made, and other than as required by law, we undertake no obligation to update or revise any forward-looking statement or provide reasons why actual results may differ, whether as a result of new information, future events or otherwise.

## Introduction

The following discussion and analysis presents management’s view of our business, financial condition and overall performance and should be read in conjunction with our Consolidated Financial Statements and the accompanying notes. This information is intended to provide investors with an understanding of our past performance, current financial condition and outlook for the future.

Our discussion and analysis includes the following subjects:

- [Overview](#)
- [Overview of Significant Events](#)
- [Results of Operations](#)
- [Liquidity and Capital Resources](#)
- [Summary of Critical Accounting Estimates](#)
- [Recent Accounting Standards](#)

## Overview

Cheniere, a Delaware corporation, is a Houston-based energy infrastructure company primarily engaged in LNG-related businesses. We provide clean, secure and affordable LNG to integrated energy companies, utilities and energy trading companies around the world. We aspire to conduct our business in a safe and responsible manner, delivering a reliable, competitive and integrated source of LNG to our customers.

LNG is natural gas (methane) in liquid form. The LNG we produce is shipped all over the world, turned back into natural gas (called “regasification”) and then transported via pipeline to homes and businesses and used as an energy source that is essential for heating, cooking, other industrial uses and back up for intermittent energy sources. Natural gas is a cleaner-burning, abundant and affordable source of energy. When LNG is converted back to natural gas, it can be used instead of coal, which reduces the amount of pollution traditionally produced from burning fossil fuels, like sulfur dioxide and particulate matter that enters the air we breathe. Additionally, compared to coal, it produces significantly fewer carbon emissions. By liquefying natural gas, we are able to reduce its volume by 600 times so that we can load it onto special LNG carriers designed to keep the LNG cold and in liquid form for efficient transport overseas.

We are the largest producer of LNG in the United States and the second largest LNG operator globally, based on the total production capacity of our liquefaction facilities, which totals approximately 45 mtpa as of June 30, 2023.

We own and operate a natural gas liquefaction and export facility located in Cameron Parish, Louisiana at Sabine Pass (the “Sabine Pass LNG Terminal”), one of the largest LNG production facilities in the world, through our ownership interest in and management agreements with CQP, which is a publicly traded limited partnership that we formed in 2007. As of June 30, 2023, we owned 100% of the general partner interest and a 48.6% limited partner interest in CQP. The Sabine Pass LNG Terminal has six operational Trains, for a total production capacity of approximately 30 mtpa of LNG (the “SPL Project”). The Sabine Pass LNG Terminal also has three marine berths, two of which can accommodate vessels with nominal capacity of up to 266,000 cubic meters and the third berth which can accommodate vessels with nominal capacity of up to 200,000 cubic meters, operational regasification facilities that include five LNG storage tanks with aggregate capacity of approximately 17 Bcfe and vaporizers with regasification capacity of approximately 4 Bcf/d. The Sabine Pass LNG Terminal also includes a 94-mile pipeline owned by CTPL, a subsidiary of CQP, that interconnects our facilities to several interstate and intrastate pipelines (the “Creole Trail Pipeline”).

We also own and operate a natural gas liquefaction and export facility located near Corpus Christi, Texas (the “Corpus Christi LNG Terminal”) through CCL, which has natural gas liquefaction facilities consisting of three operational Trains for a total production capacity of approximately 15 mtpa of LNG, three LNG storage tanks with aggregate capacity of approximately 10 Bcfe and two marine berths that can each accommodate vessels with nominal capacity of up to 266,000 cubic meters. Additionally, we are constructing an expansion of the Corpus Christi LNG Terminal (the “Corpus Christi Stage 3 Project”) for up to seven midscale Trains with an expected total production capacity of over 10 mtpa of LNG. In June 2022, our board of directors (our “Board”) made a positive FID with respect to the Corpus Christi Stage 3 Project and issued a full notice to proceed with construction to Bechtel Energy Inc. (“Bechtel”) effective June 16, 2022. We also own and operate through CCP a 21.5-mile natural gas supply pipeline that interconnects the Corpus Christi LNG Terminal with several interstate and intrastate natural gas pipelines (the “Corpus Christi Pipeline”) and together with the Corpus Christi LNG Terminal and the Corpus Christi Stage 3 Project, the “CCL Project”).

Our long-term customer arrangements form the foundation of our business and provide us with significant, stable, long-term cash flows. We have contracted substantially all of our anticipated production capacity under SPAs, in which our customers are generally required to pay a fixed fee with respect to the contracted volumes irrespective of their election to cancel or suspend deliveries of LNG cargoes, and under IPM agreements, in which the gas producer sells natural gas to us on a global LNG index price, less a fixed liquefaction fee, shipping and other costs. Through our SPAs and IPM agreements, we have contracted approximately 95% of the total anticipated production from the SPL Project and the CCL Project (collectively, the “Liquefaction Projects”) through the mid-2030s, excluding contracts executed to support additional liquefaction capacity beyond what is currently in construction or operation. Excluding contracts with terms less than 10 years and contracts executed to support additional liquefaction capacity beyond what is currently in construction or operation, our SPAs and IPM agreements had approximately 16 years of weighted average remaining life as of June 30, 2023. We also market and sell LNG produced by the Liquefaction Projects that is not contracted by CCL or SPL through our integrated marketing function. The majority of our contracts are fixed-priced, long-term SPAs consisting of a fixed fee per MMBtu of LNG plus a variable fee per MMBtu of LNG, with the variable fees generally structured to cover the cost of natural gas purchases and transportation and liquefaction fuel to produce LNG, thus limiting our exposure to fluctuations in U.S. natural gas prices. We continue to grow our portfolio of SPA and IPM agreements, and we believe that continued global demand for natural gas and LNG will provide a foundation for additional growth in our portfolio of customer contracts in the future.

We remain focused on safety, operational excellence and customer satisfaction. Increasing demand for LNG has allowed us to expand our liquefaction infrastructure in a financially disciplined manner. We have increased available liquefaction capacity at our Liquefaction Projects as a result of debottlenecking and other optimization projects. We hold significant land positions at both the Sabine Pass LNG Terminal and the Corpus Christi LNG Terminal, which provide opportunity for further liquefaction capacity expansion. In March 2023, certain of our subsidiaries submitted an application with the FERC under the Natural Gas Act (“NGA”) for an expansion adjacent to the CCL Project consisting of two midscale Trains with an expected total production capacity of approximately 3 mtpa of LNG (the “CCL Midscale Trains 8 & 9 Project”). Additionally, in May 2023, certain subsidiaries of CQP entered the pre-filing review process with the FERC under the National Environmental Policy Act (“NEPA”) for an expansion adjacent to the SPL Project consisting of up to three Trains with an expected total production capacity of approximately 20 mtpa of LNG (the “SPL Expansion Project”). The development of the CCL Midscale Trains 8 & 9 Project, the SPL Expansion Project or other projects, including infrastructure projects in support of natural gas supply and LNG demand, will require, among other things, acceptable commercial and financing arrangements before we make a positive FID.

Additionally, we are committed to the responsible and proactive management of our most important environmental, social and governance (“ESG”) impacts, risks and opportunities. In 2022, we published *Acting Today, Securing Tomorrow*, our third Corporate Responsibility (“CR”) report, which details our approach and progress on ESG issues, including our collaboration with natural gas midstream companies, technology providers and leading academic institutions on life-cycle assessment (“LCA”) models, quantification, monitoring, reporting and verification (“QMRV”) of greenhouse gas emissions and other research and development projects. We also co-founded and sponsored the Energy Emissions Modeling and Data Lab (“EEMDL”), a multidisciplinary research and education initiative led by the University of Texas at Austin in collaboration with Colorado State University and the Colorado School of Mines. In addition, we commenced providing Cargo Emissions Tags (“CE Tags”) to our long-term customers in June 2022 and joined the Oil and Gas Methane Partnership (“OGMP”) 2.0, the United Nations Environment Programme’s (“UNEP”) flagship oil and gas methane emissions reporting and mitigation initiative, in October 2022. Our CR report is available at [cheniere.com/our-responsibility/reporting-center](https://cheniere.com/our-responsibility/reporting-center). Information on our website, including the CR report, is not incorporated by reference into this Quarterly Report on Form 10-Q.

## Overview of Significant Events

Our significant events since January 1, 2023 and through the filing date of this Form 10-Q include the following:

### *Strategic*

- Cheniere Marketing entered into long-term SPAs with ENN LNG (Singapore) Pte. Ltd., Equinor ASA and Korea Southern Power Co. Ltd. with estimated volumes aggregating up to approximately 76 million tonnes of LNG and expected deliveries between 2026 and 2049. Approximately 43 million tonnes is subject to Cheniere making a positive FID on the first train of the SPL Expansion Project. Each of these SPAs permit Cheniere Marketing to assign or novate the agreement to certain affiliates at a later date.
- In May 2023, certain subsidiaries of CQP entered the pre-filing review process with the FERC under the NEPA for the SPL Expansion Project, and in April 2023, one of our subsidiaries executed a contract with Bechtel to provide the front end engineering and design work on the project.
- In April 2023, certain of our subsidiaries filed an application with the DOE with respect to the CCL Midscale Trains 8 & 9 Project, requesting authorization to export LNG to FTA countries and non-FTA countries.
- In March 2023, certain of our subsidiaries submitted an application with the FERC under the NGA for the CCL Midscale Trains 8 & 9 Project.
- On January 2, 2023, Corey Grindal, formerly Executive Vice President, Worldwide Trading, was promoted to Executive Vice President and Chief Operating Officer of the Company.

### *Operational*

- As of July 27, 2023, over 2,900 cumulative LNG cargoes totaling approximately 200 million tonnes of LNG have been produced, loaded and exported from the Liquefaction Projects.

### *Financial*

- In July 2023, Fitch Ratings upgraded its issuer credit rating of CCH from BBB- to BBB with a stable outlook.
- In June 2023, CQP entered into a \$1.0 billion Senior Unsecured Revolving Credit and Guaranty Agreement (the “CQP Revolving Credit Facility”), and SPL entered into a \$1.0 billion Senior Secured Revolving Credit and Guaranty Agreement (the “SPL Revolving Credit Facility”). The CQP Revolving Credit Facility and SPL Revolving Credit Facility each refinanced and replaced the respective existing credit facilities to, among other things, (1) extend the maturity date thereunder, (2) reduce the rate of interest and commitment fees applicable thereunder and (3) make certain other changes to the terms and conditions of the prior credit facilities.
- In June 2023, CQP issued \$1.4 billion aggregate principal amount of 5.95% Senior Notes due 2033 (the “2033 CQP Senior Notes”). Using contributed proceeds from the 2033 CQP Senior Notes together with cash on hand, SPL redeemed \$1.4 billion of its 5.75% Senior Secured Notes due 2024 (the “2024 SPL Senior Notes”) in July 2023.
- In January 2023, we achieved our second issuer investment grade credit rating from Fitch Ratings of BBB- with a stable outlook. In February 2023, S&P Global Ratings upgraded its issuer credit rating of SPL from BBB to BBB+ with a stable outlook.
- During the three and six months ended June 30, 2023, we accomplished the following pursuant to our capital allocation priorities:
  - We prepaid \$201 million and \$1.1 billion, respectively, of consolidated long-term indebtedness pursuant to our capital allocation plan, inclusive of \$201 million and \$600 million, respectively, of debt repurchases in the open market.
  - We repurchased approximately 2.3 million shares and 5.4 million shares, respectively, of our common stock as part of our share repurchase program for \$337 million and \$788 million, respectively.

- We paid dividends of \$0.395 and \$0.790 per share of common stock during the three and six months ended June 30, 2023, respectively.
- We continued to invest in accretive organic growth, including the Corpus Christi Stage 3 Project, as further described under *Investing Cash Flows* in [Sources and Uses of Cash](#) within Liquidity and Capital Resources.

## Results of Operations

### Consolidated results of operations

(in millions, except per share data)	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
Revenues						
LNG revenues	\$ 3,919	\$ 7,873	\$ (3,954)	\$ 11,010	\$ 15,213	\$ (4,203)
Regasification revenues	33	68	(35)	67	136	(69)
Other revenues	150	66	84	335	142	193
Total revenues	4,102	8,007	(3,905)	11,412	15,491	(4,079)
Operating costs and expenses (recoveries)						
Cost (recovery) of sales (excluding items shown separately below)	912	5,752	(4,840)	(627)	13,088	(13,715)
Operating and maintenance expense	487	419	68	931	808	123
Selling, general and administrative expense	87	77	10	194	173	21
Depreciation and amortization expense	297	276	21	594	547	47
Other	11	6	5	21	11	10
Total operating costs and expenses	1,794	6,530	(4,736)	1,113	14,627	(13,514)
Income from operations	2,308	1,477	831	10,299	864	9,435
Other income (expense)						
Interest expense, net of capitalized interest	(291)	(357)	66	(588)	(706)	118
Gain (loss) on modification or extinguishment of debt	(2)	(28)	26	18	(46)	64
Interest rate derivative gain (loss), net	—	(1)	1	—	2	(2)
Interest income	55	7	48	89	8	81
Other income (expense), net	—	(4)	4	3	—	3
Total other expense	(238)	(383)	145	(478)	(742)	264
Income before income taxes and non-controlling interest	2,070	1,094	976	9,821	122	9,699
Less: income tax provision (benefit)	363	181	182	1,679	(10)	1,689
Net income	1,707	913	794	8,142	132	8,010
Less: net income attributable to non-controlling interest	338	172	166	1,339	256	1,083
Net income (loss) attributable to common stockholders	\$ 1,369	\$ 741	\$ 628	\$ 6,803	\$ (124)	\$ 6,927
Net income (loss) per share attributable to common stockholders—basic	\$ 5.65	\$ 2.92	\$ 2.73	\$ 27.99	\$ (0.49)	\$ 28.48
Net income (loss) per share attributable to common stockholders—diluted	\$ 5.61	\$ 2.90	\$ 2.71	\$ 27.79	\$ (0.49)	\$ 28.28

### Operational volumes loaded and recognized from the Liquefaction Projects

(in TBtu)	Three Months Ended June 30,			Six Months Ended June 30, 2023		
	2023	2022	Variance	2023	2022	Variance
Volumes loaded during the current period	534	564	(30)	1,136	1,136	—
Volumes loaded during the prior period but recognized during the current period	39	40	(1)	56	49	7
Less: volumes loaded during the current period and in transit at the end of the period	(26)	(34)	8	(26)	(34)	8
Total volumes recognized in the current period	547	570	(23)	1,166	1,151	15

### Components of LNG revenues and corresponding LNG volumes delivered

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	2022	Variance	2023	2022	Variance
LNG revenues (in millions):						
LNG from the Liquefaction Projects sold under third party long-term agreements (1)	\$ 2,752	\$ 5,430	\$ (2,678)	\$ 6,492	\$ 9,568	\$ (3,076)
LNG from the Liquefaction Projects sold by our integrated marketing function under short-term agreements	1,037	2,171	(1,134)	4,281	5,269	(988)
LNG procured from third parties	132	135	(3)	132	393	(261)
Net derivative gains (losses)	(53)	85	(138)	1	(139)	140
Other revenues	51	52	(1)	104	122	(18)
Total LNG revenues	\$ 3,919	\$ 7,873	\$ (3,954)	\$ 11,010	\$ 15,213	\$ (4,203)
Volumes delivered as LNG revenues (in TBtu):						
LNG from the Liquefaction Projects sold under third party long-term agreements (1)	495	487	8	1,006	957	49
LNG from the Liquefaction Projects sold by our integrated marketing function under short-term agreements	52	83	(31)	160	194	(34)
LNG procured from third parties	14	4	10	14	15	(1)
Total volumes delivered as LNG revenues	561	574	(13)	1,180	1,166	14

(1) Long-term agreements include agreements with an initial tenure of 12 months or more.

### Net income (loss) attributable to common stockholders

The favorable variances of \$628 million and \$6.9 billion for the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, were primarily attributable to:

- favorable variances of \$1.7 billion and \$9.9 billion (before tax and the impact of non-controlling interest) between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, from changes in fair value and settlement of derivatives between the periods, to gains of \$770 million and \$5.4 billion in the three and six months ended June 30, 2023, respectively, from losses of \$937 million and \$4.5 billion in the three and six months ended June 30, 2022, respectively, primarily related to non-cash favorable changes in fair value of our IPM agreements where we procure natural gas at a price indexed to international gas prices as a result of continued moderation of international gas price volatility and declines in international forward commodity curves.

The favorable variances were offset by:

- unfavorable variances of \$182 million and \$1.7 billion in income tax provision (benefit) between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022;
- increases in net income attributable to non-controlling interest of \$166 million and \$1.1 billion between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022; and



- decreased LNG revenues, net of cost (recovery) of sales and excluding the effect of derivatives (as further described above), of \$820 million and \$428 million between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, the majority of which was attributable to lower margins on LNG delivered.

The following is an additional discussion of the significant drivers of the variance in net income (loss) attributable to common stockholders by line item:

#### ***Revenues***

The decreases of \$3.9 billion and \$4.1 billion between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, were primarily attributable to:

- decreased Henry Hub pricing, which contributed \$2.8 billion and \$3.6 billion decreases between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, for which the majority of our long-term contracts are indexed; and
- decreases of \$1.1 billion and \$1.2 billion between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, in revenues generated by our marketing function due to a reduction of volumes sold under short-term agreements and declining international prices.

#### ***Operating costs and expenses (recoveries)***

The \$4.7 billion and \$13.5 billion favorable variances between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, were primarily attributable to:

- \$1.8 billion and \$9.8 billion favorable variances between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, from changes in fair value and settlements of derivatives included in cost of sales, from \$1.0 billion and \$4.4 billion of losses in the three and six months ended June 30, 2022, respectively, to \$822 million and \$5.4 billion of gains in the three and six months ended June 30, 2023, respectively, primarily related to non-cash favorable changes in fair value of our IPM agreements as described above under the caption *Net income (loss) attributable to common stockholders*; and
- \$3.0 billion and \$3.9 billion decreases between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, in cost of sales excluding the effect of derivative changes described above, primarily as a result of \$3.0 billion and \$4.0 billion, respectively, in decreased cost of natural gas feedstock largely due to lower U.S. natural gas prices.

The favorable variances were partially offset by increases in operating and maintenance expense of \$68 million and \$123 million for the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022. For the three months ended June 30, 2023, increases in operating and maintenance expense were primarily due to the completion of planned large-scale maintenance activities on two trains at the SPL Project during June 2023. Further contributing to the increase in operating and maintenance expense during the six months ended June 30, 2023 was other third party service and maintenance contract costs and natural gas transportation and storage capacity demand charges.

#### ***Other income (expense)***

The \$145 million and \$264 million favorable variances between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, were primarily attributable to:

- \$66 million and \$118 million decreases in interest expense, net of capitalized interest between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, as a result of lower debt balances due to repayment of debt in accordance with our capital allocation plan and lower interest costs due to refinancing higher cost debt;
- \$48 million and \$81 million increases in interest income between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022 attributable to higher interest income earned on cash and cash equivalents from higher interest rates in 2023; and
- \$26 million and \$64 million favorable variances in gain (loss) on modification or extinguishment of debt between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, primarily due to

higher losses recognized from the amendment and restatement of CCH's term loan facility agreement (the "CCH Credit Facility") and CCH's working capital facility agreement (the "CCH Working Capital Facility") during the second quarter of 2022 and the redemption of our 4.25% Convertible Senior Notes due in 2045 (the "2045 Cheniere Convertible Senior Notes") during the first quarter of 2022, as compared to a minimal loss recognized in the second quarter of 2023. Further contributing to the favorable variance during the six months ended June 30, 2023 was a reduction in premiums paid for the early redemption or repayment of debt principal, as further detailed under *Financing Cash Flows* in [Sources and Uses of Cash](#) within Liquidity and Capital Resources.

#### ***Income tax provision (benefit)***

The \$182 million and \$1.7 billion unfavorable variances between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, were primarily attributable to an increase in pre-tax income.

Our effective tax rate was 17.5% and 17.1% for the three and six months ended June 30, 2023, respectively, as compared to 16.5% and (8.2)% for the three and six months ended June 30, 2022, respectively. Our effective tax rate was less than the statutory tax rate of 21% primarily due to CQP income that is not taxable to us. The effective tax rate for the six months ended June 30, 2022 was also impacted by discrete tax benefits primarily related to stock-based compensation awards.

#### ***Net income attributable to non-controlling interest***

The \$166 million and \$1.1 billion increase between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022, was primarily attributable to \$280 million and \$2.1 billion increase in CQP's consolidated net income between the three and six months ended June 30, 2023, respectively, as compared to the same periods of 2022.

#### ***Significant factors affecting our results of operations***

Below are significant factors that affect our results of operations.

##### *Gains and losses on derivative instruments*

Derivative instruments, which in addition to managing exposure to commodity-related marketing and price risks are utilized to manage exposure to changing interest rates and foreign exchange volatility, are reported at fair value on our Consolidated Financial Statements. For commodity derivative instruments related to our IPM agreements, the underlying LNG sales being economically hedged are accounted for under the accrual method of accounting, whereby revenues expected to be derived from the future LNG sales are recognized only upon delivery or realization of the underlying transaction. Because the recognition of derivative instruments at fair value has the effect of recognizing gains or losses relating to future period exposure, and given the significant volumes, long-term duration and volatility in price basis for certain of our derivative contracts, use of derivative instruments may result in continued volatility of our results of operations based on changes in market pricing, counterparty credit risk and other relevant factors that may be outside of our control, notwithstanding the operational intent to mitigate risk exposure over time.

##### *Commissioning cargoes*

Prior to substantial completion of a Train, amounts received from the sale of commissioning cargoes from that Train are offset against LNG terminal construction-in-process, because these amounts are earned or loaded during the testing phase for the construction of that Train. During the six months ended June 30, 2022, we realized offsets to LNG terminal costs of \$204 million corresponding to 15 TBtu attributable to the sale of commissioning cargoes from Train 6 of the SPL Project. We did not have any commissioning cargoes during the three months ended June 30, 2022 or the three and six months ended June 30, 2023.

## Liquidity and Capital Resources

The following information describes our ability to generate and obtain adequate amounts of cash to meet our requirements in the short term and the long term. In the short term, we expect to meet our cash requirements using operating cash flows and available liquidity, consisting of cash and cash equivalents, restricted cash and cash equivalents and available commitments under our credit facilities. Additionally, we expect to meet our long term cash requirements by using operating cash flows and other future potential sources of liquidity, which may include debt and equity offerings by us or our subsidiaries. The table below provides a summary of our available liquidity (in millions). Future material sources of liquidity are discussed below.

	June 30, 2023
Cash and cash equivalents (1)	\$ 4,529
Restricted cash and cash equivalents designated for the following purposes:	
SPL Project	241
CCL Project	152
Cash held by our subsidiaries that is restricted to Cheniere	247
Total restricted cash and cash equivalents	640
Available commitments under our credit facilities (2):	
SPL Revolving Credit Facility	671
CQP Revolving Credit Facility	1,000
CCH Credit Facility	3,260
CCH Working Capital Facility	1,345
Cheniere's revolving credit agreement (the "Cheniere Revolving Credit Facility")	1,250
Total available commitments under our credit facilities	7,526
Total available liquidity	\$ 12,695

- (1) Amounts presented include balances held by our consolidated variable interest entity, CQP, as discussed in [Note 7—Non-controlling Interest and Variable Interest Entity](#) of our Notes to Consolidated Financial Statements. As of June 30, 2023, assets of CQP, which are included in our Consolidated Balance Sheets, included \$1.8 billion of cash and cash equivalents, of which \$1.4 billion was used to partially redeem the 2024 SPL Senior Notes in July 2023.
- (2) Available commitments represent total commitments less loans outstanding and letters of credit issued under each of our credit facilities as of June 30, 2023. See [Note 9—Debt](#) of our Notes to Consolidated Financial Statements for additional information on our credit facilities and other debt instruments.

Our liquidity position subsequent to June 30, 2023 will be driven by future sources of liquidity and future cash requirements. Future sources of liquidity are expected to be composed of (1) cash receipts from executed contracts, under which we are contractually entitled to future consideration, and (2) additional sources of liquidity, from which we expect to receive cash although the cash is not underpinned by executed contracts. Future cash requirements are expected to be composed of (1) cash payments under executed contracts, under which we are contractually obligated to make payments, and (2) additional cash requirements, under which we expect to make payments although we are not contractually obligated to make the payments under executed contracts. For further discussion of our future sources and uses of liquidity, see the liquidity and capital resources disclosures in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#)

Although our sources and uses of cash are presented below from a consolidated standpoint, SPL, CQP, CCH and Cheniere operate with independent capital structures. Certain restrictions under debt and equity instruments executed by our subsidiaries limit each entity's ability to distribute cash, including the following:

- SPL and CCH are required to deposit all cash received into restricted cash and cash equivalents accounts under certain of their debt agreements. The usage or withdrawal of such cash is restricted to the payment of liabilities related to the Liquefaction Projects and other restricted payments. In addition, SPL and CCH's operating expenses are managed by our subsidiaries under affiliate agreements, which may require SPL and CCH to advance cash to the respective affiliates, however the cash remains restricted to Cheniere for operation and construction of the Liquefaction Projects;

- CQP is required under its partnership agreement to distribute to unitholders all available cash on hand at the end of a quarter less the amount of any reserves established by its general partner. Beginning with the distribution paid in the second quarter of 2022, quarterly distributions by CQP are comprised of a base amount plus a variable amount equal to the remaining available cash per unit, which takes into consideration, among other things, amounts reserved for annual debt repayment and capital allocation goals, anticipated capital expenditures to be funded with cash, and cash reserves to provide for the proper conduct of CQP's business;
- Our 48.6% limited partner interest, 100% general partner interest and incentive distribution rights in CQP limit our right to receive cash held by CQP to the amounts specified by the provisions of CQP's partnership agreement; and
- SPL and CCH are restricted by affirmative and negative covenants included in certain of their debt agreements in their ability to make certain payments, including distributions, unless specific requirements are satisfied.

Despite the restrictions noted above, we believe that sufficient flexibility exists within the Cheniere complex to enable each independent capital structure to meet its currently anticipated cash requirements. The sources of liquidity at SPL, CQP and CCH primarily fund the cash requirements of the respective entity, and any remaining liquidity not subject to restriction, as supplemented by liquidity provided by Cheniere Marketing, is available to enable Cheniere to meet its cash requirements.

### ***Corpus Christi Stage 3 Project***

The following table summarizes the project completion and construction status of the Corpus Christi Stage 3 Project as of June 30, 2023:

Overall project completion percentage	38.1%
Completion percentage of:	
Engineering	63.5%
Procurement	56.3%
Subcontract work	47.1%
Construction	4.9%
Date of expected substantial completion	2H 2025 - 1H 2027

### ***Sources and Uses of Cash***

The following table summarizes the sources and uses of our cash, cash equivalents and restricted cash and cash equivalents (in millions). The table presents capital expenditures on a cash basis; therefore, these amounts differ from the amounts of capital expenditures, including accruals, which are referred to elsewhere in this report. Additional discussion of these items follows the table.

	Six Months Ended June 30,	
	2023	2022
Net cash provided by operating activities	\$ 5,000	\$ 5,172
Net cash used in investing activities	(1,068)	(1,033)
Net cash used in financing activities	(1,253)	(2,990)
Effect of exchange rate changes on cash, cash equivalents and restricted cash and cash equivalents	3	—
Net increase in cash, cash equivalents and restricted cash and cash equivalents	\$ 2,682	\$ 1,149

### ***Operating Cash Flows***

Our operating cash net inflows during the six months ended June 30, 2023 and 2022 were \$5.0 billion and \$5.2 billion, respectively. The \$172 million decrease between the periods was primarily related to timing of cash receipts and payments and lower cash receipts from the sale of LNG cargoes which was partially offset by lower cash outflows for natural gas feedstock, mostly due to lower U.S. natural gas prices.

We are not subject to the 15% corporate alternative minimum tax ("CAMT") in 2023 based on enacted law and regulatory guidance; however, our CAMT status for 2023 could change in the future, depending on new regulations or regulatory guidance issued by the U.S. Department of the Treasury. The CAMT may cause volatility in our cash tax payment

obligations, particularly in periods of significant commodity, currency or financial market variability resulting from potential changes in the fair value of our derivative instruments.

#### *Investing Cash Flows*

Our investing cash net outflows in both years primarily were for the construction costs for the Liquefaction Projects. The \$35 million increase in 2023 compared to 2022 was primarily due to spend during the six months ended June 30, 2023 related to increased construction work performed by Bechtel for the Corpus Christi Stage 3 Project following our issuance of full notice to proceed to Bechtel in June 2022, partially offset by a decrease in spend due to the completion of Train 6 of the SPL Project in February 2022. We expect our capital expenditures to increase in future periods as construction work progresses on the Corpus Christi Stage 3 Project.

#### *Financing Cash Flows*

The following table summarizes our financing activities (in millions):

	Six Months Ended June 30,	
	2023	2022
Proceeds from issuances of debt	\$ 1,397	\$ 1,015
Redemptions, repayments and repurchases of debt	(1,098)	(2,715)
Debt issuance and other financing costs	(27)	(43)
Debt modification or extinguishment gains (costs)	26	(30)
Distributions to non-controlling interest	(513)	(427)
Repurchase of common stock	(774)	(565)
Dividends to stockholders	(195)	(170)
Other, net	(69)	(55)
Net cash used in financing activities	<u>\$ (1,253)</u>	<u>\$ (2,990)</u>

#### *Debt Issuances*

During the six months ended June 30, 2023, CQP issued an aggregate principal amount of \$1.4 billion of 2033 CQP Senior Notes. During the six months ended June 30, 2022, we had total borrowings of \$575 million on the Cheniere Revolving Credit Facility and \$440 million on the CCH Credit Facility. The proceeds from the borrowings during the six months ended June 30, 2022, together with cash on hand, were used to redeem or repurchase \$2.7 billion of outstanding indebtedness, entirely associated with redemptions of our outstanding notes or repayment of amounts outstanding under our credit facilities.

### Debt Redemptions, Repayments and Repurchases

The following table shows the redemptions, repayments and repurchases of debt, including intra-quarter repayments (in millions):

	Six Months Ended June 30,	
	2023	2022
<b>Redemptions, repayments and repurchases of debt</b>		
<b>SPL:</b>		
2024 SPL Senior Notes	\$ (200)	\$ —
<b>CCH:</b>		
CCH Credit Facility	—	(1,390)
CCH Working Capital Facility	—	(250)
7.000% Senior Notes due 2024	(498)	—
5.125% Senior Notes due 2027	(69)	—
3.700% Senior Notes due 2029	(237)	—
2.742% Senior Notes due 2039	(94)	—
<b>Cheniere:</b>		
2045 Cheniere Convertible Senior Notes	—	(500)
Cheniere Revolving Credit Facility	—	(575)
Total redemptions, repayments and repurchases of debt	\$ (1,098)	\$ (2,715)

### Non-Controlling Interest Distributions

We own a 48.6% limited partner interest in CQP with the remaining non-controlling limited partner interest held by Blackstone Inc., Brookfield Asset Management Inc. and the public. CQP paid distributions of \$513 million and \$427 million during the six months ended June 30, 2023 and 2022, respectively, to non-controlling interests.

### Repurchase of Common Stock

During the six months ended June 30, 2023 and 2022, we paid \$774 million and \$565 million to repurchase 5.4 million and 4.4 million shares of our common stock, respectively, as part of our share repurchase program. As of June 30, 2023, we had approximately \$2.8 billion remaining under our share repurchase program.

### Cash Dividends to Stockholders

During the six months ended June 30, 2023, we paid aggregate dividends of \$0.790 per share of common stock, for a total of \$195 million paid to common stockholders. We paid aggregate dividends of \$0.66 per share of common stock, for a total of \$170 million during the six months ended June 30, 2022.

On July 28, 2023, we declared a quarterly dividend of \$0.395 per share of common stock that is payable on August 16, 2023 to stockholders of record as of the close of business on August 9, 2023.

### Summary of Critical Accounting Estimates

The preparation of Consolidated Financial Statements in conformity with GAAP requires management to make certain estimates and assumptions that affect the amounts reported in the Consolidated Financial Statements and the accompanying notes. There have been no significant changes to our critical accounting estimates from those disclosed in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#).

### Recent Accounting Standards

For a summary of recently issued accounting standards, see [Note 1—Nature of Operations and Basis of Presentation](#) of our Notes to Consolidated Financial Statements.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

#### Marketing and Trading Commodity Price Risk

We have commodity derivatives consisting of natural gas supply contracts for the commissioning and operation of the SPL Project and the CCL Project, and associated economic hedges (collectively, “Liquefaction Supply Derivatives”). We have also entered into physical and financial derivatives to hedge the exposure to the commodity markets in which we have contractual arrangements to purchase or sell physical LNG (collectively, “LNG Trading Derivatives”). In order to test the sensitivity of the fair value of the Liquefaction Supply Derivatives and the LNG Trading Derivatives to changes in underlying commodity prices, management modeled a 10% change in the commodity price for natural gas for each delivery location and a 10% change in the commodity price for LNG, respectively, as follows (in millions):

	June 30, 2023		December 31, 2022	
	Fair Value	Change in Fair Value	Fair Value	Change in Fair Value
Liquefaction Supply Derivatives	\$ (4,541)	\$ 1,742	\$ (10,019)	\$ 2,249
LNG Trading Derivatives	(35)	14	(46)	15

See [Note 6—Derivative Instruments](#) of our Notes to Consolidated Financial Statements for additional details about our commodity derivative instruments.

#### Foreign Currency Exchange Risk

We have entered into foreign currency exchange (“FX”) contracts to hedge exposure to currency risk associated with operations in countries outside of the United States (“FX Derivatives”). In order to test the sensitivity of the fair value of the FX Derivatives to changes in FX rates, management modeled a 10% change in FX rate between the U.S. dollar and the applicable foreign currencies as follows (in millions):

	June 30, 2023		December 31, 2022	
	Fair Value	Change in Fair Value	Fair Value	Change in Fair Value
FX Derivatives	\$ (4)	\$ —	\$ (28)	\$ 3

See [Note 6—Derivative Instruments](#) of our Notes to Consolidated Financial Statements for additional details about our foreign currency derivative instruments.

### ITEM 4. CONTROLS AND PROCEDURES

We maintain a set of disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports filed by us under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. As of the end of the period covered by this report, we evaluated, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 of the Exchange Act. Based on that evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures are effective.

During the most recent fiscal quarter, there have been no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

We may in the future be involved as a party to various legal proceedings, which are incidental to the ordinary course of business. We regularly analyze current information and, as necessary, provide accruals for probable liabilities on the eventual disposition of these matters. There have been no material changes to the legal proceedings disclosed in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#) except for the update presented in our [quarterly report on Form 10-Q for the quarterly period ended March 31, 2023](#).

### ITEM 1A. RISK FACTORS

There have been no material changes from the risk factors disclosed in our [annual report on Form 10-K for the fiscal year ended December 31, 2022](#)

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

#### Purchase of Equity Securities by the Issuer and Affiliated Purchasers

The following table summarizes stock repurchases for the three months ended June 30, 2023:

Period	Total Number of Shares Purchased (1)	Average Price Paid Per Share (2)	Total Number of Shares Purchased as a Part of Publicly Announced Plans	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans
April 1 - 30, 2023	298,351	\$151.52	298,165	\$3,129,549,054
May 1 - 31, 2023	1,081,091	\$144.47	1,081,091	\$2,973,366,327
June 1 - 30, 2023	922,564	\$147.42	922,564	\$2,837,366,110
Total	2,302,006		2,301,820	

- (1) Includes issued shares surrendered to us by participants in our share-based compensation plans for payment of applicable tax withholdings on the vesting of share-based compensation awards. Associated shares surrendered by participants are repurchased pursuant to terms of the plan and award agreements and not as part of the publicly announced share repurchase plan.
- (2) The price paid per share was based on the average trading price of our common stock on the dates on which we repurchased the shares.

### ITEM 5. OTHER INFORMATION

Rule 10b5-1 under the Exchange Act provides an affirmative defense that enables prearranged transactions in securities in a manner that avoids concerns about initiating transactions at a future date while possibly in possession of material nonpublic information. Our Insider Trading Policy permits our directors and executive officers to enter into trading plans designed to comply with Rule 10b5-1. During the three-month period ending June 30, 2023, none of our executive officers or directors adopted or terminated a Rule 10b5-1 trading plan or adopted or terminated a non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K).

### ITEM 6. EXHIBITS

Exhibit No.	Description
1.1	<a href="#">Purchase Agreement dated as of June 6, 2023, among CQP, the guarantors party thereto and Morgan Stanley &amp; Co. LLC (incorporated by reference to Exhibit 1.1 to CQP's Current Report on Form 8-K (SEC File No. 001-33366), filed on June 7, 2023), included to correct the hyperlink to the previously filed exhibit</a>
4.1	<a href="#">Eighth Supplemental Indenture, dated as of June 21, 2023, among CQP, the guarantors party thereto and The Bank of New York Mellon, as Trustee under the Indenture (incorporated by reference to Exhibit 4.1 to CQP's Current Report on Form 8-K (SEC File No. 001-33366), filed on June 21, 2023)</a>



Exhibit No.	Description
10.1*	<a href="#">Change orders to the Lump Sum Turnkey Agreement for the Engineering, Procurement and Construction of the Corpus Christi Liquefaction Stage 3 Project, dated March 1, 2022, by and between Corpus Christi Liquefaction, LLC and Bechtel Energy, Inc.: (i) the Change Order CO-00022 Refrigerant Storage Packages 1 and 2, dated February 13, 2023, (ii) the Change Order CO-00023 EFG Package #2, dated February 21, 2023, (iii) the Change Order CO-00024 Defrost Improvements (Cold Box), dated February 23, 2023, (iv) the Change Order CO-00025 Miscellaneous Design Improvements, dated February 23, 2023, (v) the Change Order CO-00026 EFG Package #3, dated February 23, 2023, (vi) the Change Order CO-00027 Addition of 86 Lockout Relay on Transformers, dated February 14, 2023, (vii) the Change Order CO-00028 Additional Duct Banks, dated September 15, 2022, (viii) the Change Order CO-00029 2022 FERC Support Hours Interim Adjustment, dated March 13, 2023, (ix) the Change Order CO-00030 Drainage Blanket (A Street), dated April 6, 2023, (x) the Change Order CO-00031 Refrigerant Storage Interface Package #3, dated April 7, 2023, (xi) the Change Order CO-00032 Q4 2022 Commodity Price Rise and Fall (ATT MM), dated April 24, 2023, (xii) the Change Order CO-00033 Lift Owner-Provided Dewar System (Nitrogen Receiver Facility), dated March 1, 2022, (xiii) the Change Order CO-00034 HAZOP Package #1 - Addition of Flame Arrestors for Oil Mist Eliminator Vent, dated April 25, 2023 and (xiv) the Change Order CO-00035 EFG Package #4 (Water Pipeline Pipe Bridge), dated May 19, 2023 (Portions of this exhibit have been omitted.)</a>
10.2*	<a href="#">First Amendment to Second Amended and Restated Revolving Credit Agreement, dated as of June 15, 2023, among the Company, the Lenders and Issuing Banks party thereto, Sumitomo Mitsui Banking Corporation, as ESG Coordinator, and Société Générale, as Administrative Agent</a>
10.3	<a href="#">Registration Rights Agreement, dated as of June 21, 2023, among COP, the guarantors party thereto and Morgan Stanley &amp; Co. LLC, (incorporated by reference to Exhibit 10.1 to COP's Current Report on Form 8-K (SEC File No. 001-33366), filed on June 21, 2023)</a>
10.4*	<a href="#">Credit and Guaranty Agreement, dated as of June 23, 2023, among COP, as borrower, certain subsidiaries of COP, as Subsidiary Guarantors, the lenders from time to time party thereto, Société Générale, Natixis, Sumitomo Mitsui Banking Corporation, The Bank of Nova Scotia, and Wells Fargo Bank, as Issuing Banks, MUFG Bank, LTD as Administrative Agent and Coordinating Lead Arranger, and certain arrangers and other participants</a>
10.5	<a href="#">Senior Revolving Credit and Guaranty Agreement, among SPL, as borrower, certain subsidiaries of SPL, The Bank of Nova Scotia, as Senior Facility Agent, Société Générale, as the Common Security Trustee, the issuing banks and lenders from time to time party thereto and other participants (incorporated by reference to Exhibit 10.46 to SPL's Registration Statement on Form S-4 (SEC File No. 333-273238), filed on July 13, 2023)</a>
10.6	<a href="#">Fourth Amended and Restated Common Terms Agreement, among SPL, as borrower, the Secured Debt Holder Group Representatives party thereto, the Secured Hedge Representatives party thereto, the Secured Gas Hedge Representatives party thereto and Société Générale, as the Common Security Trustee and the Intercreditor Agent (incorporated by reference to Exhibit 10.44 to SPL's Registration Statement on Form S-4 (SEC File No. 333-273238), filed on July 13, 2023)</a>
10.7*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated May 18, 2023, to LNG Sale and Purchase Agreement, dated April 1, 2014, between CCL and Endesa S.A. (assignee of Endesa Generacion S.A.), as amended</a>
10.8*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated May 18, 2023, to LNG Sale and Purchase Agreement, dated April 7, 2014, between CCL and Endesa S.A., as amended</a>
10.9*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated June 8, 2023, to LNG Sale and Purchase Agreement, dated June 2, 2014, between CCL and Naturgy LNG GOM, Limited (assignee of Gas Natural Fenosa LNG SL), as amended</a>
10.10*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated May 18, 2023, to LNG Sale and Purchase Agreement, dated January 25, 2012, between SPL and BG Gulf Coast LNG, LLC, as amended</a>
10.11*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated June 16, 2023, to LNG Sale and Purchase Agreement, dated December 11, 2011, between SPL and GAIL (India) Limited, as amended</a>
10.12*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated June 30, 2023, to LNG Sale and Purchase Agreement, dated January 30, 2012, between SPL and Korea Gas Corporation, as amended</a>
10.13*	<a href="#">Letter agreement regarding change from LIBOR to SOFR, dated June 8, 2023, to LNG Sale and Purchase Agreement, dated November 21, 2011, between SPL and Naturgy LNG GOM, Limited (assignee of Gas Natural Aprovevisionamientos SDG S.A.), as amended</a>
31.1*	<a href="#">Certification by Chief Executive Officer required by Rule 13a-14(a) and 15d-14(a) under the Exchange Act</a>
31.2*	<a href="#">Certification by Chief Financial Officer required by Rule 13a-14(a) and 15d-14(a) under the Exchange Act</a>

Exhibit No.	Description
32.1**	<a href="#">Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
32.2**	<a href="#">Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Labels Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

*	Filed herewith.
**	Furnished herewith.

## SIGNATURES

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, thereunto duly authorized.

CHENIERE ENERGY, INC.

Date: August 2,  
2023

By:

\_\_\_\_\_  
/s/ Zach Davis

Zach Davis  
Executive Vice President and Chief  
Financial Officer  
(on behalf of the registrant and  
as principal financial officer)

Date: August 2,  
2023

By:

\_\_\_\_\_  
/s/ David Slack

David Slack  
Vice President and Chief Accounting  
Officer  
(on behalf of the registrant and  
as principal accounting officer)

\*\*\* indicates certain identified information has been excluded because it is both (a) not material and (b) would be competitively harmful if publicly disclosed.

**CHANGE ORDER**

**Refrigerant Storage Packages 1 and 2**

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00022

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 13-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc.

**DATE OF AGREEMENT:** March 1, 2022

**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall:
  - 1.1 Relocate the Truck Pad Light and install PSV Platform Piles (at 310C01 / R08) – Package 1;
  - 1.2 Add ISBL piping connections inside the Trains 1-7 battery limits – Package 1;
  - 1.3 Add piles and footers for the OSBL rack extension – Package 1; and
  - 1.4 Add piling, foundations and the addition of pipe tie-in and supports for Mixed Refrigerant De-Inventory battery limit platforms – Package 2.
2. The scope description for Refrigerant Storage Package 1 is provided in Exhibit A of this Change Order.
3. The scope description for Refrigerant Storage Package 2 is provided in Exhibit B of this Change Order.
4. The cost breakdown for Refrigerant Storage Packages 1 and 2 is provided in Exhibit C of this Change Order.
5. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00021) .....	\$ 92,214,027
3. The Contract Price prior to this Change Order was .....	\$ 5,576,214,027
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of .....	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .....	***
8. The new Contract Price including this Change Order will be .....	\$ 5,588,588,643

The following dates are modified *(list all dates modified; insert N/A if no dates modified)*: **N/A**

**Impact to other Changed Criteria** *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

~~[B] This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### EFG Package #2

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00023

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 21-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

---

#### The Agreement between the Parties listed above is changed as follows:

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall add:
  - 1.1 Pipe Rack Phase 1: Stubs on Columns for R08/R09/R18; and
  - 1.2 Pipe Rack Phase 2: Increase Column Sizes in R08 and R09.
2. The cost breakdown is provided in Exhibit A of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

---

#### Adjustment to Contract Price

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00022).....	\$ 104,588,643
3. The Contract Price prior to this Change Order was .....	\$ 5,588,588,643
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of ....	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,589,785,063

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The following dates are modified *(list all dates modified; insert N/A if no dates modified)*: **N/A**

**Impact to other Changed Criteria** *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

---

**Select either A or B:**

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

[B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### Defrost Improvements (Cold Box)

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00024

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 23-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

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#### The Agreement between the Parties listed above is changed as follows:

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner, the Parties agree Contractor shall:
  - 1.1 Add a two (2) inch line to flare defrost gas (manual valve) from V-1712.
2. The cost breakdown is provided in Exhibit A of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

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#### Adjustment to Contract Price

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00023).....	\$ 105,785,063
3. The Contract Price prior to this Change Order was .....	\$ 5,589,785,063
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of .....	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,590,638,061

---

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

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**Select either A or B:**

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### Miscellaneous Design Improvements

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00025

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 23-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc.

**DATE OF AGREEMENT:** 01-Mar-2022

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**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall:
  - 1.1 Add a single block and bleed upstream of the XV-35018 (on each Train);
  - 1.2 Add control valves on Lean Amine filtration bypass; and
  - 1.3 Add double block and bleed upstream of the MR Accumulator.
2. The cost breakdown is provided in Exhibit A of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

---

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00024).....	\$ 106,638,061
3. The Contract Price prior to this Change Order was .....	\$ 5,590,638,061
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of .....	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,593,413,832

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

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Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### EFG Package #3

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00026

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 23-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc.

**DATE OF AGREEMENT:** 01-Mar-2022

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#### The Agreement between the Parties listed above is changed as follows:

1. In accordance with Section 6.1 of the Agreement (“Owner’s Right to Change Order”) and as requested by Owner’s teams, the Parties agree Contractor shall add:
  - 1.1 NRU Methane Recycle Tie-ins; and
  - 1.2 EFG Wet Flare Tie-in.
2. The scope description for the NRU Methane Recycle Tie-in(s) is provided in Exhibit A of this Change Order.
3. The scope description for the EFG Wet Flare Tie-in is provided in Exhibit B of this Change Order.
4. The cost breakdown is provided in Exhibit C of this Change Order.
5. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

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#### Adjustment to Contract Price

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00025).....	\$ 109,413,832
3. The Contract Price prior to this Change Order was .....	\$ 5,593,413,832
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of..	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,595,832,897

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The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

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Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

~~[B] This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor \_\_ Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### Addition of 86 Lockout Relay on Transformers

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00027

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 14-Feb-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

---

**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall add:
  - 1.1 86 Lockout Relay for the 63X function on transformers listed in Attachment 1 of this Change Order.
2. The cost breakdown is provided in Exhibit A of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

---

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$	5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00026).....	\$	111,832,897
3. The Contract Price prior to this Change Order was .....	\$	5,595,832,897
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of.....		***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of....		***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....		***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .....		***
8. The new Contract Price including this Change Order will be .....	\$	5,596,018,467

---

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

---

**Select either A or B:**

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

~~[B] This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

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## CHANGE ORDER

### ADDITIONAL DUCT BANKS

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00028

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** Sept 15, 2022

**CONTRACTOR:** Bechtel Energy Inc.

**DATE OF AGREEMENT:** March 1, 2022

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**The Agreement between the Parties listed above is changed as follows:** *(attach additional documentation if necessary)*

1. Pursuant to Article 6.2 of the Agreement (*Contractor's Right to Change Orders*), the Parties agree this Change Order shall include Contractor's costs to add additional duct banks as identified in Attachment 1 of this Change Order.
2. The detailed cost breakdown for this Change Order is provided in Exhibit 1 of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 2 of this Change Order.

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**Adjustment to Contract Price**

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00027).....	\$ 112,018,467
3. The Contract Price prior to this Change Order was .....	\$ 5,596,018,467
4. The Aggregate Equipment Price will be (increased) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (increased) by this Change Order in the amount of...	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,614,797,414

---

The following dates are modified *(list all dates modified; insert N/A if no dates modified)*: **N/A**

**Impact to other Changed Criteria** *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **Yes.**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

---



**Select either A or B:**

[A]This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SMS Contractor /s/ DC Owner

~~[B]This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor \_\_ Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

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## CHANGE ORDER

### 2022 FERC Support Hours Interim Adjustment

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00029

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 13-Mar-2023

**CONTRACTOR:** Bechtel Energy Inc.

**DATE OF AGREEMENT:** 01-Mar-2022

**The Agreement between the Parties listed above is changed as follows:**

1. Pursuant to Article 11.2D of Attachment A-1 (Scope of Work) of the Agreement, the Parties acknowledge that Contractor allocated a total five hundred (500) jobhours to support Owner with FERC-related clarifications.
2. In 2022 Contractor provided \*\*\* jobhours of FERC support and has therefore, within 2022, exceeded the Agreement total by \*\*\* jobhours.
3. The detailed cost breakdown for this Change Order is provided in Exhibit 1 of this Change Order.
4. Schedule C-1 Aggregate Labor and Skills Price Milestone Payment Schedule of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 2 of this Change Order.

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$	5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00028).....	\$	130,797,414
3. The Contract Price prior to this Change Order was .....	\$	5,614,797,414
4. The Aggregate Equipment Price will be (unchanged) by this Change Order in the amount of .....		***
5. The Aggregate Labor and Skills Price will be (increased) by this Change Order in the amount of ..		***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of ..		***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..		***
8. The new Contract Price including this Change Order will be .....	\$	5,614,833,651

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **Yes**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

**Select either A or B:**

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

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## CHANGE ORDER

### Drainage Blanket (A Street)

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00030

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 06-Apr-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall add:
  - 1.1 A drainage blanket on the "A" Street heavy haul road, comprised of geotextile fabric and granular fill.
2. The cost breakdown is provided in Exhibit 1 of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 2 of this Change Order.

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00029).....	\$ 130,833,651
3. The Contract Price prior to this Change Order was .....	\$ 5,614,833,651
4. The Aggregate Equipment Price will be (increased) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (increased) by this Change Order in the amount of ..	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .. .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .. .....	***
8. The new Contract Price including this Change Order will be .....	\$ 5,615,046,194

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **Yes**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

**Select either A or B:**

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

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## CHANGE ORDER

### Refrigerant Storage Interface Package #3

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00031

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 07-Apr-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

#### The Agreement between the Parties listed above is changed as follows:

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall add:
  - 1.1 Piling and foundations for two (2) High Integrity Pressure Protection System (HIPPS) valve stations; and
  - 1.2 Piling and foundations for the following four (4) interconnect pipe racks:
    - 380G01 North Pipe Rack;
    - 380G01 South Pipe Rack;
    - 380G02 North Pipe Rack; and
    - 380G01 South Pipe Rack.
2. The cost breakdown is provided in Exhibit 1 of this Change Order.
3. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 2 of this Change Order.

#### Adjustment to Contract Price

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00020).....	\$ 131,046,194
3. The Contract Price prior to this Change Order was .....	\$ 5,615,046,194
4. The Aggregate Equipment Price will be (increased) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (increased) by this Change Order in the amount of...	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .....	***
8. The new Contract Price including this Change Order will be .....	\$ 5,621,309,042

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **Yes**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

[B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

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## CHANGE ORDER

### Q4 2022 COMMODITY PRICE RISE AND FALL (ATT MM)

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00032

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 24-Apr-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

**The Agreement between the Parties listed above is changed as follows:** *(attach additional documentation if necessary)*

1. In accordance with Section 1.2 of Attachment MM of the Agreement (“*Commodity Price Rise and Fall*”), this Change Order addresses Q4 2022 period commodity price rise and fall for:
  - 1.1 304 Stainless Steel Pipe and Fittings (Item 1 of Appendix 1 of Attachment MM), \$\*\*\* paid to Contractor;
  - 1.2 Carbon Steel Pipe, Fittings, Flanges (Item 2 of Appendix 1 of Attachment MM), \$\*\*\* paid to Contractor;
  - 1.3 USA Fabricated Structural Steel (Item 3 of Appendix 1 of Attachment MM), \$\*\*\* (not applicable in Q4 2022);
  - 1.4 UAE Fabricated Structural Steel (Item 4 of Appendix 1 of Attachment MM), \$\*\*\* paid to Owner; and
  - 1.5 Wire and Cable (Copper) (Item 5 of Appendix 1 of Attachment MM), \$\*\*\* paid to Owner.
2. Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestone listed in Exhibit 1 of this Change Order.
3. The Q4 2022 current Index Value and calculation methodology is provided in Exhibit A of this Change Order.

#### Adjustment to Contract Price

1. The original Contract Price was .....	\$ 5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00031).....	\$ 137,309,042
3. The Contract Price prior to this Change Order was .....	\$ 5,621,309,042
4. The Aggregate Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of....	***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	***
8. The new Contract Price including this Change Order will be .....	\$ 5,623,211,680

The following dates are modified *(list all dates modified; insert N/A if no dates modified)*: **N/A**

**Impact to other Changed Criteria** *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Adjustment to Payment Schedule: **N/A**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**



Adjustment to Basis of Design: N/A

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: N/A

**Select either A or B:**

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

---

## CHANGE ORDER

### LIFT OWNER-PROVIDED DEWAR SYSTEM (NITROGEN RECEIVER FACILITY)

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00033

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 13-Dec-2022

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

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**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order"), the Parties agree Contractor shall add to the scope of existing Change Order CO-00014 ("Addition of Nitrogen Receiver"), as follows:

- 1.1 Contractor shall provide a lifting plan, craneage and operators to lift the Owner-provided Dewar System from the delivery truck(s) to its final location.

---

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$	5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00032).....	\$	139,211,680
3. The Contract Price prior to this Change Order was .....	\$	5,623,211,680
4. The Aggregate Equipment Price will be (unchanged) by this Change Order in the amount of .....	\$	0
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of...	\$	0
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....	\$	0
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of ..	\$	0
8. The new Contract Price including this Change Order will be .....	\$	5,623,211,680

---

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **N/A**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

---

**Select either A or B:**

- [A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner
- [B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

---

## CHANGE ORDER

### HAZOP Package #1 – Addition of Flame Arrestors for Oil Mist Eliminator Vent

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00034

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 25-Apr-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement (“Owner’s Right to Change Order”) and as requested by Owner’s teams, the Parties agree Contractor shall perform the scope defined in Section 2 of this Change Order.
2. With respect to HAZOP Action Item(s) 21143, Contractor shall:
  - 2.1 Add one (1) flame arrestor at the oil mist eliminator vent for each MR compressor.
3. The cost breakdown is provided in Exhibit 1 of this Change Order.
4. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 2 of this Change Order.

---

**Adjustment to Contract Price**

1. The original Contract Price was .....	\$	5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00033).....	\$	139,211,680
3. The Contract Price prior to this Change Order was .....	\$	5,623,211,680
4. The Aggregate Equipment Price will be (increased) by this Change Order in the amount of .....		***
5. The Aggregate Labor and Skills Price will be (increased) by this Change Order in the amount of...		***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....		***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .....		***
8. The new Contract Price including this Change Order will be .....	\$	5,623,418,777

---

The following dates are modified *(list all dates modified; insert N/A if no dates modified)*: **N/A**

**Impact to other Changed Criteria** *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Adjustment to Payment Schedule: **N/A**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **Yes**

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

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Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ SS Contractor /s/ DC Owner

[B] ~~This Change Order shall not constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and shall not be deemed to compensate Contractor fully for such change. Initials: Contractor \_\_ Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: /s/ Steve Smith  
Name: Steve Smith  
Title: Senior Project Manager and Principal Vice President

---

## CHANGE ORDER

### EFG Package #4 (Water Pipeline Pipe Bridge)

**PROJECT NAME:** Corpus Christi Liquefaction Stage 3 Project

**CHANGE ORDER NUMBER:** CO-00035

**OWNER:** Corpus Christi Liquefaction, LLC

**DATE OF CHANGE ORDER:** 19-May-2023

**CONTRACTOR:** Bechtel Energy Inc

**DATE OF AGREEMENT:** 01-Mar-2022

**The Agreement between the Parties listed above is changed as follows:**

1. In accordance with Section 6.1 of the Agreement ("Owner's Right to Change Order") and as requested by Owner's teams, the Parties agree Contractor shall add:
  - 1.1 One (1) pipe bridge/finger rack from the south side of the Stage 3 Facility heavy haul pipe trench to inside the Stages 1 and 2 Facility to support Stage 3 water pipelines, and, various process lines. Brownfield scope tying-in to Stages 1 and 2 shall be performed in accordance with Stage 3 specifications.
2. The cost breakdown is provided in Exhibit A of this Change Order.
3. A representative scope illustration is provided in Exhibit B of this Change Order.
4. Schedules C-1 Aggregate Labor and Skills Price Monthly Payment Schedule and C-3 Aggregate Equipment Price Payment Milestones of Attachment C of the Agreement will be amended by including the milestones listed in Exhibit 1 of this Change Order.

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**Adjustment to Contract Price**

1. The original Contract Price was .....	\$	5,484,000,000
2. Net change by previously authorized Change Orders (# CO-00001 – CO-00034).....	\$	139,418,777
3. The Contract Price prior to this Change Order was .....	\$	5,623,418,777
4. The Aggregate Equipment Price will be (changed) by this Change Order in the amount of .....		***
5. The Aggregate Labor and Skills Price will be (changed) by this Change Order in the amount of..		***
6. The Aggregate Provisional Sum Equipment Price will be (unchanged) by this Change Order in the amount of .....		***
7. The Aggregate Provisional Sum Labor and Skills Price will be (unchanged) by this Change Order in the amount of .....		***
8. The new Contract Price including this Change Order will be .....	\$	5,627,669,244

---

The following dates are modified (*list all dates modified; insert N/A if no dates modified*): **N/A**

**Impact to other Changed Criteria** (*insert N/A if no changes or impact; attach additional documentation if necessary*)

Adjustment to Payment Schedule: **Yes**

Adjustment to Minimum Acceptance Criteria: **N/A**

Adjustment to Performance Guarantees: **N/A**

Adjustment to Basis of Design: **N/A**

---

Adjustment to Attachment CC (Equipment List): **To be updated on a quarterly basis**

Other adjustments to liability or obligation of Contractor or Owner under the Agreement: **N/A**

***Select either A or B:***

[A] This Change Order **shall** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall** be deemed to compensate Contractor fully for such change. Initials: /s/ NT Contractor /s/ DC Owner

[B] ~~This Change Order **shall not** constitute a full and final settlement and accord and satisfaction of all effects of the change reflected in this Change Order upon the Changed Criteria and **shall not** be deemed to compensate Contractor fully for such change. Initials: Contractor      Owner~~

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ David Craft  
Name: David Craft  
Title: SVP E&C

**BECHTEL ENERGY INC.**

By: Nirav Thakkar for /s/ Nirav Thakkar  
Name: Steve Smith  
Title: Sr. Project Manager and Principal Vice President

**FIRST AMENDMENT TO  
SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT**

This FIRST AMENDMENT dated as of June 15, 2023 (this “**Amendment**”), to that certain SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT, dated as of October 28, 2021, by and among CHENIERE ENERGY, INC., a corporation formed under the laws of the State of Delaware (“**Borrower**”), the Lenders and Issuing Banks party thereto from time to time, SUMITOMO MITSUI BANKING CORPORATION, as ESG Coordinator (“**ESG Coordinator**”), and SOCIÉTÉ GÉNÉRALE, as Administrative Agent (together with its permitted successors in such capacity, “**Administrative Agent**”), with SOCIÉTÉ GÉNÉRALE, BANK OF AMERICA, N.A., THE BANK OF NOVA SCOTIA, HOUSTON BRANCH, CITIBANK, N.A., CREDIT SUISSE AG, NEW YORK BRANCH, GOLDMAN SACHS BANK USA, ING CAPITAL LLC, JPMORGAN CHASE BANK, N.A., MIZUHO BANK, LTD., MORGAN STANLEY SENIOR FUNDING, INC., MUFG BANK, LTD., ROYAL BANK OF CANADA, HSBC BANK USA, NATIONAL ASSOCIATION, BANCO SANTANDER, S.A., NEW YORK BRANCH, BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, TRUIST SECURITIES, INC., WELLS FARGO BANK, NATIONAL ASSOCIATION, CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK BRANCH, INTESA SANPAOLO S.P.A., NEW YORK BRANCH, SUMITOMO MITSUI BANKING CORPORATION, NATIXIS, NEW YORK BRANCH, and STANDARD CHARTERED BANK, NEW YORK as Joint Lead Arrangers (collectively in such capacity, the “**Arrangers**”) and each other entity that is a party thereto (as amended, restated, amended and restated, supplemented or otherwise modified and in effect prior to the date hereof, the “**Existing Agreement**”).

RECITALS:

WHEREAS, certain loans or other extensions of credit under the Existing Agreement bear or are permitted to bear interest, or incur or are permitted to incur fees, commissions or other amounts, based on the Adjusted LIBO Rate in accordance with the terms of the Existing Agreement;

WHEREAS, the Borrower, the Lenders and the Issuing Banks desire to amend the Existing Agreement to (i) replace the Adjusted LIBO Rate with Adjusted Term SOFR as a benchmark rate for purposes of the Existing Agreement as set forth herein and (ii) make certain other amendments to the Existing Agreement as provided herein;

WHEREAS, the parties hereto hereby acknowledge and agree that the Lenders and Issuing Banks party hereto constitute all the Lenders and Issuing Banks.

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



**Article I. Amendments.**

(a) Notwithstanding anything to the contrary contained in the Existing Agreement or in any other Financing Document, the Existing Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages attached hereto as Exhibit A. A copy of the Existing Agreement is attached hereto as Exhibit A, and is marked, as described in the preceding sentence, to show the additions and deletions made to the Existing Agreement on the Effective Date pursuant to this Amendment.

(b) Exhibits B-1 and B-2 attached hereto shall be deemed to replace Exhibits D-1 and D-2, respectively, to the Existing Agreement.

(c) Exhibit C attached hereto shall be deemed to replace Exhibit E to the Existing Agreement.

**Article II. Definitions; Rules of Construction; Notice.**

(a) Capitalized terms used and not defined herein shall have the meanings assigned to such terms in Exhibit A attached hereto. For purposes of this Amendment and the provisions contained herein “**Amended Agreement**” means the Existing Agreement, as amended pursuant to this Amendment.

(b) This Amendment is a “Financing Document” as defined in the Existing Agreement.

(c) Section 1.3 of the Existing Agreement shall apply to this Amendment *mutatis mutandis*.

**Article III. Conditions to Effectiveness.** This Amendment shall become effective on the date (the “**Effective Date**”) that the following conditions precedent have been satisfied:

(a) Amendment. The Administrative Agent has received this Amendment executed and delivered by (i) a duly authorized officer of the Borrower, (ii) each Lender and (iii) each Issuing Bank.

(b) Representations and Warranties. The representations and warranties made pursuant to Article IV of this Amendment shall be true and complete on and as of such date with the same force and effect as if made on and as of such date.

Notwithstanding anything in this Amendment or the Amended Agreement to the contrary, all interest, fees, commissions and other amounts determined with reference to the Adjusted LIBO Rate (as defined in the Existing Agreement) in accordance with the terms of the Existing Agreement shall continue to be determined with reference to the Adjusted LIBO Rate in accordance with the terms of the Existing Agreement until June 30, 2023 or, with respect to any LIBO Rate Loans (as defined in the Existing Agreement) outstanding on such date, the end of the then-current Interest Period (as defined in the Existing Agreement) applicable thereto.

**Article IV. Representations and Warranties.** In order to induce the Administrative Agent to enter into this Amendment, the Borrower hereby represents and warrants to the Administrative Agent on and as of the Effective Date that:

- (a) (i) it has all corporate or other organizational power and authority to execute, deliver and perform its obligations under this Amendment and the Existing Agreement and (ii) this Amendment has been duly authorized, executed and delivered by it; and
- (b) this Amendment and the Existing Agreement constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

**Article V. Reaffirmation.** The Borrower hereby (a) acknowledges its receipt of a copy of this Amendment and its review of the terms and conditions hereof and consents to the terms and conditions of this Amendment and the transactions contemplated hereby and (b) agrees that each Financing Document to which it is a party shall continue to be in full force and effect.

**Article VI. Expenses.** The Borrower hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in connection with the negotiation, preparation, execution, and delivery of this Amendment and each other document contemplated hereby (including, without limitation, the reasonable and documented fees and expenses of counsel).

**Article VII. Miscellaneous.**

Section 7.01 Survival. Except as expressly provided in this Amendment, all of the terms, provisions, covenants, agreements, representations and warranties and conditions of the Existing Agreement and the other Financing Documents shall be and remain in full force and effect as written, unmodified hereby and are hereby ratified by the Borrower. In the event of any conflict between the terms, provisions, covenants, representations and warranties and conditions of this Amendment, on the one hand, and the Existing Agreement or any other applicable Financing Document, on the other hand, this Amendment shall control.

Section 7.02 Severability. Any term or provision of this Amendment that is invalid, illegal or unenforceable in any jurisdiction shall, solely as to that jurisdiction, be ineffective solely to the extent of such invalidity, illegality or unenforceability without rendering invalid, illegal or unenforceable the remaining terms and provisions of this Amendment or affecting the validity, legality or enforceability of any of the terms or provisions of this Amendment in any other jurisdiction. If any provision of this Amendment is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as would be enforceable.

Section 7.03 Governing Law. This Amendment and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Amendment and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provisions (other than sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York).

Section 7.04 Entire Agreement. This Amendment, the Existing Agreement (as amended hereby) and the other applicable Financing Documents constitute the entire agreement among the parties to the Existing Agreement and such other applicable Financing Document with

respect to the subject matter hereof and supersede all other prior agreements and understandings, both written and verbal, among such parties or any of them with respect to the subject matter hereof. Any exhibits or annexes attached hereto are hereby incorporated herein by reference and made a part hereof.

Section 7.05 Binding Effect, Beneficiaries. This Amendment shall be binding upon and inure to the benefit of the parties to the Existing Agreement and each other applicable Financing Document and their respective heirs, executors, administrators, successors, legal representatives and assigns, and no other party shall derive any rights or benefits herefrom.

Section 7.06 Construction. This Amendment shall be construed without regard to any presumption or other rule requiring construction against the party drafting this Amendment.

Section 7.07 Notices. All notices relating to this Amendment shall be delivered in the manner and subject to the provisions set forth in the Existing Agreement.

Section 7.08 Counterparts; Effectiveness; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single agreement. Except as provided in Article III, this Amendment shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (e.g., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7.09 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

Section 7.010 Reference to and Effect on the Existing Agreement and the Other Financing Documents. On and after the Effective Date, each reference in any Financing Document to the Existing Agreement and the use therein of "thereunder," "thereof" or words of like import referring to the Existing Agreement shall, in each case, mean and be a reference to the Existing Agreement as amended by this Amendment. Except as specifically amended by this Amendment, the Existing Agreement and the other Financing Documents shall remain in full force and effect (with the same priority, as applicable) and are hereby ratified and confirmed and this Amendment shall not be considered a novation. The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent or any other party under, the Amended Agreement, any of the other Financing Documents or otherwise.

[Signature Pages Follow]

IN WITNESS WHEREOF, each party hereto has caused this Amendment to be duly executed by its respective authorized officer or authorized officers as of the day and year first above written.

**CHENIERE ENERGY, INC.,**  
as Borrower

By: /s/ Joshua Silverman \_\_\_\_\_  
Name: Joshua Silverman  
Title: Assistant Treasurer

**SOCIÉTÉ GÉNÉRALE,**  
as Administrative Agent

By: /s/ Kevin Soucy

Name: Kevin Soucy

Title: Director

**SUMITOMO MITSUI BANKING  
CORPORATION,**  
as ESG Coordinator

By: s/ Jeffery A Cobb

Name: Jeffery A Cobb

Title: Director

**SOCIÉTÉ GÉNÉRALE,**  
as Joint Lead Arranger and Lender

By: /s/ Karla Navas \_\_\_\_\_

Name: Karla Navas

Title: Vice President

**BANCO BILBAO VIZCAYA ARENTARIA,  
S.A. NEW YORK BRANCH,**  
as Joint Lead Arranger and Issuing Bank

By:/s/ Cara Younger

Name: Cara Younger

Title: Managing Director

By:/s/ Armen Semizian

Name: Armen Semizian

Title: Executive Director



**BANCO SANTANDER, S.A. NEW YORK  
BRANCH,**  
as Joint Lead Arranger and Lender

By:/s/ Andres Barbosa

\_\_\_\_\_  
Name: Andres Barbosa

Title: Managing Director

By:/s/ Rita Walz-Cuccioli

\_\_\_\_\_  
Name: Rita Walz-Cuccioli

Title: Executive Director

**BANK OF AMERICA, N.A.,**  
as Joint Lead Arranger and Lender

By: /s/ Christopher Baethge

Name: Christopher Baethge

Title: Vice President

**THE BANK OF NOVA SCOTIA,  
HOUSTON BRANCH,**  
as Joint Lead Arranger, Issuing Bank, and  
Lender

By: /s/ Joe Lattanzi

Name: Joe Lattanzi

Title: Managing Director

**CANADIAN IMPERIAL BANK OF  
COMMERCE, NEW YORK BRANCH,**  
as Joint Lead Arranger, Issuing Bank, and  
Lender

By:/s/ Peter O'Neill

\_\_\_\_\_  
Name: Peter O'Neill

Title: Managing Director

By:/s/ Anh Nguyen

\_\_\_\_\_  
Name: Anh Nguyen

Title: Director

**CITIBANK, N.A.,**  
as Joint Lead Arranger, Issuing Bank, and  
Lender

By: /s/ Gabriel Juarez

\_\_\_\_\_  
Name: Gabriel Juarez

Title: Vice President

**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,**  
as Joint Lead Arranger and Lender

By:/s/ Michael Willis

\_\_\_\_\_  
Name: Michael Willis

Title: Managing Director

By:/s/ Page Dillehunt

\_\_\_\_\_  
Name: Page Dillehunt

Title: Managing Director

**CREDIT SUISSE AG, NEW YORK  
BRANCH,**  
as Joint Lead Arranger and Lender

By: /s/ Komal Shah

Name: Komal Shah

Title: Authorized Signatory

By: /s/ Michael Wagner

Name: Michael Wagner

Title: Authorized Signatory

**GOLDMAN SACHS BANK USA,**  
as Joint Lead Arranger and Lender

By: /s/ Andrew Vernon

Name: Andrew Vernon

Title: Authorized Signatory



**HSBC BANK USA, NATIONAL  
ASSOCIATION,**  
as Joint Lead Arranger and Lender

By:/s/ Balaji Rajgopal

Name: Balaji Rajgopal

Title: Director

**ING CAPITAL LLC,**  
as Joint Lead Arranger and Lender

By: /s/ Subha Pasumarti

Name: Subha Pasumarti

Title: Managing Director

By: /s/ Anthony Rivera

Name: Anthony Rivera

Title: Director

**INTESA SANPAOLO S.P.A., NEW YORK  
BRANCH,**

as Joint Lead Arranger and Lender

By: /s/ Nicholas A. Matacchieri

Name: Nicholas A. Matacchieri

Title: Managing Director

By: /s/ Lisa Cintron

Name: Lisa Cintron

Title: Business Director

**JPMORGAN CHASE BANK, N.A.,**  
as Joint Lead Arranger and Lender

By: /s/ Cristina Caviness \_\_\_\_\_

Name: Cristina Caviness

Title: Executive Director

**MIZUHO BANK, LTD,**  
as Joint Lead Arranger and Lender

By: /s/ Edward Sacks

Name: Edward Sacks

Title: Executive Director

**MORGAN STANLEY SENIOR FUNDING,  
INC.,**  
as Joint Lead Arranger and Lender

By: /s/ Taylor Tripucka

Name: Taylor Tripucka

Title: Vice President

**MUFG BANK, LTD.,**  
as Joint Lead Arranger and Lender

By: /s/ Saad Iqbal \_\_\_\_\_  
Name: Saad Iqbal  
Title: Managing Director

**ROYAL BANK OF CANADA,**  
as Joint Lead Arranger and Lender

By:/s/ Don J. McKinnerney

Name: Don J. McKinnerney

Title: Authorized Signatory



**NATIXIS NEW YORK BRANCH,**  
as Joint Lead Arranger, Issuing Bank, and  
Lender

By: /s/ Anthony Perna \_\_\_\_\_  
Name: Anthony Perna  
Title: Director

By: /s/ Scott Dunlop \_\_\_\_\_  
Name: Scott Dunlop  
Title: Director

**STANDARD CHARTERED BANK NEW  
YORK,**

as Joint Lead Arranger and Lender

By: /s/ Kristopher Tracy

Name: Kristopher Tracy

Title: Director, Financing Solutions

**SUMITOMO MITSUI BANKING  
CORPORATION,**  
as Joint Lead Arranger, Issuing Bank, and Lender

By:/s/ Jeffrey A Cobb

Name: Jeffrey A Cobb

Title: Director

**TRUIST SECURITIES, INC.,**  
as Joint Lead Arranger

By: /s/ Ben Brown

Name: Ben Brown

Title: Director

**TRUIST BANK,**  
as Lender

By: /s/ Ben Brown

Name: Ben Brown

Title: Director

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION,**  
as Joint Lead Arranger, Issuing Bank, and Lender

By: s/ Borden Tennant  
Name: Borden Tennant  
Title: Director

EXHIBIT A

[See Attached]

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**SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT**

dated as of October 28, 2021, among

**CHENIERE ENERGY, INC.,  
as Borrower,**

**VARIOUS LENDERS AND ISSUING BANKS,**

**SOCIÉTÉ GÉNÉRALE,  
BANK OF AMERICA, N.A.,  
THE BANK OF NOVA SCOTIA, HOUSTON BRANCH,  
CITIBANK, N.A.,  
CREDIT SUISSE AG, NEW YORK BRANCH,  
GOLDMAN SACHS BANK USA,  
ING CAPITAL LLC,  
JPMORGAN CHASE BANK, N.A.,  
MIZUHO BANK, LTD.,  
MORGAN STANLEY SENIOR FUNDING, INC.,  
MUFG BANK, LTD.,  
ROYAL BANK OF CANADA,  
HSBC BANK USA, NATIONAL ASSOCIATION,  
BANCO SANTANDER, S.A., NEW YORK BRANCH,  
BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH,  
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,  
TRUIST SECURITIES, INC.,  
WELLS FARGO BANK, NATIONAL ASSOCIATION,  
CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK BRANCH,  
INTESA SANPAOLO S.P.A., NEW YORK BRANCH,  
SUMITOMO MITSUI BANKING CORPORATION,  
NATIXIS, NEW YORK BRANCH, and  
STANDARD CHARTERED BANK, NEW YORK,  
as Joint Lead Arrangers,**

**SUMITOMO MITSUI BANKING CORPORATION,  
as ESG Coordinator**

**and**

**SOCIÉTÉ GÉNÉRALE,  
as Administrative Agent**

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## Revolving Credit Facility

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## SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

This **SECOND AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT**, dated as of October 28, 2021, is entered into by and among **CHENIERE ENERGY, INC.**, a corporation formed under the laws of the State of Delaware ("**Borrower**"), the Lenders and Issuing Banks party hereto from time to time, **SUMITOMO MITSUI BANKING CORPORATION**, as ESG Coordinator ("**ESG Coordinator**"), and **SOCIÉTÉ GÉNÉRALE**, as Administrative Agent (together with its permitted successors in such capacity, "**Administrative Agent**"), with **SOCIÉTÉ GÉNÉRALE, BANK OF AMERICA, N.A., THE BANK OF NOVA SCOTIA, HOUSTON BRANCH, CITIBANK, N.A., CREDIT SUISSE AG, NEW YORK BRANCH, GOLDMAN SACHS BANK USA, ING CAPITAL LLC, JPMORGAN CHASE BANK, N.A., MIZUHO BANK, LTD., MORGAN STANLEY SENIOR FUNDING, INC., MUFG BANK, LTD., ROYAL BANK OF CANADA, HSBC BANK USA, NATIONAL ASSOCIATION, BANCO SANTANDER, S.A., NEW YORK BRANCH, BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, TRUIST SECURITIES, INC., WELLS FARGO BANK, NATIONAL ASSOCIATION, CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK BRANCH, INTESA SANPAOLO S.P.A., NEW YORK BRANCH, SUMITOMO MITSUI BANKING CORPORATION, NATIXIS, NEW YORK BRANCH, and STANDARD CHARTERED BANK, NEW YORK** as Joint Lead Arrangers (collectively in such capacity, the "**Arrangers**").

### RECITALS:

**WHEREAS**, capitalized terms used and not defined in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 (Definitions) hereof;

**WHEREAS**, Borrower, the lenders and issuing banks party thereto (the "**Existing Lenders**") and the Administrative Agent are party to an Amended and Restated Revolving Credit Agreement, dated as of December 13, 2018 (the "**Existing Credit Agreement**");

**WHEREAS**, the Existing Lenders and each of the other parties hereto wish to and agree to amend and restate the Existing Credit Agreement on the terms and conditions set forth herein, and to continue to make loans and other extensions of credit to Borrower on the terms and conditions set forth herein;

**WHEREAS**, in connection with the amendment and restatement, the Lenders have agreed to extend to Borrower a credit facility consisting of \$1,250,000,000 aggregate principal amount of revolving Commitments;

**WHEREAS**, the proceeds of the Commitments will be used, subject to Section 2.4 (*Use of Proceeds*), for general corporate purposes of Borrower (including with respect to the issuance of Letters of Credit);

**WHEREAS**, Borrower desires to continue to secure all of its Obligations by the security interests and Liens heretofore granted to Collateral Agent, for the benefit of the Secured Parties, upon the Collateral pursuant to the Security Documents; and

**WHEREAS**, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities existing under the Existing Credit Agreement and the other Financing Documents or evidence payment of all such obligations and liabilities, and that this Agreement amends and restates the Existing Credit Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree that, effective on the Closing Date, the Existing Credit Agreement shall be and hereby is amended and restated in its entirety to read as follows:

## **SECTION 1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

**“2023 Milestone Certificate”** as defined in Section 1.10(b)(i) (*Sustainability Adjustments*).

**“Additional Commitment Lender”** means (a) a Lender or (b) any other financial institution (subject to the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) that agrees to provide a Commitment or (in the case of a Lender) agrees to increase the amount of its Commitment pursuant to Section 2.21 (*Increased Commitments*).

~~**“Adjusted LIBO Rate”** means, for any Interest Rate Determination Date with respect to an Interest Period for a LIBO Rate Loan, the rate per annum obtained by dividing (i) (a) the rate per annum equal to the rate determined by Administrative Agent to be the offered rate which appears on the page of the Reuters Screen which displays an average London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person which takes over the administration of that rate) (such page currently being LIBOR01 page) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date (the “**LIBO Screen Rate**”), or (b) in the event the rate referenced in the preceding clause (a) does not appear on such page or service or if such page or service shall cease to be available, the Interpolated Rate; or (c) in the event the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service which displays an average London interbank offered rate administered by ICE Benchmark Administration~~

~~Limited (or any other Person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (d) subject to Section 2.24, in the event the rates referenced in the preceding clauses (a), (b) and (c) are not available, the rate per annum equal to the offered quotation rate to first-class banks in the London interbank market by Administrative Agent for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in immediately available funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted LIBO Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, (the rate determined pursuant to the preceding clause (i), the “LIBO Rate”) by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement; provided that, notwithstanding the foregoing, the Adjusted LIBO Rate shall at no time be less than zero.~~

“Adjusted Term SOFR” means, for any Interest Period, an interest rate per annum equal to the sum of:

(a) Term SOFR for such Interest Period, plus

(b) 0.10% (10 basis points);

provided that if Adjusted Term SOFR as so determined would be less than the Floor, then Adjusted Term SOFR shall be deemed to be equal to the Floor for the purposes of this Agreement.

“Administrative Agent” as defined in the preamble hereto.

“Adverse Proceeding” means any action, suit, claim (including any Environmental Claims), proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign, whether pending or, to the Knowledge of Borrower, threatened in writing against or affecting Borrower or any of its Subsidiaries or any property of Borrower or any of its Subsidiaries.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected Lender” as defined in Section 2.15(b) (Illegality or Impracticability of ~~LIBO Rate~~Term SOFR Loans).

“Affected Loans” as defined in Section 2.15(b) (Illegality or Impracticability of ~~LIBO Rate~~Term SOFR Loans).



“**Affiliate**” means, with respect to any Person, another Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust. Notwithstanding the foregoing, (a) the definition of “Affiliate” shall not encompass any individual solely by reason of his or her being a director, officer, manager or employee of any Person and (b) no Agent or Lender shall be deemed to be an Affiliate of Borrower or any Subsidiary thereof solely as a result of its capacity as such.

“**Agent Affiliates**” as defined in Section 9.1(b)(iii) (*Electronic Communications*).

“**Agent(s)**” means each of (a) Administrative Agent, (b) Collateral Agent, (c) ESG Coordinator and (d) any other Person appointed under the Financing Documents to serve in an agent or similar capacity.

“**Aggregate Amounts Due**” as defined in Section 2.14 (*Ratable Sharing*).

“**Aggregate Availability**” means, as of any date of determination, the positive difference (if any) between (i) the aggregate amount of Commitments as of such date and (ii) the Total Utilization of Commitments as of such date.

“**Agreement**” means this Second Amended and Restated Revolving Credit Agreement, dated as of October 28, 2021.

“**Anti-Corruption Laws**” as defined in Section 4.23 (*Sanctions; Anti-Corruption Laws; PATRIOT Act*).

“**Anti-Terrorism and Money Laundering Laws**” means any of the following: (a) Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the US Code of Federal Regulations), (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the US Code of Federal Regulations), (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the US Code of Federal Regulations), (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the US Code of Federal Regulations), (e) the USA Patriot Act of 2001 (Pub. L. No. 107-56), (f) the U.S. Money Laundering Control Act of 1986, (g) the Bank Secrecy Act, 31 U.S.C. sections 5301 et seq., (h) Laundering of Monetary Instruments, 18 U.S.C. section 1956, (i) Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, 18 U.S.C. section 1957, (j) the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Regulations (Title 31 Part 103 of the US Code of Federal Regulations), (k) any other similar federal Government Rule having the force of law and relating to money laundering, terrorist acts or acts of war, and (l) any regulations promulgated under any of the foregoing.

“**Applicable Margin**” means, for any day, (i) prior to the Closing Date, the “Applicable Margin” as defined in the Existing Credit Agreement and (ii) from and after the Closing Date,

the applicable rate per annum set forth below based upon the ratings assigned by the Ratings Agencies on such date to the Loans; *provided* that, (x) from and after the occurrence of an Investment Grade Ratings Event, the applicable rate per annum shall be as set forth below *minus* 0.125% and (y) the Applicable Margin shall be increased or decreased in accordance with Section 1.10 (*Sustainability Adjustments*), as applicable:

	Ratings (S&P / Moody's / Fitch)	Applicable Margin ( <del>LIBOR</del> <u>Rate Term SOFR</u> Loans)	Applicable Margin (Base Rate Loans)
Category 1	≥ BBB+ / Baa1 / BBB+	1.250%	0.250%
Category 2	BBB / Baa2 / BBB	1.375%	0.375%
Category 3	BBB- / Baa3 / BBB-	1.625%	0.625%
Category 4	BB+ / Ba1 / BB+	1.875%	0.875%
Category 5	BB / Ba2 / BB	2.125%	1.125%
Category 6	≤ BB- / Ba3 / BB-	2.375%	1.375%

For purposes of the foregoing: (a) if only one Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to that rating; (b) if more than one Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to the highest assigned rating unless such ratings differ by two or more levels, in which case the applicable level will be deemed to be the one level below the higher of such levels; (c) if none of S&P, Moody's or Fitch have assigned a rating, but another Ratings Agency has assigned a rating, the applicable Category shall be determined with reference to the equivalent rating provided by such other Ratings Agency; (d) if no Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to the corporate family rating of Borrower and its Subsidiaries assigned by one or more Ratings Agencies, if available; (e) if no Ratings Agency has assigned a rating to the Loans or assigned a corporate family rating to Borrower and its Subsidiaries, the applicable Category shall be Category 6; and (f) if the ratings assigned by any Ratings Agency to the Loans (or, if applicable at such time, the corporate family rating) shall be changed (other than as a result of a change in the rating system of such Ratings Agency), such change shall be effective as of the date on which it is first announced by the applicable Ratings Agency, irrespective of when notice of such change shall have been furnished by Borrower to Administrative Agent and the Lenders. Each change in the applicable Category shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of any Ratings Agency shall change, Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system and, pending the effectiveness of any such amendment, the applicable Category shall be determined by reference to the rating of such Ratings Agency most recently in effect prior to such change.

~~“Applicable Reserve Requirement” means, at any time, for any LIBO Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (a) any category of liabilities which includes deposits by reference to which the applicable Adjusted LIBO Rate or any other interest rate of a Loan is to be determined, or (b) any category of extensions of credit or other assets which include LIBO Rate Loans. A LIBO Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on LIBO Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.~~

**“Approved Electronic Communications”** means any notice, demand, communication, information, document or other material that Borrower provides to Administrative Agent pursuant to any Financing Document or the transactions contemplated therein which is distributed to Agents, Lenders or Issuing Banks by means of electronic communications pursuant to Section 9.1(b) (*Electronic Communications*).

**“Arrangers”** as defined in the preamble hereto.

**“Assignment Agreement”** means an Assignment and Assumption Agreement substantially in the form of Exhibit A, with such amendments or modifications as may be approved by Administrative Agent.

**“Assignment Effective Date”** as defined in Section 9.6(b) (*Register*).

**“Authorized Officer”** means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, senior vice president, vice president (or the equivalent thereof), chief financial officer, chief accounting officer, treasurer, assistant treasurer, secretary, assistant secretary or other named officer of such Person (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership); provided that, the secretary or assistant secretary of such Person shall have delivered an incumbency certificate to Administrative Agent as to the authority of such Authorized Officer.

**“Auto-Extension Letter of Credit”** as defined in Section 2.2(c)(iii) (*Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit*).

**“Auto-Reinstatement Letter of Credit”** as defined in Section 2.2(c)(iv) (*Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit*).

“**Availability Period**” means the period from the Closing Date to but excluding the Commitment Termination Date.

“**Available Eligible Expenditures**” means an amount equal to 30% of the Incurred Eligible Expenditures during the relevant Measurement Period.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, ~~(x) if the then-current Benchmark is a term rate,~~ any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period or ~~(y) otherwise, any~~ payment period for any term rate or otherwise, or for determining any frequency of making payments of interest calculated ~~with reference to such Benchmark, as applicable,~~ pursuant to this Agreement as of such date (but not including any tenor for such Benchmark that is not then included in the definition of “Interest Period” pursuant to Section 2.24).

“**Bail-in Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bankruptcy Code**” means Title 11 of the United States Code as now and hereafter in effect, or any successor statute.

“**Base Rate**” means, for any day, a rate per annum equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day *plus* ½ of ~~+1.00%~~ and (iii) the sum of (x) the Adjusted ~~LIBO-Rate~~Term SOFR that would be payable on such day for a ~~LIBO-Rate~~Term SOFR Loan with a one-month interest period *plus* (y) 1.00%. Any change in the Base Rate due to a change in the Prime Rate ~~or,~~ the Federal Funds Effective Rate or the Adjusted Term SOFR shall be effective on the effective day of such change in the Prime Rate ~~or,~~ the Federal Funds Effective Rate or the Adjusted Term SOFR, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.24 (Benchmark Replacement Setting), then the Base Rate shall be the greater of (i) and (ii) above and shall be determined without regard to clause (iii) above.

“**Base Rate Loan**” means a Loan bearing interest at a rate determined by reference to the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“**Benchmark**” means, initially, ~~LIBO~~the Term SOFR Reference Rate; *provided* that if a ~~replacement of the~~ Benchmark Transition Event has occurred pursuant to Section 2.24 (~~LIBO Rate~~Benchmark Replacement Setting), then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

~~“Benchmark Replacement” means, for any Available Tenor:~~

~~(1) For purposes of Section 2.24(a) (Replacing LIBO Rate), the first alternative set forth below that can be determined by Administrative Agent:~~

~~(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration and 0.71513% (71.513 basis points) for an Available Tenor of twelve-months’ duration; or~~

~~(b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of LIBO Rate with a SOFR-based rate having approximately the same length as the interest payment period specified in Section 2.24(a) (Replacing LIBO Rate); and~~

~~(2) For purposes of Section 2.24(b) (Replacing Future Benchmarks)~~“Benchmark Replacement” means, with respect to any Benchmark Transition Event, for any Available Tenor, the sum of: (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent in consultation with and Borrower as the replacement for ~~such Available Tenor of such~~the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (x) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body and/or (y) any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the United States and (ii) the related Benchmark Replacement Adjustment;

*provided* that, if the Benchmark Replacement as so determined ~~pursuant to clause (1) or (2) above~~ would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for ~~the~~ purposes of this Agreement ~~and the other Financing Documents~~.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation

of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time in the United States.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, ~~the applicability and~~ length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent reasonably decides, with the consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed), may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides, with the consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed), is reasonably necessary in connection with the administration of this Agreement and the other Financing Documents).

**“Benchmark Replacement Date”** means, with respect to any Benchmark, a date and time determined by the Administrative Agent and Borrower, which date shall be no later than the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any

Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

~~“Benchmark Transition Event” means, with respect to any then-current Benchmark other than LIBO Rate, the occurrence of (2)~~  
a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the (or the published component used in the calculation thereof), the Federal Reserve System Board, the Federal Reserve Bank of New York NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark; (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark  
~~or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored (or such component thereof); or~~

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such

component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.24 (Benchmark Replacement Setting), and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.24 (Benchmark Replacement Setting).

“Board of Governors” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“Borrower” as defined in the preamble hereto.

~~“Business Day” means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (b) with respect to all notices, determinations, fundings and payments in connection with the Adjusted LIBO Rate or any LIBO Rate Loans, the term “Business Day” means any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.~~

“Business Day” means,

(a) except to the extent provided in clause (b) below, any day (other than a Saturday or a Sunday) on which banks are open for business in New York City, and

(b) in relation to Term SOFR Loans and any interest rate setting, funding, disbursement, settlement or payment of any Term SOFR Loan, any day that is a U.S. Government Securities Business Day.

“Cash” means money, currency or a credit balance in any demand or Deposit Account.

“Cash Collateralize” means to pledge and deposit (as a first-priority perfected security interest) with or deliver to Administrative Agent, for the benefit of Administrative Agent, the applicable Issuing Bank and the Lenders, as collateral for L/C Obligations, Cash or, if the applicable Issuing Bank benefitting from such collateral shall agree in its sole discretion, other credit support. “Cash Collateral” and “Cash Collateralization” shall have a meaning



correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Equivalents”** means, as at any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within three months after such date; (b) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within three months after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (c) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (d) certificates of deposit, Dollar-denominated time deposits, overnight bank deposits or bankers’ acceptances maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (i) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (ii) has Tier 1 capital (as defined in such regulations) of not less than \$500,000,000; and (e) any money market mutual fund and floating net asset value money market fund that (i) complies with the criteria set forth in Securities and Exchange Commission Rule 2a-7 (or any successor rule) under the Investment Company Act of 1940; (ii) is rated either BBB+ by S&P and Baa1 by Moody’s or at least 95% of the assets of which constitute Cash Equivalents described in clauses (a) through (d) of this definition and/or Dollars; and (iii) has net assets of not less than \$500,000,000.

**“CCH”** means Cheniere Corpus Christi Holdings, LLC.

**“CCH Change of Control”** means Borrower and its Affiliates together shall fail to control, directly or indirectly, more than 50% of the aggregate ordinary voting power of CCH.

**“CCH Project”** means, collectively, the Corpus Christi Pipeline and the Corpus Christi Terminal Facility.

**“CE Tag”** as defined in the definition of “ESG Milestones.”

**“CE Tag Program”** as defined in the definition of “ESG Milestones.”

**“Change in Law”** means (A) the issuance or enactment of any treaty, Government Rule or guideline, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying treaty, Government Rule or guideline was issued or enacted prior to the date hereof), including the introduction of any new treaty, Government Rule or guideline but excluding solely proposals thereof, or any determination of a Governmental Authority, in each case that becomes effective after the date hereof, or (B) the issuance or making of any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued

or made after the date hereof; provided that, for all purposes of the Financing Documents, all requests, rules, guidelines or directives issued or promulgated by (i) any United States or foreign regulatory authority under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) the Bank for International Settlements, the United States regulatory authorities or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) pursuant to Basel III, shall be deemed to be a “Change in Law” regardless of the date adopted, issued, promulgated or implemented.

**“Change of Control”** means, the occurrence of any of the following:

(a) any “person” or “group” (within the meaning of Section 13(d) of the Exchange Act), other than Borrower or its Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Borrower’s Common Equity representing more than 50% of the voting power of Borrower’s Common Equity; or

(b) consummation of (i) any recapitalization, reclassification or change of Borrower’s Common Equity (other than changes resulting from a subdivision or combination) pursuant to which Borrower’s Common Equity would be converted into, or exchanged for, or represent solely the right to receive, shares, stock or other securities of a Person other than Borrower, or other property or assets (including Cash or any combination thereof) or (ii) any share exchange, consolidation, merger or similar event involving Borrower pursuant to which Borrower’s Common Equity will be converted into, or exchanged for, or represent solely the right to receive, shares, stock or other securities of a Person other than Borrower, or other property or assets (including Cash or any combination thereof) (any such share exchange, consolidation, merger, similar event, transaction or series of transactions being referred to in this clause (b) as an “**event**”); provided that any such event described in clause (i) or (ii) above (A) where the Persons that “beneficially own,” directly or indirectly, the voting shares of Borrower immediately prior to such event “beneficially own,” directly or indirectly, more than 50% of the total voting power of all outstanding classes of voting shares or stock of the continuing or surviving Person or transferee or the parent thereof immediately after such event and such holders’ proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction, or (B) effected solely to change Borrower’s jurisdiction of incorporation or to form a holding company for Borrower and that results in a share exchange or reclassification or similar exchange of the outstanding Common Equity solely into shares of common stock or other Common Equity interests of the surviving entity (excluding cash payments for fractional shares and cash payments made in respect of dissenters’ rights) will not constitute a Change of Control.

Notwithstanding the foregoing, a transaction or series of transactions described in clause (a) or clause (b) above (whether or not giving effect to the proviso in clause (b)) shall not constitute a Change of Control if at least 80% of the consideration received or to be received by

holders of Borrower's Common Equity (excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in connection with such transaction or transactions consists of common shares that are traded on NYSE MKT, The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors), or will be so traded immediately following such transaction. For the avoidance of doubt, a transaction or a series of transactions that is not considered a "Change of Control" pursuant to this paragraph shall not be a "Change of Control" solely because such event could also be described by clause (a) or clause (b) above.

**"Closing Date"** means the date on which all the conditions set forth in [Section 3.1](#) (*Closing Date*) have been satisfied (or waived in accordance with the terms of this Agreement).

**"Closing Date Certificate"** means a Closing Date Certificate substantially in the form of [Exhibit B](#).

**"CME Term SOFR Administrator"** means [CME Group Benchmark Administration Limited, as administrator of the forward-looking term Secured Overnight Financing Rate \(or any successor administrator thereof\)](#).

**"Collateral"** means, collectively, all of the real, personal and mixed property (including Equity Interests) in which Liens are purported to be granted pursuant to the Security Documents as security for the Obligations.

**"Collateral Agency Appointment Agreement"** means the Amended and Restated Collateral Agency Appointment Agreement, dated as of June 18, 2020, by and among Borrower, Administrative Agent, Collateral Agent and the other parties thereto from time to time.

**"Collateral Agent"** means Société Générale or any successor to it appointed pursuant to the terms of the Collateral Agency Appointment Agreement.

**"Commitment"** means the commitment of each Lender or Issuing Bank (in such capacity and its capacity as Lender) to make or otherwise fund Loans or to issue Letters of Credit, as applicable, hereunder, and **"Commitments"** means such commitments of all Lenders and Issuing Banks in the aggregate. The Dollar amount of each Lender's and Issuing Bank's Commitment is set forth in [Appendix A](#) or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Commitments as of the Closing Date is \$1,250,000,000.

**"Commitment Fee Rate"** means, for any day, the applicable rate per annum set forth below based upon the ratings assigned by the Ratings Agencies on such date to the Loans; *provided* that, (x) from and after the occurrence of an Investment Grade Ratings Event, the applicable rate per annum shall be as set forth below *minus* 0.025% and (y) the Commitment Fee Rate shall be increased or decreased in accordance with [Section 1.10](#) (*Sustainability Adjustments*), as applicable:

	Ratings (S&P / Moody's / Fitch)	Commitment Fee Rate
Category 1	$\geq$ BBB+ / Baa1 / BBB+	0.15%
Category 2	BBB / Baa2 / BBB	0.20%
Category 3	BBB- / Baa3 / BBB-	0.25%
Category 4	BB+ / Ba1 / BB+	0.30%
Category 5	BB / Ba2 / BB	0.35%
Category 6	$\leq$ BB- / Ba3 / BB-	0.40%

For purposes of the foregoing: (a) if only one Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to that rating; (b) if more than one Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to the highest assigned rating unless such ratings differ by two or more levels, in which case the applicable level will be deemed to be the one level below the higher of such levels; (c) if none of S&P, Moody's or Fitch have assigned a rating, but another Ratings Agency has assigned a rating, the applicable Category shall be determined with reference to the equivalent rating provided by such other Ratings Agency; (d) if no Ratings Agency has assigned a rating to the Loans, the applicable Category shall be the Category that corresponds to the corporate family rating of Borrower and its Subsidiaries assigned by one or more Ratings Agencies, if available; (e) if no Ratings Agency has assigned a rating to the Loans or assigned a corporate family rating to Borrower and its Subsidiaries, the applicable Category shall be Category 6; and (f) if the ratings assigned by any Ratings Agency to the Loans (or, if applicable at such time, the corporate family rating) shall be changed (other than as a result of a change in the rating system of such Ratings Agency), such change shall be effective as of the date on which it is first announced by the applicable Ratings Agency, irrespective of when notice of such change shall have been furnished by Borrower to Administrative Agent and the Lenders. Each change in the applicable Category shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of any Ratings Agency shall change, Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system and, pending the effectiveness of any such amendment, the applicable Category shall be determined by reference to the rating of such Ratings Agency most recently in effect prior to such change.

“**Commitment Fees**” as defined in Section 2.9(a) (*Fees*).

“**Commitment Increase**” as defined in Section 2.21 (*Increased Commitments*).

“**Commitment Termination Date**” means the earliest to occur of (i) the Final Maturity Date; (ii) the date the Commitments are permanently reduced to zero pursuant to Section 2.10(b)

(*Voluntary Commitment Reductions*) or Section 2.11 (*Mandatory Prepayments*) and (iii) the date of the termination of the Commitments pursuant to Section 7.1 (*Events of Default*).

**“Common Equity”** of any Person means the Equity Interests of such Person that are generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

**“Completion Date”** as defined in the definition of “Material Project EBITDA Adjustment”.

**“Compliance Certificate”** means a Compliance Certificate substantially in the form of Exhibit C.

**“Consolidated Net Tangible Assets”** means, at any date, (a) total assets of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP *minus* (b) the sum of (i) current liabilities (excluding short-term Indebtedness (which, for the avoidance of doubt, shall mean indebtedness maturing within 12 months of such applicable date) and the current portion of long-term Indebtedness) of Borrower and its Subsidiaries and (ii) goodwill and other intangible assets of Borrower and its Subsidiaries, in each case determined on a consolidated basis in accordance with GAAP.

**“Contractual Obligation”** means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**“Control”** (including, with its correlative meanings, **“Controlled by”** and **“under common Control with”**) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of Equity Interests, by contract or otherwise).

**“Control Agreements”** means each control agreement executed and delivered by Collateral Agent for the benefit of the Secured Parties, a securities intermediary or depository bank and Borrower pursuant to the terms of the Pledge and Security Agreement with such modifications as Collateral Agent may reasonably request or approve.

**“Conversion/Continuation Date”** means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

**“Conversion/Continuation Notice”** means a Conversion/Continuation Notice substantially in the form of Exhibit D-1.

**“Corpus Christi Pipeline”** means the gas pipeline originating at the Corpus Christi Terminal Facility and terminating north of the City of Sinton, Texas, and related facilities.

**“Corpus Christi Terminal Facility”** means the liquefaction facilities in San Patricio County and Nueces County in the vicinity of Portland, Texas, on the La Quinta Channel in the Corpus Christi Bay, comprising liquefaction trains, LNG storage tanks, and one or more marine berths and supporting facilities.

**“Corresponding Amount”** as defined in Section 2.3(b) (Availability of Funds).

**“Corresponding Tenor”** means, with respect to any Available Tenor, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Covenant Testing Period”** means a period (i) commencing on the last day of a Fiscal Quarter of Borrower during which a Covenant Trigger Event has occurred and is continuing on the last day of such Fiscal Quarter and (ii) continuing through and including the first day after such Covenant Trigger Event when no Covenant Trigger Event has occurred for at least thirty (30) consecutive days.

**“Covenant Trigger Event”** means if at any time (a)(i) the aggregate outstanding principal amount of the Loans *plus* (ii) Unreimbursed Amounts exceeds (b) 35% of the aggregate amount of Commitments.

**“Covered Party”** as defined in Section 2.26(a) (Acknowledgment Regarding Any Supported QFCs).

**“CQH”** means Cheniere Energy Partners LP Holdings, LLC.

**“CQH Change of Control”** means the occurrence of either of the following: (a) Borrower shall cease to, directly or indirectly, own and control legally and beneficially on a fully diluted basis more than 50% of the voting rights associated with ownership of all outstanding Equity Interests of all classes of Equity Interests of CQH or (b) Borrower shall cease to hold, directly or indirectly, and control legally and beneficially on a fully diluted basis at least 50% of the economic rights associated with ownership of all outstanding limited partnership interests of CQP held, directly or indirectly by Borrower, as of the Closing Date.

**“CQP”** means Cheniere Energy Partners, L.P.

**“CQP Change of Control”** means the occurrence of any of the following:

(a) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” or “group” of related persons (as such terms are used in Section 13(d) of the Exchange Act), other than an entity owned directly or indirectly by the partners of CQP in substantially the same proportion as their ownership interests in CQP prior to such transaction, becomes the beneficial owner (as such term

is used in Section 13(d) of the Exchange Act, except that such person or group shall be deemed to have “beneficial ownership” of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of CQP or CQP GP (or their respective successors by merger, consolidation or purchase of all or substantially all of their respective assets);

(b) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of CQP and its Subsidiaries taken as a whole to any “person” (as such term is used in Section 13(d) of the Exchange Act); or

(c) the adoption of a plan relating to the liquidation or dissolution of CQP or the removal of the general partner by the limited partners of CQP;

provided that a CQP Change of Control shall be deemed to exclude transactions where (i) on a pro forma basis, Borrower retains greater than 50% control of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of CQP GP, (ii) Borrower is the surviving entity as a result of a corporate re-organization and combination of CQP into Borrower, (iii) CQP is the surviving entity as a result of a corporate reorganization and combination of Borrower into CQP (including any such reorganization the result of which CQP ceases to be a limited partnership) where on a pro forma basis, the equityholders of Borrower and CQP (prior to such reorganization or combination) collectively retain greater than 50% control of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of (A) CQP GP if CQP is a limited partnership, (B) the managing member if CQP is a limited liability company or (C) CQP if CQP is a corporation or a member managed limited liability company and (iv) following the conversion of CQP into a corporation, on a pro forma basis, Borrower retains greater than 50% control of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of CQP.

“**CQP GP**” means Cheniere Energy Partners GP, LLC.

“**CQP IDRs**” means the Incentive Distribution Rights, as that term is defined in the CQP Partnership Agreement (as in effect on the Closing Date without giving effect to any amendment thereto).

“**CQP Minority Interest**” means the sum of the amounts described below allocated and distributed (assuming 100% distribution), in accordance with the CQP Partnership Agreement, to the Partnership Interests (as that term is defined in the CQP Partnership Agreement), other than the Partnership Interests held, directly or indirectly, by Borrower and its Subsidiaries:

(a) Net Income of CQP and its consolidated Subsidiaries for such period; *plus*

(b) each of the following to the extent deducted in determining such Net Income for such period: (i) all depreciation and amortization (including amortization of intangible assets) for such period, (ii) any other non-cash charges or losses for such period (including any non-cash

losses resulting from the impairment of long-lived assets, goodwill or intangible assets) and (iii) all transaction fees and expenses for acquisitions, investments, dispositions and equity or debt offerings; *minus*

(c) each of the following: (i) all non-cash items of income or gain which were included in determining such Net Income for such period, including non-cash expenses associated with stock-based compensation, and (ii) any cash payments made during such period in respect of items described in clause (b)(ii) above subsequent to the Fiscal Quarter in which the relevant non-cash charges or losses were reflected as a charge in determining such Net Income.

**“CQP Partnership Agreement”** means that certain Fourth Amended and Restated Agreement of Limited Partnership of CQP, dated as of February 14, 2017.

**“Credit Date”** means the date of a Credit Extension.

**“Credit Extension”** means the making of a Loan, the extending of Commitments pursuant to Section 2.25, or the issuing, amending or extending of a Letter of Credit.

**“Creole Trail Project”** means the 94-mile pipeline that interconnects the SPL Project with a number of large interstate pipelines and that, as of the date hereof, is owned and operated by Cheniere Creole Trail Pipeline, L.P.

**“Cross-Acceleration Parties”** means, collectively, SPL, CQP and CCH.

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

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

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Defaulting Lender”** means, subject to Section 2.19(b) (*Defaulting Lender Cure*), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, applicable Issuing Bank or any other



Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or the applicable Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent, Borrower or the applicable Issuing Bank, to confirm in writing to Administrative Agent, or such Issuing Bank, and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent, the applicable Issuing Bank and Borrower), (d) Administrative Agent has received notification that such Lender has, or has a direct or indirect parent company that is (x) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (y) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment, or (e) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**"Deposit Account"** means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**"Derivative Counterparties"** as defined in Section 9.23 (*No Fiduciary Duty*).

**"Derivatives"** as defined in Section 9.23 (*No Fiduciary Duty*).

**"Discharge of Obligations"** means:

(a) payment in full in cash of (i) the outstanding principal amount of Loans under this Agreement, (ii) Unreimbursed Amounts and (iii) interest accrued and owing at or prior to the time such amounts are paid (including interest and fees accruing (or which would, absent the commencement of any case or proceeding under any Debtor Relief Laws of Borrower, accrue) on or after the commencement of any case or proceeding under any Debtor Relief Laws of

Borrower, whether or not such interest would be allowed in such case or proceeding), on all Indebtedness outstanding under this Agreement and the other Financing Documents;

(b) the termination or expiration of all Commitments, if any, to extend credit (including the issuance of any Letter of Credit) that would constitute Obligations;

(c) cancellation, termination or Cash Collateralization (including pursuant to a letter of credit issued by a financial institution for the benefit of each Issuing Bank satisfactory to such Issuing Bank in its sole discretion) at 103% of the aggregate maximum amount available to be drawn (in a manner reasonably satisfactory to Administrative Agent, and the applicable Issuing Bank and to the extent not already funded in such amount) under all Letters of Credit issued and outstanding under the Financing Documents; and

(d) payment in full in cash of all other Obligations that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid, including all obligations outstanding under this Agreement which constitute Obligations (in each case, other than contingent indemnification obligations with respect to which no claim is outstanding).

**“Disqualified Equity Interests”** means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part or (iii) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Final Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior Discharge of Obligations.

**“Dollars”** and the sign **“\$”** mean the lawful money of the United States of America.

~~**“Early Opt-in Effective Date”** means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Requisite Lenders.~~

~~**“Early Opt-in Election”** means the occurrence of:~~

~~(1) a notification by Administrative Agent to (or the request by Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate~~

~~(including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review); and~~

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

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Eligible Assignee”** means any Person other than a natural Person that is (a) a Lender, an Issuing Bank, an Arranger, an Affiliate of any Lender or Arranger or Issuing Bank or a Related Fund (any two (2) or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (b) a commercial bank, insurance company or mutual fund; provided that no Defaulting Lender, Borrower or Affiliate of Borrower shall be an Eligible Assignee.

**“Eligible Expenditure”** means any expenditure incurred by or on behalf of Borrower and/or any of its Subsidiaries in connection with, or related to, any of the categories set forth on Schedule I (*Eligible Expenditures*).

**“Eligible Expenditure Application Period”** means the period commencing on the date on which an Eligible Expenditure Certificate (if any) is delivered by Borrower to Administrative Agent and the ESG Coordinator and ending on the earlier to occur of (x) the date on which an Eligible Expenditure Certificate (if any) is delivered with respect to a subsequent Measurement Period and (y) the date that is 120 days following the end of the Fiscal Year in which such Eligible Expenditure Certificate was delivered.

**“Eligible Expenditure Certificate”** means a certificate substantially in the form of Exhibit E (*Eligible Expenditure Certificate*) executed by a Financial Officer of Borrower (x) attaching a list and amount of all Incurred Eligible Expenditures for the most recently ended Measurement Period and setting forth the calculation of Available Eligible Expenditures for the period covered thereby and computations in reasonable detail in respect thereof, (y) appending a certification by an External Review Provider ~~that such External Review Provider has seen satisfactory evidence of the incurrence of the Incurred Eligible Expenditures described~~

~~therein~~substantially in the form of Exhibit 2 to Exhibit E (or such other form as may be reasonably acceptable to the ESG Coordinator), and (z) including a certification by the signatory thereto (in their official, and not individual, capacity) confirming that they are not aware of any material modifications that should be made to such computations in order for them to be presented in all material respects in conformity with the applicable standards for the computation thereof.

**“Emissions Offsets”** means carbon offsets issued by the following registries: American Carbon Registry, Verra, Climate Action Reserve, Gold Standard and the United Nations Clean Development Mechanism.

**“Employee Benefit Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA which is, or was within the six-year period immediately preceding the Closing Date, sponsored, maintained or contributed to by, or required to be contributed to by, Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

**“Environmental Claim”** means any written notice of noncompliance or violation, investigation, claim, administrative, regulatory, or judicial action, suit, judgment, written demand with respect to or arising in connection with Borrower or any Subsidiary of Borrower, by any other Person alleging or asserting liability under any Environmental Law, including for investigatory costs, costs of response, removal, remediation or cleanup, governmental response costs, attorneys’ fees, damages to the environment, natural resources, fines, or penalties arising out of, based on or resulting from (a) the presence, use, or Release into the environment of any Hazardous Substances or (b) any fact, circumstance, condition, or occurrence forming the basis of any violation, or alleged violation, of or liability under any Environmental Laws or Government Approvals issued pursuant to Environmental Law.

**“Environmental Laws”** means any applicable laws, statutes, regulations, rules, ordinances, orders, decrees, rulings, judgments, writs, decisions, injunctions, or binding directives of a Governmental Authority having jurisdiction over or imposing legal requirements on Borrower or any Subsidiary of Borrower concerning human health or safety as related to any Hazardous Substance, natural resources, plant and animal species or the use or Release into the environment of any Hazardous Substances, including the Clean Air Act (42 U.S.C. §7401 *et seq.*), the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), the Safe Drinking Water Act (42 U.S.C. §300f *et seq.*), the Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Endangered Species Act (16 U.S.C. §1531 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. §668 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. §703 *et seq.*), the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*), the National Historic Preservation Act (16 U.S.C. § 468-468d), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*), the Pollution Prevention Act (42 U.S.C. § 13101 *et seq.*), the Oil Pollution Act (42 U.S.C. 11001 *et seq.*), the Louisiana Solid Waste Management and Resource Recovery Law (La. R.S. 30:2151 *et seq.*), the Louisiana Hazardous Waste Control Law (La. R.S. 30:2171 *et*

*seq.*), the Louisiana Inactive and Abandoned Hazardous Waste Site Law (La. R.S. 30:2221 *et seq.*), the Louisiana Hazardous Substance Remedial Act (La. R.S. 30:2271 *et seq.*), and the regulations promulgated pursuant to any of the foregoing and similar federal, state and local statutes, all as may be amended from time to time.

**“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 in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing (but excluding any debt security that is convertible into, or exchangeable for, any of the foregoing).

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

**“ERISA Affiliate”** means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

**“ERISA Event”** means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty (30) day notice to PBGC has been waived by regulation in effect on the date hereof under subclause .23, .27, .28 or .31 of such regulation); (b) the failure to meet the minimum funding standard of Sections 412 and 430 of the Internal Revenue Code and Sections 302 and 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code and Section 302(c) of ERISA) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan resulting in liability to Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might reasonably constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of

Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization, or is in insolvency pursuant to Section 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (h) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, against Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (i) receipt from the IRS of notice of the failure of any Pension Plan of Borrower or any of its Subsidiaries (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (j) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) of ERISA.

**“Erroneous Payment”** as defined in Section 8.12(a).

**“Erroneous Payment Deficiency Assignment”** as defined in Section 8.12(d)(i).

**“Erroneous Payment Impacted Class”** as defined in Section 8.12(d)(i).

**“Erroneous Payment Return Deficiency”** as defined in Section 8.12(d)(i).

**“Erroneous Payment Subrogation Rights”** as defined in Section 8.12(e).

**“ESG Coordinator”** as defined in the preamble hereto.

**“ESG Milestones”** means each of the following:

(a) commencement by Borrower and/or any of its Subsidiaries of a program substantially consistent with the program Borrower announced on February 24, 2021 (the **“CE Tag Program”**) to issue to buyers of LNG cargos from the SPL Project and/or the CCH Project data showing the estimated greenhouse gas (**“GHG”**) emissions, shown as CO<sub>2</sub>e/tonne of LNG, from the wellhead to the cargo delivery point, calculated using Borrower’s proprietary lifecycle analysis model that has been developed using proprietary and publicly available data from value chain participants as well as operational data from the SPL Project and CCH Project (each data set, a **“CE Tag”**); provided, that the CE Tag Program will be deemed to have commenced for purposes of this provision only to the extent such cargo data has been so delivered as confirmed by Borrower;

(b) entrance into one or more agreements by Borrower and/or any of its Subsidiaries that will result in the development of an emissions “quantification, monitoring, reporting and verification” (**“QMRV”**) program that includes the issuance of one or more QMRV report(s) by a third party (including universities) selected by Borrower and/or any of its Subsidiaries in respect of at least two (2) third-party natural gas midstream providers involved in gathering &

boosting, processing and/or transporting quantities of natural gas, each as confirmed by Borrower (acting reasonably); and

(c) installation of emissions monitoring equipment on at least five LNG vessels (as selected by Borrower) that have previously been, or are then being, chartered and/or sub-chartered by Borrower and/or a Subsidiary of Borrower (“**Vessel Program**”).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Event of Default**” means each of the conditions or events set forth in Section 7.1 (*Events of Default*).

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

“**Excluded Assets**” means “Excluded Assets” as defined in the Pledge and Security Agreement.

“**Excluded Subsidiary**” means “Excluded Subsidiary” as defined in the Pledge and Security Agreement.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 2.20 (*Removal or Replacement of a Lender*)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17 (*Taxes; Withholding, Etc.*), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(c) (*Status of Lenders*) and (d) any Taxes imposed under FATCA.

“**Existing Commitment**” as defined in Section 2.25(a) (*Amend and Extend*).

“**Existing Credit Agreement**” as defined in the recitals.

“**Existing Lenders**” as defined in the recitals.

**“Exiting Lenders”** as defined in [Section 2.13\(i\)](#).

**“Extended Commitment”** as defined in [Section 2.25\(a\)](#) (*Amend and Extend*).

**“Extending Lender”** as defined in [Section 2.25\(b\)](#) (*Amend and Extend*).

**“Extension Amendment”** as defined in [Section 2.25\(c\)](#) (*Amend and Extend*).

**“Extension Election”** as defined in [Section 2.25\(b\)](#) (*Amend and Extend*).

**“Extension Request”** as defined in [Section 2.25\(a\)](#) (*Amend and Extend*).

**“External Review Provider”** means a nationally recognized accounting firm designated by Borrower and reasonably acceptable to the ESG Coordinator with expertise in providing audit services, and shall be deemed to include any firm from among the largest four (4) international accounting firms at the relevant time.

**“Fair Labor Standards Act”** means the Fair Labor Standards Act of 1938.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, any intergovernmental agreement between a non-U.S. jurisdiction and the United States of America with respect to the foregoing and any law, regulation or practice adopted pursuant to any such intergovernmental agreement.

~~**“FCA”** as defined in [Section 2.24\(a\)](#) (*LIBO Rate Replacement*).~~

**“Federal Funds Effective Rate”** means for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that, (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent and (c) notwithstanding the foregoing, the Federal Funds Effective Rate shall at no time be less than zero.

**“Federal Reserve Board”** means [the Board of Governors of the Federal Reserve System of the United States of America](#).



**“Fee Letters”** means (i) the amended and restated agency fee letter, dated as the Closing Date, between Administrative Agent, Collateral Agent and Borrower and (ii) the upfront fee letter, dated as of the Closing Date, between Administrative Agent and Borrower.

**“FERC”** means the Federal Energy Regulatory Commission and any successor thereto.

**“Final Maturity Date”** means the earlier of (a) the fifth (5<sup>th</sup>) anniversary of the Closing Date and (b) the date all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

**“Finance Lease”** means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a finance lease on the balance sheet of that Person; provided that, notwithstanding any changes adopted or required to be adopted by Borrower after December 13, 2018 as a result of any actual or proposed update to accounting standards, including, in particular, Accounting Standards Update (ASU) 2016-02 Leases (Topic 842), any successor proposal, any implementation thereof, any oral or public deliberations by the Financial Accounting Standards Board regarding the foregoing, or any other change in GAAP that requires or would require the obligations of a Person in respect of an operating lease or a lease that would be treated as an operating lease on December 13, 2018 to be recharacterized as a Finance Lease, only leases that would be classified as capital leases under GAAP as in effect on December 13, 2018 (whether or not such leases were in effect) shall constitute Finance Leases for purposes of this definition.

**“Financial Officer”** means the chief financial officer, vice president, finance and planning, treasurer, assistant treasurer, chief accounting officer or corporate controller of Borrower, if such person is an Authorized Officer.

**“Financial Officer Certification”** means, with respect to the financial statements for which such certification is required, the certification of a Financial Officer that such financial statements fairly present, in all material respects, the consolidated or unconsolidated, as applicable, financial condition of Borrower as at the dates indicated and the results of its operations and its cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“Financing Document”** means any of this Agreement, the Notes, if any, the Security Documents, the Intercreditor Agreement, any Issuer Documents, the Fee Letters, the Collateral Agency Appointment Agreement and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of Borrower for the benefit of any Agent, any Issuing Bank or any Lender in connection herewith on or after the date hereof.

**“Fiscal Quarter”** means a fiscal quarter of any Fiscal Year.

**“Fiscal Year”** means the fiscal year of Borrower ending on December 31st of each calendar year.

“**Fitch**” means Fitch Ratings, Inc., or any successor to the rating agency business thereof.

“**Floor**” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Adjusted ~~LIBO Rate~~ Term SOFR. For the avoidance of doubt the initial Floor for Adjusted Term SOFR shall be zero.

“**Force Majeure Adjustment**” means, during the continuance of a Force Majeure Period, an amount equal to (x) the actual amount of dividends, distributions and repayment of good-faith loans made in Cash or Cash Equivalents, directly or indirectly, to Borrower in connection with the SPL Project, the CCH Project, the Creole Trail Project, the Sabine Pass Project and any additional Material Project, as applicable, during the four (4) full Fiscal Quarters immediately preceding the Fiscal Quarter in which the applicable Force Majeure Event occurred *minus* (y) the actual amount of dividends, distributions and repayment of good-faith loans made in Cash or Cash Equivalents, directly or indirectly, to Borrower in connection with the SPL Project, the CCH Project, the Creole Trail Project, the Sabine Pass Project and any additional Material Project, as applicable, during the four (4) Fiscal Quarters for which the Force Majeure Adjustment is being claimed; provided, that the foregoing shall not result in a Force Majeure Adjustment that is a negative number; provided further that, during any Force Majeure Period, Borrower shall be entitled to a Force Majeure Adjustment with respect to only one of the following (a) and (b): (a) the CCH Project and any related facilities, on the one hand, or (b) the SPL Project, the Creole Trail Project and the Sabine Pass Project and any related facilities, on the other hand.

“**Force Majeure Election Notice**” as defined in Section 5.1(j)(ii) (*Notice of Force Majeure Event; Force Majeure Election*).

“**Force Majeure Event**” means the occurrence of any event of force majeure under any material contract with a third party (as determined by Borrower in good faith) in respect of the SPL Project, the CCH Project, the Creole Trail Project, the Sabine Pass Project or any additional Material Project, in each case, so long as such Force Majeure Event does not, individually or with other such events, constitute an event of default under any Indebtedness in the individual or aggregate principal amounts in excess of \$250,000,000 of SPL, CCH, or Indebtedness incurred in connection with the Creole Trail Project, the Sabine Pass Project or such additional Material Project, as applicable.

“**Force Majeure Period**” means, at the election of Borrower, the first full Fiscal Quarter ending after a Force Majeure Event and the three full Fiscal Quarters following such first full Fiscal Quarter; provided that (i) only one Force Majeure Period may be in effect at any point in time, (ii) no new Force Majeure Period may commence until at least two full Fiscal Quarters have elapsed following the end of a prior Force Majeure Period and (iii) no more than two Force Majeure Periods may be elected during the period beginning on the Closing Date and ending on the Final Maturity Date.

**“Fronted Letter of Credit”** means a Letter of Credit issued by an Issuing Bank with a Fronting Limit.

**“Fronting Fee”** as defined in Section 2.2(i)(ii) (*Letter of Credit Fees*).

**“Fronting Limit”** means, at any time, with respect to any Issuing Bank, the amount set forth opposite the name of such Issuing Bank in the column entitled “Fronting Limit” on Schedule II, or, in the case of any Lender that becomes an Issuing Bank hereunder pursuant to Section 2.2(m) (*Resignation as Issuing Bank*) or otherwise, such amount as set forth in the agreement evidencing the appointment of such Lender as an Issuing Bank

**“Funded Debt”** means Indebtedness of Borrower (determined on an unconsolidated basis) of the type referred to in clauses (a), (b), (d) (but, with respect to clause (d), only with respect to Indebtedness referred to in clauses (a), (b), (e) and (f)), (e) and (f) of the definition of “Indebtedness”.

**“Funding Notice”** means a notice substantially in the form of Exhibit D-2.

**“GAAP”** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

**“Gas”** means any hydrocarbon or mixture of hydrocarbons consisting predominantly of methane which is in a gaseous state.

**“GHG”** as defined in the definition of “ESG Milestones.”

**“Government Approval”** means (a) any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, waiver, exemption, filing, variance, order, judgment, or decree of, by, from or with, (b) any declaration of or with or (c) any registration by or with, any Governmental Authority.

**“Governmental Authority”** means any foreign, federal, state, regional, tribal or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and having jurisdiction over the Person or matters in question.

**“Government Rule”** means any statute, law, regulation, ordinance, rule, judgment, order, decree, directive, requirement of, or other governmental restriction or any similar binding form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, which is applicable to any Person, whether now or hereafter in effect.

**“Hazardous Substances”** means any hazardous substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, urea formaldehyde insulation, lead-based paint, radon gas, or asbestos or any materials containing asbestos) designated, regulated, or defined under or with respect to which any requirement or liability may be imposed pursuant to any Environmental Law.

**“Hedge Agreement”** means any agreement evidencing an interest rate, swap, forward rate transaction, commodity swap, commodity option, commodity future, interest rate option, interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract, or other similar agreement.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Financial Statements”** means (a) the consolidated audited balance sheet of Borrower and its Subsidiaries as at the end of the Fiscal Year ending December 31, 2020 and the related consolidated statements of income, stockholders’ equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year and (b) the consolidated unaudited balance sheet of Borrower and its Subsidiaries for the Fiscal Quarter ending June 30, 2021 and the related consolidated statements of income and cash flows of Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter.

**“Honor Date”** as defined in Section 2.2(d)(i) (*Drawings and Reimbursements*).

~~**“IBA”** as defined in Section 2.24(a) (*LIBO Rate Replacement*).~~

**“Increased Cost Lender”** as defined in Section 2.20 (*Removal or Replacement of a Lender*).

**“Incurred Eligible Expenditure”** means all Eligible Expenditures incurred during a Measurement Period as evidenced on the applicable Eligible Expenditure Certificate.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (x) current accounts payable incurred in the ordinary course of business, (y) obligations that Borrower has discretion to satisfy with equity of Borrower and (z) any earn-out, purchase price adjustment or similar obligations, except with respect to this clause (z) to the extent required to be reported as a liability on the balance sheet of such Person), (d) all direct or indirect guarantees by such Person of Indebtedness of others, (e) the capitalized portions of all Finance Lease obligations that appear on the balance sheet of

such Person, (f) all reimbursement obligations of such Person as an account party in respect of payments under drawn letters of credit and letters of guaranty, (g) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (h) Disqualified Equity Interests, and (i) net obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedge Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise, in each case, valued on any date at the net hedging termination value thereof.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

- i. contingent obligations incurred in the ordinary course of business;
- ii. in connection with the purchase by Borrower of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided that at the time of closing the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter; or
- iii. any obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes.

**"Indemnified Liabilities"** means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, preparation, study, sampling, monitoring, maintenance, testing, abatement, cleanup, removal, remediation or other response action required pursuant to Environmental Law to remove, remediate, clean up or abate any Hazardous Substance), expenses and disbursements arising out of the foregoing (including the reasonable fees and disbursements of counsel for Indemnitees in connection with or as a result of any action, claim, litigation, proceeding, investigation or hearing commenced or threatened by any Person, whether or not brought by Borrower, its equity holders or creditors or an Indemnitee, against any Person, and whether or not any such Indemnitee shall be otherwise designated as a party or a potential party thereto, and without regard to the exclusive or contributory negligence of such Indemnitee, and any fees or expenses incurred by Indemnites in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, including shareholders, partners, members or other equity holders of Borrower (or its Affiliates), in any manner relating to or arising out of (a) this Agreement or the other Financing Documents or Letters of Credit or the transactions contemplated hereby or thereby or any matter referred to herein and therein (including the Lenders' agreement to make Credit Extensions or the use or intended use of the proceeds thereof, any amendments, waivers or

consents with respect to any provision of this Agreement or any of the other Financing Documents or Letters of Credit, or any enforcement of any of the Financing Documents (including any sale of, collection from, or other realization upon any of the Collateral)); or (b) any liability arising under Environmental Law or with respect to the actual or alleged presence or Release of Hazardous Substances at any location, or exposure of any person to Hazardous Substances, including, but not limited to, any Environmental Claim, related to Borrower or any of its Subsidiaries, including with respect to any past or present activity, operation, land ownership or practice of Borrower or any of its Subsidiaries.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** as defined in Section 9.3(a) (*Indemnity*).

**“Information”** as defined in Section 4.22 (*Disclosure*).

**“Initial Milestone Certificate”** as defined in Section 1.10(b)(i) (*Sustainability Adjustments*).

**“Initial Milestone Long-Stop Date”** as defined in Section 1.10(b)(ii) (*Sustainability Adjustments*).

**“Intellectual Property”** means “Intellectual Property” as defined in the Pledge and Security Agreement.

**“Intercompany Note”** means a promissory note substantially in the form of Exhibit F evidencing Indebtedness owed among Borrower and its Subsidiaries.

**“Intercreditor Agreement”** means that certain Intercreditor Agreement, dated as of June 18, 2020 (and amended on the Closing Date), by and among the Administrative Agent, Société Générale as Term Loan Administrative Agent, the Collateral and Intercreditor Agent (as defined therein) and each other First Lien Debt Representative (as defined therein) party thereto from time to time.

**“Interest Expense”** means, for any period, total Cash interest expense (including that attributable to Finance Lease obligations) of Borrower (on an unconsolidated basis) for such period with respect to all outstanding Indebtedness of Borrower (including all commissions, discounts and other fees and charges owed by Borrower or such Subsidiary with respect to letters of credit and bankers’ acceptance financing).

**“Interest Payment Date”** means with respect to (a) any Loan that is a Base Rate Loan, the last Business Day of each March, June, September and December of each year, commencing on the first such date to occur after the Closing Date; and (b) any Loan that is a ~~LBO~~ RateTerm SOFR Loan, the last day of each Interest Period applicable to such Loan; provided that, in the case of each Interest Period of longer than three (3) months, “Interest Payment Date” shall also

include each date that is three (3) months, or an integral multiple thereof, after the commencement of such Interest Period.

**“Interest Period”** means, ~~in connection with a LIBO Rate Loan, an interest period of~~ with respect to any Term SOFR Loan, the period commencing on the date of borrowing such Term SOFR Loan and ending on the numerically corresponding day in the calendar month that is one (1), three (3) or six (6) months or, if agreed to by all relevant Lenders, twelve (12) months, as selected by Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (i) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (ii) thereafter, commencing on the day on which the immediately preceding Interest Period expires thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as Borrower may elect; provided that: (ai) if any Interest Period would ~~otherwise expire~~ end on a day ~~that is not~~ other than a Business Day, such Interest Period shall ~~expire on~~ be extended to the next succeeding Business Day unless ~~no further~~ such next succeeding Business Day ~~occurs in such~~ would fall in the next calendar month, in which case such Interest Period shall ~~expire~~ end on the ~~immediately next~~ preceding Business Day; (bii) any Interest Period that ~~begins~~ commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the ~~last~~ calendar month ~~at the end of such Interest Period~~) shall, ~~subject to clause (c), of this definition,~~ end on the last Business Day of ~~at the last~~ calendar month; of such Interest Period. (iii) no tenor that has been removed from this definition pursuant to Section 2.24 (Benchmark Replacement Setting) shall be available for specification in a Funding Notice or a Conversion/Continuation Notice, and (eiv) no Interest Period shall extend beyond the Commitment Termination Date. For purposes hereof, the date of a borrowing of a Loan initially shall be the date on which such borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such borrowing.

**“Interest Rate Determination Date”** means, ~~with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.~~

**“Internal Revenue Code”** means the U.S. Internal Revenue Code of 1986.

**“Interpolated Rate”** means, ~~in relation to the Adjusted LIBO Rate, the rate which results from interpolating on a linear basis between (a) the applicable Adjusted LIBO Rate for the longest period (for which that Adjusted LIBO Rate is available) which is less than the Interest Period of the applicable Loan; and (b) the applicable Adjusted LIBO Rate for the shortest period (for which that Adjusted LIBO Rate is available) which exceeds the Interest Period of the applicable Loan, each as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period of that Loan.~~

**“Investment”** means (a) any direct purchase or other acquisition by Borrower of, or of a beneficial interest in, any of the Equity Interests of any other Person; (b) any direct redemption, retirement, purchase or other acquisition for value, by Borrower from any Person, of any Equity Interests of such Person; (c) any direct loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by Borrower to any other Person, including

all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business; and (d) all investments consisting of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes or otherwise by Borrower. The amount of any Investment of the type described in clauses (a), (b) and (c) shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment, but after giving effect to any repayment of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale).

**“Investment Grade Ratings Event”** means the receipt by Borrower of either an issuer credit rating or senior unsecured rating of BBB-, or higher, from S&P or a corporate family rating, senior unsecured rating or long-term issuer rating of Baa3, or higher, from Moody’s.

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

**“ISP”** means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**“Issuance Notice”** means an Issuance Notice substantially in the form of Exhibit D-3.

**“Issuer Documents”** means with respect to any Letter of Credit, any Issuance Notice, any Letter of Credit application required by the applicable Issuing Bank to be completed and any other document, agreement and instrument entered into by any Issuing Bank and Borrower or in favor of the Issuing Bank and relating to such Letter of Credit.

**“Issuing Bank”** means, as of the Closing Date, The Bank of Nova Scotia, Houston Branch, Citibank, N.A., Wells Fargo Bank, National Association, Canadian Imperial Bank of Commerce, New York Branch, Sumitomo Mitsui Banking Corporation and Natixis, New York Branch (together with their permitted successors and assigns in such capacity) or any Person that becomes an Issuing Bank in accordance with the provisions hereof, including Section 2.2(m) (*Resignation as Issuing Bank*), Section 2.2(n) (*Replacement of Issuing Bank*), Section 9.6(c) (*Right To Assign*), as applicable, together with its permitted successors and assigns in such capacity; provided that such Person has agreed in writing to be an Issuing Bank. Notwithstanding anything herein to the contrary, at no point will any Issuing Bank be expected to issue a commercial letter of credit or direct pay Letters of Credit (*i.e.*, Letters of Credit that at the time of issuance thereof Borrower expects will be drawn upon in the ordinary course). Any reference to “Issuing Bank” herein shall be to the applicable Issuing Bank, as appropriate.



“**Joint Venture**” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

“**Knowledge**” means, with respect to Borrower, the actual knowledge of any Person holding any of the positions (or successor position to any such position) set forth in Schedule III; provided that each such Person shall be deemed to have knowledge of all events, conditions and circumstances described in any notice delivered to Borrower pursuant to the terms of this Agreement or any other Financing Document.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Obligations**” means, as at any date of determination, the aggregate maximum amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts not refinanced by a Loan. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4 (*Letter of Credit Amounts*). For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**L/C Sublimit**” means (x) with respect to Letters of Credit that backstop equity contribution, equity support and other similar undertakings to support one or more Material Projects (other than acquisitions), 100% of the aggregate amount of Commitments under this Agreement, and (y) with respect to all other Letters of Credit, \$250,000,000.

“**Lender**” means each bank, financial institution or institutional lender listed on the signature pages hereto as a Lender, any other Person that becomes a party hereto pursuant to an Assignment Agreement and any Additional Commitment Lender.

“**Lender Payment Notice**” as defined in Section 2.2(d)(ii) (*Drawings and Reimbursements*).

“**Letter of Credit**” means any letter of credit issued hereunder pursuant to Section 2.2(a) (*Letter of Credit Commitment*) and shall be a standby letter of credit.

“**Letter of Credit Expiration Date**” means the day that is five (5) Business Days prior to the Commitment Termination Date.

“**Letter of Credit Fee**” as defined in Section 2.2(i) (*Letter of Credit Fees*).

“**Letter of Credit Issuance Commitment**” means an Issuing Bank’s Commitment less any outstanding Loans made by such Issuing Bank, as the case may be.

**“Leveraged Recapitalization”** means a recapitalization of Borrower or any of its Subsidiaries, in one transaction or a series of related transactions, with the proceeds of long-term Indebtedness (as classified on the balance sheet of Borrower or such Subsidiary in accordance with GAAP) that total, in the aggregate, greater than \$500,000,000.

**“Leverage Ratio”** means, with respect to any four (4) Fiscal Quarter period, the ratio of (x) Funded Debt as of the last day of such period to (y) Non-Consolidated EBITDA for such period.

~~**“LIBO Rate”** as defined in the definition of “Adjusted LIBO Rate”.~~

~~**“LIBO Rate Circumstances”** as defined in Section 2.15(a) (*Inability to Determine Applicable Interest Rate*).~~

~~**“LIBO Rate Loan”** means a Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.~~

~~**“LIBO Screen Rate”** as defined in the definition of “Adjusted LIBO Rate”.~~

**“Lien”** means (a) any lien, mortgage, pledge, assignment, security interest, hypothecation, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

**“LNG”** means Gas in a liquid state at or below its boiling point at a pressure of approximately one atmosphere.

**“Loan”** means a loan made by a Lender to Borrower pursuant to Section 2.1 (*Loans*) or deemed made by an Issuing Bank to Borrower pursuant to Section 2.2(d) (*Drawings and Reimbursements*).

**“Major Asset Sale”** means a sale, lease or sub-lease (as lessor or sublessor), assignment, conveyance, exclusive license (as licensor or sublicensor), transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of related transactions, of all or any part of the business, assets or properties of any kind of Borrower or any of its Subsidiaries, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, for aggregate consideration greater than \$500,000,000, other than (a) sales or other dispositions of assets that are obsolete, worn-out, superfluous or no longer used or useful in the ordinary course of Borrower’s or such Subsidiary’s business, (b) sales or other dispositions of LNG, Gas or other commercial products or inventory or equipment in the ordinary course of Borrower’s or such Subsidiary’s business and the leasing or sub-leasing of real property in the ordinary course of Borrower’s or such Subsidiary’s business, (c) issuances of Equity Interests by Borrower, (d) dispositions of Cash or Cash Equivalents, (e) dispositions in compliance with any applicable Government Rule or

Government Approval and (f) sales, discounting or forgiveness of accounts receivable in the ordinary course of Borrower's or such Subsidiary's business or in connection with the collection or compromise thereof.

**"Margin Stock"** as defined in Regulation U.

**"Material Adverse Effect"** means a material adverse effect on:

- (a) the business, financial condition or results of operations of Borrower and its Subsidiaries, taken as a whole, that has a material adverse effect on Borrower's ability to perform its material payment obligations under the Financing Documents;
- (b) the security interests created by or under the relevant Security Documents, taken as a whole, including the material impairment of the rights of or benefits or remedies, taken as a whole, available to the Secured Parties; or
- (c) the validity or enforceability of this Agreement or any of the other Financing Documents.

**"Material Project"** means any capital project of Borrower or any of its Subsidiaries with an aggregate capital cost greater than \$250,000,000.

**"Material Project EBITDA Adjustment"** means an amount determined by Borrower and approved by Administrative Agent (such approval not to be unreasonably conditioned, delayed or withheld) equal to projected Non-Consolidated EBITDA of Borrower in respect of a Material Project (including dividends and distributions projected to be paid in Cash or Cash Equivalents to Borrower and payments projected to be received in Cash or Cash Equivalents by Borrower in repayment of good-faith loans made by Borrower) attributable to such Material Project for the first 12-month period following the projected commercial operation date of such Material Project (determined based on customer contracts relating to such Material Project, projected revenues from such contracts, capital costs and expenses, the projected commercial operation date, commodity price assumptions and other reasonable factors deemed appropriate by Administrative Agent (other than uncontracted customer cash flows, which shall not be deemed appropriate)); provided, that if the applicable actual commercial operation date does not occur by the guaranteed substantial completion date (or if there is no guaranteed substantial completion date, the latest scheduled completion date) set forth in the applicable project construction contract (as such date may be extended on a day-for-day basis due to a declared force majeure event permitted thereunder (and not for any other reason) so long as such extension could not reasonably be expected to result in the termination of any customer contracts (as so extended, the **"Completion Date"**)), the foregoing amount shall be reduced, for Fiscal Quarters ending after the Completion Date to (but excluding) the first full Fiscal Quarter after such actual commercial operation date, by the following percentage amounts depending on the period of delay (based on the actual period of delay or the then-estimated delay based on the reasonable determination of Borrower at the time of measurement and reasonably agreed by the applicable project independent engineer, whichever is longer): (i) 90 days or less, 0%, (ii) longer than 90 days, but not more than 180 days, 25%, (iii) longer than 180 days, but not more than 270

days, 50%, (iv) longer than 270 days but not more than 365 days, 75%, and (v) longer than 365 days, 100%. On and after the actual commercial operation date, if the actual Non-Consolidated EBITDA of Borrower (including dividends and distributions projected to be paid in Cash or Cash Equivalents to Borrower and payments projected to be received in Cash or Cash Equivalents by Borrower in repayment of good-faith loans made by Borrower) attributable to such Material Project differ materially from the projected amounts, the Material Project EBITDA Adjustment for any applicable remaining Fiscal Quarters shall be re-determined in the same manner as provided above, as approved by Administrative Agent.

“**Measurement Period**” as defined in Section 1.10(a)(i) (*Sustainability Adjustments*).

“**Mechanics’ Liens**” means carriers’, warehousemen’s, laborers’, mechanics’, workmen’s, materialmen’s, repairmen’s, construction or other like statutory Liens.

“**Milestone Certificate**” means a certificate substantially in the form of Exhibit G (*Milestone Certificate*) executed by a Financial Officer of Borrower (x) in the case of the Initial Milestone Certificate, confirming that at least two of the ESG Milestones have been achieved by the Initial Milestone Long-Stop Date and (y) in the case of the 2023 Milestone Certificate, to the extent one or more of the ESG Milestones was not achieved by the Initial Milestone Long-Stop Date, confirming that such ESG Milestone(s) have been achieved by December 31, 2023.

“**Milestone Fee Adjustment**” means an increase of 0.01% to the Commitment Fee Rate.

“**Milestone Margin Adjustment**” means an increase of 0.05% to the Applicable Margin.

“**Minimum Collateral Amount**” means, at any time, (a) with respect to Cash Collateral consisting of Cash an amount equal to 103% of the outstanding L/C Obligations of the applicable Issuing Bank with respect to Letters of Credit issued and outstanding at such time, and (b) otherwise, an amount determined by Administrative Agent and the applicable Issuing Bank, as applicable, in their sole discretion.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multiemployer Plan**” means any “multiemployer plan” as defined in Section 3(37) of ERISA which is, or was within the six-year period immediately preceding the Closing Date, contributed to by, or required to be contributed by, Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

“**Net Debt Proceeds**” means, an amount equal to, with respect to the incurrence of any Indebtedness by Borrower, other than Indebtedness permitted to be incurred under Section 6.1 (*Indebtedness*), the Cash proceeds received from such incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith.

“**Net Income**” means, for any period, the net income (or loss) of Borrower or a Subsidiary for such period, determined on an unconsolidated basis in accordance with GAAP.

“**Non-Consenting Lender**” as defined in Section 2.20 (Removal or Replacement of a Lender).

“**Non-Consolidated EBITDA**” means, in respect of any period, the sum of:

(i) for Borrower, Net Income of Borrower for such period, excluding its equity in earnings of affiliate companies, *plus*

(a) each of the following to the extent deducted in determining such Net Income for such period: (i) all Interest Expense, (ii) all income taxes (including any franchise taxes to the extent based upon net income) of Borrower, (iii) all depreciation and amortization (including amortization of intangible assets) of Borrower for such period, (iv) any other non-cash charges or losses of Borrower for such period (including any non-cash losses resulting from the impairment of long-lived assets, goodwill or intangible assets and changes in the fair value of derivative instruments prior to contractual delivery or termination), (v) all transaction fees and expenses of Borrower for acquisitions, investments, dispositions and equity or debt offerings and (vi) all non-cash stock based compensation of Borrower; *minus*

(b) each of the following: (i) all non-cash items of income or gain of Borrower which were included in determining such Net Income for such period, and (ii) any cash payments made during such period in respect of items described in clause (a)(iv) above subsequent to the Fiscal Quarter in which the relevant non-cash charges or losses were reflected as a charge in determining such Net Income;

(ii) for all Subsidiaries of Borrower other than CQP and its consolidated Subsidiaries, the sum of the Net Income of such Subsidiaries for such period, *plus*

(a) each of the following to the extent deducted in determining such Net Income for such period: (i) all depreciation and amortization (including amortization of intangible assets) of such Subsidiaries for such period, (ii) any other non-cash charges or losses of such Subsidiaries for such period (including any non-cash losses resulting from the impairment of long-lived assets, goodwill or intangible assets and changes in the fair value of derivative instruments prior to contractual delivery or termination), (iii) all transaction fees and expenses of such Subsidiaries for acquisitions, investments, dispositions and equity or debt offerings, and (iv) all non-cash stock based compensation of such Subsidiaries; *minus*

(b) each of the following: (i) all non-cash items of income or gain which were included in determining such Net Income for such period, and (ii) any cash payments made during such period in respect of items described in clause (a)(ii) above subsequent to the Fiscal Quarter in which the relevant non-cash charges or losses were reflected as a charge in determining such Net Income;

*provided* that, in calculating such amounts under this clause (ii) for Subsidiaries that are not wholly-owned, only the portion of such amounts reflecting Borrower's direct and indirect percentage ownership interest in such Subsidiary shall be included;

(iii) for CQP and its consolidated Subsidiaries, Net Income of CQP and its consolidated Subsidiaries for such period, *plus*

(a) each of the following to the extent deducted in determining such Net Income for such period: (i) all depreciation and amortization (including amortization of intangible assets) of CQP and its consolidated Subsidiaries for such period, (ii) any other non-cash charges or losses of CQP and its consolidated Subsidiaries for such period (including any non-cash losses resulting from the impairment of long-lived assets, goodwill or intangible assets and changes in the fair value of derivative instruments prior to contractual delivery or termination) and (iii) all transaction fees and expenses of CQP and its consolidated Subsidiaries during such period for acquisitions, investments, dispositions and equity or debt offerings; *minus*

(b) each of the following: (i) all non-cash items of income or gain which were included in determining such Net Income for such period, and (ii) any cash payments made during such period in respect of items described in clause (a)(ii) above subsequent to the Fiscal Quarter in which the relevant non-cash charges or losses were reflected as a charge in determining such Net Income;

*provided* that, in calculating such amounts under this clause (iii), the portion of such amounts corresponding to the CQP Minority Interest shall be excluded;

(iv) Force Majeure Adjustments not to exceed 30% of Non-Consolidated EBITDA for such period (determined prior to any such Force Majeure Adjustments); and

(v) Material Project EBITDA Adjustments not to exceed 30% of Non-Consolidated EBITDA for such period (determined prior to any such Material Project EBITDA Adjustments).

**"Non-Extension Notice Date"** as defined in Section 2.2(c)(iii) (*Procedures for Issuance and Amendments of Letters of Credit; Auto-Extension Letters of Credit*).

**"Non-Public Information"** means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Borrower or its Affiliates or their Securities.

**"Non-Reinstatement Deadline"** as defined in Section 2.2(c)(iv) (*Procedures for Issuance and Amendments of Letters of Credit; Auto-Extension Letters of Credit*).

**"Note"** means a promissory note in the form of Exhibit H, as it may be amended, restated, supplemented or otherwise modified from time to time.

**"Notice"** means a Funding Notice, Issuance Notice, or a Conversion/Continuation Notice.

“NYFRB” means the Federal Reserve Bank of New York.

**“Obligations”** means all obligations of every nature of Borrower, including obligations from time to time owed to Agents (including former Agents), Lenders or Issuing Banks under any Financing Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to Borrower, would have accrued on any Obligation, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnification or otherwise.

**“Organizational Documents”** means (a) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization or association, as amended, and its bylaws, as amended, (b) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (c) with respect to any general partnership, its partnership agreement, as amended, and (d) with respect to any limited liability company, its certificate of formation, as amended, and its operating agreement or limited liability company agreement, as amended. In the event any term or condition of this Agreement or any other Financing Document requires any Organizational Document to be certified by a secretary of state or similar governmental official including an official of a non-United States government, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official in such official’s relevant jurisdiction.

**“Other Connection Taxes”** means, with respect to a Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or any Financing Document).

**“Other Taxes”** means any and all present or future stamp, court, intangible, recording, filing or documentary Taxes or any other similar Taxes arising from any payment made under or from the execution, delivery, enforcement, performance or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.20 (Removal or Replacement of a Lender)).

**“Outstanding Amount”** means (a) with respect to Loans on any date, the amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date and (b) with respect to any L/C Obligations, the aggregate outstanding amount of such L/C Obligations after giving effect to any L/C Credit Extension relating to any Letters of Credit occurring on such date and any other

changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts relating to any Letters of Credit.

**“Participant Register”** as defined in Section 9.6(g)(i) (Participations).

**“PATRIOT Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) of 2001, and the rules and regulations promulgated thereunder from time to time in effect.

**“Payment Recipient”** has the meaning assigned to it in Section 8.12(a).

**“PBGC”** means the Pension Benefit Guaranty Corporation or any successor thereto.

**“Pension Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA, other than a Multiemployer Plan, which is, or was within the six-year period immediately preceding the Closing Date, sponsored, maintained or contributed to by, or required to be contributed to by, Borrower or any of its ERISA Affiliates and which is subject to the provisions of Title IV of ERISA or to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

**“Permitted Business”** means (a) the businesses engaged in by Borrower on the Closing Date and (b) any business or development opportunity incidental, ancillary, complimentary or reasonably related to the businesses conducted by Borrower on the Closing Date.

**“Permitted Liens”** means each of the Liens permitted pursuant to Section 6.2 (Liens).

**“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“Platform”** as defined in Section 5.1 (Financial Statements and Other Reports).

**“Pledge and Security Agreement”** means that certain Amended and Restated Pledge and Security Agreement, dated as of June 18, 2020 (and amended on the Closing Date), by and between Borrower and the Collateral Agent.

**“Pledged Entities”** means each entity designated as such on Schedule 4.2 and any other direct Subsidiary of Borrower, the Equity Interests in which are required to be pledged pursuant to the Pledge and Security Agreement, other than Excluded Subsidiaries.

**“Prepayment Change of Control”** means the occurrence of (a) a CQH Change of Control, CQP Change of Control, CCH Change of Control or SPL Change of Control or (b) Borrower ceasing to hold at least 50% of the CQP IDRs; *provided*, that Borrower may at any



time exchange CQP IDRs for limited partnership interests in CQP and such exchange shall not constitute a Prepayment Change of Control hereunder.

**“Pricing Certificate Inaccuracy”** as defined in Section 1.10(c) (*Sustainability Adjustments*).

**“Prime Rate”** means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate, as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Agents or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

**“Principal Office”** means, for each of Administrative Agent and Issuing Banks, such Person’s “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

**“Property”** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether corporeal or incorporeal and whether tangible or intangible.

**“Pro Rata Share”** means, with respect to any Lender or any Issuing Bank (in such capacity and in its capacity as Lender), the percentage obtained by dividing (a) the Revolving Exposure of such Lender or Issuing Bank (in such capacity and its capacity as Lender) by (b) the aggregate Revolving Exposure of all Lenders and Issuing Banks (in such capacity and their capacity as Lenders).

**“PTE”** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“Public Lenders”** means Lenders that do not wish to receive Non-Public Information with respect to Borrower, its Affiliates or their securities.

**“QFC Credit Support”** as defined in Section 2.26 (*Acknowledgment Regarding Any Supported QFCs*).

**“QMRV”** as defined in the definition of “ESG Milestones.”

**“Quarterly Payment Date”** means the last Business Day of each Fiscal Quarter.

**“Rating Decline”** means, at any time during a Rating Decline Period, the downgrade by one or more Ratings Agencies of the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family rating of Borrower and its Subsidiaries) resulting in the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family rating of Borrower and its Subsidiaries) no longer having a rating from at least one Ratings Agency that is equal to the lower of (x) BB (if rated by S&P) / Ba2 (if rated by Moody’s) / BB (if rated by Fitch) (or if S&P, Moody’s and Fitch no longer rate the Loans or assign a corporate family rating to Borrower and

its Subsidiaries, as applicable, the equivalent rating from such other “nationally recognized statistical rating organization” registered with the SEC as determined by Borrower) and (y) the rating assigned to the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family rating of Borrower and its Subsidiaries) by the applicable Ratings Agency immediately preceding the applicable Rating Decline Trigger Event; provided, however, that a Rating Decline otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred, as applicable, (A) in anticipation of a particular non-recurring Restricted Payment (and thus will be disregarded in determining whether a Rating Decline has occurred for purposes of Section 6.10(c) (*Restricted Payments*)) or (B) in anticipation or as a result, in whole or in part, of a particular Prepayment Change of Control (and thus will be disregarded in determining whether a Rating Decline has occurred for purposes of Section 2.11(b) (*Change of Control Mandatory Prepayments*)), in each case, if the Ratings Agency making the reduction in rating does not announce or publicly confirm that the reduction was in anticipation or the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the proposed non-recurring Restricted Payment or Prepayment Change of Control, as applicable.

**“Rating Decline Period”** means the period beginning on the date of public notice of the intention by Borrower to (A) make a non-recurring Restricted Payment with the proceeds of any Major Asset Sale or Leveraged Recapitalization or (B) consummate a transaction that would result in a Prepayment Change of Control, and ending, in each case, on the earliest to occur of (x) the date that is ninety (90) days following such date (which period shall be extended so long as the rating of the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family rating of Borrower and its Subsidiaries) is under publicly announced consideration for downgrade by each Ratings Agency) and (y) the receipt by Borrower of a Ratings Reaffirmation.

**“Rating Decline Trigger Event”** means (A) the consummation of a Major Asset Sale or Leveraged Recapitalization, as applicable, the proceeds of which are intended to be used to make an applicable non-recurring Restricted Payment, (B) the public announcement by Borrower of a transaction that, if consummated, would result in a Prepayment Change of Control or (C) the incurrence of Indebtedness by Borrower pursuant to Section 6.1(q).

**“Ratings Agency”** means, at any time of determination, (i) to the extent such organization maintains a rating for the Loans, each of S&P, Moody’s or Fitch, (ii) if none of S&P, Moody’s or Fitch maintains a rating for the Loans at such time then, to the extent such organization maintains a corporate family rating for Borrower and its Subsidiaries at such time, each of S&P, Moody’s or Fitch or (iii) if none of S&P, Moody’s or Fitch maintains a rating for the Loans or a corporate family rating for Borrower and its Subsidiaries at such time, then any other “nationally recognized statistical rating organization” registered with the SEC as determined by Borrower that maintains a rating for the Loans or a corporate family rating for Borrower and its Subsidiaries at such time.

**“Ratings Reaffirmation”** means the reaffirmation by any one Ratings Agency that the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family of Borrower and its Subsidiaries) will remain rated at least the lower of (x) BB (if rated by S&P) / Ba2 (if rated by Moody’s) / BB (if rated by Fitch) (or if S&P, Moody’s and Fitch no longer rate the

Loans or the corporate family of Borrower and its Subsidiaries, as applicable, the equivalent rating from such other “nationally recognized statistical rating organization” registered with the SEC as determined by Borrower) and (y) the rating assigned to the Loans (or, if the Loans are not rated by any Ratings Agency, the corporate family rating of Borrower and its Subsidiaries) by the applicable Ratings Agency immediately preceding the Rating Decline Trigger Event, in the case of each of clauses (x) and (y), after giving effect to the applicable proposed non-recurring Restricted Payment, Prepayment Change of Control, or incurrence of Indebtedness by Borrower pursuant to Section 6.1(q).

“**Real Estate Asset**” means, at any time of determination, any interest (whether fee, leasehold or otherwise) then owned or held by Borrower in any real property.

“**Recipient**” means (a) Administrative Agent, (b) any Lender or (c) any Issuing Bank, as applicable.

“**Reference Time**” means, with respect to any setting of the then-current Benchmark, (i) if such Benchmark is based on Term SOFR, then two Business Days prior to such setting, or (ii) in the case of any other Benchmark, the time determined by the Administrative Agent in its reasonable discretion.

“**Register**” as defined in Section 2.5(b) (Register).

“**Regulation D**” means Regulation D of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Related Fund**” means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the shareholders, partners, members, directors, officers, employees, agents, sub-agents, trustees, advisors and attorneys of such Person and of such Person’s Affiliates.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, or leaching of any Hazardous Substances into or through the environment.

**“Released Collateral”** as defined in Section 9.22(b)(ii) (*Release of Liens*).

**“Relevant Governmental Body”** means ~~the Board of Governors of~~ the Federal Reserve ~~System or the Federal Reserve Bank of New York~~ Board, the NYFRB or a committee officially endorsed or convened by the ~~Board of Governors of the~~ Federal Reserve ~~System or the Federal Reserve Bank of New York, or~~ Board or the NYFRB or, in each case, any successor thereto.

**“Replacement Lender”** as defined in Section 2.20 (*Removal or Replacement of a Lender*).

**“Required Ratings”** means, with respect to any Issuing Bank (or any Person that guarantees the obligations of such Issuing Bank to the beneficiary of the applicable Letter of Credit), a long term unsecured non-credit enhanced senior debt rating of Baa2 or better from Moody’s and BBB or better from S&P.

**“Requisite Lenders”** means one or more Lenders or Issuing Banks, as applicable, having or holding Revolving Exposure amounting to more than fifty percent (50%) of the sum of the aggregate Revolving Exposure of all Lenders and Issuing Banks; provided that, for purposes of determining the Requisite Lenders, the Revolving Exposure of any Defaulting Lender shall be disregarded from both the numerator and denominator of the ratio.

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Restricted Payment”** means any dividend or other distribution by Borrower (in cash, Property of Borrower, securities, obligations, or other property) on, or other dividends or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by Borrower of, any portion of any Equity Interest in Borrower. Notwithstanding the foregoing, none of the following shall constitute Restricted Payments for purposes of this Agreement: (a) dividends or distributions in the form of Equity Interests in Borrower and Cash payments by Borrower to holders of Common Equity of Borrower in lieu of the issuance of fractional shares of such Common Equity; (b) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Equity Interests of Borrower deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof; (c) any dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this provision; (d) any Restricted Payment required by the terms of an agreement in effect on the Closing Date; and (e) the payment of any premium on, and the payment of other amounts and/or delivery of any Equity Interest due upon exercise and settlement or termination of, any bond hedge, capped call or similar option transaction, in each case, entered into in connection with the issuance of any debt security that is convertible into, or exchangeable for, Equity Interests.

**“Restricted Payment Certificate”** means a Restricted Payment Certificate substantially in the form attached hereto as Exhibit J.

**“Revolving Exposure”** means, with respect to each Issuing Bank (in such capacity and its capacity as Lender) or Lender as of any date of determination, (a) prior to the termination of the Commitments, the Commitments of such Issuing Bank or Lender, as the case may be; and (b) after the termination of the Commitments, the sum of the aggregate L/C Obligations in respect of all Letters of Credit issued by such Issuing Bank, if applicable, and the aggregate amount of all Loans made by such Issuing Bank or Lender, as the case may be, that have not been repaid at such time.

**“S&P”** means ~~Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc.~~ [S&P Global Ratings, an S&P Global Ratings Inc. business, and any successor or successors thereto.](#)

**“Sabine Pass Project”** means the LNG terminal located in Cameron Parish, Louisiana that, as of the date hereof, is owned and operated by Sabine Pass LNG, L.P.

**“Sanctions”** as defined in [Section 4.23](#) (*Sanctioned Persons; Anti-Corruption; PATRIOT Act*).

**“Sanctions Laws”** as defined in [Section 4.23](#) (*Sanctioned Persons; Anti-Corruption; Patriot Act*).

**“Secured Parties”** means the Agents, the Issuing Banks and the Lenders and shall include all former Agents, Issuing Banks and Lenders to the extent that any Obligations owing to such Persons were incurred while such Persons were Agents, Issuing Banks or Lenders and such Obligations have not been paid or satisfied in full.

**“Securities”** means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

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

**“Security Documents”** means the Pledge and Security Agreement, the Collateral Agency Appointment Agreement, the Control Agreements, if any, and all other instruments, documents and agreements delivered by or on behalf of Borrower pursuant to this Agreement or any of the other Financing Documents in order to grant to, or perfect in favor of, Collateral Agent, for the benefit of the Secured Parties, a Lien on any real, personal or mixed property of Borrower as security for the Obligations.

~~**“SOFR”** means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New~~

~~York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).~~

“SOFR” means the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**Solvent**” means, with respect to any Person, that as of the date of determination, (i) both the then-present fair saleable value of the Person’s then-present assets is (a) greater than the total liabilities (including contingent liabilities) of such Person and (b) greater than the amount that will be required to pay the probable liabilities of such Person’s then-existing indebtedness as they become absolute and matured; (ii) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date or with respect to any transaction contemplated to be undertaken after the Closing Date; and (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise). For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“**SPL**” means Sabine Pass Liquefaction, LLC.

“**SPL Change of Control**” means CQP shall own, directly or indirectly, less than 50% of the voting and economic interests in SPL.

“**SPL Project**” means the Sabine Pass Liquefaction Project, the subject of FERC Docket Nos. CP11-72-000 and CP13-552-000, located on the Sabine Pass River in Cameron Parish, Louisiana.

“**Springing Financial Covenant**” as defined in Section 6.5 (*Financial Covenant*).

“**Stated Amount**” has the meaning specified for such term or similar term in any Letter of Credit, as such amount may be reduced from time to time pursuant to the terms of such Letter of Credit.

“**Subordinated Indebtedness**” means any unsecured Indebtedness of Borrower which is subordinated to the Obligations pursuant to an instrument in writing reasonably satisfactory in form and substance to Administrative Agent; provided that such instrument shall include that: (a) the maturity of such subordinated debt shall be no shorter than the maturity of the Indebtedness evidenced hereby; (b) such subordinated debt shall not be amortized; and (c) no interest

payments shall be made under such subordinated debt except from monies that are permitted to be distributed pursuant Section 6.10 (Restricted Payments).

“**Subsidiary**” means, with respect to any Person, any 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 directors, managers, trustees or other Persons performing similar functions having the power to direct or cause the direction of the management and policies of such business entity is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof; provided that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding; provided, further, that, notwithstanding anything to the contrary contained in this definition, SPL shall be a Subsidiary of Borrower for all purposes hereunder unless an SPL Change of Control shall have occurred. Unless otherwise specified, all references herein to “Subsidiaries” shall refer to Subsidiaries of Borrower.

“**Supported QFC**” as defined in Section 2.26 (Acknowledgment Regarding Any Supported QFCs).

“**SWIFT**” as defined in Section 2.2(g) (Role of an Issuing Bank).

“**Tax**” means any and all present or future taxes, levies, imposts, duties, assessments, charges, fees, deductions or withholdings (including backup withholding), of any nature imposed by any Governmental Authority, including any interest, penalties or other additions thereto.

“**Term SOFR**” means, with respect to any borrowing of Term SOFR Loans and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate on the day (such day, the “Term SOFR Determination Date”) that is two U.S. Government Securities Business Days prior to the commencement of such Interest Period, as such rate is published by the CME Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on such Term SOFR Determination Date, the Term SOFR Reference Rate for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR for such Term SOFR Determination Date will be the Term SOFR Reference Rate for such tenor as published by the CME Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than three U.S. Government Securities Business Days prior to such Term SOFR Determination Date.

“**Term SOFR Determination Date**” has the meaning specified in the definition of “Term SOFR”.

**“Term SOFR Loan”** means a Loan that bears interest at a rate based on Adjusted Term SOFR.

~~**“Term SOFR” means, for the applicable corresponding tenor,**~~ **“Reference Rate”** means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

**“Terminated Lender”** as defined in Section 2.20 (*Removal or Replacement of a Lender*).

**“Total Utilization of Commitments”** means, as at any date of determination, the sum of (a) the amount of the aggregate principal amount of all outstanding Loans, and (b) the amount of the aggregate L/C Obligations.

**“Type of Loan”** means, with respect to any Loan, a Base Rate Loan or a ~~LIBO-Rate~~ Term SOFR Loan.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unreimbursed Amount”** as defined in Section 2.2(d)(i) (*Drawings and Reimbursements*).

**“Unrestricted Cash”** means Borrower’s unrestricted cash, calculated on a consolidated basis in accordance with GAAP (and including, for the avoidance of doubt, any cash held in any account subject to a Control Agreement or otherwise pledged to the Lenders in connection with the Financing Documents).



**“U.S. Government Securities Business Day”** means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“U.S. Person”** means a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

**“U.S. Tax Compliance Certificate”** as defined in Section 2.17(c)(ii) (*Status of Lenders*).

**“Vessel Program”** as defined in the definition of “ESG Milestones.”

**“Withholding Agent”** means Borrower and Administrative Agent.

**“Write-Down and Conversion Powers”** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**1.2 Accounting Terms.** Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Borrower to Lenders pursuant to Section 5.1(a) (*Quarterly Financial Statements*) and 5.1(b) (*Annual Financial Statements*) shall be prepared in accordance with GAAP as in effect at the time of such preparation. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Financing Document, and Borrower shall so request, Administrative Agent and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Requisite Lenders); provided that, until so amended, such ratio or requirement shall continue to be computed in conformity with those accounting principles and policies as in effect immediately prior to such change.

**1.3 Interpretation, Etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation. In this Agreement, where the terms “continuing”, “continuance” or words to similar effect are used in relation to a Default or an Event of Default, the terms shall mean only that the applicable event or circumstance has not been remedied, waived, cured or ceased to exist. Notwithstanding anything to the contrary contained herein, any Default or Event of Default (and any Default or Event of Default resulting from failure to provide notice thereof) shall be deemed not to be “continuing” or “existing” if the events, act or condition that gave rise to such Default or Event of Default have been remedied, waived, cured or have ceased to exist. Unless the context requires otherwise any definition of or reference to any agreement, instrument or other document herein or in any Financing Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, renewed, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein).

**1.4 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount or available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

**1.5 Timing of Payment or Performance.** Except as otherwise provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day (it being understood that the foregoing shall cause any grace period associated with any such payment obligation or performance of any covenant, duty or obligation to extend to the immediately succeeding Business Day as well).

**1.6 Negative Covenant Compliance and Other Calculations.** With respect to determining whether Borrower complies with any negative covenant in Section 6 (*Negative Covenants*) (other than the Springing Financial Covenant), to the extent that any obligation, transaction or action could be attributable to more than one exception to any such negative covenant, Borrower may divide and/or categorize, or later re-divide and/or re-categorize, all or any portion of such obligation, transaction or action to any one or more exceptions to such negative covenant that permit such obligation, transaction or action at the time of categorization thereof.

**1.7 Certifications.** All certifications to be made hereunder by an officer or representative of Borrower shall be made by such a Person in his or her capacity solely as an officer or a representative of Borrower, on Borrower's behalf and not in such Person's individual capacity.

**1.8 Rounding.** Any financial ratios required to be maintained by Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number.

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

**1.10 Sustainability Adjustments.**

(a) Eligible Expenditures.

(i) Commencing with the Fiscal Year ending December 31, 2022, within 120 days after the end of each Fiscal Year Borrower may, in its sole discretion, choose to deliver an Eligible Expenditure Certificate to the ESG Coordinator and Administrative Agent related to (x) the period beginning on the Closing Date and ending on December 31, 2022, in the case of the first such certificate, and (y) the preceding Fiscal Year, in the case of each subsequent certificate (each such applicable period, a "**Measurement Period**").

(ii) From and after the date on which an Eligible Expenditure Certificate is delivered and during the then applicable Eligible Expenditure Application Period, Available Eligible Expenditures shall automatically be applied dollar-for-dollar to reduce (x) the Applicable Margin (by an amount not greater than five (5) basis points during the applicable Eligible Expenditure Application Period) and (y) the Commitment Fee Rate (by an amount not

greater than one (1) basis point during the applicable Eligible Expenditure Application Period), in each case as interest, Letter of Credit Fees and Commitment Fees become due.

(iii) For the avoidance of doubt, only one Eligible Expenditure Certificate may be delivered in respect of any Measurement Period.

(b) ESG Milestones.

(i) Following the Closing Date Borrower may, in its sole discretion, choose to deliver a Milestone Certificate to the ESG Coordinator and Administrative Agent no later than (x) June 30, 2023 (the “**Initial Milestone Certificate**”) and (y) December 31, 2023 (the “**2023 Milestone Certificate**”).

(ii) If the Initial Milestone Certificate is not delivered on or prior to June 30, 2023 (the “**Initial Milestone Long-Stop Date**”), (x) the Applicable Margin shall be increased by the Milestone Margin Adjustment and (y) the Commitment Fee Rate shall be increased by the Milestone Fee Adjustment, in each case, commencing on July 1, 2023; provided that if the 2023 Milestone Certificate is delivered on or prior to December 31, 2023, the Applicable Margin and the Commitment Fee Rate as of and following the day immediately following the date of such delivery shall be decreased to eliminate the Milestone Margin Adjustment and Milestone Fee Adjustment.

(iii) If the Initial Milestone Certificate is delivered on or prior to the Initial Milestone Long-Stop Date but (x) the Initial Milestone Certificate does not confirm that three of the ESG Milestones have been achieved and (y) the 2023 Milestone Certificate is not delivered on or prior to December 31, 2023, then, without duplication of any increase to the Applicable Margin or Commitment Fee Rate provided for in clause (ii) above, (A) the Applicable Margin shall be increased by the Milestone Margin Adjustment and (B) the Commitment Fee Rate shall be increased by the Milestone Fee Adjustment, in each case, commencing on January 1, 2024 for the remaining term of this Agreement.

(iv) Upon reasonable request from the ESG Coordinator Borrower will provide (as determined by Borrower in good faith but in consultation with the ESG Coordinator), independent verification of the achievement of one or more of the ESG Milestones described in a Milestone Certificate.

(c) If Borrower or any Lender becomes aware of any material inaccuracy in any Eligible Expenditure Certificate or Milestone Certificate, including in any calculations therein (any such material inaccuracy, a “**Pricing Certificate Inaccuracy**”), and, in the case of any Lender, such Lender delivers, not later than five (5) Business Days after obtaining knowledge thereof, a written notice to Borrower and Administrative Agent describing such Pricing Certificate Inaccuracy in reasonable detail, Borrower and Administrative Agent shall consult in good faith on corrected calculations and, to the extent corrected calculations are agreed upon, subsequent interest, Letter of Credit Fee and/or Commitment Fee payments shall be adjusted upwards or downwards (but not below zero) to correct for such Pricing Certificate Inaccuracy. If corrected calculations

are not agreed upon, any proceeding brought in connection therewith shall be subject to the dispute resolution provisions of this Agreement. It is understood and agreed that a Pricing Certificate Inaccuracy (including the effect thereof on interest and fee payments under this Agreement) shall not constitute a Default or Event of Default, provided that Borrower complies with the terms of this Section 1.10(c).

(d) Each party hereto hereby agrees that neither Administrative Agent nor ESG Coordinator shall have any responsibility for (or liability in respect of) reviewing, auditing or otherwise evaluating any calculation by Borrower of any Eligible Expenditures, Milestone Margin Adjustment or Milestone Fee Adjustment (or any of the data or computations that are part of or related to any such calculation) set forth in any Eligible Expenditure Certificate or Milestone Certificate, as applicable (and Administrative Agent and ESG Coordinator may rely conclusively on any such certificate, without further inquiry).

**1.11 Benchmark Exculpation.** The interest rate on a Loan may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.24 provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative or successor rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service except to the extent caused by its gross negligence, willful misconduct or bad faith.

## **SECTION 2. LOANS AND LETTERS OF CREDIT**

### **2.1 Loans.**

(a) Loans. During the Availability Period, subject to the terms and conditions hereof, each Lender agrees to make Loans to Borrower in an aggregate amount up to but

not exceeding its Commitment; provided that, after giving effect to the making of any Loans pursuant to this Section 2.1(a), the Total Utilization of Commitments shall in no event exceed the Commitments then in effect; and provided further that, no Lender shall be required to make a Loan to Borrower in an amount that exceeds its Pro Rata Share of the aggregate Commitments at such time. Amounts borrowed pursuant to this Section 2.1 may be repaid and reborrowed during the Availability Period, in accordance with the terms of this Agreement. The Commitments shall expire on the Commitment Termination Date and Borrower hereby unconditionally promises to pay in full to Administrative Agent for the account of each Lender all Loans and all other amounts owed to such Lender hereunder with respect to the Loans and the Commitments no later than such date.

(b) Borrowing Mechanics.

(i) Loans shall be made in an aggregate minimum amount of \$2,000,000 and integral multiples of \$1,000,000 in excess of that amount, or, if the remaining total Commitments are less than \$2,000,000 or \$1,000,000, as applicable, such remaining amount.

(ii) Subject to Section 3.3 (Notices), whenever Borrower desires that a Loan be extended to Borrower, Borrower shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than (A) 12:00 p.m. (New York City time) at least three (3) Business Days in advance of the proposed Credit Date in the case of a ~~LIBO-Rate~~Term SOFR Loan, and (B) ~~+0:00 am~~10:00 a.m. (New York City time) on the proposed Credit Date in the case of a Base Rate Loan. Except as otherwise provided herein, a Funding Notice for a ~~LIBO-Rate~~Term SOFR Loan shall be irrevocable ~~on and after the related Interest Rate Determination Date~~, and Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of a Loan, together with the applicable interest rate, shall be provided by Administrative Agent to each Lender in accordance with Section 9.1(b)(i) (Electronic Communications) with reasonable promptness, but (provided that Administrative Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 12:00 p.m. (New York City time) on the same day as Administrative Agent's receipt of such Notice from Borrower.

(iv) Each Lender shall make its Pro Rata Share of the amount of the Loan available to Administrative Agent not later than 1:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of immediately available funds at the Principal Office of Administrative Agent. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Loans available to Borrower on the applicable Credit Date by causing an amount of immediately available funds equal to the proceeds of all such Loans received by Administrative Agent from the Lenders to be (x) paid to Borrower's account specified in the Funding Notice or (y) paid directly to the applicable payee's account as specified by Borrower in the Funding Notice.

(v) Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of Borrower to repay such Loan in accordance with the terms of this Agreement; and provided further that, for the avoidance of doubt, each Lender exercising such option shall continue to be required to comply with its obligations under Section 2.18 (*Obligation To Mitigate*).

## **2.2 Letters of Credit.**

### **(a) Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, each Issuing Bank agrees, in reliance upon the agreements of Borrower set forth in this Section 2.2, (A) from time to time on any Business Day during the Availability Period, to issue Letters of Credit for the account or benefit of Borrower or any of Borrower's Subsidiaries, and to amend or extend Letters of Credit previously issued by it in accordance with Section 2.2(c), and (B) to honor complying presentations under the Letters of Credit; provided that (1) no Letter of Credit shall be issued or extended during the last thirty (30) days of the Availability Period, (2) after giving effect to any L/C Credit Extension with respect to any Letter of Credit, the aggregate amount of Letters of Credit shall not exceed the aggregate Fronting Limit of all Issuing Banks with a Fronting Limit, (3) the sum of L/C Obligations, Loans and unpaid Letter of Credit Fees owing to such Issuing Bank shall not exceed such Issuing Bank's Commitment and its Fronting Limit, (4) the Total Utilization of Commitments shall not exceed the Commitments then in effect and (5) the outstanding amount of L/C Obligations do not exceed the L/C Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and fully reimbursed (including the repayment in full of all Unreimbursed Amounts and all Loans made, in each case, with respect to such Letter of Credit).

(ii) No Issuing Bank shall issue any particular Letter of Credit, if:

(A) subject to Section 2.2(c)(iii), the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless such Issuing Bank has approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless such Issuing Bank has approved such expiry date.

(iii) No Issuing Bank shall be under any obligation to issue any particular Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which is material to such Issuing Bank;

(B) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and the applicable Issuing Bank, the requested Letter of Credit is in an initial Stated Amount less than \$100,000;

(D) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(E) the proposed use of the Letter of Credit is not in accordance with Section 2.4 (*Use of Proceeds*); or

(F) the requested form of such Letter of Credit is not acceptable to the Issuing Bank, in its reasonable discretion.

(iv) No Issuing Bank shall amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) An Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each Issuing Bank shall have all of the benefits and immunities (A) provided to Administrative Agent in Section 8 (*Agents*) with respect to any acts taken or omissions suffered by any Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Agent” as used in Section 8 (*Agents*) included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to each Issuing Bank.



(b) Fronting.

(i) All Letters of Credit issued hereunder shall be Fronted Letters of Credit; provided that, Borrower may only request Letters of Credit from Issuing Banks that are specified in this Agreement as having a Fronting Limit.

(ii) Each Lender severally agrees with each Issuing Bank to participate in an amount equal to its Pro Rata Share in the extension of credit resulting from the issuance (or extension, modification or amendment) of a Letter of Credit by such Issuing Bank and each drawing of the Stated Amount thereunder, in the manner and the amount provided in Section 2.2(d) (Drawings and Reimbursements), and the issuance of such Letter of Credit shall be deemed to be a confirmation by the Issuing Bank and each Lender of such participation in such amount; provided that, no Lender shall be required to participate in a Letter of Credit if the sum of such Lender's L/C Obligations, Loans and unpaid Letter of Credit Fees owing to such Lender would exceed such Lender's Commitment as a result of such participation.

(c) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit

(i) Subject to Section 3 (Conditions Precedent), each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to each applicable Issuing Bank during the period specified in Section 2.2(a) (with a copy to Administrative Agent) in the form of an Issuance Notice, appropriately completed and signed by an Authorized Officer of Borrower. Such Issuance Notice must be received by each applicable Issuing Bank and by Administrative Agent not later than 12:00 p.m. (New York City time) at least two (2) Business Days (or such later date and time as Administrative Agent and the applicable Issuing Bank(s) may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Issuance Notice shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof (including a final expiration date in the case of an Auto-Extension Letter of Credit); (D) the name and address of the beneficiary thereof; (E) the form of such letter of credit (which shall be in compliance with the requirements of this Section 2.2) and the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit, which shall be in accordance with Section 2.4 (Use of Proceeds), as certified by Borrower in such Issuance Notice; (H) the name of the applicant of such Letter of Credit; and (I) such other matters as the applicable Issuing Bank may reasonably require and shall be accompanied by such Letter of Credit application as the applicable Issuing Bank may specify to Borrower for use in connection with such requested Letter of Credit and such other information as shall demonstrate compliance of such Letter of Credit with the requirements specified in this Agreement and such Letter of Credit application. In the case of a request for an amendment of any outstanding Letter of Credit, such Issuance Notice shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank (w) the Letter of Credit to be

amended; (x) the proposed date of amendment thereof (which shall be a Business Day); (y) the nature of the proposed amendment; and (z) such other matters as the applicable Issuing Bank may reasonably require and shall be accompanied by such Letter of Credit application as the applicable Issuing Bank may specify to Borrower for use in connection with such requested Letter of Credit and such other information as shall demonstrate compliance of such Letter of Credit with the requirements specified in this Agreement and such Letter of Credit application. Additionally, Borrower shall furnish to the applicable Issuing Bank and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable Issuing Bank or Administrative Agent may reasonably require.

For the avoidance of doubt, subject to compliance with the requirements of Section 2.2(a) and Section 2.2(b), Borrower may request Fronted Letters of Credit from any Issuing Bank with a Fronting Limit up to such Issuing Bank's full Fronting Limit.

(ii) Unless the applicable Issuing Bank has received written notice from Administrative Agent or Borrower, in any case, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 3 (*Conditions Precedent*) shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices and, with respect to any amendment of a Letter of Credit, so long as the amendment is satisfactory to the Issuing Bank.

(iii) If Borrower so requests in any applicable Issuance Notice, the applicable Issuing Bank shall issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a date to be agreed in each such twelve-month period at the time such Letter of Credit is issued (the “**Non-Extension Notice Date**”). Once an Auto-Extension Letter of Credit has been issued, unless otherwise directed by the applicable Issuing Bank, Borrower shall not be required to make a specific request to such Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the applicable Issuing Bank shall permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided that the applicable Issuing Bank shall not permit any such extension if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation (without any obligation to make any inquiry to make a determination that it is not so permitted or obligated), at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of Section 2.2(a)(ii) or Section 2.2(a)(iii) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from Administrative Agent or Borrower that one or more of the applicable conditions specified in Section 3 (*Conditions Precedent*) is not then satisfied (or a Default or an Event of

Default has occurred and is continuing), and in each such case directing such Issuing Bank not to permit such extension.

(iv) Subject to Section 2.2(a)(iii)(D) (*Letter of Credit Commitment*), if Borrower so requests in any applicable Issuance Notice and/or Letter of Credit application, as applicable, the applicable Issuing Bank may issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “**Auto-Reinstatement Letter of Credit**”). Once an Auto-Reinstatement Letter of Credit has been issued, unless otherwise directed by the applicable Issuing Bank in its sole discretion, Borrower shall not be required to make a specific request to such Issuing Bank to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the applicable Issuing Bank shall permit the reinstatement of all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits such Issuing Bank to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “**Non-Reinstatement Deadline**”), such Issuing Bank shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Reinstatement Deadline from Administrative Agent or Borrower that one or more of the applicable conditions specified in Section 3 (*Conditions Precedent*) is not then satisfied (or a Default or Event of Default has occurred and is continuing) (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing such Issuing Bank not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to the beneficiary thereof, the applicable Issuing Bank will also deliver to Borrower and Administrative Agent (A) a true and complete copy of such Letter of Credit or amendment or (B) the following information in respect of such Letter of Credit or amendment: Stated Amount, expiry date, evergreen notification period and name of beneficiary.

(vi) Anything herein to the contrary notwithstanding, in the event of any conflict between the terms of any Issuance Notice, any application for a Letter of Credit and those of this Agreement, the terms of this Agreement shall be controlling.

(d) Drawings and Reimbursements.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify Borrower and Administrative Agent, and the participating Issuing Banks. Not later than 1:00 p.m. (New York City time) on the date such notice of a drawing has been honored by the applicable Issuing Bank under a Letter of Credit in accordance with normal banking procedures in the place of payment (each such date, an “**Honor Date**”), Borrower shall reimburse such Issuing Bank in an amount equal to the amount of such drawing. If Borrower fails to so reimburse such Issuing Bank by such time, such Issuing Bank shall notify Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”).

In such event, Borrower shall be deemed to have requested a Base Rate Loan from such Issuing Bank to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount (in which event the unreimbursed drawing shall no longer be considered an Unreimbursed Amount for all purposes hereunder), without regard to the minimum and multiples specified in Section 2.1 (Loans) for the principal amount of Base Rate Loans or the conditions set forth in Section 3 (Conditions Precedent). Any notice given by an Issuing Bank or Administrative Agent pursuant to this Section 2.2(d)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Upon providing any notice pursuant to Section 2.2(d)(i), the applicable Issuing Bank shall be deemed to have made a Base Rate Loan to Borrower in such Unreimbursed Amount. Administrative Agent shall promptly notify each of the Lenders of the amount of its share of the payment made under such Letter of Credit, which shall be such Lender's Pro Rata Share of such amount paid by such Issuing Bank (the "**Lender Payment Notice**"). Subject to Section 2.2(b) (Fronting), each Lender hereby severally agrees to pay the amount specified in the Lender Payment Notice in immediately available funds to Administrative Agent for the account of such Issuing Bank with respect to such Letter of Credit plus interest on such amount at a rate per annum equal to the Federal Funds Effective Rate from the date of such payment by such Issuing Bank to the date of payment to such Issuing Bank by such Lender. Each Lender shall make such payment by not later than 4:00 p.m., New York City time, on the date it received the Lender Payment Notice (if such notice is received at or prior to 1:00 p.m., New York City time) and before 12:00 noon, New York City time, on the next succeeding Business Day following such receipt (if such notice is received after 1:00 p.m., New York City time). Each Lender shall indemnify and hold harmless such Issuing Bank from and against any and all losses, liabilities (including liabilities from penalties), actions, suits, judgments, demands, costs, and expenses (including reasonable attorneys' fees and expenses) resulting from any failure on the part of such Lender to provide, or from any delay in providing, Administrative Agent for the account of such Issuing Bank with its Pro Rata Share of the amount paid under the Letter of Credit but no such Lender shall be so liable for any such failure on the part of or caused by any other Lender or the willful misconduct or gross negligence, as determined by a court of competent jurisdiction by a final and non-appealable order, of Administrative Agent. Each Lender's obligation to make each such payment to Administrative Agent for the account of the applicable Issuing Bank in the case of payments made in respect of a Letter of Credit shall be several and not joint and shall not be affected by (A) the occurrence or continuance of any Event of Default, (B) the failure of any other Lender to make any payment under this Section 2.2(d)(ii), or (C) the date of the drawing under the applicable Letter of Credit issued by the applicable Issuing Bank; provided that, such drawing occurs prior to the earlier of (i) the Final Maturity Date or (ii) the termination date of the applicable Letter of Credit. Each Lender further agrees that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(iii) Administrative Agent shall pay to the applicable Issuing Bank in immediately available funds the amounts paid in respect of a Letter of Credit pursuant to this Section 2.2(d) before the close of business on the day such payment is received; provided that,

any amount received by Administrative Agent that is due and owing to such Issuing Bank and remains unpaid to such Issuing Bank on the date of receipt shall be paid on the next succeeding Business Day with interest payable at the Federal Funds Effective Rate.

(iv) For so long as any Lender is a Defaulting Lender under clause (a) of the definition thereof, each Issuing Bank shall be deemed, for purposes of Section 2.14 (*Ratable Sharing*) and Article 7, to be a Lender hereunder in substitution of such Defaulting Lender, owed a loan in an amount equal to the outstanding principal amount due and payable by such Defaulting Lender to Administrative Agent for the account of each Issuing Bank in respect of such Letter of Credit pursuant to Section 2.2(d)(ii) above. Notwithstanding anything else to the contrary contained herein, the failure of any Lender to make any required payment in response to any drawing notice in respect of a Letter of Credit shall not increase the total aggregate amount payable by Borrower with respect to the payment described in the related drawing notice in respect of a Letter of Credit above the total aggregate amount that would have been payable by Borrower at the applicable rate for Loans if such Defaulting Lender would have funded its payments to Administrative Agent in a timely manner in respect to such drawing notice in respect of a Letter of Credit.

(v) Each payment made by a Lender under Section 2.2(d)(ii) above shall constitute a deemed loan made by such Lender to Borrower on the date of such payment by an Issuing Bank under a Letter of Credit issued by such Issuing Bank. All such payments by the Lenders in respect of any one such payment by such Issuing Bank shall constitute a single deemed loan hereunder.

(vi) Each applicable Issuing Bank's obligation to make Loans as contemplated by this Section 2.2(d) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Issuing Bank may have against Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default; (C) the form, validity, sufficiency, accuracy, genuineness or legal effect of any Letter of Credit or any document submitted by any party in connection with the application for and issuance of a Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (D) failure of the beneficiary to comply fully with the conditions required in order to demand payment under a Letter of Credit; or (E) any other occurrence, event or condition, whether or not similar to any of the foregoing, including any of the events specified in Section 2.2(f) (*Obligations Absolute*). No such making of a Loan shall relieve or otherwise impair the obligation of Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(vii) In the event that more than one Letter of Credit is issued and outstanding in favor of the same beneficiary and for the same purpose, Borrower shall instruct such beneficiary of such Letters of Credit to draw on each such Letter of Credit on a ratable basis.

(e) Cash Collateral.

(i) Unreimbursed Amounts; Letter of Credit Expiration Date. Upon the request of Administrative Agent and any Issuing Bank, as applicable, (1) if such Issuing Bank has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an Unreimbursed Amount, or (2) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, Borrower shall, in each case, immediately Cash Collateralize 103% of the amount of then Outstanding Amount of all L/C Obligations.

(ii) Cash Collateralization Upon Event of Default. Without limiting Issuing Banks' or Administrative Agent's rights under applicable law or pursuant to Section 2.2(e)(i) or the applicable Issuer Documents, upon the occurrence and during the continuation of an Event of Default under Section 7 (Events of Default), Administrative Agent may, and at the direction of the Requisite Lenders shall, require Borrower to Cash Collateralize the outstanding Letters of Credit.

(iii) Grant of Security Interest. All Cash Collateral provided by or on behalf of Borrower (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts located in the United States, at one or more institutions selected by Administrative Agent. Borrower hereby grants to Administrative Agent, for the benefit of Administrative Agent and each Issuing Bank, and agrees to maintain, a first-priority security interest in all such Cash Collateral. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and the applicable Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(iv) Termination of Requirement. Cash Collateral furnished by or on behalf of Borrower shall not be released during the existence of a Default or Event of Default.

(f) Obligations Absolute. The obligation of Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each Loan deemed made pursuant to Section 2.2(d) (Drawings and Reimbursements) shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Financing Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the

transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the applicable Issuing Bank of any requirement that exists for such Issuing Bank's protection and not the protection of Borrower or any waiver by such Issuing Bank which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the applicable Issuing Bank in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;

(vii) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any amendment or waiver of or any consent or departure from all or any of the provisions of the Financing Documents or Letter of Credit;

(ix) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower; or

(x) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the applicable Issuing Bank. Borrower shall be conclusively deemed to have waived any such claim against such Issuing Bank and its correspondents unless such notice is given as aforesaid.

(g) Role of an Issuing Bank. Borrower agrees that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any Issuing Bank shall be liable or responsible for any of the matters described in Sections 2.2(f)(i) through 2.2(f)(ix) (*Obligations Absolute*); provided that, anything in such Sections to the contrary notwithstanding, Borrower may have a claim against any Issuing Bank, and such Issuing Bank may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of all the documents specified in such Letter of Credit strictly complying with the terms and conditions of a Letter of Credit, such willful misconduct, gross negligence, or willful failure as determined by a final, non-appealable judgment of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, any Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Issuing Bank may send a Letter of Credit or conduct any communication to or from the beneficiary via a Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(h) Applicability of ISP. Unless otherwise expressly agreed by the applicable Issuing Bank and Borrower when a Letter of Credit is issued or when it is amended with the consent of the beneficiary thereof, the rules of the ISP shall apply to each Letter of Credit and as to all matters not governed thereby, the law of the State of New York. Notwithstanding the foregoing, no Issuing Bank shall be responsible to Borrower for, and each Issuing Bank's rights and remedies against Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-



IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees.

(i) Borrower shall pay to Administrative Agent for the account of each Issuing Bank and participating Lender, a Letter of Credit fee (the “**Letter of Credit Fee**”) for each Letter of Credit applicable to such Issuing Bank or participating Lender, as applicable, equal to the Applicable Margin for ~~LIBO-Rate~~Term SOFR Loans times the daily maximum aggregate amount available to be drawn under such Letter of Credit times the Issuing Bank’s or Lender’s, as applicable, Pro Rata Share of such Letter of Credit.

(ii) Borrower agrees to pay each Issuing Bank that issues a Letter of Credit a letter of credit fronting fee (the “**Fronting Fee**”) in an amount equal to 0.15% per annum of the daily maximum aggregate amount available to be drawn under such Letter of Credit issued by such Issuing Bank.

(iii) For purposes of computing the daily maximum aggregate amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.4 (Letter of Credit Amounts). Letter of Credit Fees and Fronting Fees shall be (i) due and payable on each Quarterly Payment Date (commencing with the first such date to occur after the issuance of such Letter of Credit), on the Letter of Credit Expiration Date and thereafter on demand (to the extent remaining unpaid) and (ii) computed on a quarterly basis in arrears.

(j) Documentary and Processing Charges Payable to Applicable Issuing Bank. Borrower shall pay directly to the applicable Issuing Bank, for its own account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank in connection with Letters of Credit issued by such Issuing Bank as from time to time in effect. Such customary fees and standard costs and charges, if any, are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of a Subsidiary or for the account of a Subsidiary, Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit in support of any obligations of Subsidiaries inures to the benefit of Borrower and such Subsidiaries, and that Borrower’s business derives substantial benefits from the businesses of such Subsidiaries.

(m) Resignation as Issuing Bank. Any Issuing Bank may, upon sixty (60) days’ notice to Borrower and Administrative Agent, resign as Issuing Bank. In the event of any such resignation as Issuing Bank, Borrower (or, if Borrower fails to make such

appointment in thirty (30) days, Administrative Agent) shall be entitled to appoint a Person who is an Eligible Assignee with the Required Ratings (or whose guarantor, as contemplated by the definition of “Required Ratings,” has the Required Ratings) and reasonably satisfactory to Administrative Agent as a successor Issuing Bank hereunder. If any Issuing Bank resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit that it issued, including Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all L/C Obligations with respect thereto. Upon the appointment of a successor Issuing Bank, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the successor Issuing Bank shall issue letters of credit in substitution for the applicable Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable Issuing Bank to effectively assume the obligations of such Issuing Bank with respect to such Letters of Credit and (iii) the resigning Issuing Bank shall assign its Letter of Credit Issuance Commitment to issue Letters of Credit and Loans, as applicable, to such successor Issuing Bank.

(n) Replacement of Issuing Banks.

(i) If at any time an Issuing Bank (or its guarantor, as contemplated by the definition of “Required Ratings”) ceases to have the Required Ratings, then such Issuing Bank shall promptly, and in any event within two (2) Business Days after such cessation, notify Borrower thereof and Borrower may, upon thirty (30) days’ prior written notice, in each case, to such Issuing Bank and Administrative Agent, (A) (x) elect to replace such Issuing Bank in its capacity as an Issuing Bank with a Person selected by Borrower and with the Required Ratings (or whose guarantor, as contemplated by the definition of “Required Ratings,” has the Required Ratings) so long as such Person is an Eligible Assignee and is reasonably satisfactory to Administrative Agent and (y) cause such Issuing Bank to assign its Letter of Credit Issuance Commitment to issue Letters of Credit and its Loans to the successor Issuing Bank or (B) cause such Issuing Bank to assign its Letter of Credit Issuance Commitment to issue Letters of Credit and its Loans, as applicable, to another or additional Issuing Bank selected by Borrower and with the Required Ratings (or whose guarantor, as contemplated by the definition of “Required Ratings,” has the Required Ratings), so long as such Person is an Eligible Assignee and is reasonably satisfactory to Administrative Agent; and

(ii) Borrower shall notify Administrative Agent of any such replacement of an Issuing Bank pursuant to Section 2.2(n)(i) above. At the time any such replacement shall become effective, Borrower shall have (A) paid all unpaid fees and Unreimbursed Amounts accrued for the account of the replaced Issuing Bank pursuant to Section 2.9 (Fees) and (B) effected the cancellation and return to the replaced Issuing Bank of its Letters of Credit outstanding at such time. From and after the effective date of any such replacement, (1) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (2) references herein to the term “**Issuing Bank**” shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall

require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights, powers, privileges and duties of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but shall not be required to issue additional Letters of Credit.

### 2.3 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares.

(i) (A) Loans made pursuant to Section 2.1 (Loans) shall be made by Lenders simultaneously and proportionately such that after giving effect to such Loans, the Outstanding Amount of each Lender's Loans and L/C Obligations shall equal their Pro Rata Shares of the aggregate Commitments, and (B) all Letters of Credit shall be issued on a non-ratable basis by Issuing Banks with a Fronting Limit to the extent provided in Section 2.2(b) (Fronting).

(ii) [Reserved].

(iii) No Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan in respect of which such other Lender has a Commitment requested hereunder nor shall any Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan in respect of which such other Lender has a Commitment requested hereunder.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date (any such amount made available by Administrative Agent to Borrower, the "**Corresponding Amount**"). If such Corresponding Amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such Corresponding Amount on demand from such Lender, together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. In the event that Administrative Agent does not make available to Borrower a requested amount on the applicable Credit Date until such time as all applicable Lenders have made payment to Administrative Agent, Administrative Agent shall deem any payment by or on behalf of a Lender hereunder that is not made in immediately available funds prior to the time period specified herein and such delay causes Administrative Agent's failure to fund to Borrower in accordance with its Funding Notice, a non-conforming payment and such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for

receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such Corresponding Amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such Corresponding Amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Loans. Nothing in this Section 2.3(b) shall be deemed to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

**2.4 Use of Proceeds.** Letters of Credit and the proceeds of Loans shall be available and applied, respectively, for general corporate purposes of Borrower and its Subsidiaries.

**2.5 Evidence of Debt; Register; Lenders' Books and Records; Notes.**

(a) Lenders' Evidence of Debt. Each Lender and Issuing Bank shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender or Issuing Bank, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's or Issuing Banks' Commitment or Borrower's Obligations in respect of any applicable Loans; and provided further that, in the event of any inconsistency between the Register and any Lender's or Issuing Bank's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of all Lenders and Issuing Banks; the Commitments and Loans of each Lender and Issuing Bank; and principal amounts (and stated interest) of the Loans owing to each Lender or Issuing Bank pursuant to the terms hereof from time to time (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender or Issuing Bank (with respect to (i) any entry relating to such Lender's or Issuing Bank's Loans or L/C Obligations or (ii) the identity of the other Lenders and Issuing Banks (but not any information with respect to such other Lenders' or Issuing Bank's Loans or L/C Obligations)) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Commitments and the Loans in accordance with the provisions of Section 9.6 (*Successors and Assigns; Participations*), and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower, each Lender and each Issuing Bank, absent manifest error; provided that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's or Issuing Bank's Commitment or Borrower's Obligations in respect of any Loan. Borrower hereby designates Administrative Agent to serve as Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section

2.5(b), and Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute “**Indemnitees**” under Section 9.3(a) (Indemnity).

(c) Notes. If so requested by any Lender or Issuing Bank by written notice to Borrower (with a copy to Administrative Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender or Issuing Bank (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender or Issuing Bank pursuant to Section 9.6 (Successors and Assigns; Participations)) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after receipt by Borrower of such notice) a Note or Notes to evidence such Lender’s or such Issuing Bank’s Loan, as the case may be.

## **2.6 Interest on Loans.**

(a) Except as otherwise set forth herein (without duplication of amounts payable in connection with Section 2.6(f) (Interest on Loans)), each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise), and thereof as follows:

- (i) if a Base Rate Loan, at the Base Rate *plus* the Applicable Margin; or
- (ii) if a ~~LIBO-Rate~~Term SOFR Loan, at the Adjusted ~~LIBO-Rate~~Term SOFR *plus* the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any ~~LIBO-Rate~~Term SOFR Loan, shall be selected by Borrower and notified to Administrative Agent and the Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(c) In connection with ~~LIBO-Rate~~Term SOFR Loans there shall be no more than six (6) Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a ~~LIBO-Rate~~Term SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if not then outstanding) will be made as (or if outstanding as a Base Rate Loan will remain as) a Base Rate Loan, or if outstanding as a ~~LIBO-Rate~~Term SOFR Loan, will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan. In the event Borrower fails to specify an Interest Period for any ~~LIBO-Rate~~Term SOFR Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one (1) month. As soon as practicable ~~after 12:00 p.m. (New York City time) on each Interest Rate on each Term SOFR~~ Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the ~~LIBO-Rate~~Term SOFR Loans for which an interest rate is then

being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Borrower and each Lender.

(d) Interest payable pursuant to this Section 2.6 shall be computed (i) in the case of Base Rate Loans on the basis of a 365 or 366 day year, as the case may be, ~~and~~ (ii) in the case of ~~LIBO-Rate~~Term SOFR Loans, on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a ~~LIBO-Rate~~Term SOFR Loan, the date of conversion of such ~~LIBO-Rate~~Term SOFR Loan to such Base Rate Loan shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a ~~LIBO-Rate~~Term SOFR Loan, the date of conversion of such Base Rate Loan to such ~~LIBO-Rate~~Term SOFR Loan, shall be excluded; provided that, if a Loan is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided, however, that with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) Without duplication of any amounts payable under Section 2.6(a) (*Interest on Loans*), Borrower agrees to pay to each Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by such Issuing Bank in respect of each such honored drawing from the date such drawing is honored to (but excluding) the date such amount is reimbursed by or on behalf of Borrower at a rate equal to (i) for the period from the date such drawing is honored to (but excluding) the date that is one (1) Business Day immediately following the date on which such drawing is honored, the rate of interest otherwise payable hereunder with respect to Base Rate Loans, and (ii) thereafter, a rate which is two percent (2%) *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Base Rate Loans.

(g) Interest payable pursuant to Section 2.6(f) (*Interest on Loans*) shall be computed on the basis of a 365/366 day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full.

## 2.7 Conversion/Continuation.

(a) Subject to Section 2.15 (*Making or Maintaining ~~LIBO-Rate~~Term SOFR Loans*) and so long as no Default or Event of Default shall have occurred and then be continuing:

(i) Borrower shall have the option to convert at any time all or any part of any Loans, equal to \$2,000,000 and integral multiples of \$1,000,000 in excess of that amount, from one Type of Loan to another Type of Loan; provided that a ~~LIBO-Rate~~Term SOFR Loan may only be converted on a date other than the date of expiration of the Interest Period applicable to such ~~LIBO-Rate~~Term SOFR Loan if Borrower shall pay all amounts due under Section 2.15 (*Making or Maintaining ~~LIBO~~Term SOFR Loans*) in connection with any such conversion; or

(ii) in the case of ~~LIBO-Rate~~Term SOFR Loans, Borrower shall have the option upon the expiration of any Interest Period applicable to any ~~LIBO-Rate~~Term SOFR Loan, to continue all or any portion of such Loan equal to \$2,000,000 and integral multiples of \$1,000,000 in excess of that amount as a ~~LIBO-Rate~~Term SOFR Loan.

(b) Subject to Section 3.3 (*Notices*), Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 12:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three (3) Business Days in advance of the proposed Conversion/Continuation Date (in the case of a conversion to, or a continuation of, a ~~LIBO-Rate~~Term SOFR Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any ~~LIBO-Rate~~Term SOFR Loans shall be irrevocable ~~on and after the related Interest Rate Determination Date~~, and Borrower shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

**2.8 Default Interest.** If the principal amount of, any interest on or any fees in respect of the Loans or the Letters of Credit shall not be paid when due, such overdue amount shall bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is two percent (2%) per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is two percent (2%) per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans); provided that, in the case of ~~LIBO-Rate~~Term SOFR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such ~~LIBO-Rate~~Term SOFR Loans shall thereupon become Base Rate Loans and such overdue amounts shall thereafter bear interest payable upon demand at a rate which is two percent (2%) per annum in excess of the interest rate otherwise payable hereunder for Base Rate

Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.8 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, any Lender or any Issuing Bank.

**2.9 Fees.** In addition to certain fees described in Sections 2.2(i) and 2.2(j) (*Letters of Credit*):

(a) From and after the Closing Date, Borrower agrees to pay to Lenders or Issuing Banks, as applicable, commitment fees equal to an amount equal to the Commitment Fee Rate multiplied by the average of the daily Aggregate Availability (collectively, “**Commitment Fees**”).

(b) All Commitment Fees shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each applicable Lender or Issuing Bank its Pro Rata Share thereof.

(c) All Commitment Fees shall be calculated on the basis of a 360 day year and the actual number of days elapsed and shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year during the Availability Period, commencing on the first such date to occur after the Closing Date, and on the Commitment Termination Date.

(d) In addition to any of the foregoing fees, Borrower agrees to pay to Agents and Administrative Agent for the account of Lenders and Issuing Banks such other fees in the amounts and at the times separately agreed upon (including pursuant to the Fee Letters).

**2.10 Voluntary Prepayments/Commitment Reductions.**

(a) Voluntary Prepayments.

(i) Any time and from time to time Borrower may, without premium or penalty, prepay Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$2,000,000 and integral multiples of \$1,000,000 in excess of that amount; provided that, in any such case, such minimum amounts shall not apply to a prepayment of all outstanding Loans;

(ii) All such prepayments shall be made:

(A) upon not less than one (1) Business Day’s prior written or telephonic notice in the case of Base Rate Loans; and

(B) upon not less than three (3) Business Days’ prior written or telephonic notice in the case of ~~LBO~~ RateTerm SOFR Loans;



in each case given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to Administrative Agent (and Administrative Agent will promptly transmit such original notice by facsimile or telephone to each applicable Lender or Issuing Bank). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided that such prepayment obligation may be conditioned on the occurrence of any subsequent event (including a refinancing transaction) specified in such notice. Any such voluntary prepayment shall be applied as specified in Section 2.12(a) (*Application of Voluntary Prepayments*).

(b) Voluntary Commitment Reductions.

(i) Borrower may, upon not less than three (3) Business Days' prior written or telephonic notice promptly confirmed by delivery of written notice thereof to Administrative Agent (which original written notice Administrative Agent will promptly transmit by facsimile or telephone to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Commitments in an amount up to the Aggregate Availability at the time of such proposed termination or reduction; provided that any such partial reduction of the Commitments shall be in an aggregate minimum amount of \$2,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Borrower's notice to Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Commitments shall be effective on the date specified in Borrower's notice and shall reduce the Commitments of each Lender and/or Issuing Bank proportionately to its Pro Rata Share thereof; provided that such termination or reduction may be conditioned on the occurrence of any subsequent event (including a refinancing transaction).

**2.11 Mandatory Prepayments.**

(a) Net Debt Proceeds. No later than the third (3<sup>rd</sup>) Business Day following the date of receipt by Borrower of any Net Debt Proceeds, Borrower shall prepay Unreimbursed Amounts and Loans (and, as applicable, Cash Collateralize Letters of Credit) as set forth in Section 2.12(b) (*Application of Mandatory Prepayments*) in an aggregate amount equal to such Net Debt Proceeds.

(b) Changes of Control. No later than the third (3<sup>rd</sup>) Business Day following a Prepayment Change of Control, Borrower shall prepay all Unreimbursed Amounts and Loans (and, as applicable, Cash Collateralize Letters of Credit) as set forth in Section 2.12(b) (*Application of Mandatory Prepayments*); provided, that if the Loans are rated by at least one Ratings Agency (or, if the Loans are not rated by any Ratings Agencies, at least one Ratings Agency has assigned a rating to the corporate family of Borrower and its Subsidiaries), then such prepayments shall only be required if a Rating Decline shall have occurred during the applicable Rating Decline Period. Upon any prepayment

pursuant to this Section 2.11(b), the Commitments shall be terminated and permanently reduced to zero.

(c) Prepayment Certificate. Concurrently with any prepayment of the Loans and/or reduction of the Commitments pursuant to this Section 2.11, Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans and/or permanent reduction of the Commitments in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

## **2.12 Application of Prepayments.**

(a) Application of Voluntary Prepayments. With respect to each prepayment made pursuant to Section 2.10(a) (*Voluntary Prepayments*), on the date specified in the notice of prepayment delivered pursuant to Section 2.10(a)(ii) (*Voluntary Prepayments*), such prepayment of the Loans shall be applied *pro rata* to:

- (i) the principal of, and accrued but unpaid interest on, the Loans to be prepaid;
- (ii) any additional amounts required to be paid pursuant to Section 2.15(c) (*Compensation for Breakage or Non-Commencement of Interest Periods*); and
- (iii) any other Obligations due in connection with any prepayment under the Financing Documents.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Section 2.11 (*Mandatory Prepayments*) shall be applied first, to prepay the Unreimbursed Amounts and Loans and second, to Cash Collateralize such L/C Obligations in an amount equal to the Minimum Collateral Amount. Any such prepayment of Unreimbursed Amounts and Loans shall be applied *pro rata* to:

- (i) the principal of, and accrued but unpaid interest on, such Unreimbursed Amounts and Loans;
- (ii) any additional amounts required to be paid pursuant to Section 2.15(c) (*Compensation for Breakage or Non-Commencement of Interest Periods*); and
- (iii) any other Obligations due in connection with any prepayment under the Financing Documents.

(c) Application of Prepayments of Loans to Base Rate Loans and ~~LIBO-Rate~~Term SOFR Loans. Any prepayment of the Loans shall be applied first to Base Rate

Loans to the full extent thereof, before application to ~~LIBO-Rate~~Term SOFR Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.15(c) (*Compensation for Breakage or Non-Commencement of Interest Periods*).

### **2.13 General Provisions Regarding Payments.**

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in immediately available funds, without reduction, defense, recoupment, setoff or counterclaim, free of any restriction or condition, and, except as otherwise required herein, delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of Lenders.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's or Issuing Bank's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans, in lieu of its Pro Rata Share of any ~~LIBO-Rate~~Term SOFR Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period," whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and, with respect to such Loans only, such extension of time shall be included in the computation of the payment of interest hereunder or of the Commitment Fees hereunder.

(f) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in immediately available funds prior to 3:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt telephonic notice to Borrower and each applicable Lender

(confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 7.1(a) (*Failure To Make Payments When Due*). Interest and fees shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.8 (*Default Interest*) from the date such amount was due and payable until the date such amount is paid in full.

(g) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 7.1 (*Events of Default*) or pursuant to any sale of, any collection from, or other realization upon all or any part of the Collateral, all payments or proceeds received by Administrative Agent or Collateral Agent in respect of any of the Obligations, shall be applied in accordance with the application arrangements described in Section 4.1 (*Recoveries*) of the Collateral Agency Appointment Agreement.

(h) Loans Under Existing Credit Agreement. Borrower acknowledges and agrees that as of the Closing Date (prior to the amendment and restatement of the Existing Credit Agreement pursuant to the terms of this Agreement): (A) there are no Loans outstanding under the Existing Credit Agreement; and (B) there are no Letters of Credit outstanding under the Existing Credit Agreement. All Commitments shall hereafter be assigned or re-allocated among the Lenders, respectively, and after giving effect hereto, the percentages of Commitments as of the Closing Date are as set forth on Appendix A. Immediately prior to giving effect to the assignments and re-allocations of Commitments to occur on the Closing Date, Credit Suisse AG, Cayman Islands Branch hereby assigns 100% of its Commitments (as defined in the Existing Credit Agreement) to Credit Suisse AG, New York Branch, and Credit Suisse AG, New York Branch hereby assumes all such Commitments; provided that, interest and fees that have accrued for the account of Credit Suisse, Cayman Islands Branch prior to the Closing Date will be paid to Credit Suisse, Cayman Islands Branch. Credit Suisse, Cayman Islands Branch is executing this Agreement solely for purposes of effecting such assignment, and Credit Suisse, Cayman Islands Branch shall cease to be a Lender hereunder as of the Closing Date.

(i) Exiting Lenders. The Persons executing this Agreement under the heading “Exiting Lender”, in their capacity as an existing Lender under the Existing Credit Agreement (each, an “**Exiting Lender**”), is signing this Agreement for the sole purpose of amending and restating the Existing Credit Agreement and assigning its Commitments (as defined in the Existing Credit Agreement) to the other Lenders party hereto (including any Lender that was not a party to the Existing Credit Agreement). Upon giving effect to this Agreement on the Closing Date, the outstanding Commitments (as defined in the Existing Credit Agreement) of the Exiting Lenders shall be fully assigned at par to the other Lenders party hereto to the extent necessary such that after giving effect thereto, the Commitments shall be held by the Lenders (which, for the

avoidance of doubt, excludes the Exiting Lenders) according to Appendix A; provided that, fees that have accrued for the account of each Exiting Lender prior to the Closing Date will be paid to such Exiting Lender, and each Exiting Lender shall cease to be a Lender under this Agreement as of the Closing Date. The assignments effected by this Section 2.13(i) shall be an assignment for all purposes of this Agreement and be deemed to have been consummated in accordance with Section 9.5.

**2.14 Ratable Sharing.** Lenders hereby agree among themselves that, except as otherwise provided in the Security Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Financing Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Financing Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.14 shall not be construed to apply to (i) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

**2.15 Making or Maintaining ~~LBO-Rate~~Term SOFR Loans.**

(a) Inability To Determine Applicable Interest Rate. Subject to Section 2.24 (~~LBO-Rate~~Benchmark Replacement), ~~in the event that~~ Setting, if, on or prior to the first day of any Interest Period for any Term SOFR Loan, Administrative Agent ~~shall have determined~~determines (which determination shall be ~~final and conclusive and binding~~

upon all parties hereto), on any Interest Rate Determination Date with respect to any LIBO Rate Loans, that by reason of circumstances affecting the London interbank market ~~absent manifest error~~ that adequate and ~~fair~~ reasonable means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Adjusted LIBO Rate (such circumstances, the “~~LIBO Rate Circumstances~~”); Adjusted Term SOFR or Term SOFR, then the Administrative Agent shall ~~on such date~~ give notice ~~(by e-mail or by telephone confirmed in writing)~~ to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, LIBO Rate Loans until such time as ~~thereof~~ to Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and ~~the~~ Lenders that the circumstances giving rise to such notice no longer exist, ~~and~~; ~~(ix)~~ any Funding Notice ~~or Conversion/Continuation Notice given by Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower~~ that requests a Term SOFR Loan shall instead be deemed to be a Funding Notice for a Base Rate Loan; and (y) any outstanding Term SOFR Loan shall on and from the end of the applicable Interest Period be converted by the Administrative Agent to, and shall constitute, a Base Rate Loan.

(b) Illegality or Impracticability of LIBO Rate Term SOFR Loans. Subject to Section 2.24 (~~LIBO Rate Benchmark Replacement~~ Setting), in the event that on any date (i) any Lender shall have reasonably determined that a Change in Law has made the making, maintaining, converting to or continuation of its ~~LIBO Rate~~ Term SOFR Loans unlawful, or that any Governmental Authority has asserted that it is unlawful, or (ii) Administrative Agent is advised by the Requisite Lenders that the Adjusted ~~LIBO Rate~~ Term SOFR for any requested Interest Period with respect to a proposed ~~LIBO Rate~~ Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of making, maintaining, converting to or continuing such ~~LIBO Rate~~ Term SOFR Loan as a result of contingencies occurring after the Closing Date which materially and adversely affect the ~~London interbank~~ Term SOFR market or the position of the Lenders in that market, then, and in any such event, any Lender requesting compensation under this Section 2.15 shall be an “**Affected Lender**” and such Affected Lender shall on that day give notice (by e-mail or by telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). If Administrative Agent receives a notice from (x) any Lender pursuant to clause (i) of the preceding sentence or (y) a notice from Lenders constituting Requisite Lenders pursuant to clause (ii) of the preceding sentence, then (1) the obligation of the Lenders (or, in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) to make Loans as, or to convert Loans to, ~~LIBO Rate~~ Term SOFR Loans shall be suspended until such notice shall be withdrawn by each Affected Lender, (2) to the extent such determination by the Affected Lender relates to a ~~LIBO Rate~~ Term SOFR Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, the Lenders (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Lenders’ (or in the case of any notice pursuant to clause (i) of the preceding

sentence, such Lender's obligations to maintain their respective outstanding ~~LIBO-Rate~~Term SOFR Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a ~~LIBO-Rate~~Term SOFR Loan then being requested by Borrower pursuant to a Funding Notice or a Conversion/Continuation Notice, Borrower shall have the option, subject to the provisions of Section 2.15(c) (*Compensation for Breakage or Non-Commencement of Interest Periods*), to rescind such Funding Notice or Conversion/Continuation Notice as to all Lenders by giving written (which may be by e-mail) or telephonic notice (promptly confirmed by delivery of written notice thereof) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender).

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, within thirty (30) days of written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to lenders of funds borrowed by it to make or carry its ~~LIBO-Rate~~Term SOFR Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any ~~LIBO-Rate~~Term SOFR Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing, or a conversion to or continuation of any ~~LIBO-Rate~~Term SOFR Loan does not occur on a date specified therefor in a Conversion/Continuation Notice or a telephonic request for conversion or continuation; (ii) if any prepayment or other principal payment of, or any conversion of, any of its ~~LIBO-Rate~~Term SOFR Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its ~~LIBO-Rate~~Term SOFR Loans is not made on any date specified in a notice of prepayment given by Borrower. With respect to any Lender's claim for compensation under this Section 2.15, Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred and eighty (180) calendar days prior to the date that such Lender notifies Borrower of the event that gives rise to such claim.

(d) Booking of ~~LIBO-Rate~~Term SOFR Loans. Any Lender may make, carry or transfer ~~LIBO-Rate~~Term SOFR Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

~~(e) Assumptions Concerning Funding of LIBO-Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.15 and under Section 2.16 (Increased Costs; Capital Adequacy) shall be made as though such Lender had actually funded each of its relevant LIBO-Rate Loans through the purchase of a Eurodollar~~

~~deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Adjusted LIBO Rate in an amount equal to the amount of such LIBO Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided that each Lender may fund each of its LIBO Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.15 and under Section 2.16 (Increased Costs; Capital Adequacy).~~

## **2.16 Increased Costs; Capital Adequacy.**

(a) **Compensation for Increased Costs and Taxes.** Subject to the provisions of Section 2.17 (*Taxes; Withholding, Etc.*) (which shall be controlling with respect to the matters covered thereby), in the event that any Lender (which term shall include each Agent and Issuing Bank for purposes of this Section 2.16(a)) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any Change in Law has occurred that: (i) subjects such Lender (or its applicable lending office or Affiliate) or any company controlling such Lender to any additional Tax (other than any Indemnified Taxes, Other Taxes covered by Section 2.17 (*Taxes; Withholding, Etc.*) or Excluded Taxes) with respect to this Agreement or any of the other Financing Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to ~~LIBO Rate~~Term SOFR Loans that are reflected in the definition of Adjusted ~~LIBO Rate~~Term SOFR) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender's obligations hereunder ~~or the London interbank market~~; and the result of any of the foregoing is to increase the cost or decrease the yield to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) hereunder or to increase the cost to such Lender of issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit); then, in any such case, Borrower shall pay to such Lender, within thirty (30) days following receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in yield or amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for



calculating the additional amounts owed to such Lender under this Section 2.16(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error. Notwithstanding any of the foregoing, a Lender shall be entitled to request compensation for increased costs or expenses described in this Section 2.16(a) only to the extent it is the general practice or policy of such Lender to request such compensation from other borrowers under comparable facilities under similar circumstances.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term shall include each Issuing Bank for purposes of this Section 2.16(b)) shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the introduction, adoption, effectiveness, phase in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans, Commitments or Letters of Credit or participations therein or other obligations hereunder with respect to the Loans or Letters of Credit to a level below that which such Lender or such controlling company could have achieved but for such introduction, adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error. Notwithstanding any other provision herein, no Lender or Issuing Bank shall demand compensation pursuant to Section 2.16(a) or 2.16(b) if it shall not at the time be the general policy or practice of such Lender or Issuing Bank to demand such compensation from similarly situated borrowers.

(c) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.16 shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section 2.16 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Bank's

intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

## **2.17 Taxes; Withholding, Etc.**

(a) Payments To Be Free and Clear. All sums payable by or on behalf of Borrower hereunder and under the other Financing Documents shall be paid free and clear of, and without any deduction or withholding on account of, any Tax, except to the extent required by law.

(b) Withholding of Taxes. If any applicable law (as determined in the good-faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall (i) be entitled to make such deduction or withholding; (ii) pay, or cause to be paid, the full amount deducted or withheld to the appropriate Governmental Authority before the date on which penalties attach thereto; and (iii) if the Tax is an Indemnified Tax, and unless otherwise provided in this Section 2.17, then the sum payable by Borrower in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of the deduction, withholding or payment for Indemnified Taxes (including such deductions and withholdings applicable to additional sums payable under this Section 2.17(b)), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction, withholding or payment for Indemnified Taxes been made.

(c) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Financing Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(c)(ii)(A), 2.17(c)(ii)(B), and 2.17(c)(ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Financing Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that such Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(C) any Lender that is not a U.S. Person shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of

copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) If a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.17(c), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered under this Section 2.17(c) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(d) Payment of Other Taxes. Without limiting the provisions of Section 2.17(b) (*Withholding of Taxes*), Borrower shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of any Other Taxes. Borrower shall deliver to Administrative Agent official receipts or other evidence of such payment reasonably satisfactory to Administrative Agent in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(e) Evidence of Payments. Within thirty (30) days after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.17, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f) Indemnification by Borrower. Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of Indemnified Taxes (including any such Indemnified Taxes imposed or asserted on or attributable to amounts

payable under this Section 2.17) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund, from the Governmental Authority imposing the Tax, of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.17(g) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.17(g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.17(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) For purposes of this Section 2.17, the term “Lender” shall include any Issuing Bank, and applicable laws include FATCA.

(i) Survival. Each party’s obligations under this Section 2.17 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Financing Document.

**2.18 Obligation To Mitigate**. Each Lender (which term shall include each Issuing Bank for purposes of this Section 2.18) agrees that, as promptly as practicable after the officer of such Lender that is directly or indirectly responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such

Lender to receive payments under Sections 2.15 (*Making or Maintaining ~~LIBO-Rate~~Term SOFR Loans*), 2.16 (*Increased Costs; Capital Adequacy*) or 2.17 (*Taxes; Withholding, Etc.*), it will (at the request of Borrower), to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Sections 2.15 (*Making or Maintaining ~~LIBO-Rate~~Term SOFR Loans*), 2.16 (*Increased Costs; Capital Adequacy*) or 2.17 (*Taxes; Withholding, Etc.*) would be eliminated or materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect the Commitments, Loans or Letters of Credit or the interests of such Lender; provided that such Lender will not be obligated to utilize such other office pursuant to this Section 2.18 unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.18 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

## **2.19 Defaulting Lenders.**

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 7 (Events of Default) or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 9.4 (Set Off) shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; *third*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fourth*, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fifth*, to the payment of any amounts owing to the Lenders or any Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or such Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.19(a)(i) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.9(a) (Fees) for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(iii) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Lenders that are not Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the principal amount of all outstanding Loans and L/C Obligations of any Lender that is not a Defaulting Lender to exceed such Lender's Commitment. Subject to Section 2.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Lender that is not a Defaulting Lender as a result of such Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and

subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

**2.20 Removal or Replacement of a Lender.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an “**Increased Cost Lender**”) shall give notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.15 (*Making or Maintaining ~~LIBO-Rate~~Term SOFR Loans*), 2.16 (*Increased Costs; Capital Adequacy*) or 2.17 (*Taxes; Withholding, Etc.*), and (ii) such Lender shall fail to withdraw such notice within five (5) Business Days after Borrower’s request for such withdrawal; (b) (i) any Lender shall become a Defaulting Lender and continues to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.19(b) (*Defaulting Lender Cure*) within five (5) Business Days after Borrower’s request that it cure such default; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 9.5(b) (*Affected Lenders’ Consent*), the consent of the Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “**Non-Consenting Lender**”) whose consent is required shall not have been obtained; then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the “**Terminated Lender**”), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and its Commitments, if any, in full to one or more Eligible Assignees (each a “**Replacement Lender**”) in accordance with the provisions of Section 9.6 (*Successors and Assigns; Participations*) and Borrower shall pay the fees, if any, payable thereunder and any other expenses incurred by Borrower or the Secured Parties in connection with any such assignment from an Increased Cost Lender, a Non-Consenting Lender or a Defaulting Lender; provided that (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.9 (*Fees*) (but, in the case of any Defaulting Lender, subject to Section 2.19(a)(ii) (*Certain Fees*)); (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.15(c) (*Compensation for Breakage or Non-Commencement of Interest Periods*), 2.16 (*Increased Costs; Capital Adequacy*) or 2.17 (*Taxes; Withholding, Etc.*) or otherwise, as if it were a prepayment (without



regard to any *pro rata* payment obligation in respect of any other Loans); (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; and (4) in the case of any such assignment resulting from a claim for payment under Section 2.16 (*Increased Costs; Capital Adequacy*) or 2.17 (*Taxes; Withholding, Etc.*), or payments required to be made pursuant to Section 2.17 (*Taxes; Withholding, Etc.*), such assignment will result in a reduction of such payments; provided that Borrower may not make such election with respect to any Terminated Lender that is also an Issuing Bank, unless, prior to the effectiveness of such election, Borrower shall have caused the outstanding Letters of Credit issued thereby to be cancelled. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Commitments, if any, such Terminated Lender shall no longer constitute a "Lender" for purposes hereof; provided further that any rights of a Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Borrower exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 9.6 (*Successors and Assigns; Participations*). In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one (1) Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 9.6 (*Successors and Assigns; Participations*) on behalf of a Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 9.6 (*Successors and Assigns; Participations*).

## **2.21 Increased Commitments.**

Borrower shall have the right, at any time after the Closing Date and from time to time prior to the date that is thirty (30) days prior to the Commitment Termination Date, to increase the aggregate Commitments hereunder up to a maximum aggregate amount equal to the greater of (A) \$2,000,000,000 and (B) 5.0% of Consolidated Net Tangible Assets (measured as of the last day of the most recent fiscal period for which internal consolidated financial statements of Borrower and its Subsidiaries are available), by causing one or more Additional Commitment Lenders (which may include any existing Lender, provided that no existing Lender shall be obligated to increase its Commitment) to provide a (or, in the case of an existing Lender, to increase its) Commitment (each such increase, a "**Commitment Increase**"), provided that (i) no Lender shall have any obligation hereunder to become an Additional Commitment Lender and any election to do so shall be in the sole discretion of each Lender and (ii) each Additional Commitment Lender shall have entered into an agreement in form and substance reasonably satisfactory to Borrower and Administrative Agent pursuant to which such Additional Commitment Lender shall provide a Commitment (or, if such Additional Commitment Lender is an existing Lender, pursuant to which its Commitment shall be increased). Notwithstanding the foregoing, no Commitment Increase pursuant to this Section 2.21 shall be effective unless:

(a) Borrower shall have given Administrative Agent notice of any such increase at least five (5) Business Days prior to the relevant effective date of such Commitment Increase;

(b) no Default or Event of Default shall have occurred and be continuing on such effective date; and

(c) each of the representations and warranties of Borrower in the Financing Documents is true and correct in all material respects on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date), except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects (after giving effect to any qualification therein) on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

Each notice under clause (a) above shall be deemed to constitute a representation and warranty by Borrower as to the matters specified in clauses (b) and (c) above. On the effective date of each Commitment Increase, Administrative Agent may, in consultation with Borrower, take any and all actions as may be reasonably necessary to ensure that, after giving effect to such Additional Commitment Lender's Commitment Increase, the percentage of the aggregate Loans held by each Lender (including each such Additional Commitment Lender) will equal the percentage of the aggregate Commitments of all Lenders represented by such Lender's Commitment (which may be accomplished, at the discretion of Administrative Agent following consultation with Borrower, (x) by requiring the outstanding Loans to be prepaid with the proceeds of a new Loan, (y) by causing non-increasing Lenders to assign portions of their outstanding Loans to Additional Commitment Lenders or (z) by a combination of the foregoing).

**2.22 Currency Matters.** All Obligations of Borrower under the Financing Documents shall be payable in Dollars. All calculations, comparisons, measurements or determinations under the Financing Documents shall be made in Dollars.

**2.23 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**2.24 LIBO-RateBenchmark Replacement Setting.** Notwithstanding anything to the contrary herein or in any other Financing Document:

(a) ~~Replacing LIBO-RateBenchmark Replacement. On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBO-Rate’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month LIBO-Rate tenor settings. On the earlier of (i) the date that all Available Tenors of LIBO-Rate have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is LIBO-Rate, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Financing Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Financing Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.~~

~~(b) Replacing Future Benchmarks. Upon the occurrence of If a Benchmark Transition Event, the and its related Benchmark Replacement will Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the Administrative Agent and Borrower may amend this Agreement to replace the then-current Benchmark for all purposes hereunder and under any Financing Document in respect of any with a Benchmark setting at or after Replacement. Any such amendment will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders (without any amendment to, or further action or consent of any other party to, this Agreement or any other Financing Document), so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be~~

~~made, converted or continued that would bear interest by reference to such Benchmark until Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.~~

(b) ~~(e)~~ Benchmark Replacement Conforming Changes. In connection with the ~~implementation and use,~~ administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right, in consultation with the Borrower, to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Financing Document.

(c) ~~(d)~~ Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement ~~and,~~ (iii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.242.24, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party ~~hereto to this Agreement or any other Financing Document or any notification by the Administrative Agent,~~ except, ~~in each case,~~ as expressly required pursuant to this Section 2.242.24.

~~(e)~~ Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR or LIBO Rate ~~Reference Rate~~) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may ~~remove any tenor of such Benchmark that is~~ modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative ~~for Benchmark (including Benchmark Replacement) settings and (ii) tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a~~

Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate ~~any~~ such previously removed tenor ~~for Benchmark (including Benchmark Replacement) settings~~.

(d) Benchmark Unavailability Period. Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any Funding Notice for a Term SOFR Loan to be made, and any request for a conversion of a Base Rate Loan to a Term SOFR Loan and, failing that, Borrower will be deemed to have converted any Funding Notice for a Term SOFR Loan into a request for a Base Rate Loan and to have revoked any request for a conversion of a Base Rate Loan into a Term SOFR Loan. Furthermore, if any Term SOFR Loan is outstanding on the date of Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.24, such Term SOFR Loan shall, on the last day of the then-current Interest Period for such Term SOFR Loan, be converted by the Administrative Agent to, and shall constitute a Base Rate Loan.

## **2.25 Amend and Extend.**

(a) Borrower may at any time and from time to time request that all or a portion of the Commitments (each, an "Existing Commitment") be converted to extend the scheduled maturity date of any payment of principal with respect to all or a portion of any principal amount of such Commitments (any Commitments which have been so converted, "Extended Commitments") and to provide for other terms consistent with this Section 2.25. In order to establish any Extended Commitments, Borrower shall provide a notice to Administrative Agent (who shall provide a copy of such notice to each of the Lenders, which such request shall be offered equally to all Lenders) (an "Extension Request") setting forth the date on which Borrower proposes that the Extended Commitments shall be effective, which shall be a date not less than thirty (30) days after the date on which such notice is delivered to the Administrative Agent, and the proposed terms of the Extended Commitments to be established, which terms shall be identical in all material respects to the Existing Commitments; provided, however, that (i) the scheduled Final Maturity Date shall be extended for such Extended Commitments, (ii) (A) the interest margins and commitment fees with respect to the Extended Commitments may be higher or lower than the interest margins and commitment fees for the Existing Commitments and/or (B) additional fees and premiums may be payable to the Lenders providing such Extended Commitments in addition to or in lieu of any increased margins or commitment fees contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) all borrowings and all repayments of outstanding loans (including permanent repayments) under the Extended Commitments shall be made on a pro rata basis or less than pro rata basis with all other Commitments, and (iv) the Extension Amendment may provide for such other terms and

conditions (in addition to those provided in the foregoing clauses (i) through (iii)) with respect to the Extended Commitments that either, at the option of Borrower, (x) reflect market terms and conditions (taken as a whole) at the time of such Extension Amendment (as determined by Borrower in good faith), (y) if otherwise not consistent with the Existing Commitments subject to such Extension Request, are not materially more restrictive to Borrower (as determined by Borrower in good faith), when taken as a whole, than the terms of such Existing Commitments subject to such Extension Request, except, in each case under this clause (y), with respect to covenants and other terms applicable solely to any period after the Final Maturity Date of the Existing Commitments in effect immediately prior to such Extension Request or (z) such terms shall be reasonably satisfactory to Administrative Agent (*provided* that, at Borrower's election, to the extent any term or provision is added for the benefit of the lenders of Extended Commitments, no consent shall be required from Administrative Agent or the Lenders to the extent that such term or provision is also added, or the features of such term or provision are provided, for the benefit of the Lenders providing the Existing Commitments (and, for the avoidance of doubt, such term shall be deemed reasonably satisfactory to Administrative Agent)). No Lender shall have any obligation to agree to have any of its Commitments converted into Extended Commitments pursuant to any Extension Request; provided that Borrower shall be entitled to exercise its right to remove any Lender who does not agree to such conversion as a Non-Consenting Lender pursuant to Section 2.20 (*Removal or Replacement of a Lender*).

(b) Any Lender (an “**Extending Lender**”) wishing to have all or a portion of its Commitments subject to such Extension Request converted into Extended Commitments shall notify Administrative Agent (an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Commitments subject to such Extension Request that it has elected to convert into Extended Commitments. In the event that the aggregate amount of Commitments subject to Extension Elections exceeds the amount of Extended Commitments requested pursuant to the Extension Request, Commitments subject to Extension Elections shall be converted to Extended Commitments on a pro rata basis based on the amount of Commitments included in such Extension Election.

(c) Extended Commitments shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which, except to the extent expressly contemplated by Section 2.25(e) and notwithstanding anything to the contrary set forth in Section 9.5 (*Amendments and Waivers*), shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Commitments) executed by Borrower, Administrative Agent and the Extending Lenders. In addition to any terms and changes required or permitted by this Section 2.25 each Extension Amendment may, but shall not be required to, impose additional requirements (not inconsistent with the provisions of this Agreement in effect at such time) with respect to the final maturity of new Commitments obtained following the date of such Extension Amendment.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any existing Commitments are converted to extend the related scheduled maturity date(s) in accordance with this Section 2.25, in the case of the existing Commitments of each Extending Lender, the aggregate principal amount of such existing Commitments shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Commitments so converted by such Lender on such date, and the Extended Commitments shall be established as a separate class of Commitments (together with any other Extended Commitments so established on such date).

(e) Administrative Agent and the Lenders hereby (i) consent to the consummation of the transactions contemplated by this Section 2.25 (including, for the avoidance of doubt, payment of any principal, interest, fees, or premium in respect of any Extended Commitments on such terms as may be set forth in the relevant Extension Amendment) and (ii) hereby waive any requirement to obtain the consent of the Requisite Lenders for any Extension Amendment that is effectuated pursuant to Section 2.25(c).

(f) No conversion of Commitments pursuant to any Extension Amendment in accordance with this Section 2.25 shall (i) constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement or (ii) be made if an Event of Default has occurred and is continuing.

(g) At least three (3) Business Days prior to the effectiveness of the Extension Amendment, Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer that identifies each Lender and the amount of its Existing Commitments and Extended Commitments (after giving effect to the applicable Extension Amendment), the maturity date of each Extending Lender's Extended Commitments, and attaches a copy of the proposed Extension Amendment.

**2.26 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Financing Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit

Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 2.26, the following terms have the following meanings:

(i) “**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

(ii) “**Covered Entity**” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or

(C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

(iii) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).



### SECTION 3. CONDITIONS PRECEDENT

**3.1 Closing Date.** The occurrence of the Closing Date is subject to the satisfaction or waiver of the conditions precedent set forth in this Section 3.1, in each case to the satisfaction of Administrative Agent and each Lender (such satisfaction to be deemed upon each Lender's delivery of a signature page to this Agreement to the Administrative Agent), unless, in each case, waived by Administrative Agent and each Lender:

(a) Financing Documents. Administrative Agent shall have received true, correct and complete copies of the following documents, each of which shall have been duly authorized, executed and delivered by the parties thereto:

- (i) this Agreement;
- (ii) an amendment to the Pledge and Security Agreement; and
- (iii) the Fee Letters.

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) each Organizational Document of Borrower certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority or the secretary or an assistant secretary of Borrower, as applicable; (ii) signature and incumbency certificates of certain Authorized Officers of Borrower, including each Authorized Officer who is authorized to execute Funding Notices and Issuance Notices delivered under this Agreement, in substantially the form of Exhibit I hereto (with such amendments or modifications as may be approved by Administrative Agent); (iii) resolutions of the board of directors of Borrower, approving and authorizing the execution, delivery and performance of this Agreement and the other Financing Documents to be entered into on the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of Borrower's jurisdiction of incorporation dated the Closing Date or a recent date prior thereto.

(c) Historical Financial Statements. Administrative Agent shall have received the Historical Financial Statements.

(d) Opinion from Counsel. Administrative Agent shall have received the legal opinion of Sullivan & Cromwell LLP, as counsel to Borrower, in form and substance reasonably satisfactory to Administrative Agent.

(e) Bank Regulatory Requirements. Each Lender shall have received, or had access to, at least three (3) Business Days prior to the Closing Date, to the extent requested at least ten (10) Business Days prior to the Closing Date, all documentation and

other information required by bank regulatory authorities under applicable “know your customer” and Anti-Terrorism and Money Laundering Laws.

(f) Fees; Expenses. Administrative Agent shall have received for its own account, or for the account of the relevant Lender or Exiting Lender entitled thereto, as applicable, all fees due and payable on the Closing Date pursuant to the Financing Documents, all accrued and unpaid “Commitment Fees” (as defined in the Existing Credit Agreement) and all costs and expenses (other than fees and expenses of legal counsel, which shall be paid in the ordinary course of business) payable thereunder for which invoices have been presented at least three (3) Business Days prior to the Closing Date.

(g) Absence of Default. As of the Closing Date, no Default or Event of Default shall have occurred and be continuing.

(h) Closing Date Certificate. Borrower shall have delivered to Administrative Agent an executed Closing Date Certificate, which shall include a certification of an Authorized Officer of Borrower as to the matters set forth in clause (g) above and clause (i) below and that each of the conditions precedent to the Closing Date, as set forth in this Section 3.1, has been satisfied (except that no certification shall be made or required from Borrower as to the reasonable satisfaction of an Agent or Lender with respect to any such condition precedent).

(i) Representations and Warranties. Each of the representations and warranties in the Financing Documents shall be true and correct in all material respects on and as of the Closing Date (or, if stated to have been made solely as of an earlier date, as of such earlier date), except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects (after giving effect to any qualification therein) on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

(j) Solvency Certificate. Administrative Agent shall have received an executed solvency certificate in form, scope and substance reasonably satisfactory to Administrative Agent and demonstrating that Borrower is, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.

(k) Perfection of Security. Subject to Section 5.13 (Post-Closing), Administrative Agent shall have received satisfactory evidence of the completion of all actions, recordings and filings of or with respect to the Security Documents that Administrative Agent may deem necessary or reasonably desirable in order to perfect the first-priority Liens (subject only to Permitted Liens) created thereunder, including the delivery of the original certificates representing all Equity Interests in the Pledged

Entities (in each case, together with a duly executed transfer power) to Collateral Agent and the filing of UCC-1 financing statements.

(l) Lien Searches. Administrative Agent shall have received the results of recent lien, judgment and litigation searches for Borrower in each jurisdiction applicable (in Administrative Agent's reasonable opinion) to Borrower and such searches shall reveal no Liens on any of the assets of Borrower except for Permitted Liens and Liens discharged on or prior to the Closing Date pursuant to documentation reasonably satisfactory to Administrative Agent.

(m) Notes. Administrative Agent shall have received true, correct and complete copies of the Notes requested by the Lenders pursuant to Section 2.5 (*Evidence of Debt; Register; Lenders' Books and Records; Notes*), each of which shall have been duly authorized, executed and delivered by Borrower.

### **3.2 Conditions to Each Credit Extension.**

The several obligation of each Lender to make, or cause one of its Affiliates to make, a Loan (but not any continuation or conversion thereof) or of each Issuing Bank to issue, amend or extend, or cause one of its Affiliates to issue, amend or extend, a Letter of Credit is subject to the satisfaction of the following conditions precedent, unless, in each case, waived by the Requisite Lenders or by such Issuing Bank:

(a) Funding/Issuance Notice. Administrative Agent shall have received a duly executed Funding Notice (or, in the case of the issuance, amendment or extension of a Letter of Credit, Administrative Agent and the applicable Issuing Bank shall have received a duly executed Issuance Notice), as required by and in accordance with, and meeting the requirements of, Section 2.1(b)(ii) (*Borrowing Mechanics*) or Section 2.2(c)(i) (*Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit*), as applicable.

(b) Representations and Warranties. As of the applicable Credit Date, each of the representations and warranties of Borrower in the Financing Documents shall be true and correct in all material respects on and as of such Credit Date (or, if stated to have been made solely as of an earlier date, as of such earlier date), except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects (after giving effect to any qualification therein) on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

(c) Absence of Default. As of the applicable Credit Date, no Default or Event of Default shall have occurred and be continuing or would result from the making of such Loan or the issuance, amendment or extension of such Letter of Credit.

(d) Credit Date Certifications. The Funding Notice or Issuance Notice, as applicable, to be delivered in accordance with Section 3.2(a) (*Funding/Issuance Notice*) shall include a certification, dated as of such Credit Date, of an Authorized Officer that (i)

each of the conditions precedent to the Credit Extension, as set forth in this Section 3.2 has been satisfied as of the Credit Date (except that no certification shall be made or required from Borrower as to the satisfaction or reasonable satisfaction of an Agent or Lender with respect to any such condition precedent) and (ii) the proceeds of the Credit Extension will be applied in accordance with Section 2.4 (*Use of Proceeds*).

**3.3 Notices.** Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing, conversion/continuation or issuance of a Letter of Credit as the case may be; provided that each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephonic notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephonic notice shall also be irrevocable once given. None of Administrative Agent, any Lender nor any Issuing Bank shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other Person authorized on behalf of Borrower or for otherwise acting in good faith.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents, Lenders and Issuing Banks to enter into this Agreement and to make each Credit Extension to be made thereby, Borrower represents and warrants to each Agent, Lender and Issuing Bank on each of the Closing Date and each Credit Date, that the following statements are true and correct:

**4.1 Organization; Requisite Power and Authority; Qualification .** Each of Borrower and each of the Pledged Entities (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted in all material respects, and, in the case of Borrower, to enter into the Financing Documents and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect. Set forth on Schedule 4.1 is the jurisdiction of organization of Borrower and each of the Pledged Entities as of the Closing Date.

## **4.2 Equity Interests and Ownership.**

(a) The Equity Interests of each of Borrower and each of the Pledged Entities have been duly authorized and validly issued. Set forth on Part I of Schedule 4.2 is a true, correct, and complete list of all Equity Interests in all Pledged Entities as of the Closing Date. As of the Closing Date, there is no existing option, warrant, call, right, commitment or other agreement to which any of the Pledged Entities is a party requiring, and there is no membership interest or other Equity Interests of any of the Pledged Entities outstanding which upon conversion or exchange would require, the issuance by any of the Pledged Entities of any additional membership interests or other Equity Interests of any of the Pledged Entities or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any of the Pledged Entities.

(b) Except as set forth in Part II of Schedule 4.2, as of the Closing Date 100% of the Equity Interests in each Pledged Entity is owned directly by Borrower, and all such Equity Interests are owned free and clear of all Liens (other than Permitted Liens).

(c) As of the Closing Date Borrower does not own any Equity Interests in any Person except for the Equity Interests set forth on Schedule 4.2 and Equity Interests in any Excluded Subsidiary.

**4.3 Due Authorization.** The execution, delivery and performance of the Financing Documents have been duly authorized by all necessary action on the part of Borrower.

**4.4 No Conflict.** The execution, delivery and performance by Borrower of each of the Financing Documents and the consummation of the transactions contemplated by the Financing Documents do not and will not (a) violate (i) any provision of any Government Rule or any Government Approval applicable to Borrower except to the extent such violation would not reasonably be expected to have a Material Adverse Effect or (ii) any of the Organizational Documents of Borrower; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Borrower except to the extent such conflict, breach or default would not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets now owned or hereafter acquired by Borrower (other than any Permitted Lien); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation of Borrower, except for such approvals or consents (i) that have been obtained or are reasonably expected to be received at the time required and all such consents and approvals that have been obtained remain in full force and effect or (ii) the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

**4.5 Government Approvals.** The execution, delivery and performance by Borrower of the Financing Documents and the consummation of the transactions contemplated by the Financing Documents do not and will not require any Government Approval, except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Collateral Agent for filing and/or recordation, as of the Closing Date.

**4.6 Binding Obligation.** Each Financing Document has been duly executed and delivered by Borrower and each Financing Document that contains Contractual Obligations is the legally valid and binding obligation of Borrower, enforceable against Borrower in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general equitable principles.

**4.7 Financial Statements.** The financial statements of Borrower furnished to Administrative Agent pursuant to Section 5.1 (*Financial Statements and Other Reports*) (or pursuant to Section 3.1(c) (*Historical Financial Statements*)) were prepared in conformity with GAAP, and fairly present, in all material respects, the financial position, on a consolidated basis, of Borrower and its Subsidiaries as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of Borrower and its Subsidiaries for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, Borrower has no contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment required to be reflected by GAAP and that is not reflected in the financial statements or the notes thereto and which in any such case is material in relation to the business, operations and financial condition of Borrower and its Subsidiaries, taken as a whole.

**4.8 No Material Adverse Effect.** (i) As of the Closing Date, since December 31, 2020, and (ii) at any time this representation and warranty is made thereafter, since the Closing Date, no event or circumstance has occurred that would reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

**4.9 Adverse Proceedings.** There are no Adverse Proceedings, individually or in the aggregate, that would reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries is (i) in violation of any Government Rule (including Environmental Laws) in any jurisdiction that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, or (ii) subject to or in default with respect to any Government Rule, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**4.10 Payment of Taxes.** All federal income Tax returns and all other material Tax returns and reports of Borrower required to be filed have been timely filed, and all Taxes shown on such Tax returns to be due and payable and any other material Taxes required to be paid by Borrower have been paid when due and payable or remitted on a timely basis, as applicable, or are being contested in good faith by appropriate proceedings with reserves, or other appropriate provisions, as shall be required in conformity with GAAP, maintained therefor, except to the

extent that the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **4.11 Properties.**

(a) Title. Borrower has (i) good and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of its properties and assets that are necessary in the ordinary conduct of its business, free and clear of Liens (other than Permitted Liens), except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Real Estate. As of the Closing Date, Schedule 4.11 contains a true, accurate and complete list of (i) all Real Estate Assets, and (ii) all leases, subleases or assignments of leases (together with all material amendments, modifications, supplements, renewals or extensions of any thereof) in respect of each Real Estate Asset.

**4.12 Intellectual Property.** As of the Closing Date, Borrower has no material Intellectual Property.

**4.13 Environmental Matters.** (a) Neither Borrower nor any of its Subsidiaries is subject to any outstanding written Adverse Proceeding, order, consent decree or settlement agreement with any Person relating to any Environmental Law that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; (b) neither Borrower nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or letter or written request for information under any comparable foreign, state, provincial or territorial law the subject of which would reasonably be expected to result in a Material Adverse Effect; (c) to Borrower's Knowledge, there are, and have been, no facts, circumstances, conditions or occurrences which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and (d) Borrower and its Subsidiaries are and have been in compliance with all current Environmental Laws and the requirements of any Government Approvals issued pursuant to Environmental Laws, except to the extent that no Material Adverse Effect individually or in the aggregate would reasonably be expected to result.

**4.14 No Defaults.** Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, would reasonably be expected to constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not reasonably be expected to have a Material Adverse Effect.

**4.15 Investment Company Act of 1940.** Borrower is not an “investment company” as defined in the Investment Company Act of 1940.

**4.16 Federal Reserve Regulations; Exchange Act.**

(a) Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No portion of the proceeds of any Credit Extension shall be used in any manner, whether directly or indirectly, that causes or would reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

**4.17 Employee Matters.** There is (a) no material strike or work stoppage in existence or threatened involving Borrower and (b) to the Knowledge of Borrower, (i) no union representation question existing with respect to the employees of Borrower and (ii) no union organization activity with respect to the employees of Borrower is taking place. The hours worked by and payments made to employees of Borrower have not been in violation of the Fair Labor Standards Act of 1938, or any other applicable federal, state, provincial, territorial, local or foreign law dealing with such matters in any manner which would reasonably be expected to result in a Material Adverse Effect. All payments due from Borrower, or for which any claim may be made against any Borrower, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of Borrower, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

**4.18 Employee Benefit Plans.**

(a) Borrower and each of its Subsidiaries are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan in all material respects;

(b) each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status;

(c) no liability to the PBGC (other than required premium payments), the IRS, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by Borrower;

(d) no ERISA Event has occurred or is reasonably expected to occur;



(e) except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of Borrower or any of its respective Subsidiaries; and

(f) Borrower and each of its Subsidiaries have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan;

in each of subclause (a) through (f), except as would not reasonably be expected to result, in the aggregate, in a Material Adverse Effect.

**4.19 Certain Fees.** No broker’s or finder’s fee or commission with respect to the Financing Documents will be payable except as payable to Agents, Arrangers, Lenders and Issuing Banks.

**4.20 Solvency.** As of the Closing Date, Borrower is and, upon the incurrence of any Obligation by Borrower on the Closing Date, will be, Solvent.

**4.21 Compliance with Statutes, Etc.** Borrower is in compliance with all Government Approvals and Government Rules in respect of the conduct of its business and the ownership of its property, except such non-compliance that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**4.22 Disclosure.** As of the Closing Date, no representation or warranty of Borrower contained in any Financing Document, and no information, documentation or other materials (other than projections and other forward-looking information and information of a general economic or industry-specific nature, “**Information**”) in any other documents, certificates or written statements furnished directly or indirectly to any Agent, Arrangers, Lender or Issuing Bank by or on behalf of Borrower or its Affiliates in connection with the transactions contemplated hereby is or will be, when taken as a whole, not complete and correct in all material respects and the Information does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not misleading. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Borrower to be reasonable at the time made and furnished, it being recognized by each other party hereto and the Agents, the Arrangers, the Lenders and the Issuing Banks that such projections as to future events are not a guarantee of financial performance and that actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material. The inclusion of any item in any Schedule, as an exception to any representation or warranty or otherwise, is not intended, and shall not be deemed, to imply that any such item is in any way material to Borrower’s business or to establish any standard of materiality. Matters disclosed in any Schedule (except in Schedules I, 4.1 and 4.2) are not necessarily limited to matters that are required by the Agreement to be disclosed therein. Such additional matters are set forth for informational purposes only and do not necessarily include

other matters of a similar nature or impose any duty or obligation to disclose any information beyond what is required by the Agreement, and disclosure of such additional matters shall not affect, directly or indirectly, the interpretation of the Agreement or the scope of the disclosure obligations hereunder.

**4.23 Sanctions; Anti-Corruption Laws; PATRIOT Act.** To the extent applicable, neither Borrower nor any of its Subsidiaries nor, to the Knowledge of Borrower, any of their respective directors, officers, employees, agents or Affiliates is (i) the subject of any sanctions or economic embargoes administered or enforced by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control), or any other applicable U.S. sanctions authority, the United Nations, the European Union, HerHis Majesty's Treasury or Japan (collectively, "**Sanctions**"), and the associated laws, rules, regulations and orders promulgated or issued thereunder, collectively, "**Sanctions Laws**"), (ii) an organization owned or controlled by a Person, entity, or country, territory or region that is the target of Sanctions, or (iii) a Person located, organized or resident in a country, territory or region that is, or whose government is, the target of Sanctions, including, without limitation, as of the Closing Date the Crimea region, Cuba, Iran, North Korea and Syria. To the Knowledge of Borrower, each of Borrower, each of its Subsidiaries and each of their respective directors, officers, employees, agents and Affiliates is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977 and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders promulgated or issued thereunder (collectively, "**Anti-Corruption Laws**") and (iii) the Anti-Terrorism and Money Laundering Laws, and Borrower and its Subsidiaries and Affiliates have instituted and maintained and will continue to maintain policies and procedures reasonably designed to promote and achieve compliance with such laws and with the representations and warranties contained herein. No part of the proceeds of the Loans or Letters of Credit will be used, directly or, to the Knowledge of Borrower, indirectly, (A) for the purpose of financing any activities or business of or with any Person or in any country or territory that is, to the Knowledge of Borrower, at such time the subject of any Sanctions or (B) in any other manner that would result in a violation of Anti-Corruption Laws, Anti-Terrorism and Money Laundering Laws, or Sanctions Laws by any Person (including any Person participating in the Loans or Letters of Credit, whether as Agent, Lender or otherwise). There are no pending or, to the Knowledge of Borrower, threatened, legal proceedings, or, to the Knowledge of Borrower, any investigations by any governmental entity, with respect to violation of any Anti-Corruption Laws, Anti-Terrorism and Money Laundering Laws, or Sanctions Laws relating to the business of Borrower or any of its Subsidiaries or Affiliates.

**4.24 Security Documents.** Prior to the occurrence of an Investment Grade Ratings Event, the Security Documents are effective to create, in favor of Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on and security interest in all of the Collateral purported to be covered thereby, and all necessary recordings and filings have been made in all necessary public offices, and all other necessary and appropriate action has been taken, so that the security interest created by each Security Document is a perfected Lien on and security interest in all right, title and interest of Borrower in the Collateral purported to be covered thereby (including, subject to Section 5.13 (*Post-Closing*), delivery to Collateral Agent

of the certificates evidencing all of the Equity Interests in each Pledged Entity, to the extent required pursuant to the Pledge and Security Agreement), prior and superior to all other Liens other than Permitted Liens. Prior to the occurrence of an Investment Grade Ratings Event, the descriptions of the Collateral set forth in each Security Document are true, complete, and correct in all material respects and are adequate for the purpose of creating, attaching and perfecting the Liens in the Collateral granted or purported to be granted in favor of Collateral Agent for the benefit of the Secured Parties under the Security Documents.

**4.25 Insurance.** All insurance required to be obtained by Borrower pursuant to Section 5.5 (Insurance) has been obtained and is in full force and effect, and all premiums then due and payable on all such insurance have been paid, except in each case as would not, individually or in the aggregate, have a Material Adverse Effect.

**4.26 Nature of Business.** Borrower has not and is not engaged in any business other than as permitted by this Agreement.

**4.27 Ranking.** The Financing Documents and the obligations evidenced thereby are, and will at all times be, direct and unconditional general obligations of Borrower and rank, and will at all times rank (or, in the case of clause (ii) below, prior to the occurrence of an Investment Grade Ratings Event will at all times rank), (i) at least *pari passu* in right of payment with all other senior Indebtedness of Borrower, (ii) senior in respect of Collateral recovery to all unsecured Indebtedness of Borrower and (iii) senior in right of payment to Subordinated Indebtedness of Borrower, in each case whether now existing or hereafter outstanding.

**4.28 Indebtedness; Investments.** As of the Closing Date, Borrower has no (a) Indebtedness other than Indebtedness permitted pursuant to Section 6.1 (Indebtedness) and (b) Investments other than the Investments permitted pursuant to Section 6.4 (Investments).

**4.29 Affected Financial Institutions.** Borrower is not an Affected Financial Institution.

## SECTION 5. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as the Commitments have not been terminated and until the Discharge of Obligations (other than contingent indemnification obligations with respect to which no claim is outstanding), Borrower shall perform all covenants in this Section 5.

**5.1 Financial Statements and Other Reports.** Borrower will deliver to Administrative Agent:

(a) Quarterly Financial Statements. As soon as available, and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending September 30, 2021, the consolidated unaudited balance sheets of Borrower and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of Borrower

and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, in each case, setting forth in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification (it being understood that the delivery by Borrower of a Quarterly Report on Form 10-Q shall satisfy the requirements of this Section 5.1(a));

(b) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year, commencing with the Fiscal Year ended December 31, 2021, (i) a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statement of income, stockholders' equity and cash flows of Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification; and (ii) with respect to such consolidated financial statements a report thereon of an independent certified public accountant of recognized national standing (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Borrower and its Subsidiaries, in each case, as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP, applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) (it being understood that the delivery by Borrower of an Annual Report on Form 10-K shall satisfy the requirements of this Section 5.1(b));

(c) Compliance Certificate. Together with each delivery of financial statements of Borrower and its Subsidiaries pursuant to Sections 5.1(a) (*Quarterly Financial Statements*) and 5.1(b) (*Annual Financial Statements*), a duly executed and completed Compliance Certificate, certified as complete and correct by an Authorized Officer of Borrower;

(d) Notice of Default, Etc. As soon as practicable and in any event within five (5) Business Days after Borrower obtains Knowledge (i) of any condition or event that constitutes a Default or an Event of Default; or (ii) of the occurrence of any Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition or event and what action Borrower has taken, is taking and proposes to take with respect thereto;

(e) Notice of Litigation. As soon as practicable and in any event within five (5) Business Days after Borrower obtains Knowledge of the institution of any Adverse Proceeding not previously disclosed in writing by Borrower to Administrative Agent, Lenders and Issuing Banks that is reasonably likely to be adversely determined and, if adversely determined, would be reasonably expected to have a Material Adverse Effect,

or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of the transactions contemplated hereby, written notice thereof;

(f) ERISA. As soon as practicable and in any event no later than five (5) Business Days after Borrower obtains Knowledge of the occurrence of any ERISA Event, a written notice specifying the nature thereof and what action Borrower or any of its ERISA Affiliates has taken, is taking or proposes to take with respect thereto;

(g) [Reserved].

(h) Public Filings. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with any national securities exchange or regulator, including the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of its functions, in each case, that is not otherwise required to be delivered to Administrative Agent pursuant hereto;

(i) Information Regarding Collateral. Prompt written notice of any change (A) in Borrower's corporate name, (B) in Borrower's identity or corporate structure, (C) in Borrower's jurisdiction of organization or (D) in Borrower's Federal Taxpayer Identification Number or state organizational identification number.

(j) Notice of Force Majeure Event; Force Majeure Election.

(i) Promptly upon, but in all events within thirty (30) days following, the occurrence of a Force Majeure Event that would reasonably be expected to have a Material Adverse Effect, Borrower shall notify the Administrative Agent of the occurrence of such event.

(ii) If Borrower wishes to elect a Force Majeure Period with respect to any Force Majeure Event, it shall deliver notice to Administrative Agent of such election (a "**Force Majeure Election Notice**") within 365 days following the occurrence of such Force Majeure Event. The Force Majeure Election Notice shall include (A) a summary of the actions that the applicable project entity intends to take with respect to the applicable Force Majeure Event and (B) a certificate of an independent engineer certifying that the proposed remedial actions (x) have eliminated or will eliminate the impact on the applicable project of any such Force Majeure Event and (y) have enabled or will enable the applicable project to generate production at a rate and at a quality sufficient for the project to meet its material obligations under commercial contracts that were in existence at the end of the Fiscal Quarter immediately following the final Fiscal Quarter of the Force Majeure Period and (C) a certificate of Borrower certifying that no such commercial contracts have been terminated or are reasonably likely to be terminated as a result of such Force Majeure Event.

(k) Other Information. Such other information and data with respect to Borrower and its Subsidiaries as from time to time may be reasonably requested by Administrative Agent (including any Lender or any Issuing Bank, through Administrative Agent).

Borrower acknowledges that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.1 or otherwise are being distributed through IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform (the “**Platform**”), any document or notice that Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such Public Lenders. Borrower agrees to clearly designate all information provided to Administrative Agent and the Lenders by or on behalf of Borrower or any of its Affiliates that is suitable to make available to Public Lenders. If Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Non-Public Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive Non-Public Information with respect to Borrower, its Affiliates and their respective Securities.

The information required to be delivered pursuant to Section 5.1(a) (*Quarterly Financial Statements*), Section 5.1(b) (*Annual Financial Statements*) or Section 5.1(h) (*Public Filings*) may be delivered electronically and shall be deemed to have been so delivered on the date (i) on which Borrower posts such information, or such information is made available, on Borrower’s website on the Internet or at <http://www.sec.gov>; or (ii) on which such information is posted on Borrower’s behalf on an Internet or intranet website, if any, to which the Lenders and Administrative Agent have been granted access (whether a commercial, third party website or whether sponsored by Administrative Agent).

**5.2 Existence.** Borrower will at all times preserve and keep in full force and effect its existence and all rights and franchises, and Government Approvals it deems material to its business, except as otherwise permitted by this Agreement or, in the case of Government Approvals that Borrower deems material to its business, where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.3 Payment of Taxes.** Borrower will timely file all federal income Tax returns and all other material Tax returns, and remit or pay all material Taxes required to be remitted by it prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such Tax need be paid if (i) it is being contested in good faith by appropriate proceedings, as long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP, shall have been made therefor or (ii) the failure to so pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.4 Maintenance of Properties.** Except as would not reasonably be expected to have a Material Adverse Effect, Borrower will maintain or cause to be maintained in working order ordinary wear and tear excepted, all properties used or useful in the business of Borrower.

**5.5 Insurance.** Borrower will maintain or cause to be maintained, with insurers believed to be financially sound and reputable, such insurance as may customarily be carried or maintained under similar circumstances by Persons engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Each

commercial general liability insurance policy shall name Collateral Agent, for the benefit of the Secured Parties, as an additional insured thereunder as its interests may appear. Each operating property insurance policy shall name Collateral Agent, for the benefit of the Secured Parties, as loss payee thereunder as its interests may appear.

**5.6 Books and Records; Inspections.** Borrower will keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Subject to compliance with ~~the~~ Borrower's then-current safety protocols, Borrower will permit any authorized representatives designated by any Lender and the Administrative Agent to visit and inspect any of the properties of Borrower, to inspect, copy and take extracts from its financial and accounting records, and to discuss its affairs, finances and accounts with its officers, engineers and independent public accountants, all upon reasonable prior written notice and at such reasonable times during normal business hours and as often as may reasonably be requested; provided that, unless an Event of Default shall have occurred and be continuing, such visits and inspections shall be limited to once in each calendar year and shall be at the sole cost and expense of the applicable Lender(s) and the Administrative Agent (except that Administrative Agent may make one such visit to Borrower's Principal Office in each calendar year, the reasonable cost and expense thereof shall be borne by Borrower). Anything to the contrary notwithstanding, nothing in this Agreement will require Borrower to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (a) that constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure is prohibited by Law or binding agreement or (c) that is subject to attorney-client or similar privilege or constitutes attorney work product.

**5.7 Compliance with Laws.**

(a) Borrower will comply with the requirements of all applicable Government Rules (including all Environmental Laws), noncompliance with which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Borrower and its Subsidiaries shall comply in all material respects with Anti-Terrorism and Money Laundering Laws and Sanctions Laws.

(c) Borrower will not, and will procure that its Affiliates, directors and officers do not, directly or, to Borrower's Knowledge, indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Joint Venture partner or other Person:

(i) in violation of any Anti-Terrorism and Money Laundering Laws, Anti-Corruption Laws or Sanctions Laws, to the extent applicable;

(ii) to fund any activities or business of or with any Person, or in any country, territory or region, that, at the time of such funding, is, or whose government is, the target of Sanctions; or

(iii) in any other manner that would result in a violation of any Anti-Terrorism and Money Laundering Laws, Anti-Corruption Laws or Sanctions, by any Person (including any Person participating in the Loans, whether as Lender, Administrative Agent, Collateral Agent or otherwise).

## **5.8 Environmental.**

(a) Environmental Disclosure. Borrower will deliver to Administrative Agent (and Administrative Agent shall deliver to the Lenders and, if so requested, the Issuing Banks):

(i) as soon as reasonably practicable following receipt thereof, copies of all written environmental audits, assessments, investigations, analyses and reports prepared by any independent consultants (excluding, for clarity, legal counsel) with respect to any (A) significant environmental matters at or related to any property owned or occupied by Borrower or any of its Subsidiaries that, in any such case, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, or (B) Environmental Claims against Borrower that, in any such case, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect;

(ii) as soon as reasonably practicable following the occurrence thereof, written notice describing in reasonable detail (1) any Release that would reasonably be expected to have a Material Adverse Effect, (2) any violation of applicable Environmental Laws that would reasonably be expected to have a Material Adverse Effect and (3) any remedial action relating to any of the foregoing that would reasonably be expected to have a Material Adverse Effect;

(iii) as soon as reasonably practicable following the sending or receipt thereof by Borrower, a copy of any and all material written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect and (2) any Release by Borrower that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, in each case that are from or to any Governmental Authority or third party bringing such Environmental Claim or alleging such Release;

(iv) reasonably prompt written notice describing in reasonable detail any proposed acquisition of stock, assets or property by Borrower that would reasonably be expected to expose Borrower to, or result in, Environmental Claims that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect; and

(v) with reasonable promptness, such other material documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this Section 5.8(a).

(b) Obligation to Cure, Etc. Borrower shall promptly take any and all actions reasonably necessary to (i) cure any violation of applicable Environmental Laws by



Borrower that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, (ii) address any Release that if not investigated and/or remediated would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (iii) make any appropriate response to any Environmental Claim against it where the failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.9 Subsidiaries.** Prior to an Investment Grade Ratings Event, in the event that any Person becomes a direct Subsidiary of Borrower (other than any Excluded Subsidiary) after the Closing Date, Borrower shall take, or shall cause such Subsidiary to take, all of the actions referred to in Section 3.1(k) (*Perfection of Security*) necessary to grant and to perfect a first priority Lien (subject to Permitted Liens) in favor of Collateral Agent, for the benefit of the Secured Parties, under the Pledge and Security Agreement in 100% of the Equity Interests of such Subsidiary held by Borrower to the extent such Equity Interests are required to be so pledged pursuant to the Pledge and Security Agreement, and such Subsidiary shall become a Pledged Entity. Prior to an Investment Grade Ratings Event, with respect to each such direct Subsidiary that is required to become a Pledged Entity, Borrower shall as soon as practicable and in any event no later than thirty (30) days after such Person becomes a Subsidiary send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Borrower and (ii) all of the data required to be set forth in Schedule 4.1 and Schedule 4.2 with respect to such Person.

**5.10 [Reserved].**

**5.11 Further Assurances.** At any time or from time to time upon the request of Administrative Agent or Collateral Agent, without duplication of Section 5.1(i) (*Information Regarding Collateral*) and 5.1(k) (*Other Information*), Borrower will, at its expense, promptly execute, acknowledge and deliver such further documents (including, prior to an Investment Grade Ratings Event, UCC financing statements and UCC continuation statements) and do such other acts and things as Administrative Agent or Collateral Agent may reasonably request in order to effect fully the purposes of the Financing Documents and to ensure the validity, enforceability and legality of this Agreement or any other Financing Document and the rights of the Secured Parties and Collateral Agent hereunder or thereunder. In furtherance and not in limitation of the foregoing, prior to an Investment Grade Ratings Event, Borrower shall take such actions as Administrative Agent or Collateral Agent may reasonably request from time to time to ensure that the Obligations (other than contingent indemnification obligations with respect to which no claim has been made) are secured by the Collateral and that the Liens on the Collateral are duly perfected in accordance with all applicable Government Rules for the purposes of perfecting the first priority Lien (subject only to Permitted Liens) created, or purported to be created, in favor of Collateral Agent or the Secured Parties under this Agreement or any other Financing Documents.

**5.12 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely for purposes permitted in this Agreement.

**5.13 Post-Closing.** Within thirty (30) days following the Closing Date (or such longer period as Administrative Agent may agree to in its sole discretion) Borrower shall deliver to Collateral Agent the original certificates representing all Equity Interests in Corpus Christi Liquefaction Stage II, LLC (together with a duly executed transfer power).

## **SECTION 6. NEGATIVE COVENANTS**

Borrower covenants and agrees that, so long as the Commitments have not been terminated and until the Discharge of Obligations (other than contingent indemnification obligations with respect to which no claim is outstanding), Borrower shall perform all covenants in this Section 6.

**6.1 Indebtedness.** Borrower shall not directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

- (a) the Loans and all other Obligations under this Agreement and the other Financing Documents;
- (b) purchase money Indebtedness or Finance Lease obligations to the extent incurred in the ordinary course of business, Indebtedness with respect to acquired Real Estate Assets and licensing of intellectual property; provided that, (i) if such obligations are secured, they are secured only by Liens upon the equipment, Real Estate Asset or intellectual property being financed and (ii) the aggregate principal amount and the capitalized portion of such obligations (for the avoidance of doubt, calculated with reference to the amount appearing on the balance sheet of Borrower) does not at any time exceed \$100,000,000 in the aggregate at any time outstanding;
- (c) Indebtedness that is mandatorily convertible into Common Equity of Borrower;
- (d) Indebtedness that is unsecured;
- (e) trade or other similar Indebtedness incurred in the ordinary course of business, which is (i) not more than ninety (90) days past due, or (ii) being contested in good faith and by appropriate proceedings;
- (f) Indebtedness outstanding on the date hereof, including Indebtedness listed on Schedule 6.1, and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof, other than by an amount not to exceed unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, original issue discount, defeasance costs, fees (including upfront fees), commissions and expenses;

- (g) 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;
- (h) to the extent constituting Indebtedness, obligations in respect of performance bonds, bid bonds, performance guarantees and completion guarantees and similar obligations in an aggregate amount not to exceed \$100,000,000 outstanding at any one time;
- (i) to the extent constituting Indebtedness, obligations in respect of appeal bonds, surety bonds, indemnification obligations, obligations to pay insurance premiums and similar obligations;
- (j) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;
- (k) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law;
- (l) Indebtedness consisting of the financing of insurance premiums in customary amounts consistent with operations and business of Borrower in the ordinary course of business;
- (m) Subordinated Indebtedness owing by Borrower to any of its Subsidiaries; provided that all such Indebtedness shall be evidenced by an Intercompany Note;
- (n) Indebtedness under Hedge Agreements (other than Hedge Agreements entered into with respect to any commodity), subject to Section 6.9 (*Speculative Transactions*);
- (o) Indebtedness in connection with guarantees by Borrower of the obligations of its Subsidiaries under Hedge Agreements, subject to Section 6.9 (*Speculative Transactions*) in an aggregate amount not to exceed \$100,000,000 outstanding at any one time;
- (p) any other Indebtedness of Borrower in an aggregate amount not to exceed \$200,000,000 outstanding at any one time; and
- (q) (x) other secured Indebtedness, which may be used only to fund capital development, including new projects or expansion projects, at the CCH Project or at projects by other Subsidiaries of Borrower and/or any refinancing of Indebtedness of Borrower's Subsidiaries, provided that such Indebtedness shall not exceed \$2,750,000,000 in the aggregate at any time outstanding and Borrower shall have received a Ratings Reaffirmation immediately preceding the incurrence of such Indebtedness, and (y) any extensions, renewals, refinancings and replacements of any such Indebtedness;

provided, that no reference herein to Liens permitted hereunder (including Permitted Liens), including any statement or provision as to the acceptability of any Liens (including Permitted Liens), shall in any way constitute or be construed as to provide for a subordination of any rights of the Agents, the Lenders, the Issuing Banks or other Secured Parties hereunder or arising under any of the other Financing Documents in favor of such Liens.

With respect to any Indebtedness that was permitted to be incurred hereunder on the date of such incurrence, any increase in the amount of such Indebtedness in connection with the accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness or in the form of Equity Interests and the accretion of original issue discount or liquidation preference shall also be permitted hereunder after the date of such incurrence.

**6.2 Liens.** Borrower shall not, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind of Borrower, whether now owned or hereafter acquired, except:

(a) Liens in favor of Collateral Agent for the benefit of Secured Parties granted pursuant to any Financing Document;

(b) Liens securing (i) Indebtedness with respect to, and guarantees of, Hedge Agreements entered into by Borrower and its Subsidiaries, subject to Section 6.9 (*Speculative Transactions*), (ii) Finance Leases and purchase money liens on property purchased securing Indebtedness described in Section 6.1(b) (*Indebtedness*); provided that, in the case of this clause (ii), any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness and (iii) Indebtedness with respect to Real Estate Assets acquired as permitted under this Agreement; provided that, in the case of this clause (iii), any such Lien shall encumber only the Real Estate Asset acquired with the proceeds of such Indebtedness;

(c) Liens in existence on the date hereof, including those listed in Schedule 6.2;

(d) statutory Liens or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than ninety (90) days or if more than ninety (90) days overdue, are unfiled and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(e) pledges or deposits of cash or letters of credit to secure the performance of bids, trade contracts (other than for borrowed money), performance guarantees, completion guarantees, government contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and return of money bonds, letters of credit and other obligations of a like nature incurred in the ordinary course of business;

(f) easements, rights of way, encroachments and other similar encumbrances affecting real property which are incurred in the ordinary course of business and encumbrances consisting of zoning or other rights reserved to or vested in any governmental office or agency, licenses, restrictions on the use of property or encumbrances, defects or imperfections in title which do not materially impair such property for the purpose for which Borrower's interest therein was acquired or materially interfere with the operation of Borrower's business;

(g) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of investments; provided that such Liens (i) attach only to such investments and (ii) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such investments and not any obligation in connection with margin financing or otherwise;

(h) 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;

(i) Liens created in the ordinary course of business on deposits to secure liability for premiums to insurance carriers or securing insurance premium financing arrangements, arising in connection with conditional sale, title retention, consignment or similar arrangements for the sale of goods or securing letters of credit issued in the ordinary course of business;

(j) Mechanics' Liens, Liens of lessors and sublessors, other common law Liens and similar Liens incurred in the ordinary course of business for sums which secure amounts not overdue for a period of more than ninety (90) days or if more than ninety (90) days overdue, are unfiled and no other action has been taken to enforce such Lien or which are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(k) legal or equitable encumbrances (other than any attachment prior to judgment, judgment lien or attachment in aid of execution on a judgment) deemed to exist by reason of the existence of any pending litigation or other legal proceeding if the same is effectively stayed or the claims secured thereby are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(l) Liens arising out of judgments or awards not constituting an Event of Default so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate cash reserves, bonds or other cash equivalent security have been provided or are fully covered by insurance (other than any customary deductible);

(m) Liens for workers' compensation awards and similar obligations not then delinquent and any such Liens, whether or not delinquent, whose validity is at the time being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(n) the replacement, extension or renewal of any Lien permitted by this Section 6.2; provided that such Lien is on the same assets originally subject thereto and arises out of the extension, renewal, refinancing or replacement of the Indebtedness secured thereby (without any increase in the amount thereof except to the extent permitted herein);

(o) Liens solely on any cash earnest money deposits made by Borrower in connection with any letter of intent or purchase agreement permitted hereunder;

(p) Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP to the extent required by GAAP;

(q) non-exclusive outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by Borrower in the ordinary course of business and not interfering in any respect with the ordinary conduct of or materially detracting from the value of the business of Borrower;

(r) non-consensual statutory Liens and rights of setoff of financial institutions over deposit accounts held at such financial institutions to the extent such Liens or rights of setoff secure or allow setoff against amounts owing for fees and expenses relating to the applicable deposit account;

(s) Liens not otherwise permitted by this Section 6.2 securing Indebtedness in an aggregate amount not to exceed \$200,000,000 at any time outstanding; and

(t) Liens securing Indebtedness incurred pursuant to Section 6.1(q).

With respect to any Lien securing Indebtedness that was permitted to secure Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any increase in the amount of such Indebtedness in connection with the accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness or in the form of Equity Interests and the accretion of original issue discount or liquidation preference.

### **6.3 No Further Negative Pledge.**

Borrower shall not enter into any agreement that, by its terms, prohibits the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter

acquired, to secure the Obligations, except with respect to: (a) specific property encumbered to secure payment of particular Indebtedness, (b) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, Joint Venture agreements and similar agreements to the extent permitted hereunder (provided that, such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, Joint Venture agreements or similar agreements, as the case may be), (c) any restrictions imposed by any agreement relating to Liens securing Indebtedness permitted by this Agreement, to the extent that such restrictions apply only to the property or assets securing such Indebtedness, (d) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under this Agreement pending the consummation of such sale, transfer lease or other dispositions, (e) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business, (f) restrictions identified on Schedule 6.3 and (h) restrictions imposed by Government Rule.

**6.4 Investments.** Borrower shall not, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

- (a) Investments in Cash and Cash Equivalents;
- (b) equity Investments owned as of the Closing Date in any Subsidiary or any other Person;
- (c) intercompany loans made by Borrower in compliance with Section 6.8 (*Conduct of Business*); provided that, all such intercompany loans shall be evidenced by an Intercompany Note;
- (d) [reserved];
- (e) subject to Section 6.9 (*Speculative Transactions*), Hedge Agreements and guarantees thereof, in each case, that constitute Investments; and
- (f) to the extent not otherwise permitted by clauses (a) through (e) above, any Investment in any Permitted Business.

**6.5 Financial Covenant.**

At any time a Covenant Testing Period has commenced and is continuing, Borrower shall not, as of the end of any Fiscal Quarter, permit the Leverage Ratio to exceed 5.50:1.00 (the “**Springing Financial Covenant**”). If in effect at the end of any Fiscal Quarter, the Springing Financial Covenant shall be tested as of such date upon delivery of the Compliance Certificate corresponding thereto; *provided* that, in the event Borrower has breached the Springing Financial Covenant, such breach shall be deemed to have occurred as of the last day of the Fiscal Quarter with respect to which the Compliance Certificate corresponded.

**6.6 Fundamental Changes.** Borrower shall not liquidate, wind-up or dissolve itself, consolidate or merge with or into any other Person, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of the properties and assets of Borrower and its Subsidiaries, taken as a whole, to any other Person unless:

(a) either: (i) Borrower is the surviving Person; or (ii) the Person formed by or surviving any such consolidation, amalgamation or merger or resulting from such conversion (if other than Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States, any State thereof or the District of Columbia;

(b) the Person formed by or surviving any such conversion, consolidation, amalgamation or merger (if other than Borrower) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes the due and punctual payment of all the Obligations (including principal, interest and fees) and the performance of every covenant of this Agreement and the other Financing Documents on the part of Borrower to be performed or observed; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

**6.7 Transactions with Affiliates.** Borrower shall not, directly or indirectly, enter into any transaction with aggregate consideration in excess of \$50,000,000 (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of Borrower on terms that are materially less favorable in the aggregate to Borrower than Borrower would obtain in a comparable agreement with independent parties acting at arm's length; provided that, the foregoing restriction shall not apply to (a) any indemnity provided to and any reasonable and customary fees paid to members of the board of directors of Borrower; (b) (i) compensation, benefits and indemnification arrangements for officers and other employees of Borrower entered into in the ordinary course of business, and (ii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity-based plans and the granting and stockholder rights of registration rights approved by the board of directors of Borrower; (c) transactions in effect on the Closing Date that are permitted under the Existing Credit Agreement, including amendments and extensions thereto entered into in accordance with this Section 6.7 (it being understood that the aggregate consideration payable in connection with any amendment or extension shall be determined based on the remaining term of the applicable transaction as amended or extended); (d) Subordinated Indebtedness permitted by Section 6.1(m) (*Indebtedness*); (f) the entering into of any tax sharing agreement or similar arrangement; or (g) any transaction between Borrower and a wholly owned Subsidiary of Borrower, so long as Borrower has determined in good faith that such transaction is in its commercial interest.



For purposes of this Section 6.7, for so long as (i) Borrower retains, directly or indirectly, ownership of 100% of the CQP IDRs, (ii) Borrower, directly or indirectly, holds and controls legally and beneficially on a fully diluted basis at least 80% of the economic and voting rights associated with ownership of all outstanding Equity Interests of all classes of Equity Interests of CQH, (iii) Borrower, directly or indirectly, owns and controls legally and beneficially on a fully diluted basis 100% of the voting rights associated with ownership of all outstanding Equity Interests of all classes of Equity Interests of CQP GP (and CQP GP remains the general partner of CQP), and (iv) CQH does not dispose of any of the limited partnership interests of CQP held by CQH on the Closing Date, CQP and CQH shall be considered wholly owned Subsidiaries of Borrower.

**6.8 Conduct of Business.** From and after the Closing Date, Borrower shall not engage in any business other than any Permitted Business.

**6.9 Speculative Transactions.** Borrower shall not engage in any transaction, or enter into any guarantee in respect of any transaction, involving any Hedge Agreement, other than (a) Hedge Agreements that are entered into by Borrower for bona fide hedging purposes and not for speculative purposes and (b) guarantees of any Hedge Agreements entered into by any Subsidiaries that, in the case of this clause (b), are (i) entered into for bona fide hedging purposes and not for speculative purposes and (ii) in an aggregate amount not to exceed \$100,000,000.

**6.10 Restricted Payments.** Borrower shall not make or agree to make, directly or indirectly, any Restricted Payments unless each of the following conditions set forth below have been satisfied:

(a) no Default or Event of Default has occurred and is continuing or would occur as a result of such Restricted Payment;

(b) at the time of such Restricted Payment, Borrower would be in pro forma compliance with the Springing Financial Covenant as of the last day of the most recently ended Fiscal Quarter (provided that, solely for purposes of calculating pro forma compliance with the Springing Financial Covenant for purposes of this Section 6.10(b), a Covenant Trigger Event shall be deemed to have occurred if the Total Utilization of Commitments at such time exceeds 35% of the aggregate amount of Commitments);

(c) if a non-recurring Restricted Payment is to be made by Borrower with the proceeds of a Major Asset Sale or Leveraged Recapitalization, (x) the Loans are rated by at least one Ratings Agency (or, if the Loans are not rated by any Ratings Agencies, at least one Ratings Agency has assigned a rating to the corporate family of Borrower and its Subsidiaries) and the applicable Rating Decline Period has expired with no Rating Decline having occurred and (y) Administrative Agent shall have received a Restricted Payment Certificate, duly executed by a Financial Officer of Borrower, confirming that each of the conditions set forth in Sections 6.10(a), 6.10(b) and this Section 6.10(c) has been satisfied.

**6.11 Margin Regulations.** Borrower shall not use any portion of the proceeds of any Credit Extension to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock. Borrower shall not use the proceeds of any Credit Extension in a manner that would reasonably be expected to violate or be inconsistent with the provisions of Regulation T, Regulation U or Regulation X.

## **SECTION 7. EVENTS OF DEFAULT**

**7.1 Events of Default.** If any one or more of the following conditions or events shall occur:

(a) **Failure To Make Payments When Due.** Failure by Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise, or any amount payable to any Issuing Bank in reimbursement of any drawing under a Letter of Credit (unless a Base Rate Loan is deemed made with respect to such Unreimbursed Amount) or any Cash Collateralization of a Letter of Credit as required pursuant to Section 2.2 (*Letters of Credit*); unless, in each case, (x) such failure is caused by an administrative or technical error and (y) payment is made within three (3) Business Days of its due date; or (ii) any interest on any Loan or any fee or any other amount due hereunder within three (3) Business Days after the date due; or

(b) **Default in Other Agreements or Instruments.** (i) A failure of Borrower to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more other items of Indebtedness (other than Indebtedness referred to in Section 7.1(a) (*Failure to Make Payments When Due*)) in the individual or aggregate principal amounts in excess of \$250,000,000 beyond the grace period, if any, provided therefor; (ii) a breach or default by Borrower with respect to any other term of one or more items of Indebtedness of Borrower or any agreement relating thereto in the individual or aggregate principal amounts in excess of \$250,000,000 beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redemption) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or (iii) (A) a failure of any Cross-Acceleration Party to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of one or more items of Indebtedness of such Cross-Acceleration Party in the individual or aggregate principal amounts in excess of \$250,000,000, or (B) a breach or default by any Cross-Acceleration Party with respect to any other term of one or more items of Indebtedness of such Cross-Acceleration Party or any agreement relating thereto in the individual or aggregate principal amounts in excess of \$250,000,000, in the case of each of subclauses (A) and (B), if the effect of such default is to cause that applicable Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity; or

(c) Breach of Certain Covenants. Failure of Borrower to perform or comply with any term or condition applicable to it in Section 2.4 (Use of Proceeds), Section 5.2 (Existence), Section 5.12 (Use of Proceeds) or Section 6 (Negative Covenants); or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by Borrower in any Financing Document or in any statement or certificate at any time given by Borrower in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made, unless, if such misstatement (and the effect thereof) is capable of being cured, Borrower cures such misstatement (and any effect thereof) within thirty (30) days after obtaining Knowledge thereof (or if such incorrect representation or warranty is not susceptible to cure within thirty (30) days, and Borrower is proceeding with diligence and in good faith to cure such default, and such default is susceptible to cure, such thirty (30) day period shall be extended as may be necessary to cure such default, with such extended period not to exceed sixty (60) days in the aggregate (inclusive of the original thirty (30) day period)); or

(e) Other Defaults Under Financing Documents. Borrower shall default in the performance of or compliance with any term contained herein or any of the other Financing Documents other than any such term referred to in any other clause of this Section 7.1, and such default shall not have been remedied, cured or waived within thirty (30) days after the earlier of (i) Borrower obtaining Knowledge of such default or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; provided, that if such failure is not capable of remedy within such thirty (30) day period, such thirty (30) day period shall be extended to a total period of ninety (90) days so long as (A) such default is subject to cure, (B) Borrower is diligently pursuing a cure and (C) such additional cure period would not reasonably be expected to result in a Material Adverse Effect; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of Borrower in an involuntary case or proceeding under any Debtor Relief Laws, or any receiver, sequestrator, trustee, conservator, liquidator or other custodian or other officer having similar powers over Borrower or over all or a substantial part of its property shall be appointed, or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Borrower and any such event described in this clause (i) shall remain undismissed or unstayed for sixty (60) days; or (ii) a case or proceeding shall be commenced against Borrower without the consent or acquiescence of such party seeking relief under any Debtor Relief Laws or seeking the appointment of a receiver, sequestrator, trustee, conservator, liquidator or other custodian or other officer having similar powers over Borrower or over all or a substantial part of its property, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or (iii) any analogous step or procedure is taken under the laws of any jurisdiction in respect of Borrower; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) Borrower shall have an order for relief entered with respect to it or shall commence a voluntary case or proceeding under any Debtor Relief Laws, or shall consent to the entry of an order for relief in an involuntary case or proceeding, or to the conversion of an involuntary case to a voluntary case or proceeding, under any such law, or shall seek or consent to or acquiesce in the appointment of or taking possession by a receiver, trustee, conservator, liquidator or other custodian for all or a substantial part of its property; or Borrower shall make any assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; or (ii) Borrower shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or (iii) the board of directors (or similar governing body) of Borrower (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 7.1(f) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*); or (iv) any analogous step or procedure is taken under the laws of any jurisdiction in respect of Borrower; or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving in excess of \$250,000,000 (to the extent not adequately covered by insurance as to which a Solvent and un-Affiliated insurance company has been notified thereof and not denied coverage) shall be entered or filed against Borrower or any of its assets and shall remain unpaid, undischarged, unvacated, unbonded or unstayed for a period of ninety (90) days; or

(i) Dissolution. Any order, judgment or decree shall be entered against Borrower decreeing the dissolution or split up of Borrower and such order shall remain undischarged or unstayed for a period in excess of thirty (30) days or any analogous step or procedure is taken under the laws of any applicable jurisdiction; or

(j) Change of Control. A Change of Control shall occur; or

(k) Security Documents and other Financing Documents. At any time after the execution and delivery thereof, (i) this Agreement or any Security Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Discharge of Obligations in accordance with the terms hereof) or shall be declared null and void, or Collateral Agent shall not have or shall cease to have a valid and perfected Lien on the Collateral purported to be covered by the Security Documents with the priority required by the relevant Security Document (except to the extent that any such loss of perfection or priority results from the failure of the Collateral Agent to (x) maintain control of Collateral or possession of Collateral actually delivered to it and pledged under the Security Documents, (y) file UCC amendments relating to Borrower's change of name or jurisdiction of formation (solely to the extent that Borrower provides the Collateral Agent with notice thereof) or continuation statements or (z) take any other action contemplated to be taken by it under the Financing Documents within the Collateral Agent's control); provided, in each case, that such event results in the invalidation of any Lien in a material portion of the

Collateral; (ii) Borrower shall contest the validity or enforceability of any Financing Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Financing Document to which it is a party or shall contest the validity or perfection of any Lien in any Collateral purported to be covered by the Security Documents (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or the Discharge of Obligations in accordance with the terms hereof); or (iii) the Loans shall cease to constitute first priority Indebtedness (subject to Permitted Liens); or

(l) Employee Benefit Plans. There shall occur one or more ERISA Events which, individually or in the aggregate, results in or would reasonably be expected to result in a Material Adverse Effect;

**THEN**, (1) upon the occurrence of any Event of Default described in Section 7.1(f) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) or 7.1(g) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of Requisite Lenders, upon notice to Borrower by Administrative Agent, (A) the Commitments, if any, of each Lender having such Commitments and the obligation of each Issuing Bank to issue any Letter of Credit shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Borrower: (I) the unpaid principal amount of and accrued interest and premium, if any, on the Loans, (II) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit) and (III) all other Obligations; provided that, the foregoing shall not affect in any way the obligations of Lenders under Section 2.2(d)(i) (*Drawings and Reimbursements*); (C) Administrative Agent may cause Collateral Agent to enforce any and all Liens and security interests created pursuant to Security Documents; and (D) Administrative Agent shall direct Borrower to pay (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Sections 7.1(f) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) and 7.1(g) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*) to pay) to Cash Collateralize the L/C Obligations (in an amount equal to 103% of the amount of the Outstanding Amount of L/C Obligations thereof).

## SECTION 8. AGENTS

**8.1 Appointment of Agent.** Société Générale is hereby appointed Administrative Agent hereunder and under the other Financing Documents and each Lender and Issuing Bank hereby authorizes Société Générale to act as Administrative Agent in accordance with the terms hereof and the other Financing Documents, and Société Générale hereby accepts such appointment. Administrative Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Financing Documents, as applicable. The provisions of this Section 8 are solely for the benefit of the Agents and Lenders and Borrower shall have no

rights as a third-party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries. Notwithstanding anything to the contrary herein, none of the Arrangers, in their capacity as such, shall have any duties, responsibilities or obligations under this Agreement or any other Financing Document nor any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Arrangers, in such capacity, but each Arranger, in such capacity, shall be entitled to all benefits of this Section 8. Each of the Arrangers and any Agent described in clause (d) of the definition thereof appointed to serve in a similar capacity may resign from such role at any time, with immediate effect, by giving prior written notice thereof to Administrative Agent and Borrower.

**8.2 Powers and Duties.** Each Lender irrevocably authorizes each Agent (a) to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Financing Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto and (b) to enter into any and all of the Security Documents together with such other documents as shall be necessary to give effect to the Collateral contemplated by the Security Documents, on its behalf. For the avoidance of doubt, each Lender and Issuing Bank agrees to be bound by the terms of the Intercreditor Agreement to the same extent as if it were a party thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Financing Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Financing Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Financing Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Financing Documents except as expressly set forth herein or therein.

### **8.3 General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Financing Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of Borrower to any Agent or any Lender in connection with the Financing Documents and the transactions contemplated thereby or for the financial condition or business affairs of Borrower or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Financing Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to

make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or L/C Obligations or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Financing Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Financing Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.5 (Amendments and Waivers)) or, in the case of Collateral Agent, in accordance with the applicable Security Documents or Intercreditor Agreement, and upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be) or in the case of Collateral Agent, in accordance with the applicable Security Documents or Intercreditor Agreement, such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Financing Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 9.5 (Amendments and Waivers)). Without limiting the generality of the foregoing, no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Financing Document or applicable law; and no Agent shall, except as expressly set forth herein and in the other Financing Documents, have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity. Each Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to such Agent by Borrower or a Lender.

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Financing Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 8.3 and of Section 8.6 (*Right to Indemnity*) shall apply to any Affiliates of Administrative Agent or Collateral Agent (as applicable) and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent or Collateral Agent (as applicable).

**8.4 Agents Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with any of Borrower’s Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

**8.5 Lenders’ Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender or Issuing Bank, as applicable, by delivering its signature page to this Agreement or an Assignment Agreement and funding a Loan or issuing a Letter of Credit hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document and each other document required to be approved by any Agent, Requisite Lenders, Issuing Banks or Lenders, as applicable on such Credit Date.

(c) Notwithstanding anything herein to the contrary, each Lender acknowledges that the Lien and security interest granted to Collateral Agent pursuant to



the Pledge and Security Agreement and each other applicable Security Document and the exercise of any right or remedy by Collateral Agent thereunder are subject to the provisions of the Intercreditor Agreement and that in the event of any conflict between the terms of the Intercreditor Agreement and such other Security Document, the terms of the Intercreditor Agreement shall govern and control.

**8.6 Right to Indemnity.** Each Lender or Issuing Bank, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by Borrower, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Financing Documents or Letters of Credit or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Financing Documents or Letters of Credit; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided that in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further that, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**8.7 Successor Administrative Agent.**

(a) Administrative Agent may resign from the performance of all its functions and duties hereunder and under the other Financing Documents at any time by giving thirty (30) days' written notice to Borrower and the Lenders. Administrative Agent may be removed at any time (i) by the Requisite Lenders (x) for such Person's gross negligence or willful misconduct or (y) if such Person is a Defaulting Lender pursuant to clause (d) of the definition thereof, to the extent permitted by applicable Government Rule or (ii) by Borrower, with the consent of the Requisite Lenders, for such Person's gross negligence or willful misconduct. In the event Société Générale is no longer Administrative Agent, any successor Administrative Agent may be removed at any time with cause by the Requisite Lenders. Any such resignation or removal shall take effect upon the appointment of a successor Administrative Agent, in accordance with this Section 8.7.

(b) Upon any notice of resignation by Administrative Agent or upon the removal of Administrative Agent by the Requisite Lenders, or by Borrower with the

approval of the Requisite Lenders pursuant to Section 8.7(a), the Requisite Lenders shall appoint a successor Administrative Agent, hereunder and under each other Financing Document to which Administrative Agent is a party, which successor Administrative Agent shall be a commercial bank having a combined capital and surplus of at least one billion Dollars (\$1,000,000,000); provided that, if no Default or Event of Default shall then be continuing, appointment of a successor Administrative Agent shall also be acceptable to Borrower (such acceptance not to be unreasonably withheld, conditioned or delayed). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor.

(c) If no successor Administrative Agent has been appointed by the Requisite Lenders within thirty (30) days after the date a notice of resignation was given by the resigning Administrative Agent, or the Requisite Lenders elected to remove such Person, any Secured Party may petition any court of competent jurisdiction for the appointment of a successor Administrative Agent. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor Administrative Agent, who shall serve as Administrative Agent hereunder and under each other Financing Document to which it is a party until such time, if any, as the Requisite Lenders appoint a successor Administrative Agent, as provided above.

(d) Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent, and the retiring (or removed) Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Financing Documents. After the retirement or removal of Administrative Agent hereunder and under the other Financing Documents, the provisions of this Section 8 and Section 9.3 (Indemnity) shall continue in effect for the benefit of such retiring (or removed) Person, its sub-agents and their respective Agent Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Person was acting in its capacity as Administrative Agent.

## **8.8 Security Documents.**

(a) Agents under Security Documents. Each Secured Party hereby further authorizes Administrative Agent to (or to authorize Collateral Agent to, as applicable), on behalf of and for the benefit of the Secured Parties, (i) be the agent for and representative of the Secured Parties with respect to the Collateral and the Security Documents, to enter into the Security Documents on behalf of the Secured Parties, and to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent and to Collateral Agent, respectively, by the terms of this Agreement, the Collateral Agency Appointment Agreement and the other Security Documents, together with such powers and discretion as are reasonably incidental thereto, (ii) enter into the Intercreditor Agreement and (iii) acknowledge its consent, as may be necessary under each applicable

jurisdiction, to the granting of the first-priority Lien (subject to Permitted Liens) pursuant to each of the Security Documents.

(b) Right to Realize on Collateral. Anything contained in any of the Financing Documents to the contrary notwithstanding, Borrower, and subject at all times to the provisions of the Intercreditor Agreement, Administrative Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Financing Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof; provided that, notwithstanding the foregoing, (A) in any proceeding under Debtor Relief Laws, any Secured Party may file a proof of claim or statement of interest with respect to the Obligations owed to the Secured Parties; (B) any Secured Party may take any action to preserve or protect the validity and enforceability of the Liens granted in favor of Secured Parties, provided that no such action is, or could reasonably be expected to be, (x) adverse, in any material respect, to the Liens granted in favor of the Secured Parties or the rights of Collateral Agent, Administrative Agent or any other Secured Parties to exercise remedies in respect thereof or (y) otherwise inconsistent with the terms of this Agreement and the Security Documents and (C) any Secured Party may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of such Secured Party, including any claims secured by the Collateral, in each case, to the extent not inconsistent with the terms of this Agreement and the Security Documents; (ii) subject at all times to the provisions of the Intercreditor Agreement, Administrative Agent shall be entitled to instruct Collateral Agent to and Collateral Agent (at the instruction of Administrative Agent) shall be entitled, for the benefit of the Secured Parties, to sell, transfer or otherwise dispose of or deal with any Collateral as provided in this Agreement and in the Security Documents and (iii) in the event of a foreclosure or similar enforcement action by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and Collateral Agent, as agent for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from Administrative Agent at the instruction of the Requisite Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Collateral Agent at such sale or other disposition.

(c) Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by or on behalf of Borrower in connection therewith, nor shall Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**8.9 Withholding Taxes.** To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding Tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this Section 8.9.

**8.10 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Laws relative to Borrower, Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Issuing Banks and Administrative Agent, including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due

Administrative Agent under Sections 2.2 (Letters of Credit), 2.9 (Fees), 9.2 (Expenses) and 9.3 (Indemnity) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and Issuing Banks to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.2 (Letters of Credit), 2.9 (Fees), 9.2 (Expenses) and 9.3 (Indemnity). To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.2 (Letters of Credit), 2.9 (Fees), 9.2 (Expenses) and 9.3 (Indemnity) hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or Issuing Banks may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**8.11 Intercreditor Agreement.** Each Lender and Issuing Bank hereby authorizes the Administrative Agent and the Collateral Agent to enter into the Intercreditor Agreement and any arrangement or supplement thereto permitted under this Agreement without any further consent by any Lender or Issuing Bank and such Intercreditor Agreement shall be binding upon the Lenders and the Issuing Banks.

**8.12 Erroneous Payments.**

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient (and each of their respective successors and assigns), a “**Payment Recipient**”) that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or

repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “**Erroneous Payment**”) and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided, that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within 5 Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 8.11 and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank, Secured Party or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within two Business Days of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 8.12(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 8.12(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 8.12(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Financing Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Secured Party under any Financing Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment

Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 9.6 (but excluding, in all events, any assignment consent or approval requirements (whether from Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or Secured Party, to the rights and interests of such Lender, Issuing Bank or Secured Party, as the case may be) under the Financing Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (*provided* that Borrower’s Obligations under the Financing Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrower; *provided* that this Section 8.12(e) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; *provided, further*, that for the



avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

(g) Each party’s obligations, agreements and waivers under this Section 8.12 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Financing Document.

### **8.13 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of Borrower, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Employee Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the

Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84- 14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Financing Document or any documents related hereto or thereto).

## SECTION 9. MISCELLANEOUS.

### 9.1 Notices.

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to Borrower, Collateral Agent, Administrative Agent or each Issuing Bank, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Financing Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in Section 3.3 (Notices) or Section 9.1(b) (Electronic Communications), each notice hereunder shall be in writing and may be personally served or sent by facsimile (except for any notices sent to Administrative Agent) or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that no notice to any Agent shall be effective until received by such Agent; provided further that, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 8.3(c) (Delegation of Duties) hereto as designated by Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent, Lenders and each Issuing Bank hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Agent, any Lender or any Issuing Bank pursuant to Section 2 (*Loans and Letters of Credit*) if such Person has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Borrower understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Borrower, each Lender, each Issuing Bank and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(i) Administrative Agent shall give prompt notice to each Lender and Issuing Bank of receipt of each notice or request required or permitted to be given to Administrative Agent by Borrower pursuant to the terms of this Agreement or any other

Financing Document (unless also concurrently delivered to all Lenders and Issuing Banks by Borrower).

(ii) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the “Public Side Information” portion of the Platform and that may contain Non-Public Information with respect to Borrower, its Affiliates or their respective Securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither Borrower nor Administrative Agent has any responsibility for such Public Lender’s decision to limit the scope of the information it has obtained in connection with this Agreement and the other Financing Documents.

**9.2 Expenses.** Borrower agrees to pay promptly (a) all actual, reasonable and documented fees and expenses of advisors to the Agents (in the case of legal fees and expenses, limited to the legal fees, expenses and disbursements of Skadden, Arps, Slate, Meagher & Flom LLP and one local counsel to Agents in each jurisdiction in which security over property of Borrower has or will be granted in connection with the Financing Documents; provided that in the event of an actual or potential conflict of interest, the affected Agents shall be entitled to reimbursement of the actual, reasonable and documented fees, expenses and disbursements of one additional counsel) in connection with the negotiation, preparation, execution and administration of the Financing Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (b) all actual, reasonable and documented out-of-pocket costs and reasonable expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of Collateral Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes (including stamp or documentary taxes), or search fees; (c) the actual, reasonable and documented out-of-pocket costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Collateral Agent and its counsel) in connection with the custody or preservation of any of the Collateral; (d) without duplication of the foregoing clauses (a) through (c), all other actual, reasonable and documented out-of-pocket costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions contemplated by the Financing Documents and any consents, amendments, waivers or other modifications thereto; and (e) after the occurrence and during the continuance of a Default or an Event of Default, all actual, documented and reasonable out-of-pocket costs and expenses, including the reasonable fees and out-of-pocket

expenses of one counsel and, to the extent applicable, one local counsel reasonably necessary in each applicable material jurisdiction, incurred by the Secured Parties, taken as a whole, in enforcing any Obligations of or in collecting any payments due from Borrower hereunder or under the other Financing Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work out” or pursuant to any insolvency or bankruptcy cases or proceedings; provided that in the event of an actual or potential conflict of interest, each affected Agent, Issuing Bank and Lender shall be entitled to reimbursement of the actual, reasonable and documented fees, expenses and disbursements of one additional counsel. This Section 9.2 shall not apply with respect to Taxes that are imposed with respect to payments to or for the account of any Agent or any Lender under any Financing Document which are covered by Section 2.17 (*Taxes; Withholding, Etc.*) or that are specifically excluded from the scope of Section 2.17 (*Taxes; Withholding, Etc.*).

### **9.3 Indemnity.**

(a) In addition to the payment of expenses pursuant to Section 9.2 (*Expenses*), Borrower agrees to defend (subject to Indemnitees’ selection of counsel), indemnify, pay and hold harmless, each Arranger, each Agent, each Issuing Bank and Lender and each of their and their Affiliates’ respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents, affiliates, administrators, managers, representatives and controlling Persons (each, an “**Indemnitee**”), from and against any and all Indemnified Liabilities; provided that Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from (x) such Indemnitee’s gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction or (y) material breach of such Indemnitee’s express obligations hereunder, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 9.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. If for any reason the foregoing indemnification is unavailable to any Indemnitee, or insufficient to hold it harmless, then Borrower will contribute to the amount paid or payable by such Indemnitee, as applicable, as a result of such Indemnified Liability in such proportion as is appropriate to reflect the relative economic interests of (i) Borrower and its Affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Indemnitee on the other hand with respect to the transactions under the Financing Documents, as well as the relative fault of (x) Borrower and its Affiliates, shareholders, partners, members or other equity holders and (y) such Indemnitee with respect to such Indemnified Liability. The reimbursement, indemnity and contribution obligations of Borrower under this Section 9.3 will be in addition to any liability which Borrower may otherwise have, and will be binding upon and inure to the benefit of any successors,

assigns, heirs and personal representatives of Borrower, the Indemnitees, any such Affiliate and any such Person. Notwithstanding the foregoing, Borrower shall not be required to indemnify any indemnified party for losses, claims, damages or liabilities arising solely out of disputes as between the indemnified parties that are not based on any act or omission of Borrower or any of its subsidiaries or affiliates, excluding any disputes against any Agent acting in such capacity.

(b) To the extent permitted by applicable law, Borrower shall not assert, and Borrower hereby waives, any claim against each Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and Borrower hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. Other than with respect to the obligations of Borrower pursuant to Section 9.3(a), to the extent permitted by applicable law, no Arranger, Lender, Issuing Bank or Agent shall assert, and each Arranger, Lender, Issuing Bank and Agent hereby waives, any claim against Borrower and its Affiliates, officers, partners, members, directors, trustees, advisors employees, attorneys, agents, sub-agents or controlling Persons, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and ~~no~~each Arranger, Lender, Issuing Bank and Agent hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. No Indemnatee referred to in this paragraph (b) shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby, except to the extent such damages are found in a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the bad faith, willful misconduct or gross negligence of such Indemnatee.

(c) Borrower also agrees that no Indemnatee will have any liability, based on its or their exclusive or contributory negligence or otherwise, to Borrower (or its Affiliates) or any Person asserting claims on behalf of or in right of Borrower (or their respective Affiliates) or any other Person in connection with or as a result of this

Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except to the extent that any losses, claims, damages, liabilities or expenses incurred by Borrower or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (x) the gross negligence or willful misconduct of such Indemnatee or (y) the material breach of such Indemnatee's express obligations under the Financing Documents by, such Indemnatee in performing its obligations under this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event will such Indemnatee have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Indemnatee's activities related to this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein. Notwithstanding the foregoing, Borrower shall not be required to indemnify any Indemnatee for any Indemnified Liabilities arising solely out of disputes as between the Indemnitees that are not based on any act or omission of Borrower or any of its Subsidiaries or Affiliates, excluding any disputes against any Agent acting in such capacity.

(d) Promptly after receipt by any Arranger, Lender, Issuing Bank or Agent of notice of its involvement in any action, proceeding or investigation, such Arranger, Lender, Issuing Bank or Agent will, if a claim for indemnification in respect thereof is to be made against Borrower under this Section 9.3, notify Borrower in writing of such involvement. Failure by any Arranger, Lender, Issuing Bank or Agent to so notify Borrower will not relieve Borrower from the obligation to indemnify the Indemnitees under this Section 9.3 except to the extent that Borrower suffers actual prejudice as a result of such failure, and will not relieve Borrower from its obligation to provide reimbursement and contribution to such Arrangers, Lenders, Issuing Banks or Agents.

This Section 9.3 shall not apply with respect to Taxes other than any Taxes that represent Indemnified Liabilities arising from any non-Tax claim.

#### **9.4 Set Off.**

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender and each Issuing Bank is hereby authorized by Borrower at any time or from time to time, without notice to Borrower or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender or such Issuing Bank to or for the credit or the account of Borrower against and on account of the obligations and liabilities of Borrower to such Lender or

such Issuing Bank hereunder, the Letters of Credit and participations therein and under the other Financing Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Financing Document, irrespective of whether or not (a) such Lender or such Issuing Bank shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 2 (*Loans and Letters of Credit*) and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.14 (*Ratable Sharing*) and 2.19 (*Defaulting Lenders*) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, Issuing Banks and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 9.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender, Issuing Bank or their respective Affiliates may have. Failure of any Lender or Issuing Bank to give notice of any such setoff and application to Administrative Agent shall not affect the validity of such setoff and application.

#### **9.5 Amendments and Waivers.**

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 9.5(b) (*Affected Lenders' Consent*) and 9.5(c) (*Other Consents*), no amendment, modification, termination or waiver of any provision of the Financing Documents, or consent to any departure by Borrower therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; provided that (x) Administrative Agent may, with the consent of Borrower only, amend, modify or supplement this Agreement or any other Financing Document (i) to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by Administrative Agent), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender (or any Issuing Bank if applicable) or the Lenders shall have received at least five (5) Business Days' prior written notice thereof and Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment, (ii) to enter into additional or supplemental Security Documents, (iii) to release Collateral in accordance with Section 9.22 (*Release of Liens*) of this Agreement and the Security Documents, (iv) to make any change that would provide any additional rights or benefits to the Lenders, (v) to make, complete or confirm any grant of Collateral permitted or required by any of the Security Documents, including to secure any Indebtedness that is permitted under Section 6.1 (*Indebtedness*) that may be secured by a Permitted Lien on the Collateral, or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Security Documents, (vi) to revise any schedule to reflect any change in notice information, (vii) to revise the name of the



Collateral Agent on any UCC financing statement or other Security Document as may be necessary to reflect the replacement of the Collateral Agent or (viii) to amend this Agreement or the other Financing Documents in order to effectuate the provisions of Section 2.24 (~~LIBO Rate~~Benchmark Replacement Setting) and (y) Administrative Agent, with the consent of Borrower and ESG Coordinator only, may amend, modify or supplement Schedule I (*Eligible Expenditures*).

(b) Affected Lenders' Consent. No amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend any Commitment or the scheduled Final Maturity Date of any Loan or Note without the written consent of the Lender or Issuing Bank holding such Commitment, Loan or Note; provided that no amendment, modification or waiver of any condition precedent, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an extension of a Commitment or a Final Maturity Date unless expressly agreed in such waiver, amendment or modification;

(ii) waive, reduce or postpone repayment (but not voluntary prepayment or mandatory prepayment, which shall be governed by Section 9.5(a) (*Requisite Lenders' Consent*)) of any Loan beyond the Final Maturity Date without the written consent of the Lender or Issuing Bank holding such Loan;

(iii) extend the Letter of Credit Expiration Date beyond the Commitment Termination Date without the written consent of each Issuing Bank;

(iv) subject to Section 2.24 (~~LIBO Rate~~Benchmark Replacement Setting), reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.8 (*Default Interest*)), any premium or any fee payable to a Lender or an Issuing Bank under this Agreement or any other Financing Documents without the written consent of the Lender or Issuing Bank to which such interest, premium or fee is payable hereunder;

(v) extend the time for payment of any interest, fees or premium payable to a Lender or Issuing Bank under this Agreement or any other Financing Documents (but not voluntary prepayment or mandatory prepayment, which shall be governed by Section 9.5(a) (*Requisite Lenders' Consent*)) without the written consent of the Lender or Issuing Bank to which such interest, fee or premium is payable (it being understood that no amendment, modification or waiver of any condition precedent, covenant, Default, Event of Default or mandatory prepayment shall constitute an extension of any time for payment of interest or fees unless expressly agreed in such waiver, amendment or modification);

(vi) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit without the written consent of the Lender or the applicable Issuing Bank to which such Loan or reimbursement obligation, as applicable, is payable;

(vii) amend, modify, terminate or waive any provision of this Section 9.5(b), Section 9.5(c) (*Other Consents*) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required, without the written consent of all Lenders;

(viii) amend (A) the definition of “**Requisite Lenders**,” (B) the definition of “**Pro Rata Share**,” (C) any other provision of this Agreement specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determinations or grant any consent hereunder, in each case, without the written consent of all Lenders;

(ix) amend the provisions of Section 2.9(b) (*Fees*), Section 2.12 (*Application of Prepayments*), Section 2.13(c) (*General Provisions Regarding Payments*), Section 2.13(d) (*General Provisions Regarding Payments*), Section 2.13(g) (*General Provisions Regarding Payments*), Section 2.14 (*Ratable Sharing*) or clause (x) of the proviso in Section 9.4 (*Set Off*), in each case in a manner that would by its terms alter the *pro rata* sharing of payments required thereby, without the consent of each Lender adversely affected thereby;

(x) release all or substantially all of the Collateral except as expressly provided in the Financing Documents and except in connection with a “credit bid” undertaken by Collateral Agent at the direction of the Requisite Lenders pursuant to section 363(k), section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Financing Documents (in which case only the consent of the Requisite Lenders will be needed for such release), without the written consent of all Lenders and Issuing Banks; or

(xi) consent to the assignment or transfer by Borrower of any of its rights and obligations under any Financing Document, without the written consent of all Lenders;

provided that, (1) for the avoidance of doubt, all Lenders and Issuing Banks shall be deemed directly affected by any amendment described in Sections 9.5(b)(vii), 9.5(b)(viii) and 9.5(b)(x); (2) no amendment, waiver or consent shall, unless in writing and signed by the applicable Issuing Bank in addition to the Lenders required above, affect the rights or duties of such Issuing Bank under this Agreement, any Issuer Document or any other Financing Document relating to any Letter of Credit issued or to be issued by it; and (3) any amendment, waiver or consent of this Agreement that by its terms affects the rights or duties under this Agreement of the Lenders (but not the Issuing Banks) or the Issuing Banks (but not the Lenders) may be effected by a written instrument executed by Borrower and by or on behalf of the requisite percentage in interest of the Lenders or the Issuing Banks, as applicable, that would be required to consent thereto under the foregoing provisions of this Section 9.5 if such class of Lenders or Issuing Banks were the only class of Lenders or Issuing Banks hereunder at the time;

provided, further, that notwithstanding anything herein to the contrary, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent

of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended, the maturity of any of its Loans may not be extended, the rate of interest or fees on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender materially and more adversely than the other affected Lenders shall require the consent of such Defaulting Lender.

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Financing Documents, or consent to any departure by Borrower therefrom, shall:

(i) increase any Commitment of any Lender over the amount thereof then in effect without the consent of such Lender or Letter of Credit Issuance Commitment of any Issuing Bank over the amount thereof in effect without the consent of such Issuing Bank; provided that no amendment, modification or waiver of any condition precedent, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall constitute an increase in any Commitment of any Lender or Letter of Credit Issuance Commitment of any Issuing Bank, as applicable; or

(ii) amend, modify, terminate or waive any provision of the Financing Documents as the same applies to any Agent or Arranger, or any other provision hereof as the same applies to the rights or obligations of any Agent or Arranger, in each case without the consent of such Agent or Arranger, as applicable.

(d) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender or any Issuing Bank, execute amendments, modifications, waivers or consents on behalf of such Lender or Issuing Bank. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9.5 shall be binding upon each Lender and Issuing Bank at the time outstanding, each future Lender or Issuing Bank and, if signed by Borrower, on Borrower.

#### **9.6 Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. Neither Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by Borrower without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties

hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any benefit, legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders or Issuing Banks in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof. The entries in the Register shall be conclusive absent manifest error. No assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 9.6(d) (Mechanics). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “**Assignment Effective Date.**” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender or Issuing Bank shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right To Assign. Each Lender or Issuing Bank (in such capacity and in its capacity as a Lender) shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment, Loans and L/C Obligations owing to it (provided that *pro rata* assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments; and provided further that, no partial assignment of any outstanding Letter of Credit shall be permitted) to a Person who is (A) an Eligible Assignee and (B) in the case of an Issuing Bank, has the Required Ratings (or its guarantor, as contemplated by the definition of “Required Ratings,” has the Required Ratings), and, in each case, is reasonably satisfactory to Administrative Agent and consented to by each Issuing Bank and Borrower (such consent not to be (x) unreasonably withheld, conditioned or delayed or (y) required (1) from Borrower at any time an Event of Default pursuant to Sections 7.1(a) (Failure To Make Payments When Due), 7.1(f) (Involuntary Bankruptcy; Appointment of Receiver, Etc.) or 7.1(g) (Voluntary Bankruptcy; Appointment of Receiver, Etc.) shall have occurred and then be continuing or (2) in case of assignment to a then-existing Lender or Issuing Bank or an Affiliate of such Lender or Issuing Bank); provided further that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within ten (10) Business Days after having received notice thereof. Upon a Lender’s or Issuing Bank’s assignment of L/C Obligations,

Commitments and outstanding Loans to an additional Lender or Issuing Bank, as applicable, (i) such additional Lender or Issuing Bank shall become vested with all of the rights, powers, privileges and duties of a Lender or Issuing Bank (as applicable) hereunder, and (ii) if the assignee is an Issuing Bank, such assignee Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, assigned to such Issuing Bank.

(d) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to withholding tax matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.17(c) (*Status of Lenders*), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee (and, if the assignee is to be an Issuing Bank, has the Required Ratings (or whose guarantor, as contemplated by the definition of "Required Ratings," has the Required Ratings)); (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may

be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 9.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it will not provide any information (other than customary administrative information) obtained by it in its capacity as a Lender to Borrower or any Affiliate of Borrower.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 9.6, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder and under the other Financing Documents to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 9.8 (*Survival of Representations, Warranties and Agreements*)) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided that, anything contained in any of the Financing Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations without restriction to any Person (other than Borrower, any of its Subsidiaries or any of their respective Affiliates, or any natural Person) in all or any part of its Commitments, Loans or any other Obligation. Each Lender that sells a participation pursuant to this Section 9.6(g) shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant’s participation interest with respect to the Commitments, Loans and other Obligations (each, a “**Participant Register**”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant’s interest in any Commitments, Loans or its other obligations under any Financing Document) except to the

extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other Obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by applicable law, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the IRS. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of the applicable participation for all purposes under this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by Borrower of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Security Documents (except as expressly provided in the Financing Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 2.15(c) (Compensation for Breakage or Non-Commencement of Interest Periods), 2.16 (Increased Costs; Capital Adequacy) and 2.17 (Taxes; Withholding, Etc.) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.6(c) (Right To Assign); provided that (x) a participant shall not be entitled to receive any greater payment under Section 2.16 (Increased Costs; Capital Adequacy) or 2.17 (Taxes; Withholding, Etc.) than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the participant acquired the applicable participation, (y) a participant shall not be entitled to the benefits of Section 2.17 (Taxes; Withholding, Etc.) unless such participant agrees, for the benefit of Borrower, to comply with Section 2.17 (Taxes; Withholding, Etc.) and provide all forms required by Section 2.17(c) (Status of Lenders) as though it were a Lender (it being understood that the forms required by Section 2.17(c) (Status of Lenders) shall be delivered to the participating Lender and if required by law for reduced withholding, copies shall be delivered to Borrower) and (z) a participant agrees to be subject to the provisions of Sections 2.18 (Obligation to Mitigate) and 2.20 (Removal or Replacement of a Lender) as if it were an assignee under Section 9.6(c) (Right To Assign); provided further that, except as specifically set forth in clauses (x) and (y) of this

sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 9.4 (*Set Off*) as though it were a Lender, provided such participant agrees to be subject to Section 2.14 (*Ratable Sharing*) as though it were a Lender. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of Sections 2.18 (*Obligation to Mitigate*) and 2.20 (*Removal or Replacement of a Lender*) with respect to any participant.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 9.6, any Lender or Issuing Bank may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender or Issuing Bank, and its Notes, if any, to secure obligations of such Lender, including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank or other central bank; provided that no Lender or Issuing Bank, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or "Issuing Bank" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

#### **9.7 Independence of Covenants.**

All covenants hereunder 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. Any determination regarding whether or not a Default or Event of Default has occurred or is existing or continuing under this Agreement or any other Financing Document shall be made by Borrower and the Requisite Lenders (or Administrative Agent) to the extent such Default or Event of Default, if it had occurred, would be waivable by the Requisite Lenders pursuant to Section 9.5 (*Amendments and Waivers*) hereof. The Lenders shall act collectively through Administrative Agent with respect to all such determinations; provided that the Requisite Lenders may direct Administrative Agent with respect to any such determination; provided further that the foregoing shall not in any manner prohibit any Lender from communicating with any other Lender or with Administrative Agent regarding any such actual or claimed Event of Default, Default, default, event or condition, what action Borrower or Lender has taken, is taking, or proposes to take with respect thereto, the terms and conditions of any amendment or waiver with respect to such Default or Event of Default or any other matter relating to Borrower or any Financing Document.



#### **9.8 Survival of Representations, Warranties and Agreements.**

All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of Borrower set forth in Sections 2.15(c) (Compensation for Breakage or Non-Commencement of Interest Periods), 2.16 (Increased Costs; Capital Adequacy), 2.17 (Taxes; Withholding, Etc.), 9.2 (Expenses), 9.3 (Indemnity), 9.4 (Set Off), 9.8 and 9.23 (No Fiduciary Duty) and the agreements of Lenders set forth in Sections 2.14 (Ratable Sharing), 8.3(b) (Exculpatory Provisions) and 8.6 (Right to Indemnity) shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder and the termination hereof.

#### **9.9 No Waiver; Remedies Cumulative.**

No failure or delay on the part of any Agent, any Issuing Bank or any Lender in the exercise of any power, right or privilege hereunder or under any other Financing Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Financing Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy. Nothing herein shall prohibit any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank) hereunder and under the other Financing Documents.

#### **9.10 Marshalling; Payments Set Aside.**

Neither any Agent nor any Lender or Issuing Bank shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Administrative Agent, any Issuing Bank or Lenders (or to Administrative Agent, on behalf of Lenders or any Issuing Bank), or any Agent, Issuing Bank or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

#### **9.11 Severability.**

In case any provision in or obligation hereunder or under any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. Without limiting the foregoing provisions of this Section 9.11, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Administrative Agent or an Issuing Bank, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### **9.12 Obligations Several; Independent Nature of Lenders' Rights.**

The obligations of Lenders (which term shall include each Issuing Bank for purposes of this Section 9.12) hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Financing Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and (subject to the provisions hereof) enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

#### **9.13 Headings.**

Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**9.14 APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

**9.15 CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER FINANCING DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND**

UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY SECURITY AGREEMENT GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.1 (NOTICES); (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER SUCH PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) IN THE CASE OF BORROWER ONLY, AGREES THAT THE AGENTS, ISSUING BANKS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST BORROWER IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY SECURITY DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT. BORROWER, FOR ITSELF AND ITS AFFILIATES, AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

#### **9.16 WAIVER OF JURY TRIAL.**

EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER FINANCING DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE,

**MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

**9.17 Confidentiality.**

Each Agent and each Lender (which term shall for the purposes of this Section 9.17 include each Issuing Bank) shall hold all non-public information regarding Borrower and its Subsidiaries and Affiliates and their respective businesses in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, Administrative Agent may disclose such information to the Lenders and each Agent and each Lender and each Agent may make (a) disclosures of such information to Affiliates of such Lender or Agent and to their respective officers, directors, partners, members, employees, representatives, administrators, managers, legal counsel, independent auditors, insurers and other experts, agents, trustees and advisors (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 9.17) who need to know such information and on a confidential basis, (b) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein, by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to Borrower and its obligations under the Loans or by any potential providers of credit protection, in each case, who are advised of the confidential nature of such information and who acknowledge and accept that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to Borrower), (c) disclosure to any rating agency on a confidential basis; provided that such information is supplied to such rating agency after consultation with Administrative Agent, (d) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (e) disclosures in connection with the exercise of any remedies hereunder or under any other Financing Document or any action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder, (f) disclosures to the extent that such information is publicly available or becomes publicly available other than by reason of improper disclosure by such Person, (g) disclosures received by a Person on a non-confidential basis from a source (other than the disclosing party or any of its affiliates, advisors, members, directors, employees, agents or other representatives) not known by such Person to be prohibited from disclosing such information to such Person by a legal, contractual or fiduciary obligation, (h) disclosures to the extent that such information was already in the disclosing party's possession or is independently

developed by the disclosing party, (i) with respect to the Arrangers only, disclosures for purposes of establishing a “due diligence” defense, (j) disclosures to market data collectors and similar services providers in the lending industry, and service providers to Agents and Lenders in connection with the administration and management of the Loans, (k) disclosures required or requested by any court, administrative or governmental agency, body, committee or representative thereof or pursuant to applicable law or legal, administrative or judicial process, or pursuant to a subpoena or order issued by a court of competent jurisdiction, in which case such Person agrees to inform Borrower promptly thereof to the extent permitted by applicable law, (l) disclosures upon the request or demand of any regulatory or quasi-regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) purporting to have jurisdiction over such Person or any of its Affiliates, (m) disclosures to any other party hereto or to Collateral Agent in its capacity as such, (n) disclosures subject to an agreement containing provisions substantially the same as (or more stringent than) those set forth in this [Section 9.17](#) and (o) disclosures with the consent of Borrower. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all Persons without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analyses) that are provided to any such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their respective Affiliates’ directors and employees to comply with applicable securities laws. For this purpose, “tax structure” means any facts relevant to the U.S. federal income tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates.

#### **9.18 Usury Savings Clause.**

Notwithstanding any other provision herein, the aggregate interest rate charged by any Lender with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law, shall not exceed the Highest Lawful Rate applicable to such Lender. If the rate of interest (determined without regard to the preceding sentence) under this Agreement charged by any Lender at any time exceeds the Highest Lawful Rate applicable to such Lender, the Outstanding Amount of the Loans held by such Lender made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due thereunder equals the amount of interest which would have been due thereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made thereunder are repaid in full the total interest due thereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due thereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid to such Lender and the amount of interest which would have been paid to such Lender if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and

Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate applicable to such Lender, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the Outstanding Amount of the Loans made hereunder to such Lender or be refunded to Borrower.

**9.19 Effectiveness; Counterparts.**

This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (*i.e.*, "pdf" or "tif") shall be effective as delivery of an original executed counterpart of this Agreement.

**9.20 Entire Agreement.**

This Agreement and the other Financing Documents with respect to fees payable to Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract and understanding among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**9.21 PATRIOT Act.**

Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective for each Lender, Agent and Issuing Bank.

**9.22 Release of Liens.**

(a) In the event that (i) Borrower disposes of all or any portion of any of its assets to any Person, (ii) all or any portion of Borrower's assets become Excluded Assets, in the case of each of clauses (i) and (ii), in a transaction not prohibited by this Agreement or the other Financing Documents, (iii) the Discharge of Obligations has occurred, (iv) an Investment Grade Ratings Event occurs or (v) Requisite Lenders (or such other Lenders as may be required to give such consent under Section 9.5 (*Amendments and Waivers*)) have otherwise consented, any Lien created by any Financing Document for the benefit of the Secured Parties in respect of such assets shall be automatically released and the Administrative Agent shall, and shall direct the

Collateral Agent to, promptly (and each other Secured Party hereby authorizes and directs the Administrative Agent and the Collateral Agent or any of them to) take such action and execute any such documents as may be requested by Borrower and at Borrower's expense to evidence such release. Without limiting the foregoing, each Secured Party hereby agrees to provide such cooperation and assistance as may be reasonably requested by Administrative Agent or Collateral Agent to facilitate and effect actions taken or intended to be taken by Administrative Agent or Collateral Agent, as applicable, including execution and delivery of notices, instruments and other documents as are reasonably deemed necessary by Administrative Agent or Collateral Agent to effect such actions, and joining in any action, motion or proceeding initiated by Collateral Agent (at the instruction of Administrative Agent) for such purposes.

(b) Without limiting the generality of the foregoing clause (a), and notwithstanding anything to the contrary in this Agreement or any other Financing Document, upon three Business Days' prior notice by Borrower to Administrative Agent of the occurrence of an Investment Grade Ratings Event (which notice may be provided in advance of the occurrence of an Investment Grade Ratings Event based on preliminary ratings that meet the requirements set forth in this definition of "Investment Grade Ratings Event", provided that the applicable final rating is equal to or exceeds such preliminary rating):

(i) the Administrative Agent shall withdraw from the Intercreditor Agreement; and

(ii) to the extent that the Administrative Agent is the last remaining First Lien Debt Representative (as defined in the Intercreditor Agreement) and there are no remaining First Lien Debt Representatives party to the Intercreditor Agreement, the Administrative Agent (or counsel on its behalf) shall direct the Collateral Agent (or counsel on its behalf) to, upon the request of Borrower, (x) authorize Borrower to file UCC-3 termination statements with respect to the UCC-1 financing statements naming Borrower as debtor, (y) cause to be transferred, delivered and returned, but without any recourse, warranty or representation whatsoever, any remaining assets and properties of Borrower granted and pledged to the Collateral Agent under the Security Documents (including related certificates of membership interests) (such assets and properties, the "**Released Collateral**") in its possession and money received in respect of Released Collateral but not applied to any Obligations and (z) furnish, execute and deliver such documents, instruments, certificates, notices, mortgage releases or further assurances as Borrower may request and as necessary to effect such termination and release, all at Borrower's sole expense.

#### **9.23 No Fiduciary Duty.**

Each Arranger, each Agent, each Lender, each Issuing Bank and their respective Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), are full service financial institutions engaged, either directly or through their respective affiliates, in a broad array of activities, including commercial and investment banking, financial advisory, market

making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, each Lender and funds or other entities in which the Lenders invest or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, any Lender may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of Borrower and/or any of its Affiliates, as well as of Borrower and/or other Persons which (a) may be involved in transactions arising from or relating to the Financing Documents or (b) have other relationships with Borrower or its Affiliates. In addition, any Lender may provide investment banking, commercial banking, underwriting and financial advisory services to such other Persons. The transactions contemplated by the Financing Documents may have a direct or indirect impact on the investments, securities or instruments referred to in this Section 9.23, and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor, and may have economic interests that conflict with those of Borrower, their respective equity holders and/or their respective Affiliates. Although any Lender in the course of such other activities and relationships may acquire information about the Financing Documents and transactions contemplated thereby or other Persons which may be the subject of the Financing Documents, none of the Lenders shall have any obligation to disclose such information, or the fact that such Lender is in possession of such information, Borrower or to use such information on Borrower's behalf. Borrower acknowledges and agrees that nothing in the Financing Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and Borrower and its equity holders or Affiliates, on the other. Borrower acknowledges and agrees that (i) each Lender will act under the Financing Documents as an independent contractor, (ii) the transactions contemplated by the Financing Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and Borrower, on the other, and (iii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of Borrower, its equity holders or its Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise Borrower, its equity holders or its Affiliates on other matters) or any other obligation to Borrower except the obligations expressly set forth in the Financing Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of Borrower, or any of its management, equity holders, Affiliates, creditors or any other Person. Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that Borrower, its equity holders and its Affiliates are each responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar



duty to Borrower in connection with such transaction or the process leading thereto. In addition, any Lender may employ the services of its Affiliates in providing services hereunder and may exchange with such Affiliates information concerning Borrower or its equity holders or its Affiliates and other companies that may be the subject of the transactions contemplated by the Financing Documents, and such Lender Affiliates will be entitled to the benefits afforded to such Lender hereunder. Consistent with each Lender's policies to hold in confidence the affairs of its customers, each Lender will not furnish confidential information obtained from Borrower by virtue of the transactions contemplated by the Financing Documents to any of its other customers. Furthermore, Borrower acknowledges that none of the Lenders or any of their respective Affiliates has an obligation to use in connection with the transactions contemplated by the Financing Documents, or to furnish to Borrower, confidential information obtained or that may be obtained by them from any other Person.

Each of the Lenders or Issuing Banks or its respective Affiliates are, or may at any time be, a counterparty (in such capacities, the **"Derivative Counterparties"**) to Borrower and/or any of its Subsidiaries with respect to one or more agreements with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, entered into by Borrower (collectively, the **"Derivatives"**). Borrower acknowledges and agrees for itself and its Subsidiaries that each Derivative Counterparty (a) will be acting for its own account as principal in connection with the Derivatives, (b) will be under no obligation or duty as a result of such Lender's or its respective Affiliates' role in connection with the transactions contemplated by the Financing Documents or otherwise to take any action or refrain from taking any action, or exercising any rights or remedies, that such Derivative Counterparty may be entitled to take or exercise in respect of the applicable Derivatives and (c) may manage its exposure to the Derivatives without regard to such Lenders' or its respective Affiliates' role hereunder.

#### **9.24 Authorization of Filing of Financing Statements.**

Collateral Agent is hereby authorized to file one or more financing statements (including fixture filings), continuation statements, or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by Borrower pursuant to the Security Documents, without the signature of Borrower, and naming any Borrower as debtor and Collateral Agent as secured party. Borrower authorizes Collateral Agent to use the collateral description "all assets," "all personal property, whether now existing or hereafter acquired," "all of the debtor's assets, whether now owned or hereafter acquired" or words of similar effect in any such financing statements filed or other filings for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted hereunder by Borrower.

**9.25 Electronic Execution of Documents.** The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement, any Assignment Agreement, the other Financing Documents

and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

#### **9.26 Amendment and Restatement.**

This Agreement amends, restates and supersedes the Existing Credit Agreement in its entirety, but does not constitute a novation of the Existing Credit Agreement or any document entered into in connection therewith.

#### **9.27 Affirmation of Security Documents**

All rights, benefits, interests, duties, liabilities and obligations of the parties to the Security Documents, are hereby confirmed, renewed, affirmed and continued by this Agreement and continue to secure, apply and extend to all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by Borrower to the Collateral Agent for the benefit of the Secured Parties, or any one or more of them, in any currency, under, in connection with or pursuant to the Financing Documents. Without limitation of the foregoing, all security interests, pledges, assignments and other Liens previously granted by Borrower, pursuant to the Security Documents are confirmed, renewed, affirmed and continued by this Agreement, and all such security interests, pledges, assignments and other Liens shall remain in full force and effect as security for all obligations thereunder with no change in the priority applicable thereto, in each case, subject only to Permitted Liens.

*[Remainder of page intentionally left blank.]*

~~IN WITNESS WHEREOF~~, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

~~{Signature pages separately provided}~~

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EXHIBIT B-1

EXHIBIT D-1 TO  
CREDIT AGREEMENT

**CONVERSION/CONTINUATION NOTICE**

Date: [\_\_\_\_\_, \_\_\_, \_\_\_\_]<sup>1</sup>

Société Générale,  
as Administrative Agent  
245 Park Avenue, 5th Floor  
New York, NY 10167  
Attention: Lucca Tatoni  
Telephone: (212) 278-5557  
E-mail: [lucca.tatoni@sgcib.com](mailto:lucca.tatoni@sgcib.com)

Reference is made to the Second Amended and Restated Revolving Credit Agreement, dated as of October 28, 2021 (as it may be amended, amended and restated, extended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among CHENIERE ENERGY, INC., a Delaware corporation (“**Borrower**”), the Lenders and Issuing Banks party thereto from time to time, SOCIÉTÉ GÉNÉRALE, as Administrative Agent (together with its permitted successors and assigns in such capacity, the “**Administrative Agent**”), and the other agents and arrangers party thereto from time to time.

Pursuant to Section 2.7 of the Credit Agreement, Borrower desires to convert or to continue the following Loans, each such conversion and/or continuation to be effective as of [mm/dd/yy]:

**Loans Denominated in Dollars<sup>2</sup>:**

\$[\_\_\_\_\_, \_\_\_, \_\_\_\_] Term SOFR Loans to be continued with Interest Period of [1] [3] [6] [12]<sup>3</sup> month(s)

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<sup>1</sup> **Note:** Conversion/Continuation Notice shall be delivered to the Administrative Agent no later than 12:00 p.m. (New York City time) at least (i) in the case of a conversion of Term SOFR Loans to Base Rate Loans, one (1) Business Day in advance of the proposed conversion date or (ii) in the case of a conversion to, or a continuation of, Term SOFR Loans, three (3) Business days in advance of the proposed Conversion/Continuation Date.

<sup>2</sup> **Note:** Loans to be continued/converted must be in an aggregate amount that is not less than two million Dollars (\$2,000,000) and integral multiples of one million Dollars (\$1,000,000) in excess of that amount.

<sup>3</sup> **Note:** Twelve (12) month interest period only permitted if agreed to by all relevant Lenders, as set forth in the definition of “Interest Period.”

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\$[\_,\_,\_] Base Rate Loans to be converted to Term SOFR Loans with Interest Period of [1] [3] [6] [12]<sup>4</sup> month(s)

\$[\_,\_,\_] Term SOFR Loans to be converted to Base Rate Loans

Borrower hereby certifies that as of the date hereof:

- (a) no Default or Event of Default has occurred and is continuing; and
- (b) after giving effect to the conversion and/or continuation requested herein, no more than six (6) Interest Periods are outstanding with respect to the Loans.

[Remainder of page intentionally left blank]

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<sup>4</sup> **Note:** Twelve (12) month interest period only permitted if agreed to by all relevant Lenders, as set forth in the definition of “Interest Period.”

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IN WITNESS WHEREOF, Borrower has caused this Conversion/Continuation Notice to be executed by its Authorized Officer as of the date first above written.

**CHENIERE ENERGY, INC.**, as Borrower

By: \_\_\_\_\_

Name:

Title:

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EXHIBIT B-2

EXHIBIT D-2 TO  
CREDIT AGREEMENT

**FUNDING NOTICE**

Date: [\_\_\_\_\_, \_\_\_\_]<sup>5</sup>

Société Générale,  
as Administrative Agent  
245 Park Avenue, 5th Floor  
New York, NY 10167  
Attention: Lucca Tatoni  
Telephone: (212) 278-5557  
E-mail: [lucca.tatoni@sgcib.com](mailto:lucca.tatoni@sgcib.com)

Reference is made to the Second Amended and Restated Revolving Credit Agreement, dated as of October 28, 2021 (as it may be amended, amended and restated, extended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among CHENIERE ENERGY, INC., a Delaware corporation (“**Borrower**”), the Lenders and Issuing Banks party thereto from time to time, SOCIÉTÉ GÉNÉRALE, as Administrative Agent (together with its permitted successors and assigns in such capacity, the “**Administrative Agent**”), and the other agents and arrangers party thereto from time to time.

Pursuant to Section 2.1 of the Credit Agreement, Borrower desires that Lenders make the following Loans to Borrower in accordance with the applicable terms and conditions of the Credit Agreement on [mm/dd/yy] (the “**Credit Date**”)<sup>6</sup>:

**Loans denominated in Dollars:<sup>7</sup>**

☐ Base Rate Loans: \$[\_\_\_\_\_,\_\_\_\_\_,\_\_\_\_\_]

☐ Term SOFR Loans, with an initial Interest  
Period of [1] [3] [6] [12]<sup>8</sup> month(s): \$[\_\_\_\_\_,\_\_\_\_\_,\_\_\_\_\_]

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<sup>5</sup> **Note:** To be delivered to Administrative Agent no later than (i) 12:00 p.m. (New York City time) at least three (3) Business Days in advance of the proposed Credit Date in the case of a Term SOFR Loan, and (ii) 10:00 a.m. (New York City time) on the proposed Credit Date in the case of a Base Rate Loan.

<sup>6</sup> **Note:** Must be a Business Day.

<sup>7</sup> **Note:** Must be an aggregate amount that is not less than two million Dollars (\$2,000,000) and integral multiples of one million Dollars (\$1,000,000) in excess of that amount, or, if the remaining amount of total Commitments is less than two million Dollars (\$2,000,000) or one million Dollars (\$1,000,000), as applicable, such remaining amount.

<sup>8</sup> **Note:** Twelve (12) month interest period only permitted if agreed to by all relevant Lenders, as set forth in the definition of “Interest Period.”

Borrower hereby certifies that, as of the Credit Date:

- (i) after making the Loans requested on the Credit Date, the Total Utilization of Commitments shall not exceed the Commitments then in effect;
- (ii) each of the conditions precedent to the making of this Credit Extension as set forth in Section 3.2 of the Credit Agreement has been satisfied as of the Credit Date (except that no certification is made or required from Borrower as to the satisfaction or reasonable satisfaction of an Agent or Lender with respect to any such condition precedent); and
- (iii) the proceeds of this Credit Extension will be applied in accordance with Section 2.4 of the Credit Agreement.

The proceeds of the Loans requested on the Credit Date are to be made available by Administrative Agent by a deposit into the account set forth below:<sup>9</sup>

Account Holder:	_____
Bank Name:	_____
Bank Address:	_____
ABA Number:	_____
Account Number:	_____
Attention:	_____
Reference:	_____

[Remainder of page intentionally left blank]

<sup>9</sup> **Note:** Instead of using the existing designated deposit account, Borrower may direct Administrative Agent to deposit the proceeds of the Loans on any Credit Date into another account identified by Borrower at least two (2) Business Days prior to the delivery of the Funding Notice for the applicable borrowing.



IN WITNESS WHEREOF, Borrower has caused this Funding Notice to be executed by its Authorized Officer as of the date first above written.

**CHENIERE ENERGY, INC.**, as Borrower

By: \_\_\_\_\_

Name:

Title:<sup>10</sup>

---

<sup>10</sup> **Note:** Must be the chairman of the board (if an officer), chief executive officer, president, senior vice president, vice president (or the equivalent thereof), chief financial officer, chief accounting officer, treasurer, assistant treasurer, secretary, assistant secretary or other named officer for whom the secretary or assistant secretary has delivered an incumbency certificate as to the authority of such Authorized Officer.

---

EXHIBIT C

EXHIBIT E TO  
CREDIT AGREEMENT

**ELIGIBLE EXPENDITURE CERTIFICATE**

Date: [●]<sup>11</sup>

Société Générale,  
as Administrative Agent  
245 Park Avenue, 5th Floor  
New York, NY 10167  
Attention: Kevin Soucy  
Telephone: (212) 278-5578  
E-mail: Kevin.Soucy@sgcib.com

Sumitomo Mitsui Banking Corporation,  
as ESG Coordinator  
277 Park Avenue  
New York, NY 10172  
Attention: Aaron Franklin  
Telephone: (917) 769-7975  
E-mail: aaron\_franklin@smbcgroup.com

Reference is made to the Second Amended and Restated Revolving Credit Agreement, dated as of October 28, 2021 (as it may be amended, amended and restated, extended, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among Cheniere Energy, Inc., a Delaware corporation (“**Borrower**”), the Lenders and Issuing Banks party thereto from time to time, Société Générale, as Administrative Agent (together with its permitted successors and assigns in such capacity, the “**Administrative Agent**”), and the other agents and arrangers party thereto from time to time. Capitalized terms used but not otherwise defined herein will have the meanings assigned to such terms in the Credit Agreement.

The undersigned, as [*insert title of Financial Officer*] of Borrower, hereby certifies on behalf of Borrower, solely in his or her capacity as a Financial Officer of Borrower and not in his or her individual capacity, the following:

1. Attached hereto as Exhibit 1 is (x) a list and amount of all Incurred Eligible Expenditures for the most recently ended Measurement Period and (y) the calculation of Available Eligible Expenditures for such period and computations in reasonable detail in respect thereof. The undersigned is not aware of any material modifications that should be made to such computations in order for them to be presented in all material respects in conformity with the applicable standards for the computation thereof.
2. Attached hereto as Exhibit 2 is a certification by [*insert name of External Review Provider*], an External Review Provider, in connection with the Incurred Eligible Expenditures as described on Exhibit 1.

---

<sup>11</sup> To be delivered within 120 days after the end of each Fiscal Year.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, I have caused this Certificate to be duly executed and delivered as of the date written above.

By: \_\_\_\_\_

Name:

Title:

---

**Exhibit 1**

**For the Measurement Period ending [●], 20[●]:**

<b>Eligible Expenditure (Schedule I (a)-(e))</b>	<b>Description</b>	<b>Incurred Eligible Expenditure Amount (\$)<sup>12</sup></b>	<b>Available Eligible Expenditure Amount (equal to 30% of Incurred Eligible Expenditure Amount) (\$)</b>
<b>Totals</b>			

---

<sup>12</sup> Incurred Eligible Expenditures means all expenditures incurred during the relevant Measurement Period by or on behalf of Borrower and/or any of its Subsidiaries in connection with or related to any Eligible Expenditures described in Schedule I (*Eligible Expenditures*) to the Credit Agreement.

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## **Exhibit 2**

[External Review Provider Letterhead]

### **Report of Independent Registered Public Accounting Firm**

The Board of Directors  
Cheniere Energy, Inc.:

We have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Cheniere Energy, Inc. and subsidiaries (the Company) as of December 31, 20[●], and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for the year then ended, and have issued our report thereon dated [●].

In connection with our audit, nothing came to our attention that caused us to believe that the Company failed to comply with the terms, covenants, provisions, or conditions of Section 1.10(a), of the Second Amended and Restated Revolving Credit Agreement dated October 28, 2021, by and among the Company, the lenders and issuing banks party thereto, Société Générale, as Administrative Agent, Sumitomo Mitsui Banking Corporation, as ESG Coordinator, and the other agents and arrangers party thereto from time to time (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the Credit Agreement) and the Eligible Expenditure Certificate delivered by the Company pursuant to the Credit Agreement on *[insert date of delivery]* insofar as they relate to accounting matters. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance.

This report is intended solely for the information and use of the boards of directors and management of the Company and its subsidiaries, Société Générale, as Administrative Agent, Sumitomo Mitsui Banking Corporation, as ESG Coordinator, and the other lenders and issuing banks party to the Credit Agreement, and is not intended to be and should not be used by anyone other than these specified parties.

Houston, Texas  
*[insert date]*

**CREDIT AND GUARANTY AGREEMENT**

**dated as of June 23, 2023**

**among**

**CHENIERE ENERGY PARTNERS, L.P.,  
as Borrower,**

**CERTAIN SUBSIDIARIES OF THE BORROWER,  
as Subsidiary Guarantors,**

**VARIOUS LENDERS,**

**SOCIÉTÉ GÉNÉRALE, NATIXIS, NEW YORK BRANCH, SUMITOMO MITSUI BANKING CORPORATION, THE BANK OF NOVA  
SCOTIA, HOUSTON BRANCH AND WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Issuing Banks,**

**MUFG BANK, LTD.,  
as Coordinating Lead Arranger,**

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH, BANCO SANTANDER, S.A., NEW YORK BRANCH, BANK OF  
AMERICA, N.A., BANK OF CHINA, NEW YORK BRANCH, CANADIAN IMPERIAL BANK OF COMMERCE, NEW YORK  
BRANCH, CHINA MERCHANTS BANK CO., LTD., NEW YORK BRANCH, CITIBANK, N.A., CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK, DBS BANK, LTD., GOLDMAN SACHS BANK USA, HSBC BANK USA, N.A., INDUSTRIAL AND COMMERCIAL  
BANK OF CHINA LIMITED, NEW YORK BRANCH, ING CAPITAL LLC, INTESA SANPAOLO S.P.A., NEW YORK BRANCH,  
JPMORGAN CHASE BANK, N.A., MIZUHO BANK, LTD., MORGAN STANLEY BANK, N.A., NATIXIS, NEW YORK BRANCH, ROYAL  
BANK OF CANADA, STANDARD CHARTERED BANK, SUMITOMO MITSUI BANKING CORPORATION, THE BANK OF NOVA  
SCOTIA, HOUSTON BRANCH, TRUIST SECURITIES INC., and WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Joint Lead Arrangers,**

**MUFG BANK, LTD.,  
SG AMERICAS SECURITIES, LLC  
as Joint Bookrunners**

**and**

**MUFG BANK, LTD.,  
as Administrative Agent**

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**\$1,000,000,000 Revolving Commitments**

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## CREDIT AND GUARANTY AGREEMENT

This **CREDIT AND GUARANTY AGREEMENT**, dated as of June 23, 2023, is entered into by and among **CHENIERE ENERGY PARTNERS, L.P.**, a limited partnership formed under the laws of the State of Delaware (the “**Borrower**”), and **CERTAIN SUBSIDIARIES OF THE BORROWER**, as Subsidiary Guarantors, the Lenders party hereto from time to time, the Issuing Banks party hereto from time to time, **MUFG BANK, LTD.**, as Administrative Agent (together with its permitted successors in such capacity, the “**Administrative Agent**”), with **MUFG BANK, LTD.**, as sole Coordinating Lead Arranger (in such capacity, the “**Coordinating Lead Arranger**”), **MUFG BANK, LTD.** and **SG AMERICAS SECURITIES, LLC**, as Joint Bookrunners (in such capacity, the “**Joint Bookrunners**”).

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 (Definitions) hereof;

**WHEREAS**, the Borrower and, *inter alia*, the lenders and issuing banks party thereto entered into that certain Credit and Guaranty Agreement dated May 29, 2019 (as amended prior to the date hereof, the “**Existing Revolving Credit Facility Agreement**”) to extend certain credit facilities to the Borrower consisting of \$750,000,000 aggregate principal amount of term loans (which have been paid in full) and \$750,000,000 aggregate principal amount of revolving commitments;

**WHEREAS**, the Borrower wishes to replace the Existing Revolving Credit Facility Agreement and has requested the Lenders to provide loans and the Issuing Banks to provide letters of credit, and the Lenders and Issuing Banks have agreed to extend certain revolving and letter of credit facilities to the Borrower consisting of \$1,000,000,000 aggregate principal amount of Revolving Commitments;

**WHEREAS**, the proceeds of the revolving loans and letters of credit borrowed or issued under the Revolving Commitments will be used (i) to refinance any outstanding loans or letters of credit under the Existing Revolving Credit Facility Agreement, (ii) to pay fees and expenses related to this Agreement, and (iii) for the general corporate purposes of the Borrower and its Subsidiaries;

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

### SECTION 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

“**ABR**” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“**Additional Secured Indebtedness**” has the meaning set forth in Section 2.23 (Additional Secured Indebtedness).

**“Additional Secured Revolving Indebtedness”** has the meaning set forth in Section 2.23 (*Additional Secured Indebtedness*).

**“Additional Secured Term Indebtedness”** has the meaning set forth in Section 2.23 (*Additional Secured Indebtedness*).

**“Additional Unsecured Indebtedness”** has the meaning set forth in Section 2.24 (*Additional Unsecured Indebtedness*).

**“Additional Unsecured Revolving Indebtedness”** has the meaning set forth in Section 2.24 (*Additional Unsecured Indebtedness*).

**“Additional Unsecured Term Indebtedness”** has the meaning set forth in Section 2.24 (*Additional Unsecured Indebtedness*).

**“Administrative Agent”** as defined in the preamble hereto.

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

**“Affiliate”** means, with respect to any Person, another Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is Controlled by any such member or trust. Notwithstanding the foregoing, the definition of “Affiliate” shall not encompass (a) any individual solely by reason of his or her being a director, officer, manager or employee of any Person and (b) no Agent or Lender shall be deemed to be an Affiliate of any Loan Party solely as a result of its capacity as such.

**“Agent(s)”** means each of (a) Administrative Agent, (b) Arrangers and (c) any other Person appointed under the Financing Documents to serve in an agent or similar capacity.

**“Agent Affiliates”** as defined in Section 10.1(b) (*Electronic Communications*).

**“Aggregate Amounts Due”** as defined in Section 2.15 (*Ratable Sharing*).

**“Agreement”** means this Credit and Guaranty Agreement, dated as of the Closing Date.

**“Alternate Base Rate”** means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1.00% and (c) the sum of the Term SOFR Rate for a one-month tenor in effect on such date plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Term SOFR Rate, as the case may be.

**“Anti-Corruption Laws”** as defined in Section 4.14 (*Sanctions; Anti-Corruption Laws; PATRIOT Act*).



“**Anti-Terrorism and Money Laundering Laws**” means any of the following (a) Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the US Code of Federal Regulations), (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the US Code of Federal Regulations), (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the US Code of Federal Regulations), (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the US Code of Federal Regulations), (e) the USA Patriot Act of 2001 (Pub. L. No. 107-56), (f) the U.S. Money Laundering Control Act of 1986, (g) the Bank Secrecy Act, 31 U.S.C. sections 5301 et seq., (h) Laundering of Monetary Instruments, 18 U.S.C. section 1956, (i) Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity, 18 U.S.C. section 1957, (j) the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Regulations (Title 31 Part 103 of the US Code of Federal Regulations), (k) any other similar federal Government Rule having the force of law and relating to money laundering, terrorist acts or acts of war, and (l) any regulations promulgated under any of the foregoing.

“**Applicable Facility LNG Sale and Purchase Agreements**” has the meaning set forth in the SPL Credit Facility.

“**Applicable Margin**” means, on any day, with respect to Loans that are Term SOFR Loans or ABR Loans, the percent per annum set forth below under the caption “Applicable Margin for Term SOFR Loans” and “Applicable Margin for ABR Loans,” respectively, based upon the level corresponding to the Designated Ratings by the Rating Agencies applicable on such date:

Pricing Grid				
Level	Designated Rating	Applicable Margin for Term SOFR Loans (%) p.a.)	Applicable Margin for ABR Loans (%) p.a.)	Commitment Fee (% p.a.)
I	Baa1/BBB+/BBB+ or Higher	1.125%	0.125%	0.10%
II	Baa2/BBB/BBB	1.25%	0.25%	0.15%
III	Baa3/BBB-/BBB-	1.50%	0.50%	0.20%
IV	Ba1/BB+/BB+	1.75%	0.75%	0.25%
V	Ba2/BB/BB or Lower	2.00%	1.00%	0.30%

For purposes of the foregoing, (a) if the Designated Ratings are split, the highest of such ratings shall apply, provided that if such ratings differ by two or more levels, the applicable level shall be deemed to be one level below the higher of such levels; (b) if only one Rating Agency issues a Designated Rating, such rating shall apply; (c) if there is no Designated Rating from a Rating Agency but another ratings agency has assigned a rating to the Borrower’s long-term senior unsecured debt rating, the equivalent rating provided by such other ratings agency shall apply; (d) if no Rating Agency has assigned a rating to the Borrower’s long-term senior unsecured debt, the applicable Level shall be the Level that corresponds to the corporate family rating of the Borrower assigned by one or more Rating Agencies, if available; (e) if no Rating Agency has

assigned a rating to the Borrower's long-term senior unsecured debt or assigned a corporate family rating to the Borrower, the applicable Level shall be "Level V"; and (f) if the Designated Rating established by any of the Rating Agencies shall be changed (other than as a result of a change in the rating system of such Rating Agency), such change shall be effective as of the date on which it is first announced by the applicable Rating Agency. If the rating system of any Rating Agency shall change, or if any of the Rating Agencies shall cease to be in the business of rating corporate debt obligations, the Borrower and the Administrative Agent shall negotiate in good faith if necessary to amend this provision to reflect such changed rating system or the unavailability of Designated Ratings from such Rating Agencies and, pending the effectiveness of any such amendment, the applicable Level shall be determined by reference to the Designated Rating of such Rating Agencies most recently in effect prior to such change or cessation. Each change in the applicable Level shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change.

**"Approved Electronic Communications"** means any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Financing Document or the transactions contemplated therein which is distributed to the Agents, Lenders or Issuing Banks by means of electronic communications pursuant to Section 10.1(b) (*Electronic Communications*).

**"Arranger"** means each of the Coordinating Lead Arranger, the Joint Bookrunners, Banco Bilbao Vizcaya Argentaria, S.A. New York Branch, Banco Santander, S.A., New York Branch, Bank of America, N.A., Bank of China, New York Branch, Canadian Imperial Branch of Commerce, New York Branch, China Merchants Bank Co., Ltd., New York Branch, Citibank, N.A., Credit Agricole Corporate and Investment Bank, DBS Bank, Ltd., Goldman Sachs Bank USA, HSBC Bank USA, N.A., Industrial and Commercial Bank of China Limited, New York Branch, ING Capital LLC, Intesa Sanpaolo S.p.A., New York Branch, JPMorgan Chase Bank, N.A., Mizuho Bank, LTD., Morgan Stanley Bank, N.A., Natixis, New York Branch, Royal Bank of Canada, Standard Chartered Bank, Sumitomo Mitsui Banking Corporation, The Bank of Nova Scotia, Houston Branch, Truist Securities Inc., and Wells Fargo Bank, National Association.

**"Assignment Agreement"** means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by the Administrative Agent.

**"Authorized Officer"** means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer, treasurer or other named officer of such Person (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership); provided that the secretary or assistant secretary of such Person shall have delivered an incumbency certificate to the Administrative Agent as to the authority of such Authorized Officer.

**"Availability Period"** means, for any Revolving Commitment, the period beginning on the Closing Date and ending on the earlier of (a) the Maturity Date and (b) the Revolving Commitment Termination Date.

**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, if such Benchmark is a term rate, any tenor for such

Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.30(d) (*Unavailability of Tenor of Benchmark*).

“**Bail-in Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule, or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation, or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms, or other financial institutions or their affiliates (other than through liquidation, administration, or other insolvency proceedings).

“**Bankruptcy Code**” means Title 11 of the United States Code as now and hereafter in effect, or any successor statute.

“**Benchmark**” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.30(a) (*Benchmark Replacement*).

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of (a) Daily Simple SOFR, and (b) 0.10%; or

(2) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Financing Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such

Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Date”** means a date and time determined by the Administrative Agent, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) have been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if such Benchmark is a term rate, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such

component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark (or such component thereof) or, if such Benchmark is a term rate, any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such Benchmark (or such component thereof) or, if such Benchmark is a term rate, all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if such Benchmark is a term rate, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Unavailability Period**” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.30 (*Effect of Benchmark Replacement*) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Financing Document in accordance with Section 2.30 (*Effect of Benchmark Replacement*).

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Beneficiary**” means each Agent, Issuing Bank and Lender.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Board**” means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Borrower**” as defined in the preamble hereto.

“**Borrowing**” means a borrowing consisting of Loans of the same Type, made, converted or continued on the same date and, in the case of Term SOFR Loans, as to which a single Interest Period is in effect.

**“Borrowing Notice”** means a notice substantially in the form of Exhibit A-1 (or such other form reasonably acceptable to the Administrative Agent).

**“Business Day”** means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close; provided that, when used in connection with a Term SOFR Loan (including with respect to all notices and determinations in connection therewith and any payments of principal, interest or other amounts thereon), the term “Business Day” shall also exclude any day that is not a U.S. Government Securities Business Day.

**“Cash Collateralize”** means to pledge and deposit (as a first priority perfected security interest) with or deliver to the Administrative Agent, for the benefit of the applicable Issuing Bank and the Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect thereof (as the context may require), cash or, if the applicable Issuing Bank benefitting from such collateral shall agree in its sole discretion, other credit support (including letters of credit) or, in the case of Cash Collateralization by a Defaulting Lender, documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the applicable Issuing Bank. “Cash Collateral” and “Cash Collateralization” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**“Cash Flow Available for Debt Service”** means, for the Project Life Period, the amount equal to (a) all Revenues projected to be received by the Borrower during such period minus (b) the amount of all operation and maintenance expenses projected to be paid by the Borrower during such period.

**“CEI”** means Cheniere Energy, Inc.

**“Change in Law”** as defined in Section 2.17(a) (*Compensation for Increased Costs and Taxes*).

**“Change of Control”** means CEI shall cease to, directly or indirectly, own and control legally and beneficially on a fully diluted basis more than 50% of the voting rights associated with ownership of all outstanding Equity Interests of all classes of Equity Interests of the general partner of the Borrower; provided that no Change of Control shall be deemed to have occurred if the Person acquiring and maintaining such Equity Interests is a Qualified Owner.

**“Class”**, when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing as revolving Loans.

**“Closing Date”** means the date on which all the conditions set forth in Section 3.1 (*Closing Date*) have been satisfied (or waived in accordance with the terms of this Agreement).

**“Commitment Increase Agreement”** means a Commitment Increase Agreement substantially in the form of Exhibit G (or such other form reasonably acceptable to the Administrative Agent).

**“Commitment Increase Notice”** has the meaning given to such term in Section 2.25 (*Increase of Revolving Commitments*).

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

**“Compliance Certificate”** means a Compliance Certificate substantially in the form of Exhibit C.

**“Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.14 and other technical, administrative or operational matters) that the Administrative Agent decides with the consent of Borrower (such consent not to be unreasonably withheld, conditioned or delayed) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent and the Borrower decides is reasonably necessary in connection with the administration of this Agreement and the other Financing Documents).

**“Control”** (including, with its correlative meanings, **“Controlled by”** and **“under common Control with”**) means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of Equity Interests, by contract or otherwise).

**“Conversion/Continuation Date”** means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

**“Conversion/Continuation Notice”** means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

**“Coordinating Lead Arranger”** as defined in the preamble hereto.

**“Counterpart Agreement”** means a Counterpart Agreement substantially in the form of Exhibit H (or such other form reasonably acceptable to the Administrative Agent) delivered by a new Subsidiary Guarantor pursuant to Section 5.10 (*Subsidiaries*).

**“Credit Date”** means the date of a Credit Extension.

**“Credit Extension”** means the making of a Loan or the issuing of a Letter of Credit.

**“Creole Trail Pipeline”** means the approximately 94 miles of 42-inch diameter natural gas pipeline and other related facilities as described in the application filed by CTPL pursuant to Section 7(c) of the NGA in FERC Docket Nos. CP05-357-000, CP12-351-000, and CP13-533-000.

**“CTPL”** means Cheniere Creole Trail Pipeline, L.P., a Delaware limited partnership.

**“Daily Simple SOFR”** means, for any day (a **“SOFR Rate Day”**), a rate per annum equal to SOFR for the day (such day, a **“SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. If by 5:00 p.m. (New York City time) on the second (2nd) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to the Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower. If Daily Simple SOFR would be less than zero, Daily Simple SOFR will be deemed to be zero for the purposes of this Agreement and the other Financing Documents.

**“Debt Service”** means, for the Project Life Period, the sum computed without duplication, of the following: (a) all amounts scheduled to become payable by the Borrower in respect of scheduled principal of Indebtedness during such period in respect of Senior Obligations plus (b) interest on (i) Senior Obligations (taking into account interest rate Hedging Agreements) scheduled to become due and payable during such period and (ii) unsecured Indebtedness of the Loan Parties scheduled to become due and payable during such period, plus (c) L/C Costs plus (d) all other commitment fees, agency fees, trustee fees or other administrative fees (other than upfront fees, arranging fees, underwriting fees or similar fees) scheduled to become payable in connection with the Senior Obligations.

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

**“Default”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Defaulting Lender”** means subject to Section 2.20(b) (Defaulting Lender Cure), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the applicable Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the applicable Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement



to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent, the Borrower or the applicable Issuing Bank, to confirm in writing to the Administrative Agent, such Issuing Bank and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, the applicable Issuing Bank and the Borrower), (d) the Administrative Agent has received notification that such Lender has, or has a direct or indirect parent company that is (x) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (y) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment, or (e) has become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**"Derivative Counterparties"** as defined in Section 10.24 (*No Fiduciary Duty*).

**"Derivatives"** as defined in Section 10.24 (*No Fiduciary Duty*).

**"Designated Rating"** means, with respect to any Rating Agency, the Borrower's long-term senior unsecured debt rating.

**"Discharge of Obligations"** means:

(a) payment in full in cash of (i) the outstanding principal amount of Loans under this Agreement, (ii) Unreimbursed Amounts and (iii) interest accrued and owing at or prior to the time such amounts are paid (including interest and fees accruing (or which would, absent the commencement of any case or proceeding under any Debtor Relief Laws of the Borrower, accrue) on or after the commencement of any case or proceeding under any Debtor Relief Laws of the Borrower, whether or not such interest would be allowed in such case or proceeding), on all Indebtedness outstanding under this Agreement and the other Financing Documents;

(b) the termination or expiration of all Revolving Commitments, (including the issuance of any Letter of Credit), if any;

(c) cancellation, termination or Cash Collateralization at 102% of the aggregate maximum amount available to be drawn (in a manner reasonably satisfactory to the Administrative Agent, and the applicable Issuing Bank and to the extent not already funded in

such amount) under all Letters of Credit issued and outstanding under the Financing Documents; and

(d) payment in full in cash of all other Obligations that are then due and payable or otherwise accrued and owing at or prior to the time such amounts are paid, including all obligations outstanding under this Agreement which constitute Obligations (but excluding, for avoidance of doubt, contingent indemnification obligations with respect to which no claim has been made).

**“Disclosed Matters”** means the actions, suits, proceedings and matters, including environmental matters, applicable to the Loan Parties disclosed in the public filings of the Borrower or its Affiliate.

**“Disqualified Equity Interests”** means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, or (iii) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Maturity Date, except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior discharge of Obligations.

**“Dollars”** and the sign **“\$”** mean the lawful money of the United States of America.

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Eligible Assignee”** means any Person other than a natural Person that is (i) a Lender, an Arranger, an affiliate of any Lender or Arranger or a Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (ii) a commercial bank, financial institution, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided, no Defaulting Lender or Loan Party or Affiliate of a Loan Party shall be an Eligible Assignee.

**“Employee Benefit Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA which is, or was within the six-year period immediately preceding the Closing Date, sponsored, maintained or contributed to by, or required to be contributed by, Borrower or, solely with respect to a Plan or Multiemployer Plan, any of its ERISA Affiliates.

**“Environmental Claim”** means any written notice of noncompliance or violation, investigation, claim, administrative, regulatory, or judicial action, suit, judgment, or demand with respect to or arising in connection with any Loan Party, by any other Person alleging or asserting liability under any Environmental Law, including for investigatory costs, costs of response, removal, remediation or cleanup, governmental response costs, attorneys’ fees, damages to the environment or natural resources, fines, or penalties arising out of, based on or resulting from (a) the presence, use, or Release into the environment of any Hazardous Substances or (b) any fact, circumstance, condition, or occurrence forming the basis of any violation, or alleged violation, of any Environmental Laws or Government Approvals issued pursuant to Environmental Law applicable to the Loan Parties.

**“Environmental Laws”** means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, or legally enforceable directives issued, promulgated or entered into by any Governmental Authority, relating to the environment, preservation or reclamation of natural resources, or the management or release of any Hazardous Substance.

**“Environmental Liability”** means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party resulting from or based upon (a) violation of any Environmental Law, (b) exposure to any Hazardous Substances, (c) the release of any Hazardous Substances into the environment or (d) any contract or other written agreement pursuant to which liability is assumed by or imposed against any Loan Party with respect to any of the foregoing.

**“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 in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing (but excluding any debt security that is convertible into, or exchangeable for, any of the foregoing).

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**“ERISA Affiliate”** means, as applied to any Person, (a) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (b) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (c) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (a) above or any trade or business described in clause (b) above is a member.

**“ERISA Event”** means (a) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30 day notice to PBGC has been waived by regulation in effect on the

Closing Date under subclause .23, .27, .28 or .31 of such regulation); (b) the failure to meet the minimum funding standard of Sections 412 and 430 of the Internal Revenue Code and Sections 302 and 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code and Section 302(c) of ERISA) or the failure to make by its due date a required instalment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal by the Borrower or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might reasonably constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability on the Borrower or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the withdrawal of the Borrower or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Borrower or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in insolvency pursuant to Section 4245 of ERISA; (h) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, against Borrower or any of its ERISA Affiliates in connection with any Employee Benefit Plan; (i) receipt from the IRS of notice of the failure of any Pension Plan of the Borrower (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (j) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) of ERISA.

**“Erroneous Payment”** as defined in Section 10.25(a) (*Erroneous Payments*).

**“Erroneous Payment Deficiency Assignment”** as defined in Section 10.25(d)(i) (*Erroneous Payments*).

**“Erroneous Payment Impacted Class”** as defined in Section 10.25(d)(i) (*Erroneous Payments*).

**“Erroneous Payment Return Deficiency”** as defined in Section 10.25(d)(i) (*Erroneous Payments*).

**“Erroneous Payment Subrogation Rights”** as defined in Section 10.25(e) (*Erroneous Payments*).

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Event of Default”** means each of the conditions or events set forth in Section 8.1 (*Events of Default*).

**“Excluded Subsidiary”** means:

- (a) SPL and each of its Subsidiaries;
- (b) Sabine Pass LNG – LP, LLC and each of its Subsidiaries;
- (c) any Unrestricted Subsidiary and each of its Subsidiaries;
- (d) any Subsidiary that as of the last day of the Fiscal Quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered contributes less than 1.00% individually, or 2.50% in the aggregate, of the consolidated total assets of the Borrower;
- (e) any Subsidiary (i) that is prohibited from providing a Guaranty by (A) any law or regulation or (B) any contractual obligation, that in the case of this clause (B), exists on the Closing Date or at the time such Subsidiary becomes a Subsidiary (and was not entered into in contemplation thereof) or (ii) that would require Government Approval in order to provide such Guaranty (unless such Government Approval has been obtained) or where the provision of such Guaranty would otherwise result in material adverse tax consequences as reasonably determined by the Borrower;
- (f) any direct or indirect domestic Subsidiary (i) substantially all of the assets of which consist of the equity and/or debt of one or more Foreign Subsidiaries or (ii) that is treated as a disregarded entity for U.S. federal income Tax purposes that has no material assets other than equity and/or debt of one or more Foreign Subsidiaries (either of clauses (i) or (ii), a **“Disregarded Domestic Person”**);
- (g) any domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary or a Disregarded Domestic Person;
- (h) not-for-profit Subsidiaries and captive insurance Subsidiaries, if any;
- (i) solely in the case of any obligation under any Hedging Agreement that constitutes a “swap” within the meaning of section 1(a)(47) of the Commodity Exchange Act (after giving effect to a customary “keepwell” provision applicable under the Guaranty), any Subsidiary that is not an “Eligible Contract Participant” as defined under the Commodity Exchange Act; and
- (j) any other Subsidiary to the extent that the cost, burden, difficulty or consequence of providing such Guaranty outweighs or is disproportionate to the benefit afforded thereby as reasonably determined by the Borrower and the Administrative Agent (including after accounting for any adverse effects on non-U.S. taxes, interest deductibility, stamp duty, registration taxes and notarial costs).

**“Excluded Swap Obligation”** means, with respect to any Subsidiary Guarantor, (a) as it relates to all or a portion of the Guaranty of such Subsidiary Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of

such Subsidiary Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guaranty of such Subsidiary Guarantor becomes effective with respect to such Swap Obligation or (b) as it relates to all or a portion of the grant by such Subsidiary Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Subsidiary Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Subsidiary Guarantor becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes illegal.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, by the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Commitment (other than pursuant to an assignment request by the Borrower under Section 2.21 (*Removal or Replacement of Lenders*)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.18 (*Taxes; Withholding, Etc.*), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) any amount of Tax attributable to the failure of a Recipient to comply with Section 2.18(c) (*Status of Lenders*), and (d) any Taxes imposed under FATCA.

**"Existing Commitment"** as defined in Section 2.28(a) (*Amend and Extend*).

**"Existing Indenture"** means the Indenture, dated as of September 18, 2017, among the Borrower, the subsidiary guarantors party thereto from time to time and The Bank of New York Mellon, as trustee, as supplemented by the Third Supplemental Indenture, dated as of September 12, 2019, the Fourth Supplemental Indenture, dated as of November 5, 2020, the Fifth Supplemental Indenture, dated as of March 11, 2021, the Sixth Supplemental Indenture, dated as of September 27, 2021, and the Eighth Supplemental Indenture, dated as of June 21, 2023, as it may be further amended, supplemented or otherwise modified from time to time.

**"Existing Lenders"** means the banks and other financial institutions party to the Existing Revolving Credit Facility Agreement as a "Lender" as of the Closing Date.

**"Existing Revolving Credit Facility Agreement"** as defined in the recitals hereto.

**"Extended Commitment"** as defined in Section 2.28(a) (*Amend and Extend*).

**"Extending Lender"** as defined in Section 2.28(b) (*Amend and Extend*).

**“Extension Amendment”** as defined in Section 2.28(c) (*Amend and Extend*).

**“Extension Election”** as defined in Section 2.28(b) (*Amend and Extend*).

**“Extension Request”** as defined in Section 2.28(a) (*Amend and Extend*).

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, and any law, fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities with respect to the foregoing.

**“Federal Funds Effective Rate”** means for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the NYFRB on the Business Day next succeeding such day; provided that, (a) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by the Administrative Agent and (c) notwithstanding the foregoing, the Federal Funds Effective Rate shall at no time be less than zero.

**“Fee Letter”** means the fee letter, dated as of the Closing Date, between Administrative Agent and the Borrower.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Finance Lease”** means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a finance lease on the balance sheet of that Person; provided that, notwithstanding any changes adopted or required to be adopted by the Borrower after December 13, 2018 as a result of any actual or proposed update to accounting standards, including, in particular, Accounting Standards Update (ASU) 2016-02 Leases (Topic 842), any successor proposal, any implementation thereof, any oral or public deliberations by the Financial Accounting Standards Board regarding the foregoing, or any other change in GAAP that requires or would require the obligations of a Person in respect of an operating lease or a lease that would be treated as an operating lease on December 13, 2018 to be recharacterized as a Finance Lease, only leases that would be classified as capital leases under GAAP as in effect on December 13, 2018 (whether or not such leases were in effect) shall constitute Finance Leases for purposes of this Agreement and the Financing Documents.

**“Financing Document”** means any of this Agreement, the Notes, if any, any Issuer Documents, the Fee Letters and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of a Loan Party for the benefit of any Agent, any Issuing Bank or any Lender in connection herewith on or after the Closing Date and designated as a “Financing Document” pursuant to the terms thereof.

**“Fiscal Quarter”** means a fiscal quarter of any Fiscal Year.

**“Fiscal Year”** means the fiscal year of the Borrower ending on December 31st of each calendar year.

**“Fitch”** means Fitch Ratings Ltd., or any successor to the rating agency business thereof.

**“Foreign Subsidiary”** means any existing or future direct or indirect Subsidiary of the Borrower organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia.

**“Fronting Exposure”** means, at any time there is a Defaulting Lender, with respect to any Issuing Bank, such Defaulting Lender’s Pro Rata Share of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Bank other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**“GAAP”** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

**“Government Approval”** means (a) any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, waiver, exemption, filing, variance, order, judgment, or decree of, by, from or with, (b) any required notice to, (c) any declaration of or with or (d) any registration by or with, any Governmental Authority.

**“Government Rule”** means any statute, law, regulation, ordinance, rule, judgment, order, decree, directive, requirement of, or other governmental restriction or any similar binding form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, including all common law, which is applicable to any Person, whether now or hereafter in effect.

**“Governmental Authority”** means any foreign, federal, state, regional, tribal or local government or political subdivision thereof or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) and having jurisdiction over the Person or matters in question.

**“Guaranty”** means the guaranty of each Subsidiary Guarantor set forth in Section 7 (*Guaranty*).

**“Hazardous Substances”** means any hazardous substances, pollutants, contaminants, wastes, or hazardous materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, urea formaldehyde insulation, lead-based paint, radon gas, or friable asbestos or any materials containing friable asbestos), in each case to the extent regulated under Environmental Law.



**“Hedging Agreement”** means any agreement evidencing an interest rate swap, forward rate transaction, commodity swap, commodity option, commodity future, interest rate option, interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract, forward contract, derivative transaction, or other similar agreement.

**“Hedging Termination Value”** means, in respect of any Hedging Agreement of a Loan Party, after taking into account the effect of any netting arrangements relating to such Hedging Agreement, net obligations of such person in respect of such Hedging Agreement, in each case, valued at the net hedging termination value thereof (as determined in accordance with the documentation evidencing such Hedging Agreement).

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Honor Date”** as defined in Section 2.3(c) (*Drawings and Reimbursements; Funding of Participations*).

**“Increased Cost Lender”** as defined in Section 2.21 (*Removal or Replacement of Lenders*).

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business, (ii) obligations that such Person has discretion to satisfy with equity of the Borrower or such Person and (iii) any earn-out, purchase price adjustment or similar obligations, except with respect to this clause (iii), to the extent required to be reported as a liability on the balance sheet of such Person), (d) all direct or indirect guarantees by such Person of Indebtedness of others, (e) the capitalized portions of all Finance Lease obligations of such person, (f) all reimbursement obligations of such Person as an account party in respect of payments under drawn letters of credit and letters of guaranty, (g) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (h) Disqualified Equity Interests, and (i) net obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Hedging Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise, in each case, valued on any date at the net Hedging Termination Value thereof. Notwithstanding the above provisions, in no event shall the following constitute Indebtedness: (x) contingent obligations incurred in the ordinary course of business, (y) in connection with the purchase by any Loan Party of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided that at the time of closing the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 60 days thereafter; or (z) any obligations in respect of workers’ compensation claims, early retirement or termination obligations, pension fund

obligations or contributions or similar claims, obligations or contributions or social security or wage taxes.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, preparation, study, sampling, monitoring, maintenance, testing, abatement, cleanup, removal, remediation or other response action required pursuant to Environmental Law to remove, remediate, clean up or abate any Hazardous Substance), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with or as a result of any action, claim, litigation, proceeding, investigation or hearing commenced or threatened by any Person, whether or not brought by the Loan Parties, their respective equity holders or creditors or an Indemnatee, against any Person, and whether or not any such Indemnatee shall be otherwise designated as a party or a potential party thereto, and without regard to the exclusive or contributory negligence of such Indemnatee, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect, special or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnatee, including shareholders, partners, members or other equity holders of the Loan Parties (or their respective Affiliates), in any manner relating to or arising out of (i) this Agreement or the other Financing Documents or Letters of Credit or the transactions contemplated hereby or thereby or any matter referred to herein and therein (including the Lenders’ agreement to make Credit Extensions, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof, any amendments, waivers or consents with respect to any provision of this Agreement or any of the other Financing Documents or Letters of Credit, or any enforcement of any of the Financing Documents (the enforcement of the Guaranty)); or (ii) any Environmental Claim relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership or practice of the Borrower or any of its Subsidiaries.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnatee”** as defined in Section 10.4(a) (*Indemnity*).

**“Information”** as defined in Section 4.11 (*Disclosure*).

**“Interest Payment Date”** means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Term SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term SOFR Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

**“Interest Period”** means with respect to any Term SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months (or six or twelve months or less than one month, in each case, if agreed to by all of the Lenders) thereafter, as the Borrower may elect; provided

that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Term SOFR Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

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

**“Investment Grade Rating”** means a rating of BBB- or higher by S&P, BBB- or higher by Fitch or Baa3 or higher by Moody’s.

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

**“ISP”** means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**“Issuance Notice”** means an Issuance Notice substantially in the form of Exhibit A-3 (or such other form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank).

**“Issuer Documents”** means with respect to any Letter of Credit, any Issuance Notice, any Letter of Credit application required by the applicable Issuing Bank to be completed and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower or in favor of the Issuing Bank and relating to such Letter of Credit.

**“Issuing Bank”** means Société Générale, Natixis, New York Branch, Sumitomo Mitsui Banking Corporation, The Bank of Nova Scotia, Houston Branch and Wells Fargo Bank, National Association. Any reference to “Issuing Bank” herein shall be to the applicable Issuing Bank, as appropriate.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form.

**“Knowledge”** means, with respect to any of the Loan Parties, the actual knowledge of any Person holding any of the positions (or successor position to any such position) set forth in Schedule I; provided that each such Person shall be deemed to have knowledge of all events, conditions and circumstances described in any notice delivered to the Borrower pursuant to the terms of this Agreement or any other Financing Document.

**“L/C Costs”** means (a) fees, expenses and interest associated with the issuance of Letters of Credit and (b) any reimbursement by the Borrower of amounts paid under a Letter of Credit for expenditures that if paid by a Loan Party directly would have constituted operation and maintenance expenses.

**“L/C Credit Extension”** means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

**“L/C Obligations”** means, as at any date of determination, the aggregate maximum amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts not refinanced by a Loan. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.5 (*Letter of Credit Amounts*). For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

**“L/C Overnight Rate”** means for any day, the greater of (a) the Federal Funds Effective Rate and (b) an overnight rate determined by the applicable Issuing Bank in accordance with banking industry rules on interbank compensation.

**“Lender”** means each bank, financial institution or institutional lender listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

**“Letter of Credit”** means any letter of credit issued hereunder pursuant to Section 2.3(a) (*Letter of Credit Commitment*).

**“Letter of Credit Fee”** as defined in Section 2.3(i) (*Letter of Credit Fees*).

**“Letter of Credit Expiration Date”** means the day that is five (5) Business Days prior to the Maturity Date.

**“Letter of Credit Fees Default Rate”** as defined in Section 2.9 (*Default Interest*).

**“Letter of Credit Issuance Commitment”** means the commitment of each Issuing Bank to issue Letters of Credit, as applicable, hereunder, and **“Letter of Credit Issuance Commitments”** means such commitments of all Issuing Banks in the aggregate. The Dollar amount of each Issuing Bank’s Letter of Credit Issuance Commitment is set forth on Appendix A under the caption “Letter of Credit Issuance Commitment” or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Letter of Credit Issuance Commitments as of the Closing Date is \$1,000,000,000. The issuance of a Letter of Credit shall reduce the available Revolving Commitment on a dollar for dollar basis.

**“Level”** means the “Levels” set forth in the pricing grid in the definition of Applicable Margin.

“**Lien**” means any lien, mortgage, pledge, assignment, security interest, hypothecation, charge or similar encumbrance (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

“**Loan**” means a loan made by a Lender to the Borrower pursuant to Section 2.1 (*Loans*) or deemed made by a Lender to the Borrower pursuant to Section 2.2 (*Requests for Borrowings*).

“**Loan Party**” means the Borrower and each Subsidiary Guarantor.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, financial condition or results of operations of the Borrower and its Subsidiaries, taken as a whole, (b) the Borrower’s ability to perform its material payment obligations under this Agreement, (c) the material rights and remedies (taken as a whole) available to the Lenders under the Financing Documents or (d) the validity or enforceability of this Agreement or any of the other Financing Documents.

“**Maturity Date**” means, for any Revolving Commitment the earlier of (a) the fifth anniversary of the Closing Date, as extended pursuant to Section 2.28 (*Amend and Extend*) and (b) the date all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

“**Minimum Collateral Amount**” means, at any time, with respect to Cash Collateral consisting of Cash an amount equal to 102% of the outstanding L/C Obligations of the applicable Issuing Bank with respect to Letters of Credit issued and outstanding at such time.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Multiemployer Plan**” means any “multiemployer plan” as defined in Section 3(37) of ERISA which is, or was within the six-year period immediately preceding the Closing Date, contributed to by, or required to be contributed by, Borrower, or any of its ERISA Affiliates.

“**NAIC**” means The National Association of Insurance Commissioners, and any successor thereto.

“**Net Tangible Assets**” means, at any date of determination, the total amount of consolidated assets of the Borrower and its Subsidiaries (excluding any derivative assets, but including, without limitation, any assets consisting of securities or equity interests in any other entity), after deducting therefrom:

(a) all current liabilities (excluding (i) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than twelve months after the time as of which the amount thereof is being computed, (ii) current maturities of long-term debt, and (iii) any current derivative liabilities; and

(b) the value (net of any applicable reserves) of all goodwill, trade names, trademarks, patents and other like intangible assets;

all as prepared in accordance with GAAP and set forth, or on a *pro forma* basis would be set forth, on a consolidated balance sheet of the Borrower and its Subsidiaries for the Borrower’s most recently completed Fiscal Quarter for which financial statements are available.

**“New Lender Agreement”** means a New Lender Agreement substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and the Borrower).

**“NGA”** means the Natural Gas Act of 1938 and the regulations promulgated thereunder.

**“Non-Consenting Lender”** as defined in Section 2.21 (*Removal or Replacement of Lenders*).

**“Non-Defaulting Lender”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“Non-Public Information”** means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or its Affiliates or their securities.

**“Non-Responding Lender”** as defined in Section 10.6(d) (*Non-Responding Lenders*).

**“Note”** means a promissory note substantially in the form of Exhibit B (or in such other form acceptable to the applicable Lender), as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Notice”** means a Borrowing Notice or an Issuance Notice.

**“NYFRB”** means the Federal Reserve Bank of New York.

**“Obligations”** means all obligations of every nature of each Loan Party, including obligations from time to time owed to Agents (including former Agents), Lenders or any of them, under any Financing Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnification or otherwise, excluding, in each case, Excluded Swap Obligations.

**“Obligee Guarantor”** as defined in Section 7.7 (*Subordination of Other Obligations*).

**“Organizational Documents”** means (i) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization or association, as amended, and its bylaws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its certificate of formation, as amended, and its operating agreement or limited liability company agreement, as amended. In the event any term or condition of this Agreement or any other Financing Document requires any Organizational Document to be certified by a secretary of state or similar governmental official including an official of a non-United States government, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such governmental official in such official’s relevant jurisdiction.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing

such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document).

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.21 (*Removal or Replacement of Lenders*)).

**“Outstanding Amount”** means with respect to Loans on any date, the amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

**“Participant Register”** as defined in Section 10.7(g) (*Successors and Assigns; Participations*).

**“PATRIOT Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) of 2001, and the rules and regulations promulgated thereunder from time to time in effect.

**“Payment Recipient”** as defined in Section 10.25(a) (*Erroneous Payments*).

**“PBGC”** means the Pension Benefit Guaranty Corporation or any successor thereto.

**“Pension Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA, other than a Multiemployer Plan, which is, or was within the six-year period immediately preceding the Closing Date, sponsored, maintained or contributed to by, or required to be contributed to by, Borrower or any of its ERISA Affiliates and which is subject to the provisions of Title IV of ERISA or to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

**“Periodic Term SOFR Determination Day”** has the meaning specified in the definition of Term SOFR Rate.

**“Permitted Indebtedness”** means:

(a) the Loans, Letters of Credit and all other obligations under this Agreement and other Financing Documents;

(b) (i) Additional Secured Indebtedness, Additional Unsecured Indebtedness and Replacement Debt, (ii) any Indebtedness provided that at least two of the Rating Agencies (or one Rating Agency, if only one Rating Agency is then rating the Borrower’s long-term senior unsecured debt, this Agreement, the Existing Indenture or the corporate family of the Borrower) shall have assigned or reaffirmed an Investment Grade Rating of any of (A) the Borrower’s long-term senior unsecured debt, (B) this Agreement, (C) the Existing Indenture or (D) the Borrower’s corporate family or determined that the existing rating for any of the foregoing is not affected (in each case, after giving effect to the incurrence of such Indebtedness) and (iii) any other Indebtedness; provided that, in the case of this clause (iii), the Borrower certifies that its *pro*

*forma* Projected Debt Service Coverage Ratio is no less than 1.35x (after giving effect to the incurrence of such Indebtedness and the use of proceeds therefrom);

(c) (i) the incurrence of Finance Lease obligations and purchase money Indebtedness in an amount not to exceed \$100,000,000 in the aggregate, and (ii) the incurrence of Finance Lease obligations and purchase money Indebtedness in respect of tug or other maritime services;

(d) Indebtedness that is mandatorily convertible into common equity of the Borrower;

(e) trade or other similar Indebtedness incurred in the ordinary course of business, which is (i) not more than ninety (90) days past due, or (ii) being contested in good faith and by appropriate proceedings;

(f) Indebtedness outstanding on the Closing Date (excluding under the Existing Revolving Credit Facility Agreement) and extensions, renewals, refinancings and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof, other than by an amount not to exceed unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, original issue discount, defeasance costs, fees (including upfront fees), commissions and expenses;

(g) 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;

(h) to the extent constituting Indebtedness, (i) obligations in respect of performance bonds, bid bonds, performance guarantees and completion guarantees and similar obligations, in an aggregate amount not to exceed \$100,000,000 outstanding at any one time, and (ii) obligations in respect of performance bonds, bid bonds, appeal bonds, surety bonds, indemnification obligations, obligations to pay insurance premiums, take-or-pay or take-and-deliver obligations contained in supply agreements, cash deposits incurred in connection with natural gas purchases and similar obligations incurred in the ordinary course of business;

(i) Indebtedness in respect of any bankers' acceptance, letter of credit, warehouse receipt or similar facilities entered into in the ordinary course of business;

(j) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(k) to the extent constituting Indebtedness, unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law;

(l) Indebtedness consisting of the financing of insurance premiums in customary amounts consistent with operations and business of any Loan Party in the ordinary course of business;

(m) intercompany Indebtedness between or among the Loan Parties;



(n) Indebtedness owing by a Loan Party to any person (including any non-Loan Party affiliate) so long as such Indebtedness is subordinated pursuant to a subordination agreement substantially on the same terms as the subordination agreement attached as Exhibit I or otherwise on subordination terms reasonably acceptable to the Administrative Agent (any such Indebtedness, “**Subordinated Indebtedness**”);

(o) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary of the Borrower or Indebtedness attaching to assets that are acquired by the Borrower or any of its Subsidiaries; provided that (i) such Indebtedness existed at the time such Person became a Subsidiary of the Borrower or at the time such assets were acquired and, in each case, was not created in anticipation thereof, and (ii) such Indebtedness is not guaranteed in any respect by the Borrower or any Loan Party (other than by any such Person that so becomes a Subsidiary of the Borrower);

(p) Indebtedness to current or former officers, managers, consultants, directors and employees of Cheniere Energy Partners GP, LLC or any Loan Party (or their respective spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees) incurred in lieu of the payment of cash consideration for the redemption of equity interests or securities convertible into Equity Interests of the Borrower or direct or indirect parent entity of the Borrower; provided that the aggregate principal amount of such Indebtedness does not exceed \$5,000,000 at any time outstanding (it being understood that the consideration payable in respect of such equity interests or securities convertible into equity interests may be calculated net of any applicable exercise price, taxes or other amounts payable by the holder or beneficiary thereof in respect of such equity interests or convertible securities);

(q) Indebtedness in respect of Hedging Agreements entered into not for speculative purposes; and

(r) any other Indebtedness of any Loan Party in an aggregate amount not to exceed \$250,000,000.

“**Permitted Intercompany Activities**” means any transactions (a) entered into in the ordinary course of business of any Loan Party that, in the good faith judgment of the Borrower, are necessary or advisable in connection with the ownership or operation of the business of the Borrower and its Subsidiaries or Joint Ventures, including, but not limited to, (i) payroll, cash management, purchasing, insurance, and hedging and risk mitigation arrangements and (ii) management, technology and licensing arrangements and (b) between or among any Loan Party and any captive insurance subsidiary.

“**Permitted Liens**” means at any time:

(a) any Lien existing on any property prior to the acquisition thereof by any Loan Party or existing on any property of any person that becomes a Loan Party after the Closing Date prior to the time such person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property of any Loan Party and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such person becomes a Loan Party, as the case may be;

(b) any Lien on any real or personal tangible property securing permitted Finance Lease obligations or purchase money Indebtedness incurred by any Loan Party;

(c) any Lien securing Indebtedness incurred in connection with extension, renewal, refinancing, refunding or replacement (or successive extensions, renewals, refinancing, refunding or replacements), in whole or in part, of Indebtedness secured by Liens referred to in clauses (a) or (b) above or (e) below; provided that (i) any such extension, renewal, refinancing, refunding or replacement Lien shall be limited to the property or assets (including replacements or proceeds thereof) covered by the lien extended, renewed, refinanced, refunded or replaced and (ii) the Indebtedness secured by any such extension, renewal, refinancing, refunding or replacement lien shall be in an amount not greater than the amount of the obligations secured by the lien (or, if greater, the committed amount) extended, renewed, refinanced, refunded or replaced and any fees and expenses of Loan Parties (including any premium) incurred in connection with such extension, renewal, refinancing, refunding or replacement;

(d) Liens (if any) securing this Agreement and obligations under the Financing Documents;

(e) Liens for Taxes not delinquent or being contested in good faith and by appropriate proceedings in relation to which appropriate reserves are maintained and liens for customs duties that have been deferred in accordance with the laws of any applicable jurisdiction;

(f) Liens imposed by law or order as a result of any proceeding before any court or regulatory body that is being contested in good faith, and liens which secure a judgment or other court-ordered award or settlement as to which the applicable Loan Party has not exhausted its appellate rights; and

(g) Liens upon any Principal Property, whether owned on the Closing Date or thereafter acquired, to secure any Indebtedness (including Additional Secured Indebtedness) of any Loan Party; provided that, if after giving *pro forma* effect to such Indebtedness (including the application of proceeds) the outstanding principal amount of all such Indebtedness (other than Indebtedness under this Agreement and other Financing Documents) secured by a Lien on any Principal Property is in excess of the greater of (i) \$1,500,000,000 and (ii) 15.0% of Net Tangible Assets, the Loans under this Agreement are secured equally and ratably with such Indebtedness (so long as such Indebtedness is so secured and subject to intercreditor arrangements reasonably acceptable to the Required Lenders).

With respect to any Lien securing any Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “**Increased Amount**” of any Indebtedness means any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

“**Person**” means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies,

Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“Platform”** means any information platform, such as IntraLinks/IntraAgency, SyndTrak or another similar information platform or website, by which certain documents or notices may be distributed to Lenders in accordance with this Agreement.

**“Prime Rate”** means the rate of interest publicly announced from time to time by the Administrative Agent as its prime rate in effect at its principal office; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

**“Principal Office”** means, for each of Administrative Agent and Issuing Banks, such Person’s “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to the Borrower, Administrative Agent and each Lender.

**“Principal Property”** any building, structure or other facility (together with the land on which it is erected and fixtures comprising a part thereof) that is owned or leased by any Loan Party and used primarily for processing, storage or distribution, in each case which is located within the United States, and that has a book value on the date of which the determination is being made, without deduction of any depreciation reserves, exceeding 2% of Net Tangible Assets, (provided however, that any such building, structure, or other facility (together with the land on which it is erected and fixtures comprising a part thereof) (or portion thereof) that the Borrower reasonably determines is not material to the business of the Borrower and its Subsidiaries, taken as a whole will be excluded from the foregoing definition).

**“Pro Rata Share”** means with respect to all payments, computations and other matters relating to the Revolving Commitment or Loans or any participations in Letters of Credit, the percentage obtained by dividing (i) the Revolving Exposure of such Lender by (ii) the aggregate Revolving Exposure of all Lenders.

**“Project”** means the SPLNG Terminal and/or the Creole Trail Pipeline, as applicable.

**“Project Life Period”** means, as of any date of determination, the period commencing on such date of determination through to, and including, the termination date of the last to terminate of the Applicable Facility LNG Sale and Purchase Agreements.

**“Projected Debt Service Coverage Ratio”** means, for the Project Life Period, the ratio of (a) Cash Flow Available for Debt Service projected for such period to (b) Debt Service projected to be paid in such period (other than (i) pursuant to voluntary prepayments or mandatory prepayments, (ii) Debt Service due at maturity, (iii) Loans, (iv) L/C Costs, and (v) Hedging Termination Values) using an interest rate equal to the weighted average interest rate of all such Senior Obligations outstanding after giving effect to the incurrence of any Indebtedness and the application of the proceeds therefrom.

**“Property”** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether corporeal or incorporeal and whether tangible or intangible.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lenders**” means Lenders that do not wish to receive Non-Public Information with respect to the Borrower, its Affiliates or their securities.

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Qualified Operator**” means any Person that, directly or through an affiliate, within the last 5 years, (a) is engaged in the business of procuring or transporting at least 0.5 bcf of natural gas per day and (b) has operated LNG liquefaction facilities processing not less than 4.4 mtpa of LNG.

“**Qualified Owner**” means any Person that, alone or with its affiliates, (a) has an Investment Grade Rating for its unsecured long-term senior debt obligations and (b) either (i) is (or is a subsidiary or a controlled affiliate of) a Qualified Operator, (ii) has engaged a Qualified Operator to operate the Projects and the SPL Project, (iii) has engaged one or more affiliates of CEI to operate the Projects and the SPL Project or (iv) has provided the Administrative Agent with a certificate from an independent engineer stating that such Person (or its designated operator) is qualified to operate the Projects and the SPL Project; provided, that any Qualified Owner shall have provided the Administrative Agent with all information necessary for the Lenders to identify such Person in accordance with the requirements of the PATRIOT Act (including applicable, and uniformly applied, “know your customer” regulations) and all other applicable Anti-Terrorism and Money Laundering Laws.

“**Rating Agency**” means any of S&P, Fitch or Moody’s, including any successor to S&P, Fitch or Moody’s, or, if none of S&P, Fitch or Moody’s maintains a rating for the Loans or a corporate family rating for Borrower at such time, then any other “nationally recognized statistical rating organization” registered with the U.S. Securities and Exchange Commission as determined by the Borrower that maintains a rating for the Loans or a corporate family rating for the Borrower at such time.

“**Recipient**” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“**Register**” as defined in Section 2.6(b) (*Register*).

“**Regulation D**” means Regulation D of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulation T**” means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation U”** means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation X”** means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Related Fund”** means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the shareholders, partners, members, directors, officers, employees, agents, sub-agents, trustees, advisors and attorneys of such Person and of such Person’s Affiliates.

**“Release”** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, disposal, discharge, dumping, or leaching of any Hazardous Substances into or through the environment.

**“Relevant Governmental Body”** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**“Replacement Debt”** has the meaning set forth in Section 2.22 (*Permitted Refinancing Debt*).

**“Replacement Lender”** as defined in Section 2.21 (*Removal or Replacement of Lenders*).

**“Required Lenders”** means one or more Lenders having or holding Revolving Exposure and representing more than 50% of the sum of the aggregate Revolving Exposure of all Lenders; provided that the Revolving Exposure of any Defaulting Lender shall be disregarded for purposes of determining “Required Lenders” for purposes of the Financing Documents.

**“Required Rating”** means a long term unsecured non-credit enhanced senior debt rating of Baa1 or better from Moody’s and BBB+ or better from S&P.

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Restricted Lender”** has the meaning set forth in Section 10.26 (*Restricted Lenders*).

**“Restricted Payment”** means any dividend or other distribution by the Borrower (in cash, or other Property) on, or other dividends or distributions on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any portion of any membership interest in the Borrower, other than a Tax Distribution.

**“Revenue”** means, for the Project Life Period, the aggregate of all cash revenues (without duplication) projected to be received by the Borrower, including from: (a) any interest or earnings on cash equivalents on deposit in any of the account of the Borrower, (b) any distributions projected to be made by any Subsidiary Guarantor, SPL or any other non-Loan Party, and (c) any other revenue, proceeds, receipts, liquidated damages, or earnings projected to

be received by the Borrower during such period determined on a cash basis; provided, however, that “**Revenue**” shall not include proceeds from the incurrence or issuance of Indebtedness.

“**Revolving Commitment**” means the commitment of each Lender to make or otherwise fund any Loan or to purchase participations in Letters of Credit, as applicable, hereunder, and “**Revolving Commitments**” means such commitments of all Lenders in the aggregate. The Dollar amount of each Lender’s Revolving Commitment is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Closing Date is \$1,000,000,000.

“**Revolving Commitment Termination Date**” means the earliest to occur of (i) the Maturity Date; (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.11 (*Voluntary Prepayments; Commitment Reductions*) or Section 2.12 (*Mandatory Prepayments*); and (iii) the date of the termination of the Revolving Commitments pursuant to Section 8.1 (*Events of Default*).

“**Revolving Exposure**” means, with respect to each Lender as of any date of determination, (i) prior to the termination of the Revolving Commitments, the Revolving Commitments of such Lender; and (ii) after the termination of the Revolving Commitments, the sum of (a) the aggregate outstanding principal amount of the Loans of such Lender and (b) the aggregate amount of all participations by such Lender in any outstanding Letters of Credit or any Unreimbursed Amounts. Each Issuing Bank shall be deemed to have purchased, in its capacity as Lender, a participation in any Letter of Credit that it has issued.

“**S&P**” means S&P Global Ratings, a division of McGraw-Hill Financial, Inc.

“**Sanctioned Country**” means a country, region or territory which is itself the subject or target of comprehensive Sanctions (at the Closing Date, Cuba, Iran, North Korea, Syria, and the Crimea region, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Kherson and the Zaporizhka regions of Ukraine).

“**Sanctions**” has the meaning assigned to such term in Section 4.14 (*Sanctions; Anti-Corruption Laws; PATRIOT Act*).

“**Sanctions Laws**” has the meaning assigned to such term in Section 4.14 (*Sanctions; Anti-Corruption Laws; PATRIOT Act*).

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

“**Senior Obligations**” means collectively (a) the Loans and all obligations under this Agreement, (b) Indebtedness and any other secured obligations under a permitted Hedging Agreement, (c) any Replacement Debt that is secured on a *pari passu* basis or otherwise *pari passu* with the Loans, (d) any Additional Secured Indebtedness that is secured on a *pari passu* basis with the Loans, (d) any Additional Unsecured Indebtedness that is *pari passu* with the Loans and (e) any Indebtedness under the Existing Indenture.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**SOFR Determination Day**” has the meaning provided in the definition of “Daily Simple SOFR”.

“**SOFR Rate Day**” has the meaning provided in the definition of “Daily Simple SOFR”.

“**Solvent**” means, with respect to any Person, that as of the date of determination, (i) both the then present fair saleable value of the Person’s present assets is (a) greater than the total liabilities of (including contingent liabilities) of such Person and (b) greater than the amount that will be required to pay the probable liability of such Person’s then existing indebtedness as they become absolute and matured; (ii) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date or with respect to any transaction contemplated to be undertaken after the Closing Date; (iii) such Person has not incurred and does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (iv) such Person is “solvent” within the meaning given that term and similar terms under the Bankruptcy Code and other applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No.5).

“**SPL**” as defined in the recitals hereto.

“**SPL Credit Facility**” means the Senior Secured Credit Agreement dated as of June 23, 2023 among SPL, as the borrower, The Bank of Nova Scotia, as senior facility agent, Société Générale, as common security trustee, the issuing banks and lenders named therein and the other parties named therein.

“**SPL Project**” means the natural gas liquefaction facility located in Cameron Parish, Louisiana owned and operated by SPL for the production of liquefied natural gas and other services.

“**SPLNG**” means Sabine Pass LNG, L.P., a Delaware limited partnership.

“**SPLNG Terminal**” means Sabine Pass LNG terminal in Cameron Parish, Louisiana, including associated storage tanks, unloading docks, vaporizers, tugs and related facilities, as authorized by FERC in *Sabine Pass LNG, L.P.*, 109 FERC ¶ 61, 324 (3004), and subsequent orders.

“**Subordinated Indebtedness**” as defined in clause (n) of the definition of “**Permitted Indebtedness**”.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company, association, Joint Venture or other business entity of which more than 50% of

the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding. Unless otherwise specified, all references herein to “Subsidiaries” shall refer to Subsidiaries of the Borrower.

“**Subsidiary Guarantor**” means (i)(a) Cheniere Energy Investments, LLC, a Delaware limited liability company; (b) SPLNG; (c) CTPL; (d) Sabine Pass LNG-GP, LLC, a Delaware limited liability company; (e) Sabine Pass Tug Services, LLC, a Delaware limited liability company; and (f) Cheniere Pipeline GP Interests, LLC, a Delaware limited liability company; and (ii) each other Subsidiary of the Borrower that, after the Closing Date, signs a Counterpart Agreement or such other accession agreement to this Agreement (accepted and agreed by, and in form and substance reasonably satisfactory to, Administrative Agent) as a Subsidiary Guarantor, in each case until such Person shall cease to be a Subsidiary Guarantor in compliance with the provisions of this Agreement.

“**Swap Obligation**” means, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) imposed by any Governmental Authority and any and all liabilities (including interest, fines, penalties or additions to tax) with respect to the foregoing.

“**Tax Distributions**” means, the amount necessary for payment to each beneficial owner of the Borrower (that is treated as a partner of the Borrower for U.S. federal income tax purposes) to enable such beneficial owner to pay its income tax liability with respect to income generated by the Borrower and its Subsidiaries, determined at the highest combined U.S. federal and state rate applicable to such beneficial owner for the applicable period.

“**Term SOFR**” when used in reference to any Loan or Borrowing, shall refer to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Term SOFR Rate.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited as administrator of the forward-looking Secured Overnight Financing Rate (SOFR) (or a successor administrator).

“**Term SOFR Rate**” means:

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator plus 0.10%; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the



applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day;

provided, further, that if the Term SOFR Rate is determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than 0.00%, then Term SOFR shall be deemed to be 0.00%.

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

“**Terminated Lender**” as defined in Section 2.21 (*Removal or Replacement of Lenders*).

“**Total Utilization of Revolving Commitments**” means, as at any date of determination, the sum of (a) the amount of the aggregate principal amount of all outstanding Loans, and (b) the amount of the aggregate L/C Obligations.

“**Transaction**” means collectively, the transactions described in Section 2.5 (*Use of Proceeds*).

“**Type**”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Alternate Base Rate or the Term SOFR Rate or Daily Simple SOFR.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income department of its members be closed for the entire day for purposes of trade in the United States government securities.

“**U.S. Tax Compliance Certificate**” as defined in Section 2.18(c)(ii)(B)(3) (*Status of Lenders*).

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unreimbursed Amount”** as defined in Section 2.3(c) (*Drawings and Reimbursements; Funding of Participations*).

**“Unrestricted Subsidiary”** means any Subsidiary of a Loan Party formed or acquired after the Closing Date and designated by a resolution of the board of directors or similar governing body (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership) of such Loan Party (including a general standing authorization of such governing bodies or Persons, as applicable, granting authorization to an Authorized Officer of such Loan Party to so designate) as an Unrestricted Subsidiary subsequent to the Closing Date, and in each case, any Subsidiary formed or acquired by an Unrestricted Subsidiary following such Unrestricted Subsidiary’s designation; provided that each of the following conditions is satisfied at the time of such designation:

(c) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing or result therefrom;

(d) any Indebtedness of the Unrestricted Subsidiary shall be non-recourse to the Loan Parties unless the credit support (including any Liens on the Equity Interests of such Unrestricted Subsidiary) provided by any Loan Party is permitted by this Agreement;

(e) such Unrestricted Subsidiary has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Loan Parties, including under the Existing Indenture; and

(f) Borrower has delivered to the Administrative Agent an Authorized Officer’s certificate certifying that the conditions set forth in clauses (a) through (c) above have been satisfied.

**“Withholding Agent”** means any Loan Party and the Administrative Agent.

**“Write-Down and Conversion Powers”** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to

provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

### **1.2 Accounting Terms.**

Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by the Borrower to Lenders pursuant to Sections 5.1(a) (Quarterly Financial Statements) and 5.1(b) (Annual Financial Statements) shall be prepared in accordance with GAAP as in effect at the time of such preparation. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Financing Document, and the Borrower shall so request, Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Required Lenders), provided that, until so amended, such ratio or requirement shall continue to be computed in conformity with those accounting principles and policies as in effect immediately prior to such change.

### **1.3 Interpretation, Etc.**

Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation. In this Agreement and the other Financing Documents, where the terms “continuing”, “continuance” or words to similar effect are used in relation to a Default or an Event of Default, the terms shall mean only that the applicable event or circumstance has not been remedied, waived, cured or ceased to exist. Unless the context requires otherwise, any definition of or reference to any agreement (including this Agreement), instrument or other document herein or in any Financing Document, shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented or otherwise modified or extended, replaced or refinanced (subject to any restrictions or qualifications on such amendments, restatements, amendment and restatements, supplements or modifications or extensions, replacements or refinancings set forth herein). Any reference herein or any other Financing Document to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a Person, or an allocation of assets to a series of a Person (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer or similar term, as applicable to, of or with a separate Person. Any

division of a limited liability company shall constitute a separate Person hereunder and under any other Financing Document (and each division of any limited liability company that is a Subsidiary, Affiliate, joint venture or any other like term shall also constitute such a Person or entity).

**1.4 Rates.** The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to ABR, the Term SOFR Reference Rate, or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, ABR, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of ABR, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain ABR, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**1.5 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.6 Timing of Payment or Performance.**

When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day (it is understood that the foregoing shall cause any grace period associated with any such payment obligation or performance of any covenant, duty or obligation to extend to the immediately succeeding Business Day as well).

**1.7 Negative Covenant Compliance and Other Calculations.**

For purposes of determining whether Borrower and the Subsidiary Guarantors comply with any exception to Section 6 (*Negative Covenants*) where compliance with any such exception is based on a financial ratio or metric being satisfied as of a particular point in time, it is understood that (a) compliance shall be measured at the time when the relevant event is undertaken, as such financial ratios and metrics are intended to be “incurrence” tests and not “maintenance” tests and (b) correspondingly, any such ratio and metric shall only prohibit Borrower and the Subsidiary Guarantors from creating or incurring, assuming, becoming liable or suffering to exist as the case may be, any new, for example, Liens or Indebtedness, but shall not result in any previously permitted, for example, Liens or Indebtedness ceasing to be permitted hereunder. For avoidance of doubt, with respect to determining whether Borrower and the Subsidiary Guarantors comply with any negative covenant in Section 6 (*Negative Covenants*), to the extent that any obligation, transaction or action could be attributable to more than one exception to any such negative covenant, Borrower may categorize or re-categorize from time to time all or any portion of such obligation, transaction or action to any one or more exceptions to such negative covenant that permit such obligation, transaction or action.

#### **1.8 Certifications.**

All certifications to be made hereunder by an officer or representative of a Loan Party shall be made by such a Person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party’s behalf and not in such Person’s individual capacity.

#### **1.9 Rounding.**

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number.

**1.10 Classification of Loans and Borrowings.** For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “revolving Loan”) or by Type (e.g., a “Term SOFR Loan”). Borrowings also may be classified and referred to by Class (e.g., a “revolving Borrowing”) or by Type (e.g., a “Term SOFR Borrowing”).

### **SECTION 2. LOANS AND LETTERS OF CREDIT**

#### **2.1 Loans.**

(a) Revolving Commitments. During the Availability Period, subject to the terms and conditions hereof, each Lender agrees severally and not jointly or jointly and severally to make Loans to the Borrower in an aggregate amount up to but not exceeding such Lender’s Revolving Commitment; provided, that after giving effect to the making of any Loans in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.1(a) (*Revolving Commitments*) may be repaid and reborrowed during the Availability Period. The Revolving Commitment shall expire on the Revolving Commitment Termination Date and all Loans and all other amounts owed hereunder with respect to the Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Loans and Borrowings.

(A) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Revolving Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Revolving Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(B) Subject to Section 2.30(a) (Benchmark Replacement), each Borrowing shall be comprised entirely of ABR Loans or Term SOFR Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Term SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(C) Each Borrowing shall be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Revolving Commitments or that is required to finance the reimbursement of a Letter of Credit issuance as contemplated by Section 2.3(c) (Drawings and Reimbursements; Funding of Participations). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of eight (8) Term SOFR Borrowings outstanding.

(D) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Loan if the Interest Period requested with respect thereto would end after the Maturity Date.

**2.2 Requests for Borrowings.** To request a Borrowing, the Borrower shall provide the Administrative Agent a fully executed Borrowing Notice by e-mail, or facsimile or notify the Administrative Agent by telephone, to be promptly confirmed by e-mail or facsimile of a fully executed Borrowing Notice (a) in the case of a Term SOFR Borrowing, not later than 2:00 p.m. (New York City time), three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m. (New York City time), on the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of a Letter of Credit as contemplated by Section 2.3(c) (Drawings and Reimbursements; Funding of Participations) may be given not later than 12:00 p.m. (New York City time), on the date of the proposed Borrowing. Each such Borrowing Notice shall be irrevocable and, if telephonic, shall be confirmed promptly by e-mail or facsimile to the Administrative Agent of a written Borrowing Notice signed by the Borrower. Each such telephonic and written Borrowing Notice shall specify the following information in compliance with Section 2.1 (Loans):

- (a) the aggregate amount of the requested Borrowing;
- (b) the date of such Borrowing, which shall be a Business Day;
- (c) whether such Borrowing is to be an ABR Borrowing or a Term SOFR Borrowing;

(d) in the case of a Term SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and

(e) the location and number of the Borrower’s account to which funds are to be disbursed

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Term SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Notice in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Borrowing.

### 2.3 Letters of Credit.

(a) Letter of Credit Commitment. Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in reliance upon the agreements of the Borrower set forth in this Section 2.3 (Letters of Credit), (A) from time to time on any Business Day during the period from the first Credit Date to occur until at least thirty days prior to the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it in accordance with subsection (b) below, and (B) to honor complying presentations under the Letters of Credit and (ii) each Lender severally agrees to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the L/C Obligations with respect to all Letters of Credit issued by each Issuing Bank shall not exceed such Issuing Bank’s Letter of Credit Issuance Commitment; (y) the Total Utilization of Revolving Commitments shall not exceed the Revolving Commitments then in effect; and (z) the aggregate Outstanding Amount of the Loans of any Lender, plus such Lender’s Pro Rata Share of the L/C Obligations shall not exceed such Lender’s Revolving Commitment. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower’s ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and fully reimbursed.

(i) No Issuing Bank shall issue any Letter of Credit, if:

(A) subject to Section 2.3(b)(iii) (Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit), the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless such Issuing Bank and the Required Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders and the applicable Issuing Bank have approved such expiry date.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the applicable Issuing Bank, the requested Letter of Credit is in an initial stated amount less than \$50,000;

(D) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder;

(E) the proposed use of the Letter of Credit is not in accordance with Section 2.5(b) (*Use of Proceeds*); or

(F) the requested form of such Letter of Credit is not acceptable to the Issuing Bank, in its reasonable discretion.

(iii) No Issuing Bank shall amend any Letter of Credit if such Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(iv) An Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(v) Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Issuing Banks shall have all of the benefits and immunities (A) provided to the Administrative Agent in Section 9 (*Agents*) with respect to any acts taken or omissions suffered by any Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Section 9 (*Agents*) included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to each Issuing Bank.



(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit

(i) Subject to Section 3 (*Conditions Precedent*), each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to the applicable Issuing Bank during the period specified in Section 2.3(a) (*Letter of Credit Commitment*) (with a copy to the Administrative Agent) in the form of an Issuance Notice, appropriately completed and signed by an Authorized Officer of Borrower. Such Issuance Notice or Letter of Credit application, as applicable, must be received by the applicable Issuing Bank and Administrative Agent not later than 12:00 p.m. (New York City time) at least one (1) Business Day (or such later date and time as the Administrative Agent and the applicable Issuing Bank may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Issuance Notice or Letter of Credit application, as applicable, shall specify in form and detail satisfactory to the applicable Issuing Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof (including a final expiration date in the case of an Auto-Extension Letter of Credit); (D) the name and address of the beneficiary thereof; (E) the form of such letter of credit (which shall be in compliance with the requirements of this Section 2.3 (*Letters of Credit*)) and the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit, which shall be in accordance with Section 2.5(b) (*Use of Proceeds*), or as otherwise approved by the Issuing Bank in its sole discretion; and (H) such other matters as the applicable Issuing Bank may reasonably require and shall be accompanied by such application as the applicable Issuing Bank may specify to the Borrower for use in connection with such requested Letter of Credit and such other information as shall demonstrate compliance of such Letter of Credit with the requirements specified in this Agreement and the relevant application. In the case of a request for an amendment of any outstanding Letter of Credit, such Issuance Notice or Letter of Credit application, as applicable, shall specify in form and detail satisfactory to the applicable Issuing Bank (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the applicable Issuing Bank may reasonably require and shall be accompanied by such application as the applicable Issuing Bank may specify to the Borrower for use in connection with such requested Letter of Credit and such other information as shall demonstrate compliance of such Letter of Credit with the requirements specified in this Agreement and the relevant application. Additionally, Borrower shall furnish to the applicable Issuing Bank and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the applicable Issuing Bank or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Issuance Notice and/or Letter of Credit application, as applicable, the applicable Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Issuance Notice and/or Letter of Credit application, as applicable, from the Borrower and, if not, such Issuing Bank will provide the Administrative Agent with a copy thereof, and the Administrative Agent shall notify the Lenders of such Issuance Notice and/or Letter of Credit application. Unless the applicable Issuing Bank has received written notice from any Lender, Administrative Agent or any Loan Party, in any case, at least one (1) Business Day

prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 3.2 (*Conditions to Each Credit Extension not on the Closing Date*) shall not then be satisfied, then, subject to the terms and conditions hereof, the applicable Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with such Issuing Bank's usual and customary business practices and, with respect to any amendment of a Letter of Credit, so long as the amendment is satisfactory to the Issuing Bank. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to (regardless of whether the conditions set forth in Section 3.2 (*Conditions to Each Credit Extension not on the Closing Date*) have been satisfied), purchase from the applicable Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Issuance Notice and/or Letter of Credit application, as applicable, the applicable Issuing Bank shall issue a Letter of Credit that has automatic extension provisions (each, an “**Auto-Extension Letter of Credit**”); provided that any such Auto-Extension Letter of Credit must permit such Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a date to be agreed in each such twelve-month period at the time such Letter of Credit is issued (the “**Non-Extension Notice Date**”). Once an Auto-Extension Letter of Credit has been issued, unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to such Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, each Lender shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the applicable Issuing Bank shall not permit any such extension if (A) such Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.3(a) (*Letter of Credit Commitment*) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 3 (*Conditions Precedent*) is not then satisfied (or a Default or Event of Default has occurred and is continuing), and in each such case directing such Issuing Bank not to permit such extension.

(iv) Subject to Section 2.3(a)(ii)(E) (*Letter of Credit Commitment*), if the Borrower so requests in any applicable Issuance Notice and/or Letter of Credit application, as applicable, the applicable Issuing Bank shall issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an “**Auto-Reinstatement Letter of Credit**”). Once an Auto-Reinstatement Letter of Credit has been issued, unless otherwise directed by the applicable Issuing Bank in its sole discretion, Borrower shall not be required to make a specific request to such Issuing Bank to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, each Lender shall be deemed to have authorized (but may not require) the applicable Issuing Bank to and the applicable Issuing Bank shall permit the reinstatement of all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits such

Issuing Bank to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the “**Non-Reinstatement Deadline**”), such Issuing Bank shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Reinstatement Deadline from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 3 (*Conditions Precedent*) is not then satisfied (or a Default or Event of Default has occurred and is continuing) (treating such reinstatement as an L/C Credit Extension for purposes of this clause) and, in each case, directing such Issuing Bank not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower, the Administrative Agent and each Lender a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify the Borrower, the Administrative Agent and the Lenders thereof. Not later than 1:00 p.m. (New York City time) on the date of any payment by the applicable Issuing Bank under a Letter of Credit in accordance with normal banking procedures in the place of payment (each such date, an “**Honor Date**”), the Borrower shall reimburse such Issuing Bank in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse such Issuing Bank by such time, such Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”) and the amount of such Lender’s Pro Rata Share thereof. In such event, Borrower shall be deemed to have requested a Loan from such Issuing Bank that is an ABR Loan to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.1 (*Loans*) for the principal amount of ABR Loans or the conditions set forth in Section 3 (*Conditions Precedent*). Any notice given by an Issuing Bank, Administrative Agent or any Lender pursuant to this Section 2.3(c)(i) (*Drawings and Reimbursements; Funding of Participations*) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall, upon receiving any notice pursuant to Section 2.3(c)(i) (*Drawings and Reimbursements; Funding of Participations*), make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of, the applicable Issuing Bank at the Principal Office designated by such Issuing Bank in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the applicable Issuing Bank (with a copy to the Administrative Agent and the Borrower), whereupon, each Lender that so makes funds available shall be deemed to have made a Loan that is an ABR Loan to the Borrower in such Unreimbursed Amount.

(iii) Until each Lender funds its Loans pursuant to this Section 2.3(c) (Drawings and Reimbursements; Funding of Participations) to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of such Issuing Bank.

(iv) Each Lender's obligation to make Loans to reimburse the applicable Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.3(c) (Drawings and Reimbursements; Funding of Participations), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any Issuing Bank, Borrower, any Subsidiary Guarantor or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default or Event of Default; (C) the form, validity, sufficiency, accuracy, genuineness or legal effect of any Letter of Credit or any document submitted by any party in connection with the application for and issuance of a Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (D) failure of the beneficiary to comply fully with the conditions required in order to demand payment under a Letter of Credit; or (E) any other occurrence, event or condition, whether or not similar to any of the foregoing, including any of the events specified in Section 2.3(f) (Obligations Absolute). No such making of a Loan shall relieve or otherwise impair the obligation of Borrower to reimburse the applicable Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(v) If any Lender fails to make available to the applicable Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.3(c) (Drawings and Reimbursements; Funding of Participations) by the time specified in Section 2.3(c)(ii) (Drawings and Reimbursements; Funding of Participations), then, without limiting the other provisions of this Agreement, such Issuing Bank shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the L/C Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan, included in the relevant Revolving Commitment. A certificate of the applicable Issuing Bank submitted to any Lender (with a copy to the Administrative Agent and the Borrower) with respect to any amounts owing under this clause (v) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the applicable Issuing Bank has made a payment under any Letter of Credit and has received from any Lender such Lender's Pro Rata Share of the Unreimbursed Amount in respect of such payment in accordance with Section 2.3(c) (Drawings and Reimbursements; Funding of Participations), if such Issuing Bank receives any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the applicable Issuing Bank pursuant to Section 2.3(c)(i) (Drawings and Reimbursements; Funding of Participations) is required to be returned under any of the circumstances described in Section 10.11 (Marshalling; Payments Set Aside) (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Lender shall pay to such Issuing Bank its Pro Rata Share thereof on demand of such Issuing Bank, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the L/C Overnight Rate. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Cash Collateralization Upon Event of Default. Upon the occurrence and during the continuation of an Event of Default under Section 8 (Events of Default), the Administrative Agent may, and at the direction of the Required Lenders shall, require the Borrower to Cash Collateralize the L/C Obligations.

(f) Obligations Absolute. The obligation of Borrower to reimburse the applicable Issuing Bank for each drawing under each Letter of Credit and to repay each Loan, in either case, deemed made pursuant to Section 2.3(c)(ii) (Drawings and Reimbursements; Funding of Participations) shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Financing Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) waiver by the Issuing Bank of any requirement that exists for the Issuing Bank's protection and not the protection of Borrower or any waiver by the Issuing Bank which does not in fact materially prejudice Borrower;
- (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by the Issuing Bank in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC or the ISP, as applicable;

(vii) any payment by the applicable Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the applicable Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any amendment or waiver of or any consent or departure from all or any of the provisions of the Financing Documents or Letter of Credit;

(ix) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Borrower or any Subsidiary; or

(x) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any Subsidiary.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the applicable Issuing Bank. Borrower shall be conclusively deemed to have waived any such claim against such Issuing Bank and its correspondents unless such notice is given as aforesaid.

(g) Role of an Issuing Bank. Each applicable Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the applicable Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Banks, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any Issuing Bank shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (ix) of Section 2.3(f) (Obligations Absolute); provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against any Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which Borrower proves were caused by such Issuing Bank's willful misconduct or gross negligence or such Issuing Bank's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of all the documents specified in such Letter of Credit

strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, any Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and such Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Issuing Bank may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (“**SWIFT**”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(h) Applicability of ISP. Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a Letter of Credit is issued or when it is amended with the consent of the beneficiary thereof, the rules of the ISP shall apply to each Letter of Credit and as to all matters not governed thereby, the law of the State of New York. Notwithstanding the foregoing, no Issuing Bank shall be responsible to the Borrower for, and each Issuing Bank’s rights and remedies against Borrower shall not be impaired by, any action or inaction of such Issuing Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law or any order of a jurisdiction where such Issuing Bank or the beneficiary is located, the practice stated in the ISP, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Letter of Credit Fees. Borrower shall pay to the Administrative Agent for the account of each Lender, in accordance with its Pro Rata Share, a Letter of Credit fee (the “**Letter of Credit Fee**”) for each Letter of Credit equal to the Applicable Margin for Loans, that are Term SOFR Loans times the daily maximum aggregate amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable Issuing Bank pursuant to Section 2.20 (Defaulting Lenders) shall be payable, to the maximum extent permitted by applicable law, to the other Lenders in accordance with the upward adjustments in their respective Pro Rata Share allocable to such Letter of Credit pursuant to Section 2.20(a)(iii) (Certain Fees), with the balance of such fee, if any, payable to such Issuing Bank for its own account. For purposes of computing the daily maximum aggregate amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.5 (Letter of Credit Amounts). Letter of Credit Fees shall be (i) due and payable on each Interest Payment Date for ABR Loans (commencing with the first such date to occur after the issuance of such Letter of Credit), on the Letter of Credit Expiration Date and thereafter on demand (to the extent remaining unpaid) and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily maximum aggregate amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of Issuing Banks having aggregate Letter of Credit Issuance Commitments in excess of

50% of all of the aggregate Letter of Credit Issuance Commitments, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Letter of Credit Fees Default Rate.

(j) Documentary and Processing Charges Payable to applicable Issuing Bank. Borrower shall pay directly to the applicable Issuing Bank, for its own account, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank in connection with Letters of Credit issued by such Issuing Bank as from time to time in effect. Such customary fees and standard costs and charges, if any, are due and payable on demand and are nonrefundable.

(k) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of a Subsidiary, Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. Borrower and the Subsidiary Guarantors hereby acknowledge that the issuance of Letters of Credit in support of any obligations of Subsidiaries, inures to the benefit of Borrower and such Subsidiaries, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(m) Resignation as Issuing Bank. Any Issuing Bank may, upon 60 days' notice to the Borrower and Administrative Agent, resign as Issuing Bank. In the event of any such resignation as Issuing Bank, the Borrower or, if the Borrower fails to make such appointment in 30 days, the Administrative Agent shall be entitled to appoint a Person with the Required Ratings who is also an Eligible Assignee and reasonably satisfactory to the Administrative Agent as a successor Issuing Bank hereunder. If any Issuing Bank resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of an Issuing Bank hereunder with respect to all Letters of Credit that it issued, including Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all L/C Obligations with respect thereto. Upon the appointment of a successor Issuing Bank, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable Issuing Bank to effectively assume the obligations of such Issuing Bank with respect to such Letters of Credit and (c) the resigning Issuing Bank shall assign its Letter of Credit Issuance Commitment to issue Letters of Credit and Loans, as applicable, to such successor Issuing Bank.

(n) Replacement of Issuing Banks.

(i) If at any time an Issuing Bank ceases to have the Required Ratings, then such Issuing Bank shall promptly, and in any event within two (2) Business Days after such cessation, notify the Borrower thereof and the Borrower may, upon 30 days' prior written notice, in each case, to such Issuing Bank and Administrative Agent, (A) (x) elect to replace such Issuing Bank in its capacity as an Issuing Bank with a Person selected by the Borrower with the Required Ratings so long as such Person is an Eligible Assignee and is reasonably satisfactory to the Administrative Agent and (y) cause such Issuing Bank to assign its Letter of Credit Issuance Commitment to issue Letters of Credit to the successor Issuing Bank or (B) cause such Issuing Bank to assign its Letter of Credit Issuance Commitment to issue Letters of Credit to another or



additional Issuing Bank with the Required Ratings selected by the Borrower, so long as such Person is an Eligible Assignee and is reasonably satisfactory to the Administrative Agent; and

(ii) The Borrower shall notify the Administrative Agent of any such replacement of an Issuing Bank pursuant to paragraph (i) above. At the time any such replacement shall become effective, the Borrower shall have (A) paid all unpaid fees and Unreimbursed Amounts accrued for the account of the replaced Issuing Bank and (B) effected the Cash Collateralization at 102% of the replaced Issuing Bank's Letters of Credit outstanding at such time or the cancellation and return to the replaced Issuing Bank, of its Letters of Credit outstanding at such time. From and after the effective date of any such replacement, (1) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (2) references herein to the term "**Issuing Bank**" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights, powers, privileges and duties of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such collateralization or replacement but shall not be required to issue additional Letters of Credit.

#### 2.4 Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares.

(i) All Loans made pursuant to Section 2.1 (Loans) shall be made by Lenders simultaneously and proportionately to their Pro Rata Shares.

(ii) No Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan in respect of which such other Lender has a Revolving Commitment requested hereunder or to purchase a participation required hereby nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan in respect of which such other Lender has a Revolving Commitment requested hereunder or to purchase a participation required hereby.

(b) Availability of Funds. Unless the Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender, as the case may be, does not intend to make available to the Administrative Agent the amount of such Lender's Loan requested on such Credit Date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such Credit Date and the Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to the Borrower a corresponding amount on such Credit Date (any such amount made available by the Administrative Agent to the Borrower, the "**Corresponding Amount**"). If such Corresponding Amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such Corresponding Amount on demand from such Lender, together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Alternate Base Rate. In the event that the Administrative Agent does not make available to the Borrower a requested amount on the applicable Credit Date until such time as all applicable Lenders have made payment to the Administrative Agent, the Administrative Agent shall deem

any payment by or on behalf of a Lender hereunder that is not made in immediately available funds prior to the time period specified herein and such delay causes the Administrative Agent's failure to fund to the Borrower in accordance with its Borrowing Notice, a non-conforming payment and such Lender, as the case may be, shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by the Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender, as the case may be, does not pay such Corresponding Amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such Corresponding Amount to the Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for ABR Loans for such Loans. Nothing in this Section 2.4(b) (Availability of Funds) shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitments hereunder or to prejudice any rights that the Borrower may have against any Lender as a result of any default by such Lender hereunder.

## **2.5 Use of Proceeds.**

(a) Revolving Loans. The proceeds of the Loans made on any Credit Date shall be applied by the Borrower for (i) the refinancing and replacement of loans outstanding under the Existing Revolving Credit Facility Agreement, (ii) fees and expenses related to this Agreement and (iii) the general corporate purposes of the Borrower and/or its Subsidiaries.

(b) Letters of Credit. Letters of Credit may be applied by the Borrower for general corporate purposes of the Borrower and/or its Subsidiaries.

## **2.6 Evidence of Debt; Lenders' Books and Records; Notes.**

(a) Lenders' Evidence of Debt. Each Lender and Issuing Bank shall maintain on its internal records an account or accounts evidencing the Obligations of the Borrower to such Lender or Issuing Bank, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on the Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's or Issuing Banks' Revolving Commitment or Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's or Issuing Bank's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of all Lenders and Issuing Banks; the Revolving Commitment, Letter of Credit Issuance Commitment, Loans and L/C Obligations of each Lender and Issuing Bank; and principal amounts (and stated interest) of the Loans owing to each Lender or Issuing Bank pursuant to the terms hereof from time to time (the "**Register**"). The Register shall be available for inspection by the Borrower or any Lender or Issuing Bank (with respect to (i) any entry relating to such Lender's or Issuing Bank's Loans or L/C Obligations or (ii) the identity of the other Lenders and Issuing Banks (but not any information with respect to such other Lenders' or Issuing Bank's Loans or L/C Obligations)) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and the Loans in accordance with the provisions of Section 10.7

(*Successors and Assigns; Participations*), and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on the Borrower, each Lender and each Issuing Bank, absent manifest error; provided, that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's or Issuing Bank's Revolving Commitment or Letter of Credit Issuance Commitment or Borrower's Obligations in respect of any Loan. Borrower hereby designates Administrative Agent to serve as Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.6 (*Evidence of Debt; Lenders' Books and Records; Notes*), and the Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute Indemnitees.

(c) Notes. If so requested by any Lender by written notice to the Borrower (with a copy to the Administrative Agent) at least two (2) Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.7 (*Successors and Assigns; Participations*)) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after receipt by the Borrower of such notice) a Note or Notes to evidence such Lender's Loan, as the case may be.

## **2.7 Interest on Loans.**

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows (without duplication of amounts payable in connection with Section 2.7(f) (*Interest on Loans*)):

(i) if an ABR Loan, at the Alternate Base Rate plus the Applicable Margin; or

(ii) if a Term SOFR Loan, at the Term SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Loan, and the Interest Period with respect to any Term SOFR Loan, shall be selected by the Borrower and notified to the Administrative Agent and Lenders pursuant to the applicable Borrowing Notice or Conversion/Continuation Notice, as the case may be.

(c) In connection with Term SOFR Loans there shall be no more than eight (8) Interest Periods outstanding at any time with respect to each Loan. In the event Borrower fails to specify between a Type of Loan in the applicable Borrowing Notice or Conversion/Continuation Notice, such Loan (if not then outstanding, will be made as (or if outstanding as an ABR Loan will remain as) an ABR Loan, or if outstanding as a Term SOFR Loan, will be automatically converted into an ABR Loan on the last day of the then current Interest Period for such Loan). In the event Borrower fails to specify an Interest Period for any Term SOFR Loan in the applicable Borrowing Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 12:00 p.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding

upon all parties) the interest rate that shall apply to the Term SOFR Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender.

(d) Interest payable pursuant to Section 2.7(a) (Interest on Loans) shall be computed (i) in the case of ABR Loans on the basis of a 365 or 366 day year, as the case may be, and (ii) in the case of Term SOFR Loans, on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted from a Term SOFR Loan, the date of conversion of such Term SOFR Loan to such ABR Loan shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to an ABR Loan being converted to a Term SOFR Loan, the date of conversion of such ABR Loan to such Term SOFR Loan, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; (iii) shall accrue on a daily basis and shall be payable on any day that a Term SOFR Loan is converted prior to the expiration of the Interest Period applicable to such Term SOFR Loan, and (iv) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided, however, with respect to any voluntary prepayment of an ABR Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

(f) Without duplication of any amounts payable under Section 2.7(a) (Interest on Loans), Borrower agrees to pay to each Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by such Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the date that is one (1) Business Day immediately following the date on which such drawing is honored, the rate of interest otherwise payable hereunder with respect to Loans that are ABR Loans, and (ii) thereafter, a rate which is 2% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Loans that are ABR Loans.

(g) Interest payable pursuant to Section 2.7(f) (Interest on Loans) shall be computed on the basis of a 365/366 day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by any Issuing Bank of any payment of interest pursuant to Section 2.7(f) (Interest on Loans), such Issuing Bank shall distribute to each Lender, out of the interest received by such Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which such Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit.

In the event any Issuing Bank shall have been reimbursed by a Lender for all or any portion of such honored drawing, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.3(c) (*Drawings and Reimbursements; Funding of Participations*) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by such Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which such Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by the Borrower.

## **2.8 Conversion/Continuation.**

(a) Subject to Section 2.16 (*Making or Maintaining SOFR Rate Loans*) and so long as no Default or Event of Default shall have occurred and then be continuing.

(i) Borrower shall have the option to convert at any time all or any part of any Loans, equal to \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Term SOFR Loan may only be converted prior to the expiration of the Interest Period applicable to such Term SOFR Loan if the Borrower shall pay all amounts due under Section 2.16 (*Making or Maintaining SOFR Rate Loans*) in connection with any such conversion; or

(ii) in the case of Term SOFR Loans, Borrower shall have the option upon the expiration of any Interest Period applicable to any Term SOFR Loan, to continue all or any portion of such Loan equal to \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount as a Term SOFR Loan.

(b) Subject to Section 3.3 (*Notices*), Borrower shall deliver a Conversion/Continuation Notice to the Administrative Agent no later than 12:00 p.m. (New York City time) at least one (1) Business Day in advance of the proposed conversion date, in the case of a conversion to an ABR Loan, and at least three (3) Business Days in advance of the proposed Conversion/Continuation Date, in the case of a conversion to, or a continuation of, a Term SOFR Loan. Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Term SOFR Loans shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Borrowing Notice or Conversion/Continuation Notice has not been delivered to the Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be an ABR Loan.

(c) Each notice pursuant to this Section 2.8 (*Conversion/Continuation*) shall refer to this Agreement and specify (A) the identity, amount and currency of the Borrowing that the Borrower requests be converted or continued, (B) whether such Borrowing is to be converted to or continued as a Term SOFR Borrowing or an ABR Borrowing, (C) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (D) if such Borrowing is to be converted to or continued as a Term SOFR Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Term SOFR Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise the Lenders of any notice given pursuant to this Section 2.8 (*Conversion/Continuation*) and of each

Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given notice in accordance with this Section 2.8 (Conversion/Continuation) to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.8 (Conversion/Continuation) to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted or continued into an ABR Borrowing.

**2.9 Default Interest.** Upon the occurrence and during the continuance of an Event of Default pursuant to Section 8.1(e) (Involuntary Bankruptcy; Appointment of Receiver, Etc.), Section 8.1(f) (Voluntary Bankruptcy; Appointment of Receiver, Etc.) or, at the direction of the Required Lenders, Sections 8.1(a) (Failure to Make Payments When Due), the overdue principal amount of all Loans outstanding and, to the extent permitted by applicable law, any overdue interest payments on the Loans or any fees or other amounts owed hereunder (including Letter of Credit Fees ("**Letter of Credit Fees Default Rate**")), shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans); provided, in the case of Term SOFR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Term SOFR Loans shall thereupon become ABR Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for ABR Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.9 (Default Interest) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Administrative Agent, any Lender or any Issuing Bank.

**2.10 Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.3(a) (Letter of Credit Commitment):

(a) Borrower agrees to pay to Lenders, as applicable, having Revolving Exposure, commitment fees equal to the Applicable Margin multiplied by the average of the daily difference between (i) the Revolving Commitments and (ii) the aggregate principal amount of (A) all outstanding Loans, plus (B) the L/C Obligations (collectively, "**Commitment Fees**").

(b) All Commitment Fees shall be paid to the Administrative Agent at its Principal Office and upon receipt, the Administrative Agent shall promptly distribute to each applicable Lender its Pro Rata Share thereof.

(c) All Commitment Fees shall be calculated on the basis of a 360 day year and the actual number of days elapsed and shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year during the Availability Period, commencing on the first such date to occur after the Closing Date, and on the Maturity Date (or, if earlier, the Revolving Commitment Termination Date).

(d) Borrower agrees to pay to each Issuing Bank, a fee in respect of each Letter of Credit issued by such Issuing Bank (the “**Fronting Fee**”), for the period from and including the date of issuance of such Letter of Credit to but excluding the termination or expiration date of such Letter of Credit, equal to 0.15% per annum multiplied by an amount equal to (a) the average daily stated amount of such Letter of Credit minus (b) an amount equal to the product of (i) the average daily stated amount of such Letter of Credit multiplied by (ii) the Pro Rata Share of such Letter of Credit participated in by such Issuing Bank in its capacity as Lender. The Fronting Fee shall be (x) due and payable on each Interest Payment Date for ABR Loans, commencing on the first such day to occur after a Letter of Credit has been issued by the applicable Issuing Bank in respect of which other Lenders have a participation and (y) computed on the basis of a year of three hundred sixty (360) days and shall be payable the actual number of days elapsed (including the first but excluding the last day).

(e) In addition to any of the foregoing fees, Borrower agrees to pay to the Administrative Agent for the account of the Lenders and Issuing Banks such other fees in the amounts and at the times separately agreed upon (including pursuant to the Fee Letter).

## 2.11 Voluntary Prepayments; Commitment Reductions.

### (a) Voluntary Prepayments.

(i) At any time and from time to time the Borrower may prepay Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount (provided that, in any such case, such minimum amounts shall not apply to a prepayment of all outstanding Loans);

(ii) All such prepayments shall be made:

(A) upon not less than one (1) Business Day’s prior written or telephonic notice in the case of ABR Loans;

and

(B) upon not less than three (3) Business Days’ prior written or telephonic notice in the case of Term SOFR

Loans;

in each case given to the Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to the Administrative Agent (and the Administrative Agent will promptly transmit such original notice for Loans, by facsimile or telephone to each applicable Lender or Issuing Bank). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided, that such prepayment obligation may be conditioned on the occurrence of any subsequent event (including

a refinancing transaction). Any such voluntary prepayment shall be applied as specified in Section 2.13 (*Application of Prepayments*).

(b) Voluntary Commitment Reductions.

(i) Borrower may, upon not less than three (3) Business Days' prior written or telephonic notice promptly confirmed by delivery of written notice thereof to the Administrative Agent (which original written notice Administrative Agent will promptly transmit by facsimile or telephone to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Borrower's notice and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof; provided, that any such termination or reduction may be conditioned on the occurrence of any subsequent event (including a refinancing transaction).

(iii) If, after giving effect to any reduction of the Revolving Commitments, the aggregate Letter of Credit Issuance Commitments exceed the aggregate Revolving Commitments, the Issuing Banks and the Borrower shall agree on how to allocate such excess to reductions of the Letter of Credit Issuance Commitments; provided, that if the Issuing Banks and the Borrower shall not so agree within thirty (30) days of giving effect to such reduction, such allocation shall be made pro rata across all unused Letter of Credit Issuance Commitments.

**2.12 Mandatory Prepayments.**

If the aggregate principal balance of the Loans plus all outstanding Letters of Credit exceeds the Total Utilization of Revolving Commitments, then the Administrative Agent shall notify Borrower of the same. The Borrower shall pay or prepay three (3) Business Days after receiving such notice such that the aggregate balance of the Loans plus all outstanding Letters of Credit does not exceed the Total Utilization of Revolving Commitments after giving effect to such payments or prepayments.

**2.13 Application of Prepayments.**

With respect to each payment or prepayment made pursuant to Section 2.11 (*Voluntary Prepayments; Commitment Reductions*) or Section 2.12 (*Mandatory Prepayments*), such prepayment of the Loans shall be applied as directed by the Borrower as between any outstanding Loans and pro-rata to each Lender in respect of each Loan.

**2.14 General Provisions Regarding Payments.**



(a) All payments by any Loan Party of principal, interest, fees and other Obligations shall be made in immediately available funds, without reduction, defense, recoupment, setoff or counterclaim, free of any restriction or condition, and, except as otherwise required herein, delivered to the Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of Lenders.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) The Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender's or Issuing Bank's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by the Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Conversion/Continuation Notice is withdrawn as to any Affected Lender or if any Affected Lender makes ABR Loans, in lieu of its Pro Rata Share of any Term SOFR Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(e) Subject to the provisos set forth in the definition of "Interest Period" as they may apply to Loans, whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and, with respect to such Loans only, such extension of time shall be included in the computation of the payment of interest hereunder or of the Revolving Commitment fees hereunder.

(f) The Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in immediately available funds prior to 3:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by the Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. The Administrative Agent shall give prompt telephonic notice to the Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Interest and fees shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.9 (Default Interest) from the date such amount was due and payable until the date such amount is paid in full.

**2.15 Ratable Sharing.** Lenders hereby agree among themselves that, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Financing Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and

other amounts then due and owing to such Lender hereunder or under the other Financing Documents (collectively, the “**Aggregate Amounts Due**” to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify the Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of the Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. The Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker’s lien, consolidation, set off or counterclaim with respect to any and all monies owing by the Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.15 (Ratable Sharing) shall not be construed to apply to (a) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

## **2.16 Making or Maintaining SOFR Rate Loans.**

(a) Inability to Determine Rates. Subject to Section 2.30 (Effect of Benchmark Replacement), if:

(i) the Administrative Agent determines reasonably and in good faith (which determination shall be conclusive absent manifest error) prior to the commencement of any Interest Period for a Term SOFR Borrowing, that adequate and reasonable means do not exist for ascertaining the Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis) for such Interest Period, or

(ii) the Administrative Agent is advised by the Required Lenders reasonably and in good faith that prior to the commencement of any Interest Period for a Term SOFR Borrowing, the Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Borrowings (or its Borrowings) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until (x) the Administrative Agent notifies the Borrower and the Lenders, or the Required Lenders notify the Administrative Agent and the Borrower, as the case may be, that the circumstances giving rise to such notice no longer exist with respect to the relevant benchmark rate (which notice shall be delivered within five (5) Business Days after such circumstances cease to exist) and (y) the Borrower delivers a notice of conversion or continuation in accordance with the terms of Section 2.8 (Conversion/Continuation) or a Borrowing Notice in accordance with the terms of

Section 2.2 (Requests for Borrowings), any notice of conversion or continuation that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term SOFR Borrowing, or any notice of Borrowing that requests a Term SOFR Borrowing, may be revoked by the Borrower and, failing that, shall instead be deemed to be a notice of conversion or continuation or a Borrowing Notice for an ABR Loan. Furthermore, if any Term SOFR Loan is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.16(a) (Inability to Determine Rates) with respect to the Term SOFR Rate, then until (x) the Administrative Agent notifies the Borrower and the Lenders, or the Required Lenders notify the Administrative Agent and the Borrower, as the case may be, that the circumstances giving rise to such notice no longer exist with respect to the relevant benchmark rate (which notice shall be delivered within five (5) Business Days after such circumstances cease to exist) and (y) the Borrower delivers a new notice of conversion or continuation in accordance with the terms of Section 2.8 (Conversion/Continuation) or a new Borrowing Notice in accordance with the terms of Section 2.2 (Requests for Borrowings), any such Term SOFR Loan shall on the last day of the Interest Period applicable to such Term SOFR Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute an ABR Loan.

(b) Illegality. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Term SOFR Loans (the "**Affected Lender**"), then, by written notice to the Borrower (which notice shall include documentation or information in reasonable detail supporting the conclusions in such notice) and to the Administrative Agent (an "**Illegality Notice**"), (a) any obligation of such Affected Lender to make Term SOFR Loans, and any right of the Borrower to continue Term SOFR Loans of such Affected Lender or to convert ABR Loans of such Affected Lender to Term SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Alternate Base Rate", in each case until such Affected Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon written demand from such Affected Lender (with a copy to the Administrative Agent), prepay or, at the Borrower's option, convert all Term SOFR Loans of such Affected Lender to ABR Loans (the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to clause (c) of the definition of "Alternate Base Rate"), on the last day of the Interest Period therefor, if such Affected Lender may lawfully continue to maintain such Term SOFR Loans to such day, or immediately, if such Affected Lender may not lawfully continue to maintain such Term SOFR Loans to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.16(c) (Compensation for Losses).

(c) Compensation for Losses. In the event of (a) the payment of any principal of any Term SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Term SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 (Voluntary

*Prepayments; Commitment Reductions*) and is revoked in accordance therewith), or (d) the assignment of any Term SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 (*Obligation to Mitigate*), then, in any such event, the Borrower shall compensate each applicable Lender for the reasonable loss, cost and expense attributable to such event (other than loss of anticipated profits). A certificate of any Lender setting forth any amount or amounts which such Lender believes it is entitled to receive pursuant to this Section 2.16(c) (*Compensation for Losses*), including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate, shall be delivered to the Borrower and shall, absent clearly demonstrable error, be final and conclusive and binding. The Borrower shall pay such Lender the undisputed amount shown as due on any such certificate within 30 days after receipt thereof.

## **2.17 Increased Costs; Capital Adequacy.**

(a) Compensation for Increased Costs and Taxes. Subject to the provisions of Section 2.18 (*Taxes; Withholding, Etc.*) (which shall be controlling with respect to the matters covered thereby), in the event that (A) any treaty, Government Rule or guideline, or any change therein or in the interpretation, administration or application thereof (regardless of whether the underlying treaty, Government Rule or guideline was issued or enacted prior to the Closing Date), including the introduction of any new treaty, Government Rule or guideline but excluding solely proposals thereof, or any determination of a court or governmental authority, in each case that becomes effective after the Closing Date, or (B) any guideline, request or directive by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law) or any implementation rules or interpretations of previously issued guidelines, requests or directives, in each case that is issued or made after the Closing Date (in each case, a **“Change in Law”**): (i) subjects any Lender (which term shall include the Administrative Agent and Issuing Bank for purposes of this Section 2.17(a) (*Compensation for Increased Costs and Taxes*)) (or its applicable lending office or Affiliate) or any company controlling such Lender to any additional Tax (other than any Indemnified Taxes, Other Taxes covered by Section 2.18 (*Taxes; Withholding, Etc.*) and Excluded Taxes) with respect to this Agreement or any of the other Financing Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender’s obligations hereunder; and the result of any of the foregoing is to increase the cost or decrease the yield to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) hereunder; then, in any such case, the Borrower shall pay to such Lender, within 30 days following receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in yield or amounts received or receivable hereunder. Such Lender shall deliver to the Borrower (with a

copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.17(a) (*Compensation for Increased Costs and Taxes*), including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate (but such Lender shall not be required to provide any information, calculations, or criteria that are proprietary to such Lender), which statement absent clearly demonstrable error, be final and conclusive and binding.

(b) Capital Adequacy Adjustment. In the event that any Lender (which term shall include each Issuing Bank for purposes of this Section 2.17(b) (*Capital Adequacy Adjustment*)) shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that (A) the introduction, adoption, effectiveness, phase in or applicability of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or (B) compliance by any Lender (or its applicable lending office) or any company controlling such Lender with any guideline, request or directive regarding capital adequacy or liquidity (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, in each case after the Closing Date, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans, Revolving Commitments or Letters of Credit or participations therein or other obligations hereunder with respect to the Loans or Letters of Credit to a level below that which such Lender or such controlling company could have achieved but for such introduction, adoption, effectiveness, phase in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy), then from time to time, within five (5) Business Days after receipt by the Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company for such reduction. Such Lender shall deliver to the Borrower (with a copy to the Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.17(b) (*Capital Adequacy Adjustment*), including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate (but such Lender shall not be required to provide any information, calculations, or criteria that are proprietary to such Lender), which statement shall be conclusive and binding upon all parties hereto absent clearly demonstrable error. For the avoidance of doubt, for all purposes of the Financing Documents, subsections (a) and (b) of this Section 2.17 (*Increased Costs; Capital Adequacy*) shall apply to all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued or promulgated by any United States or foreign regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International Settlements, the United States regulatory authorities or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), regardless of the date adopted, issued, promulgated or implemented.

(c) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or Issuing Bank pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or Issuing Bank, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

## **2.18 Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Loan Party hereunder and under the other Financing Documents shall be paid free and clear of, and without any deduction or withholding on account of, any Tax, except to the extent required by law.

(b) Withholding of Taxes. If any Withholding Agent (but, for the avoidance of doubt, not including a Lender acting as a withholding agent with respect to payments made to its members, partners or beneficiaries) is required by law to make any deduction or withholding on account of any Tax from any sum paid or payable by any Loan Party to the Administrative Agent or any Lender under any of the Financing Documents: (i) the applicable Withholding Agent shall be entitled to make such deduction or withholding; (ii) the applicable Withholding Agent shall pay, or cause to be paid, any such Tax to the appropriate Governmental Authority before the date on which penalties attach thereto; (iii) if the tax is an Indemnified Tax and unless otherwise provided in this Section 2.18 (Taxes; Withholding, Etc.), the sum payable by such Loan Party in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of the deduction, withholding or payment for Indemnified Taxes (including such deductions and withholdings applicable to additional sums payable under this Section 2.18(b) (Withholding of Taxes)), the applicable Recipient receives a net sum equal to what it would have received had no such deduction, withholding or payment for Indemnified Taxes been required or made; and (iv) within thirty (30) days after the due date of payment of any Tax which it is required by clause (ii) above to pay, the applicable Loan Party shall (if any Loan Party is responsible for the deduction, withholding or payment) deliver to the Administrative Agent the original or a certified copy of a receipt evidencing such payment, a copy of the return reporting such payment or other evidence reasonably satisfactory to the Administrative Agent of such deduction, withholding or payment and of the remittance thereof to the relevant Governmental Authority.

### **(c) Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Financing Document shall deliver to the Borrower and Administrative Agent, at the time or times reasonably requested by the Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the

Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.18(c)(ii)(A) (Status of Lenders), 2.18(c)(ii)(B) (Status of Lenders) and 2.18(g) (Taxes; Withholding, Etc.) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender and Agent that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Financing Document, executed copies of IRS Form W-8BEN or W-8BEN-E (or applicable successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Document, IRS Form W-8BEN or W-8BEN-E (or applicable successor form), as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit J-1 to the effect that such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance**");

**Certificate”)** and (y) executed copies of IRS Form W-8BEN or W-8BEN-E (or applicable successor form), as applicable; or

(4) to the extent a Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or applicable successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-2 or Exhibit J-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Lender is a partnership and one or more direct or indirect partners of such Lender are claiming the portfolio interest exemption, such Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit J-4 on behalf of each such direct and indirect partner;

(C) any Lender that is not a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) MUFG Bank, Ltd., as the Administrative Agent, and any successor or supplemental Administrative Agent that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, shall deliver to the Borrower, on or prior to the date on which it becomes a party to this Agreement, two duly completed copies of IRS Form W-8IMY, with the effect that the Borrower may make payments to the Administrative Agent, to the extent such payments are received by the Administrative Agent as an intermediary, without deduction or withholding of any Taxes imposed by the United States.

Each Lender agrees that if any form or certification it previously delivered under this Section 2.18(c) (*Status of Lenders*) or under Section 2.18(g) (*Taxes; Withholding, Etc.*) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(d) Without limiting the provisions of Section 2.18(b) (*Taxes; Withholding, Etc.*), Borrower shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law. Borrower shall deliver to the Administrative Agent the original or certified copy of an official receipt, a copy of the return reporting such payment or other



evidence of such payment reasonably satisfactory to the Administrative Agent in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(e) Borrower shall indemnify Administrative Agent and any Lender for the full amount of Indemnified Taxes (taking into account all exceptions provided in this Section 2.18 (*Taxes; Withholding, Etc.*)) arising in connection with payments made under this Agreement or any other Financing Document (including any such Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.18 (*Taxes; Withholding, Etc.*)) payable or paid by the Administrative Agent or Lender required to be withheld or deducted from a payment to the Administrative Agent or Lender and for any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate of any Lender setting forth any amount or amounts which such Lender believes it is entitled to receive pursuant to this Section 2.18(e) (*Taxes; Withholding, Etc.*), including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate, shall be delivered to the Borrower and shall, absent clearly demonstrable error, be final and conclusive and binding. The Borrower shall pay such Lender the amount (which is absent clearly demonstrable error) shown as due on any such certificate within 30 days after receipt thereof.

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund, of any Taxes as to which it has been indemnified pursuant to this Section 2.18 (*Taxes, Withholding, Etc.*) (including by the payment of additional amounts pursuant to this Section 2.18 (*Taxes, Withholding, Etc.*)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, under this Section 2.18 (*Taxes, Withholding, Etc.*) with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Taxes resulting in such indemnification payments or additional amounts and giving rise to such refund had never been imposed and such indemnification payments or additional amounts have never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) If a payment made to a Lender under any Financing Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or Administrative Agent as may

be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.18(g) (*Taxes, Withholding, Etc.*), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(h) For purposes of this Section 2.18 (*Taxes, Withholding, Etc.*), the term "Lender" shall include any Issuing Bank and the term "applicable law" shall include FATCA.

(i) Survival. Each party's obligations under this Section 2.18 (*Taxes, Withholding, Etc.*) shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of a Lender, the termination of the Revolving Commitments and the repayment, satisfaction or discharge of all obligations under any Financing Document.

#### **2.19 Obligation to Mitigate.**

Each Lender (which term shall include each Issuing Bank for purposes of this Section 2.19 (*Obligation to Mitigate*)) agrees that, as promptly as practicable after the officer of such Lender that is directly or indirectly responsible for administering its Loans or Letters of Credit, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender to receive payments under Sections 2.16 (*Making or Maintaining SOFR Rate Loans*), 2.17 (*Increased Costs; Capital Adequacy*) or 2.18 (*Taxes; Withholding, Etc.*), it will (at the request of the Borrower), to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (a) make, issue, fund or maintain its Credit Extensions, through another office of such Lender, or (b) take such other measures as such Lender may deem reasonable, if as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender pursuant to Sections 2.16 (*Making or Maintaining SOFR Rate Loans*), 2.17 (*Increased Costs; Capital Adequacy*) or 2.18 (*Taxes; Withholding, Etc.*) would be eliminated or materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Revolving Commitments, Loans or Letters of Credit through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Revolving Commitments, Loans or Letters of Credit or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.19 (*Obligation to Mitigate*) unless the Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate of any Lender setting forth any amount or amounts which such Lender believes it is entitled to receive pursuant to this Section 2.19 (*Obligation to Mitigate*), including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate, shall be delivered to the Borrower and shall, absent clearly demonstrable error, be final and conclusive and binding.

## 2.20 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.6 (Amendments and Waivers).

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 (Events of Default) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.5 (Set Off) shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank hereunder; *third*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fourth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fifth*, to the payment of any amounts owing to the Lenders or any Issuing Bank as a result of any judgment of a court of competent jurisdiction obtained by any Lender or such Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Unreimbursed Amounts refinanced by a Loan in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 3 (Conditions Precedent) were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are funded and unfunded participations in Letters of Credit are held by the Lenders pro rata in accordance with the applicable Revolving Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.20(a)(ii) (Defaulting Lender Waterfall) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.10 (Fees) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been

required to have been paid to that Defaulting Lender); provided, such Defaulting Lender shall be entitled to receive fees pursuant to Section 2.3(i) (Letter of Credit Fees) for any period during which that Lender is a Defaulting Lender only to extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.20(d) (Cash Collateral).

(B) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (A) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the applicable Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Exposure of any such Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 2.27 (Acknowledgement and Consent to Bail-In of Affected Financial Institutions), no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders of the applicable Revolving Commitment or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the applicable Revolving Commitments (without giving effect to Section 2.20(a)(iv) (Reallocation of Participations to Reduce Fronting Exposure)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) Cash Collateral. Upon the request of Administrative Agent and any Issuing Bank, as applicable, (1) if such Issuing Bank has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an Unreimbursed Amount, or (2) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, Borrower shall, in each case, immediately Cash Collateralize 102% of the amount of all L/C Obligations.

(e) Grant of Security Interest. All Cash Collateral provided by or on behalf of Borrower (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts located in the United States, at one or more institutions selected by Administrative Agent. Borrower hereby grants to Administrative Agent, for the benefit of Administrative Agent and each Issuing Bank, and agrees to maintain, a first-priority security interest in all such Cash Collateral. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and the applicable Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(f) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.20 (Defaulting Lenders), Section 2.3 (Letters of Credit) and Section 2.11(b) (Voluntary Commitment Reductions) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(g) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the applicable Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.20 (Defaulting Lenders) following (A) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (B) the determination by the Administrative Agent that there exists excess Cash Collateral; provided that, (x) subject to the other provisions of this Section 2.20 (Defaulting Lenders), the Person providing Cash Collateral and the applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and (y) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the existence of a Default or Event of Default.

**2.21 Removal or Replacement of Lenders.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an "**Increased Cost Lender**") shall give notice to the Borrower that such Lender is an Affected Lender or such Lender is entitled to receive payments under Sections 2.16 (Making or Maintaining SOFR Rate Loans), 2.17 (Increased Costs; Capital Adequacy) or 2.18 (Taxes; Withholding, Etc.) and (ii) such Lender shall fail to withdraw such notice within five (5) Business Days after Borrower's request for such withdrawal, (b)(i) any Lender shall become a Defaulting Lender and continues to be a Defaulting Lender, and (ii) such Defaulting Lender shall fail to cure the default pursuant to Section 2.20(b) (Defaulting Lender Cure) within five (5) Business Days after Borrower's request that it cure such default, or (iii) in connection with any proposed amendment, modification, termination,

waiver or consent with respect to any of the provisions hereof or any Financing Document as contemplated by Section 10.6(b) (*Affected Lenders' Consent*) or Section 10.6(c) (*Other Consents*), the consent of Required Lenders shall have been obtained but the consent of one or more of such other Lenders (each a “**Non-Consenting Lender**”) whose consent is required shall not have been obtained; then, with respect to each such Increased Cost Lender, Defaulting Lender or Non-Consenting Lender (the “**Terminated Lender**”), the Borrower may, by giving written notice to the Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans and Revolving Commitments, if any, in full to one or more Eligible Assignee (each a “**Replacement Lender**”) in accordance with the provisions of Section 10.7 (*Successors and Assigns; Participations*) and the Borrower shall pay the fees, if any, payable thereunder in connection with any such assignment from an Increased Cost Lender, a Non-Consenting Lender or a Defaulting Lender; provided that (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.10 (*Fees*) (but, in the case of any Defaulting Lender, subject to Section 2.20(a)(iii) (*Certain Fees*)); (2) on the date of such assignment, the Borrower shall pay any amounts payable to such Terminated Lender pursuant to Sections 2.17 (*Increased Costs; Capital Adequacy*), Section 2.16(c) (*Compensation for Losses*), or Section 2.18 (*Taxes; Withholding, Etc.*) or otherwise, as if it were a prepayment (without regard to any pro rata payment obligation in respect of any other Loans); (3) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender; and (4) in the case of any such assignment resulting from a claim for payment under Section 2.17 (*Increased Costs; Capital Adequacy*) or Section 2.18 (*Taxes; Withholding, Etc.*), or payments required to be made pursuant to Section 2.18 (*Taxes; Withholding, Etc.*), such assignment will result in a reduction of such payments; provided, Borrower may not make such election with respect to any Terminated Lender that is also an Issuing Bank, unless, prior to the effectiveness of such election, Borrower shall have caused the outstanding Letters of Credit issued thereby to be cancelled or 102% Cash Collateralized. Upon the prepayment of all amounts owing to any Terminated Lender and the termination of such Terminated Lender's Revolving Commitments, if any, such Terminated Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if the Borrower exercises its option hereunder to cause an assignment by such Lender as a Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.7 (*Successors and Assigns; Participations*). In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one (1) Business Day after receipt of such notice, each Lender hereby authorizes and directs the Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.7 (*Successors and Assigns; Participations*) on behalf of a Terminated Lender and any such documentation so executed by the Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.7 (*Successors and Assigns; Participations*).

**2.22 Permitted Refinancing Debt.** The Borrower will, subject to the terms and conditions of this Section 2.22 (*Permitted Refinancing Debt*), be permitted to replace or refinance this Agreement, any Additional Secured Indebtedness, any Additional Unsecured Indebtedness or any other unsecured or secured Indebtedness (any such refinancing or replacement Indebtedness, “**Replacement Debt**”), at its sole discretion, subject to the satisfaction or waiver of the following conditions:

- (a) no Default or Event of Default shall have occurred and be continuing;
- (b) the maximum principal amount of the Replacement Debt does not exceed the sum of (i) the commitments being cancelled, plus (ii) the loans or notes being prepaid, plus (iii) all accrued interest on such loans or notes being repaid or redeemed, all premiums, reserves, termination or settlement costs, discounts, fees, costs and expenses associated with any such cancellation, prepayment, termination, unwinding or redemption incurred in connection with the Replacement Debt plus (iv) the amount required to be funded into any debt service reserve account for the benefit of the Replacement Debt lenders;
- (c) the final maturity date of the Replacement Debt shall not occur prior to the Maturity Date; and
- (d) the Replacement Debt shall otherwise be on reasonable terms and conditions, as determined by the Borrower in good faith.

**2.23 Additional Secured Indebtedness.** The Borrower may, subject to the terms and conditions of this Section 2.23 (*Additional Secured Indebtedness*), (a)(i) add one or more term loan facilities to this Agreement and the other Financing Documents or (ii) add one or more additional term loan, secured bond or other debt facilities pursuant to separate documentation (each such facility in this clause (a), “**Additional Secured Term Indebtedness**”) and/or (b)(i) add one or more senior revolving credit facilities to this Agreement and the other Financing Documents and/or (ii) add one or more additional revolving and/or letter of credit facilities pursuant to separate documentation (any such revolving or letter credit facility in this clause (b), “**Additional Secured Revolving Indebtedness**”; the Additional Secured Revolving Indebtedness and the Additional Secured Term Indebtedness are collectively referred to as “**Additional Secured Indebtedness**”), at its sole discretion, subject to the satisfaction or waiver of the following conditions:

- (a) no Default or Event of Default shall have occurred and be continuing; provided that, if the Additional Secured Indebtedness at issue will be used to effect an acquisition permitted by the Financing Documents (i) as of the date of execution of the acquisition agreement related to such acquisition, no Event of Default under the Financing Documents has occurred and is continuing, (ii) as of the date of the consummation of such acquisition, no Event of Default pursuant to Sections 8.1(a) (*Failure to Make Payments When Due*), 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver; Etc.*) and 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver; Etc.*) has occurred and is continuing and (iii) any Event of Default under the loan documents related to such Additional Secured Indebtedness has been waived or limited as agreed by the Borrower and the lenders thereunder, then the Borrower shall be permitted to effect the consummation of such acquisition and the incurrence of Additional Secured Indebtedness related thereto (it being understood that any such closing or waiver will not waive any Event of Default under the Financing Documents);

- (b) the Additional Secured Indebtedness will have a final maturity no earlier than the Maturity Date;
- (c) it shall not be guaranteed by any Subsidiary of the Borrower other than the Subsidiary Guarantors;
- (d) it shall not be secured by any Principal Property other than pursuant to Permitted Liens;

(e) either (i) the Borrower shall certify that after giving effect to the incurrence of such Additional Secured Indebtedness, the Borrower's Projected Debt Service Coverage Ratio is not less than 1.35x or (ii) two of the Rating Agencies (or one Rating Agency, if only one Rating Agency is then rating the Borrower's long-term senior unsecured debt, the Loans under this Agreement, the Existing Indenture or the corporate family of the Borrower) shall have (A) assigned or reaffirmed an Investment Grade Rating of any of (w) the Borrower's long-term senior unsecured debt, (x) the Loans under this Agreement, (y) the Existing Indenture or (z) the Borrower's corporate family or (B) determined that the existing rating for any of the foregoing is not affected (in each case, after giving effect to the incurrence of such Additional Secured Indebtedness);

(f) the rate of interest applicable to any such Additional Secured Indebtedness, and, the amortization schedule (subject to clause (b) above), pricing and fees with respect thereto shall be determined by the Borrower and the respective lenders providing such Additional Secured Indebtedness; and

(g) except as otherwise required or permitted in clauses (a) through (f) above, all other terms of such Additional Secured Indebtedness shall not be materially more favorable (taken as a whole) to the lenders or the agent of such Additional Secured Indebtedness (except for provisions which apply after the Maturity Date, as the case may be) as determined by the Borrower in good faith (unless such terms are added to this Agreement).

To the extent any Additional Secured Indebtedness is incurred pursuant to this Agreement, this Agreement and the other Financing Documents shall be amended to give effect to the Additional Secured Indebtedness by documentation executed by the lender or lenders making the commitments thereunder, the Administrative Agent and the Borrower, without the consent of any other Lender (including the Required Lenders).

**2.24 Additional Unsecured Indebtedness.** The Borrower may, subject to the terms and conditions of this Section 2.24 (*Additional Unsecured Indebtedness*), (a)(i) add one or more unsecured term loan facilities to this Agreement and the other Financing Documents or (ii) add one or more additional unsecured term loan, unsecured bond or other unsecured debt facilities pursuant to separate documentation (each such facility in this clause (a), "**Additional Unsecured Term Indebtedness**") and/or (b)(i) add one or more senior unsecured revolving credit facilities to this Agreement and the other Financing Documents and/or (ii) add one or more additional unsecured revolving and/or letter of credit facilities pursuant to separate documentation (any such revolving or letter credit facility in this clause (b), "**Additional Unsecured Revolving Indebtedness**"; the Additional Unsecured Revolving Indebtedness and the Additional Unsecured Term Indebtedness are collectively referred to as "**Additional Unsecured Indebtedness**"), at its sole discretion, subject to the satisfaction or waiver following conditions:



(a) no Default or Event of Default shall have occurred and be continuing; provided that, if the Additional Unsecured Indebtedness at issue will be used to effect an acquisition permitted by the Financing Documents (i) as of the date of execution of the acquisition agreement related to such acquisition, no Event of Default under the Financing Documents has occurred and is continuing, (ii) as of the date of the consummation of such acquisition, no Event of Default pursuant to Sections 8.1(a) (*Failure to Make Payments When Due*), 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) and 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*) has occurred and is continuing and (iii) any Event of Default under the loan documents related to such Additional Unsecured Indebtedness has been waived or limited as agreed by the Borrower and the lenders thereunder, then the Borrower shall be permitted to effect the consummation of such acquisition and the incurrence of Additional Unsecured Indebtedness related thereto (it being understood that any such closing or waiver will not waive any Event of Default under the Financing Documents);

(b) the Additional Unsecured Indebtedness will have a final maturity no earlier than the Maturity Date;

(c) either (i) the Borrower shall certify that after giving effect to the incurrence of such Additional Unsecured Indebtedness, the Borrower's Projected Debt Service Coverage Ratio is not less than 1.35x or (ii) two of the Rating Agencies (or one Rating Agency, if only one Rating Agency is then rating the Borrower's long-term senior unsecured debt, the Loans under this Agreement, the Existing Indenture or the corporate family of the Borrower) shall have (A) assigned or reaffirmed an Investment Grade Rating of any of (w) the Borrower's long-term senior unsecured debt, (x) the Loans under this Agreement, (y) the Existing Indenture or (z) the Borrower's corporate family or (B) determined that the existing rating for any of the foregoing is not affected (in each case, after giving effect to the incurrence of such Additional Unsecured Indebtedness); and

(d) the rate of interest applicable to any such Additional Unsecured Indebtedness, and the amortization schedule (subject to clause (b) above), pricing and fees with respect thereto shall be determined by the Borrower and the respective lenders providing such Additional Unsecured Indebtedness.

To the extent any Additional Unsecured Indebtedness is incurred pursuant to this Agreement, the Financing Documents shall be amended to give effect to the Additional Unsecured Indebtedness by documentation executed by the lender or lenders making the commitments thereunder, the Administrative Agent and the Borrower, without the consent of any other Lender (including the Required Lenders).

#### **2.25 Increase of Revolving Commitments.**

(a) The Borrower shall have the right, at any time and from time to time request an increase of the aggregate Revolving Commitments by notice to the Administrative Agent in writing of the amount of such proposed increase (such notice, a "**Commitment Increase Notice**"); provided, however, that (i) each such increase shall be at least \$10,000,000, (ii) the cumulative increase in Revolving Commitments after the Closing Date pursuant to this Section 2.25 (*Increase of Revolving Commitments*) shall not exceed \$1,000,000,000 without the approval of the Required Lenders, and (iii) the Revolving Commitment of any Lender may not be increased without such Lender's consent and (iv) no Default or Event of Default shall have occurred and be continuing on the effective date of such Commitment Increase Notice.

Following any Commitment Increase Notice, the Borrower may, in its sole discretion, offer to any Eligible Assignee (with a copy to the Administrative Agent) the opportunity to participate in all or a portion of the increased Revolving Commitments pursuant to paragraph (c) or (d) below, as applicable.

(b) Any Lender that accepts an offer to it by the Borrower to increase its Revolving Commitments pursuant to this Section 2.25 (Increase of Revolving Commitments) shall, in each case, execute a Commitment Increase Agreement with the Borrower and the Administrative Agent, whereupon such Lender shall be bound by and entitled to the benefits of this Agreement with respect to the full amount of its Revolving Commitment as so increased, and the definition of Revolving Commitment in Section 1.1 (Definitions) hereof shall be deemed to be amended to reflect such increase. No Lender shall have any obligation whatsoever to agree to increase its Revolving Commitment. Each Commitment Increase Agreement shall be irrevocable and shall be effective upon notice thereof by the Administrative Agent at the same time as that of all other increasing Lenders.

(c) Any Eligible Assignee (other than a Lender) that accepts an offer to it by the Borrower to participate in the increased Revolving Commitments shall execute and deliver to the Administrative Agent a New Lender Agreement setting forth its Revolving Commitment, and upon the effectiveness of such New Lender Agreement, such bank or financial institution (a “**New Lender**”) shall become a Lender for all purposes and to the same extent as if originally a party hereto and shall be bound by and entitled to the benefits of this Agreement, and the signature pages hereof shall be deemed to be amended to add the name of such New Lender and the definition of Revolving Commitment in Section 1.1 (Definitions) shall be deemed amended to increase the aggregate Revolving Commitments of the Lenders by the Revolving Commitment of such New Lender, provided that, the Revolving Commitment of any New Lender shall be an amount not less than \$10,000,000. Each New Lender Agreement shall be irrevocable and shall be effective upon notice thereof by the Administrative Agent at the same time as that of all other New Lenders.

(d) Once a Commitment Increase Agreement or New Lender Agreement has been executed by the applicable Eligible Assignee and delivered to the Administrative Agent (and countersigned or otherwise acknowledged in writing by the Borrower), the Administrative Agent shall reflect the increases in the Revolving Commitments effected by such agreements by appropriate entries in the Register.

(e) Upon and after the effective date of any increase in the Revolving Commitments pursuant to this Section 2.25 (Increase of Revolving Commitments) (the “**Re-Allocation Date**”), additional Loans shall be made pro rata based on the respective Revolving Commitments of the Lenders in effect on or after such Re-Allocation Date, and continuations of Loans outstanding on such Re-Allocation Date shall be effected by repayment of such Loans on the last day of the Interest Period applicable thereto or, in the case of ABR Loan, on the date of such increase based on the respective Revolving Commitments in effect prior to the Re-Allocation Date, and the making of new Loans of the same Type pro rata based on the respective Revolving Commitments in effect on and after such Re-Allocation Date.

(f) If on any Re-Allocation Date there is an unpaid principal amount of Term SOFR Loans, such Term SOFR Loans shall remain outstanding with the respective holders thereof until the expiration of their respective Interest Periods (unless the Borrower elects to prepay any thereof in accordance with the applicable provisions of this Agreement), and interest

on and repayments of such Term SOFR Loans will be paid thereon to the respective Lenders holding such Term SOFR Loans pro rata based on the respective principal amounts thereof outstanding.

**2.26 Currency Matters.** All Obligations of each Loan Party under the Financing Documents shall be payable in Dollars. All calculations, comparisons, measurements or determinations under the Financing Documents shall be made in Dollars.

**2.27 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**2.28 Amend and Extend.**

(a) The Borrower may at any time and from time to time request that all or a portion of the Revolving Commitments (each, an “**Existing Commitment**”) be converted to extend the scheduled Maturity Date of any payment of principal with respect to all or a portion of any principal amount of such Revolving Commitments (any Revolving Commitments which have been so converted, “**Extended Commitments**”) and to provide for other terms consistent with this Section 2.28 (*Amend and Extend*). In order to establish any Extended Commitments, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders, which such request shall be offered equally to all Lenders) (an “**Extension Request**”) setting forth the date on which the Borrower proposes that the Extended Commitments shall be effective, which shall be a date not less than thirty (30) days after the date on which such notice is delivered to the Administrative Agent, and the proposed terms of the Extended Commitments to be established, which terms shall be identical in all material respects to the Existing Commitments; provided that (i) the scheduled Maturity Date shall be extended for such Extended Commitments, (ii) (A) the interest margins and commitment fees with respect to the Extended Commitments may be higher or lower than the interest margins

and commitment fees for the Existing Commitments and/or (B) additional fees and premiums may be payable to the Lenders providing such Extended Commitments in addition to or in lieu of any increased margins or commitment fees contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) all borrowings and all repayments of outstanding loans (including permanent repayments) under the Extended Commitments shall be made on a pro rata basis with all other Revolving Commitments, and (iv) the Extension Amendment may provide for such other terms and conditions (in addition to those provided in the foregoing clauses (i) through (iii)) with respect to the Extended Commitments that either, at the option of the Borrower, (x) reflect market terms and conditions (taken as a whole) at the time of such Extension Amendment (as determined by the Borrower in good faith), (y) if otherwise not consistent with the Existing Commitments subject to such Extension Request, are not materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Existing Commitments subject to such Extension Request, except, in each case under this clause (y), with respect to covenants and other terms applicable solely to any period after the Maturity Date of the Existing Commitments in effect immediately prior to such Extension Request or (z) to the extent such term or provision is also added, or the features of such term or provision are provided, for the benefit of the Lenders providing the Existing Commitments. No Lender shall have any obligation to agree to have any of its Revolving Commitments converted into Extended Commitments pursuant to any Extension Request; provided that the Borrower shall be entitled to exercise its right to remove any Lender who does not agree to such conversion as a Non-Consenting Lender pursuant to Section 2.21 (Removal or Replacement of Lenders).

(b) Any Lender (an “**Extending Lender**”) wishing to have all or a portion of its Revolving Commitments subject to such Extension Request converted into Extended Commitments shall notify the Administrative Agent (an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Revolving Commitments subject to such Extension Request that it has elected to convert into Extended Commitments. In the event that the aggregate amount of Revolving Commitments subject to Extension Elections exceeds the amount of Extended Commitments requested pursuant to the Extension Request, Revolving Commitments subject to Extension Elections shall be converted to Extended Commitments on a pro rata basis based on the amount of Revolving Commitments included in such Extension Election.

(c) Extended Commitments shall be established pursuant to an amendment (an “**Extension Amendment**”) to this Agreement (which, except to the extent expressly contemplated by Section 2.28(e) (Amend and Extend) and notwithstanding anything to the contrary set forth in Section 10.6 (Amendments and Waivers), shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Commitments) executed by the Borrower, the Administrative Agent and the Extending Lenders. In addition to any terms and changes required or permitted by this Section 2.28 (Amend and Extend) each Extension Amendment may, but shall not be required to, impose additional requirements (not inconsistent with the provisions of this Agreement in effect at such time) with respect to the final maturity of new Revolving Commitments obtained following the date of such Extension Amendment.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any existing Revolving Commitments are converted to extend the related scheduled Maturity Date in accordance with this Section 2.28 (Amend and Extend), in the case of the existing Revolving Commitments of each Extending Lender, the aggregate principal amount

of such existing Revolving Commitments shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Commitments so converted by such Lender on such date, and the Extended Commitments shall be established as a separate class of Revolving Commitments (together with any other Extended Commitments so established on such date).

(e) The Administrative Agent and the Lenders hereby (i) consent to the consummation of the transactions contemplated by this Section 2.28 (*Amend and Extend*) (including, for the avoidance of doubt, payment of any principal, interest, fees, or premium in respect of any Extended Commitments on such terms as may be set forth in the relevant Extension Amendment) and (ii) hereby waive any requirement to obtain the consent of the Required Lenders for any Extension Amendment that is effectuated pursuant to this Section 2.28 (*Amend and Extend*).

(f) No conversion of Revolving Commitments pursuant to any Extension Amendment in accordance with this Section 2.28 (*Amend and Extend*) shall (i) constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement or (ii) be made if an Event of Default has occurred and is continuing.

(g) At least three (3) Business Days prior to the effectiveness of the Extension Amendment, the Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer that identifies each Lender and the amount of its Existing Commitments and Extended Commitments (after giving effect to the applicable Extension Amendment), the Maturity Date of each Extending Lender's Extended Commitments, and attaching a copy of the proposed Extension Amendment.

**2.29 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Financing Documents provide support, through a guarantee or otherwise, for any Hedging Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution

Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 2.29 (*Acknowledgement Regarding Any Supported QFCs*), the following terms have the following meanings:

(i) “**BHC Act Affiliate**” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such part.

(ii) “**Covered Entity**” means any of the following:

(A) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §252.82(b);

(B) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or

(C) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

(iii) “**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

(iv) “**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

### 2.30 **Effect of Benchmark Replacement.**

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Financing Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Financing Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Financing Document and (y) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Financing Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Financing Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark

Replacement is based upon Daily Simple SOFR, all interest payments will be payable on a monthly basis.

(b) Benchmark Replacement Conforming Changes. In connection with the administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent, with the written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party (other than the Borrower) to this Agreement.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.30, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.30.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Financing Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Borrower may revoke any pending request for a Term SOFR Loan of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a

Borrowing of or conversion to ABR Loans and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted to ABR Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Alternate Base Rate.

### SECTION 3. CONDITIONS PRECEDENT

3.1 **Closing Date.** The occurrence of the Closing Date is subject to the satisfaction or waiver of the following conditions precedent, in each case to the satisfaction of each of the Lenders, unless, in each case, waived by each of the Lenders:

(a) **Financing Documents.** Administrative Agent shall have received true, correct and complete copies of this Agreement and the Fee Letter, each of which shall have been duly authorized, executed and delivered by the parties thereto.

(b) **Borrowing Notice.** If a borrowing or issuance is requested to occur on the Closing Date, the Administrative Agent shall have received a duly executed Borrowing Notice or Issuance Notice in accordance with this Agreement.

(c) **Organizational Documents; Incumbency.** Administrative Agent shall have received, in respect of each Loan Party, (i) each Organizational Document certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority or, with respect to its limited liability company agreement or partnership agreement, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (ii) signature and incumbency certificates of the officers of such Loan Party (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership); (iii) resolutions of the board of directors or similar governing body of such Loan Party (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership), approving and, to the extent required in any jurisdiction, resolutions of the meeting of shareholders of a Loan Party (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership), acting in its own capacity, in each case, authorizing the execution, delivery and performance of this Agreement and the other Financing Documents to which such Loan Party is, or shall become, a party as of the Closing Date, certified as of the Closing Date or a recent date prior thereto; by its secretary or an assistant secretary as being in full force and effect without modification or amendment; and (iv) a good standing certificate from the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation dated the Closing Date or a recent date prior thereto.

(d) **Opinions from Counsel.** The Administrative Agent shall have received the legal opinions of White & Case LLP, as New York counsel to each of the Loan Parties in form and substance reasonably satisfactory to the Administrative Agent.

(e) **Bank Regulatory Requirements.** Each Lender shall have received, or had access to, at least three (3) Business Days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable "know your customer" rules and regulations, including the PATRIOT Act (including a customary Beneficial Ownership Certification addressed to the Administrative Agent), to the extent reasonably requested by such



Lender (as conveyed to the Borrower in writing at least five (5) Business Days prior to the Closing Date.

(f) Fees. The Administrative Agent shall have received for its own account, or for the account of the relevant Lender entitled thereto, or Borrower shall have made provision to pay on the Closing Date all fees due and payable pursuant to the Financing Documents on or prior to the Closing Date and for which invoices have been presented at least three (3) Business Days prior to the Closing Date.

(g) Absence of Default. As of the Closing Date, no Default or Event of Default shall have occurred and be continuing.

(h) Representations and Warranties. Each of the representations and warranties in this Agreement shall be true and correct in all material respects on and as of the Closing Date (or, if stated to have been made solely as of an earlier date, as of such earlier date), except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects (after giving effect to any qualification therein) on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

(i) Closing Certificate. The Administrative Agent shall have received a certificate from an Authorized Officer of the Borrower certifying as to (i) no Default or Event of Default has occurred and is continuing as of the Closing Date or would result from the consummation of the transactions contemplated by the Financing Documents, (ii) each of the representations and warranties of the Loan Parties in the Financing Documents is true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) on and as of the Closing Date (or, if stated to have been made solely as of an earlier date, as of such earlier date) and (iii) that each of the conditions precedent to the Closing Date, as set forth in this Section 3.1 (Closing Date), has been satisfied (except that no certification shall be made or required from Borrower as to the reasonable satisfaction of an Agent or Lender with respect to any such condition precedent).

(j) Payoff Letter. The Administrative Agent shall have received a payoff letter in respect of the Existing Revolving Credit Facility Agreement providing that, among other things, all of the Indebtedness of the Loan Parties and the commitments of the Existing Lenders under the Existing Revolving Credit Facility Agreement has been discharged, paid or otherwise satisfied in full.

Without limiting the generalities of Section 10.6 (Amendments and Waivers), for purposes of determining compliance with this Section 3.1 (Closing Date), each Lender that has executed and delivered this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

### **3.2 Conditions to Each Credit Extension not on the Closing Date.**

(a) The several obligation of each Lender or any Issuing Bank, as applicable, to make, or cause one of its Affiliates to make, a Credit Extension on a Credit Date (other than

the Closing Date) is subject to the satisfaction or waiver of the following conditions precedent unless, in each case, waived by the Required Lenders or such Issuing Bank, as applicable:

(A) Borrowing Notice; Issuance Notice. The Administrative Agent shall have received a duly executed Borrowing Notice or Issuance Notice, as required by and in accordance with this Agreement.

(B) Representations and Warranties. Each of the representations and warranties of the Loan Parties in this Agreement is true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) on and as of such Credit Date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

(C) Absence of Default. As of such Credit Date, no Default or Event of Default has occurred and is continuing.

3.3 **Notices.** Any Notice shall be executed by an Authorized Officer in a writing delivered to the Administrative Agent. In lieu of delivering a Notice, the Borrower may give the Administrative Agent telephonic notice by the required time of any proposed Credit Extension or the conversion/continuation or issuance of a Loan or Letter of Credit as the case may be; provided each such telephonic notice shall be promptly confirmed in writing by delivery of the applicable Notice to the Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if the Borrower provides telephonic notice in lieu thereof, such telephone notice shall also be irrevocable once given. None of the Administrative Agent, any Lender nor any Issuing Bank shall incur any liability to the Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by an Authorized Officer of the Borrower (or other Person the Administrative Agent or Issuing Bank believes in good faith is authorized to act on behalf of the Borrower).

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

In order to induce Agents, Lenders and Issuing Banks to enter into this Agreement and to make each Credit Extension to be made thereby, the Borrower represents and warrants to each Agent, Lender and Issuing Bank on each of the Closing Date and, to the extents specified below, each Credit Date, that the following statements are true and correct:

4.1 **Organization; Powers.** Each Loan Party (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted in all material respects, and to enter into the Financing Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing would not be reasonably expected to have a Material Adverse Effect.

4.2 **Authorization; Enforceability.** The execution, delivery and performance of the Financing Documents to which a Loan Party is a party have been duly authorized by all necessary action on the part of such Loan Party. Each Financing Document has been duly executed and delivered by the Loan Party party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general equitable principles.

4.3 **No Conflict.** As of the Closing Date and on each Credit Date, the execution, delivery and performance by each Loan Party of each of the Financing Documents to which they are parties and the consummation of the transactions contemplated by the Financing Documents do not and will not (a) violate (i) any provision of any law or any Government Rule or any Government Approval applicable to the Loan Parties, (ii) any of the Organizational Documents of the Loan Parties, or (iii) any order, judgment or decree of any court or other agency of government binding on the Loan Parties, in the case of clauses (i) and (iii), except to the extent such violation would not reasonably be expected to have a Material Adverse Effect; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any contractual obligation of the Loan Parties except to the extent such conflict, breach or default could not reasonably be expected to have a Material Adverse Effect; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets now owned or hereafter acquired by the Loan Parties (other than any Permitted Lien); or (d) require any approval of stockholders, members or partners or any approval or consent of any Person under any contractual obligation of the Loan Parties, except for such approvals or consents (i) that have been obtained or are reasonably expected to be received at the time required and all such consents and approvals that have been obtained remain in full force and effect or (ii) the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

4.4 **Governmental Approvals.** As of the Closing Date, the execution, delivery and performance by each Loan Party of the Financing Documents to which it is a party and the consummation of the transactions contemplated by the Financing Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority except to the extent that a failure to obtain such registrations, consents, approvals, notices or other actions would not reasonably be expected to result in a Material Adverse Effect.

4.5 **Financial Statements; No Material Adverse Effect.**

(a) The financial statements of the Borrower furnished to the Lenders pursuant to Section 5.1(a) (*Quarterly Financial Statements*), and Section 5.1(b) (*Annual Financial Statements*) present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower as of such dates and for such periods in conformity with GAAP, subject to, in the case of any such unaudited financial statements, changes resulting from audit and normal year-end adjustments. As of the Closing Date, Borrower has no contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment required to be reflected by GAAP and that is not reflected in the financial statements or the notes thereto and which in any such case is material in relation to the business, operations and financial condition of Borrower and its Subsidiaries, taken as a whole.

(b) As of the Closing Date, between December 31, 2022 and the Closing Date, no Material Adverse Effect has occurred.

#### **4.6 Litigation and Environmental Matters.**

(a) As of the Closing Date, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the Knowledge of the Borrower, threatened against or affecting any Loan Party (i) which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) As of the Closing Date, except for the Disclosed Matters or except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received written notice of any claim with respect to any Environmental Liability or (iv) knows of any reasonable basis for any Environmental Liability.

**4.7 Investment Company Status.** No Loan Party is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

**4.8 Taxes.** All federal income Tax returns and all other material Tax returns and reports of any Loan Party required to be filed have been timely filed, and all Taxes shown on such Tax returns to be due and payable and any other material Taxes required to be paid by such Loan Party have been paid when due and payable or remitted on a timely basis, as applicable, or are being contested in good faith by appropriate proceedings with reserves, or other appropriate provisions, as shall be required in conformity with GAAP, maintained therefor, except to the extent that the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**4.9 Employee Matters.** Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, there is (a) no strike or work stoppage in existence or threatened involving Borrower and (b) to the Knowledge of Borrower, (i) no union representation question existing with respect to the employees of Borrower and (ii) no union organization activity with respect to the employees of Borrower is taking place. The hours worked by and payments made to employees of Borrower have not been in violation of the Fair Labor Standards Act of 1938, or any other applicable federal, state, provincial, territorial, local or foreign law dealing with such matters in any manner which would reasonably be expected to result in a Material Adverse Effect. All payments due from Borrower, or for which any claim may be made against any Borrower, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of Borrower, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

#### **4.10 ERISA.**

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

(b) The present value of all accumulated benefit obligations under each Pension Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Pension Plan by an amount that would reasonably be expected to have a Material Adverse Effect, and the present value of all accumulated benefit obligations of all underfunded Pension Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Pension Plans by an amount that would reasonably be expected to have a Material Adverse Effect.

(c) Each of the Loan Parties and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan, except where failure to do so would not reasonably be expected to result, in the aggregate, in a Material Adverse Effect.

(d) Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the IRS indicating that such Employee Benefit Plan is so qualified and to the Knowledge of Borrower, nothing has occurred or failed to occur subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, except where failure to do so would not reasonably be expected to result, in the aggregate, in a Material Adverse Effect.

(e) No liability to the PBGC (other than required premium payments), any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by any Loan Party, that would reasonably be expected to result in a Material Adverse Effect.

(f) Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws and except to the extent not reasonably expected to result, in the aggregate, in a Material Adverse Effect, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of any of the Loan Parties or any of their respective ERISA Affiliates.

(g) Each of the Loan Parties and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, except, in either case and as applicable, where failure to do so or as would not reasonably be expected to result, in the aggregate, in a Material Adverse Effect.

**4.11 Disclosure.** As of the Closing Date, all written reports, certificates or other written information (other than the projections, budgets, forecasts, third party consultant reports, pro forma financial information, other forward-looking information and information of a general economic or industry-specific nature) concerning the Loan Parties and any transactions contemplated hereby prepared by or on behalf of the foregoing or their representatives and made available to any Lender or the Administrative Agent in connection with the transactions

contemplated hereby on or before the date hereof (the “**Information**”), when taken as a whole, as of the date such Information was furnished to the Lenders and as of the Closing Date, did not contain any untrue statement of a material fact as of such date or omit to state a material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith and based upon assumptions and estimates believed by the management of the Borrower to be reasonable and consistent with the Financing Documents at the time prepared. Whether or not such projections or forward looking statements are in fact achieved will depend upon future events, some of which are not within the control of the Loan Parties it being recognized by the Lenders and Issuing Banks that such projections and other information regarding future events are not to be viewed as fact and that actual results or developments during the period or periods covered may differ from the delivered projections and other prospective information and such differences may be material and that such projected financial information is not a guarantee of financial performance. Accordingly, actual results may vary from the projections and such variations may be material. The Borrower makes no representation or warranty as to future conditions or performance, or as to general industry or other information derived from consultants or public or third-party sources.

**4.12 Subsidiaries.** As of the Closing Date, (a) the Borrower has no Subsidiaries other than those listed in Schedule 4.11 (*Subsidiaries*) attached hereto and (b) Schedule 4.11 (*Subsidiaries*) lists, for each Subsidiary of the Borrower its full legal name, its jurisdiction of organization and the owner(s) of such Equity Interests.

**4.13 Margin Stock.** No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan will be used to purchase or carry any margin stock in violation of said Regulation T, U or X or to extend credit to others for the purpose of purchasing or carrying margin stock in violation of said Regulation T, U or X.

**4.14 Sanctions; Anti-Corruption Laws; PATRIOT Act.**

(a) As of the Closing Date, to the extent applicable, no Loan Party nor, to the Knowledge of the Borrower, any of their respective directors, officers, employees, agents or Affiliates is (i) the subject of any sanctions or economic embargoes imposed, administered or enforced by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control), or any other applicable U.S. sanctions authority, the United Nations, the European Union, His Majesty’s Treasury or Japan (collectively, “**Sanctions**”, and the associated laws, rules, regulations and orders promulgated or issued thereunder, collectively, “**Sanctions Laws**”), (ii) an organization owned or controlled by a Person, entity, or country, territory or region that is the target of Sanctions, or (iii) a Person located, organized or resident in a country, territory or region that is, or whose government is, the target of Sanctions, including, without limitation, as of the Closing Date, each Sanctioned Country.

(b) As of the Closing Date, each Loan Party and, to the Knowledge of the Borrower, their respective directors, officers, employees, agents and Affiliates is in compliance, in all material respects, with (i) applicable Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977 and any other applicable anti-bribery or anti-corruption Laws, rules, regulations and orders promulgated or issued thereunder (collectively, “Anti-Corruption Laws”)

and (iii) the Anti-Terrorism and Money Laundering Laws. No part of the proceeds of the Loans or Letters of Credit will be used, directly or, to the Knowledge of the Borrower, indirectly, (A) for the purpose of financing any activities or business of or with any Person or in any country or territory that is, to the Knowledge of the Borrower, at such time the subject of any Sanctions or (B) in any other manner that would result in a violation of Anti-Corruption Laws, Anti-Terrorism and Money Laundering Laws, or Sanctions Laws by any Person (including any Person participating in the Loans or Letters of Credit, whether as Agent, Lender, or otherwise). As of the Closing Date, there are no pending or, to the Knowledge of Borrower, threatened, legal proceedings, or, to the Knowledge of Borrower, any investigations. by any governmental entity, with respect to violation of any Anti-Corruption Laws, Anti-Terrorism and Money Laundering Laws, or Sanctions Laws relating to the business of Borrower or any of its Subsidiaries or Affiliates.

(c) The Borrower and each Loan Party have instituted and maintain policies and procedures designed to ensure continued compliance with applicable Anti-Corruption Laws, Anti-Terrorism and Money Laundering Laws, and Sanctions Laws in all material respects.

4.15 **Title to Properties.** As of the Closing Date and on each Credit Date, each of the Loan Parties has (i) good and legal title to (in the case of fee interests in real or personal property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of its properties and assets reflected in its financial statements referred to in Section 4.5(a) (*Financial Statements; No Material Adverse Effect*), except as where the failure to hold such title would not reasonably be expected to have a Material Adverse Effect.

4.16 **Solvency.** As of the Closing Date, the Loan Parties, on a consolidated basis, are Solvent.

## SECTION 5. AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that so long as the Revolving Commitments have not been terminated and until the Discharge of Obligations:

5.1 **Financial Statements and Other Reports.** The Borrower will deliver to the Administrative Agent:

(a) Quarterly Financial Statements. Within sixty (60) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending June 30, 2023, the Borrower shall furnish or cause to be furnished to the Administrative Agent the consolidated unaudited balance sheets of the Borrower as at the end of such Fiscal Quarter and the related consolidated statements of income and cash flows of the Borrower for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, in each case, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail;

(b) Annual Financial Statements. Within one hundred and twenty (120) days after the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2023, the Borrower shall furnish or cause to be furnished to the Administrative Agent (i) a consolidated balance sheet of the Borrower as at the end of such Fiscal Year and the related consolidated

statements of income, stockholders' equity and cash flows of the Borrower for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, all in reasonable detail; and (ii) with respect to such consolidated financial statements a report thereon of an independent certified public accountants of recognized national standing (which report and/or the accompanying financial statements shall be unqualified as to scope of audit or any going concern (other than (x) resulting from the impending maturity of any Indebtedness or (y) resulting from any actual or prospective breach of any financial covenant (if any) applicable to the Loan Parties));

(c) Compliance Certificate. Together with each delivery of financial statements of the Borrower pursuant to Sections 5.1(a) (Quarterly Financial Statements) and 5.1(b) (Annual Financial Statements), a duly executed and completed Compliance Certificate, from an Authorized Officer of the Borrower certifying only as to the following (i) no Default or Event of Default then exists (or, if any Default or Event of Default does exist, what curative action the Borrower is taking or proposes to take with respect thereto) and (ii) the financial statements delivered in connection with the Compliance Certificate fairly present, in all material respects, the consolidated financial condition of the Borrower as at the dates indicated and the results of its operations and its cash flows for the periods indicated, subject to, in the case of any unaudited financial statements, changes resulting from audit and normal year-end adjustments;

(d) ERISA Events. Promptly, and in any event no later than ten (10) Business Days after becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event that would reasonably be expected to have a Material Adverse Effect, a written notice specifying the nature thereof, what action Borrower, any of its Subsidiary Guarantors or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto.

(e) Notice of Default.

(i) The Borrower will deliver to the Administrative Agent, promptly, and in any event within ten (10) Business Days of an Authorized Officer becoming aware of any Event of Default, an Authorized Officer's certificate specifying such Event of Default and what curative action the Borrower is taking or proposes to take with respect thereto.

(ii) The Borrower will deliver to the Administrative Agent, promptly and in any event within ten (10) Business Days of any Authorized Officer becoming aware of any event that would be reasonably expected to have a Material Adverse Effect.

Any information required to be delivered pursuant to this Section 5.1 (Financial Statements and Other Reports) shall be deemed to have been delivered to the Administrative Agent on the date that such information has been posted (and is publicly available) on the Borrower's (or its direct or indirect parent's) website on the Internet (which website is located as of the Closing Date at [www.cheniere.com](http://www.cheniere.com)) or on the SEC website accessible through <http://www.sec.gov/edgar> (or any successor webpage of the SEC thereto).

Notwithstanding the foregoing, the Borrower may redact or otherwise omit commercially sensitive information and no Loan Party shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary



information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any law or any binding agreement, or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

5.2 **Existence.** Subject to Section 6.3 (*Fundamental Changes*), each Loan Party will do all things necessary to maintain its corporate, limited liability company or partnership, as applicable, existence in its jurisdiction of organization except, in the case of any Subsidiary Guarantor, where the failure to do so would not reasonably be expected to have a Material Adverse Effect and provided that the foregoing shall not prohibit the conversion of any Loan Party into another form of entity or the continuation of any Loan Party in another jurisdiction.

5.3 **Compliance with Laws.** Each Loan Party will comply with all applicable laws, rules, regulations and orders of Governmental Authorities (including Environmental Law, health and safety and port laws), except where such failure to comply could not reasonably be expected to have a Material Adverse Effect.

5.4 **Insurance.** Each Loan Party will maintain (or cause to be maintained) the Loan Parties' properties (to the extent of an insurable nature and of a character usually insured) insured with financially sound insurers in such form and amounts as is prudent and reasonable.

5.5 **Maintenance of Properties.** Each Loan Party will maintain or cause to be maintained in working order ordinary wear and tear excepted, all properties used or useful in the business of the Loan Parties, except to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.6 **Payment of Taxes.** Each Loan Party will (a) file or cause to be filed all Tax returns required to be filed by it (after giving effect to any applicable extensions) and (b) pay and discharge, before the same shall become delinquent, after giving effect to any applicable extensions, all Taxes imposed on it or its property (including interest and penalties) except to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.7 **Use of Proceeds.** The Borrower shall use the proceeds of the Credit Extensions for the purposes permitted in this Agreement.

5.8 **Access.** Each of Loan Party will grant the Administrative Agent or any authorized representative designated by the Administrative Agent from time to time, including during the pendency of an Event of Default, upon reasonable prior written notice but no more than once per calendar year (unless an Event of Default has occurred and is continuing) reasonable access to all of its books and records; provided that (a) all such inspections are conducted at times and with a scope reasonably acceptable to the Borrower in a manner that does not disrupt the operations of the Loan Parties, (b) the Borrower may redact or otherwise omit commercially sensitive information and (c) no Loan Party shall be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by any law or any binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

The reasonable fees and documented expenses of such annual inspection shall be for the account of the Borrower.

**5.9 Sanctions; Anti-Corruption Laws.**

(a) Each Loan Party will, and will cause each other Person under its Control to, comply in all material respects with Anti-Terrorism and Money Laundering Laws and Sanctions Laws.

(b) Each Loan Party will not, and will procure that its Affiliates, directors and officers do not, directly or, to each Loan Party's Knowledge, indirectly, use the proceeds of the Loans or Letters of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, Joint Venture partner or other Person:

(i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money or anything else of value, to any Person in violation of any Anti-Terrorism and Money Laundering Laws, Anti-Corruption Laws or Sanctions Laws, to the extent applicable;

(ii) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the target of Sanctions in violation of applicable Sanctions Laws; or

(iii) in any other manner that would result in a violation of any Anti-Terrorism and Money Laundering Laws, Anti-Corruption Laws, or Sanctions, by any Person (including any Person participating in the Loans, whether as Lender, the Administrative Agent or otherwise).

**5.10 Subsidiaries.** In the event that any Person becomes a Subsidiary of the Borrower (other than any Excluded Subsidiary) after the Closing Date, the Borrower will, either (a) within thirty (30) Business Days of such Subsidiary's formation or creation (or such longer period as agreed by the Administrative Agent) or (b) within thirty (30) days of the end of the Fiscal Quarter in which such Subsidiary was formed or created, cause such Subsidiary to become a Subsidiary Guarantor hereunder by executing and delivering to the Administrative Agent a Counterpart Agreement.

**SECTION 6. NEGATIVE COVENANTS**

Each Loan Party covenants and agrees that so long as the Revolving Commitments have not been terminated and until the Discharge of Obligations:

**6.1 Indebtedness.** No Loan Party will, directly or indirectly, create or incur, assume or guaranty, or otherwise become liable with respect to any Indebtedness except for any Permitted Indebtedness.

**6.2 Liens.** No Loan Party will, directly or indirectly, create, incur, grant, assume or permit to exist any Lien on any Principal Properties other than Permitted Liens.

**6.3 Fundamental Changes.** The Borrower will not merge, wind-up, dissolve, consolidate or dispose of all or substantially all of the assets of the Borrower and its Subsidiaries

(taken as a whole), except that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing:

(a) any Person may merge or consolidate with or into the Borrower, provided that the Borrower shall be the surviving Person; or

(b) any Person may merge or consolidate with or into the Borrower, provided that the Person formed by or surviving any such consolidation, amalgamation or merger or resulting from such conversion (if other than the Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made (i) is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States, any State thereof or the District of Columbia and (ii) assumes the due and punctual payment of all the Obligations (including principal, interest and fees) and the performance of every covenant of this Agreement and the other Financing Documents on the part of the Borrower to be performed or observed; provided, that any such surviving Person (if other than the Borrower) shall have provided the Administrative Agent with all information necessary for the Lenders to identify such Person in accordance with the requirements of the PATRIOT Act (including applicable, and uniformly applied, “know your customer” regulations) and all other applicable Anti-Terrorism and Money Laundering Laws.

**6.4 Distributions.** The Borrower will not make or agree to make, directly or indirectly, any Restricted Payment in cash if, on the date of declaration thereof, an Event of Default exists or is continuing pursuant to Section 8.1(a) (*Failure to Make Payments When Due*), Section 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*), Section 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*), Section 8.1(d) (*Breach of Certain Negative Covenants*) or, solely in the case of a breach of Sections 6.4 (*Distributions*), 6.5 (*Hedging*), 6.6 (*Transactions with Affiliates*) or Section 8.1(g) (*Breach of Certain Other Covenants*).

**6.5 Hedging.** No Loan Party shall enter into any Hedging Agreement other than a Hedging Agreement that is entered into for bona fide hedging purposes and not for speculative purposes.

**6.6 Transactions with Affiliates.** No Loan Party will, directly or indirectly, enter into any transaction with aggregate consideration in excess of \$50,000,000 (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any of its Affiliates on terms that are materially less favorable in the aggregate to such Loan Party than such Loan Party would obtain in a comparable agreement with independent parties acting at arm’s length (or, if there is no comparable arm’s length transaction, then on terms that are reasonably determined by the board of directors (or other governing body) of such Loan Party to be fair and reasonable (or, in the case of a limited partnership, of the general partner, acting on behalf of such limited partnership)); provided that, the foregoing restriction shall not apply to (a) any indemnity provided to and any reasonable and customary fees paid to members of the board of directors of a Loan Party (or any direct or indirect parent thereof); (b)(i) compensation, benefits and indemnification arrangements for officers and other employees of any Loan Party (or any direct or indirect parent thereof) entered into in the ordinary course of business, and (ii) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options, stock ownership plans, including restricted stock plans, stock grants, directed share programs and other equity-based plans and the granting and stockholder rights of registration rights approved by the board of

directors of a Loan Party (or any direct or indirect parent thereof); (c) transactions in effect on the Closing Date, including amendments and extensions thereto entered into in accordance with this Section 6.6 (*Transactions with Affiliates*) (it being understood that the aggregate consideration payable in connection with any amendment or extension shall be determined based on the remaining term of the applicable transaction as amended or extended); (d) Subordinated Indebtedness; (e) the entering into of any tax sharing agreement or similar arrangement; (f) Permitted Intercompany Activities; (g) Restricted Payments, capital contributions or the issuance of Equity Interests, in each case, to the extent permitted by this Agreement; (h) transactions between or among Loan Parties; (i) transactions in which a Loan Party delivers to the Administrative Agent a letter from a third party financial advisor stating that such transaction is fair to the Borrower or such other Loan Party from a financial point of view or meets the arm's length requirement of this Section 6.6 (*Transactions with Affiliates*); or (j) any transaction between a Loan Party and a Subsidiary or, if applicable, Joint Venture, so long as the Borrower has determined in good faith that such transaction is in such Loan Party's commercial interest.

## SECTION 7. GUARANTY

7.1 **Guaranty of the Obligations.** Subject to the provisions of Section 7.2 (*Contribution by Guarantors*), the Subsidiary Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to the Administrative Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full of all Obligations, when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or any equivalent provision in any applicable jurisdiction) (each, a "**Guaranteed Obligation**" and, collectively, the "**Guaranteed Obligations**").

7.2 **Contribution by Guarantors.** All Subsidiary Guarantors desire to allocate among themselves (collectively, the "**Contributing Guarantors**"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Subsidiary Guarantor (a "**Funding Guarantor**") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "**Fair Share**" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. "**Fair Share Contribution Amount**" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "**Fair Share Contribution Amount**" with respect to any Contributing Guarantor for purposes of this Section 7.2 (*Contribution by Guarantors*), any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing

Guarantor. “**Aggregate Payments**” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2 (*Contribution by Guarantors*)), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2 (*Contribution by Guarantors*). The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 (*Contribution by Guarantors*) shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Subsidiary Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2 (*Contribution by Guarantors*).

**7.3 Payment by Guarantors.** Subject to Section 7.2 (*Contribution by Guarantors*), the Subsidiary Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Subsidiary Guarantor by virtue hereof, that upon the failure of the Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a) or any equivalent provision in any applicable jurisdiction), the Subsidiary Guarantors will upon demand pay, or cause to be paid, in cash, to the Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower becoming the subject of a case under the Bankruptcy Code or other similar legislation in any jurisdiction, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

**7.4 Liability of Guarantors Absolute.** Each Subsidiary Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Subsidiary Guarantor agrees as follows:

- (a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Subsidiary Guarantor and not merely a contract of surety;
- (b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;
- (c) the obligations of each Subsidiary Guarantor hereunder are independent of the obligations of the Borrower and the obligations of any other guarantor (including any other Subsidiary Guarantor) of the obligations of the Borrower, and a separate action or actions may be brought and prosecuted against such Subsidiary Guarantor, whether or not any action is brought

against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Subsidiary Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Subsidiary Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Administrative Agent is awarded a judgment in any suit brought to enforce any Subsidiary Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Subsidiary Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Subsidiary Guarantor, limit, affect, modify or abridge any other Subsidiary Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Subsidiary Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Subsidiary Guarantor) with respect to the Guaranteed Obligations; (v) subject to the provisions of this Agreement and the other Financing Documents, enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Subsidiary Guarantor against any other Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Financing Documents; and

(f) this Guaranty and the obligations of Subsidiary Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Subsidiary Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Financing Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating

thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Financing Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Financing Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Financing Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower, or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Subsidiary Guarantor as an obligor in respect of the Guaranteed Obligations.

**7.5 Waivers by Guarantors.** Each Subsidiary Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Subsidiary Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Subsidiary Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Beneficiary in favor of any Loan Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Subsidiary Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Subsidiary Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Subsidiary Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Subsidiary Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including

acceptance hereof, notices of default hereunder or under any Financing Document, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Borrower and notices of any of the matters referred to in Section 7.4 (*Liability of Guarantors Absolute*) and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

**7.6 Guarantors' Rights of Subrogation, Contribution, Etc.** Until the Guaranteed Obligations shall have been paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Subsidiary Guarantor hereby waives, any claim, right or remedy, direct or indirect, that such Subsidiary Guarantor now has or may hereafter have against Borrower or any other Subsidiary Guarantor or any of its assets in connection with this Guaranty or the performance by such Subsidiary Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Subsidiary Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled, each Subsidiary Guarantor shall withhold exercise of any right of contribution such Subsidiary Guarantor may have against any other guarantor (including any other Subsidiary Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2 (*Contribution by Guarantors*). Each Subsidiary Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Subsidiary Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Subsidiary Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Subsidiary Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

**7.7 Subordination of Other Obligations.** Any Indebtedness of the Borrower or any Subsidiary Guarantor now or hereafter held by any Subsidiary Guarantor (an "**Obligee Guarantor**") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to the Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without



affecting, impairing or limiting in any manner the liability of the Obligor Guarantor under any other provision hereof.

**7.8 Continuing Guaranty.** This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled. Each Subsidiary Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

**7.9 Authority of Guarantors or Borrower.** It is not necessary for any Beneficiary to inquire into the capacity or powers of any Subsidiary Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

**7.10 Financial Condition of the Borrower.** Any Credit Extension may be made to the Borrower or continued from time to time, and any permitted Hedging Agreements may be entered into from time to time, in each case without notice to or authorization from any Subsidiary Guarantor regardless of the financial or other condition of the Borrower at the time of any such grant or continuation or at the time such permitted Hedging Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Subsidiary Guarantor its assessment, or any Subsidiary Guarantor's assessment, of the financial condition of the Borrower. Each Subsidiary Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of the Borrower and its ability to perform its obligations under the Financing Documents, and each Subsidiary Guarantor assumes the responsibility for being and keeping informed of the financial condition of the Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Subsidiary Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of the Borrower now known or hereafter known by any Beneficiary.

**7.11 Bankruptcy, Etc.**

(a) So long as any Guaranteed Obligations remain outstanding, no Subsidiary Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Subsidiary Guarantor. The obligations of Subsidiary Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Subsidiary Guarantor or by any defense which Borrower or any other Subsidiary Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Subsidiary Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Subsidiary Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Subsidiary Guarantors pursuant hereto should

be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Guaranteed Obligations. Subsidiary Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by the Borrower, the obligations of Subsidiary Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

**7.12 Discharge of Guaranty Upon Sale of Guarantor.** If all of the Equity Interests of any Subsidiary Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof to any party (other than a Loan Party) or such Subsidiary has been designated an Unrestricted Subsidiary in accordance with the definition thereof, then the Guaranty of such Subsidiary Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such disposition.

**7.13 Keepwell.**

(a) Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 7.13 (Keepwell) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 7.13 (Keepwell), or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 7.13 (Keepwell) shall remain in full force and effect until the Guaranteed Obligations have been paid in full and the Revolving Commitments shall have terminated and all Letters of Credit shall have expired or have been cancelled or Cash Collateralized with at least 102% coverage. Each Qualified ECP Guarantor intends that this Section 7.13 (Keepwell) constitute, and this Section 7.13 (Keepwell) shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**SECTION 8. EVENTS OF DEFAULT**

**8.1 Events of Default.** If any one or more of the following conditions or events (each, an “**Event of Default**”) shall occur:

(a) Failure to Make Payments When Due. Failure by the Borrower (i) to pay when due any principal or any amount payable to an Issuing Bank in reimbursement of any drawing under a Letter of Credit when due, unless, in each case, (x) such failure is caused by an administrative or technical error and (y) payment is made within three (3) Business Days of its due date, or (ii) to pay when due any interest on the Loans or any fee or any other amount payable by it under this Agreement or any other Obligation and such default continues unremedied for a period of three (3) Business Days after the occurrence of such default;

(b) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Financing Document or in any statement or certificate at any time given by any Loan Party in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made, unless, if such misstatement (and the effect thereof) is capable of being cured, such Loan Party cures such misstatement (and any effect thereof) within thirty (30) days of such Loan Party obtaining Knowledge thereof (or if such incorrect representation or warranty is not susceptible to cure within thirty (30) days, and such Loan Party is proceeding with diligence and in good faith to cure such default, and such default is susceptible to cure, such thirty (30) day period shall be extended as may be necessary to cure such default, such extended period not to exceed sixty (60) days in the aggregate (inclusive of the original thirty (30) day period));

(c) Cross Acceleration. Default with respect to any Indebtedness of any Loan Party that is in excess of \$500,000,000 in the aggregate and continued beyond any applicable grace period, the effect of which has been to cause the entire amount of such Indebtedness under this clause (c) to become due (whether by redemption, purchase, offer to purchase or otherwise) and such Indebtedness under this clause (c) remains unpaid or the acceleration of its stated maturity unrescinded;

(d) Breach of Certain Negative Covenants. Failure of any applicable Loan Party to:

- (i) comply with its obligations described under Section 6.3 (*Fundamental Changes*); and
- (ii) for 30 days to comply with the provisions of Section 6.1 (*Indebtedness*) or Section 6.2 (*Liens*) or;

(e) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower in an involuntary case or proceeding under any Debtor Relief Laws, or any receiver, sequestrator, trustee, conservator, liquidator or other custodian or other officer having similar powers over the Borrower or over all or a substantial part of its property shall be appointed, or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Borrower and any such event described in this clause (i) shall remain undismissed or unstayed for sixty days; or (ii) a case or proceeding shall be commenced against the Borrower without the consent or acquiescence of such party seeking relief under any Debtor Relief Laws or seeking the appointment of a receiver, sequestrator, trustee, conservator, liquidator or other custodian or other officer having similar powers over the Borrower or over all or a substantial part of its property, and any such event described in this clause (ii) shall continue for sixty days

without having been dismissed, bonded or discharged; or (iii) any analogous step or procedure is taken under the laws of any jurisdiction in respect of the Borrower;

(f) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The Borrower shall have an order for relief entered with respect to it or shall commence a voluntary case or proceeding under any Debtor Relief Laws, or shall consent to the entry of an order for relief in an involuntary case or proceeding, or to the conversion of an involuntary case to a voluntary case or proceeding, under any such law, or shall seek or consent to or acquiesce in the appointment of or taking possession by a receiver, trustee, conservator, liquidator or other custodian for all or a substantial part of its property; or Borrower shall make any assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors; or (ii) the Borrower shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or (iii) in the case of the Borrower, the board of directors (or similar governing body) of the Borrower (or any committee thereof); or (iv) in the case of any Subsidiary Guarantor, the board of directors (or similar governing body) of such Subsidiary Guarantor (or any committee thereof), in each case shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*); or (v) any analogous step or procedure is taken under the laws of any jurisdiction in respect of the Borrower;

(g) Breach of Certain Other Covenants. Any Loan Party shall default in the performance of or compliance with any covenant contained herein or any of the other Financing Documents other than any such term referred to in any other clause of this Section 8.1, and such default shall not have been remedied, cured or waived within thirty (30) days after the earlier of (i) an Authorized Officer of such Loan Party becoming aware of such default or (ii) receipt by the Borrower of notice from the Administrative Agent or any Lender of such default; provided, that if such failure is not capable of remedy within such 30-day period, such 30-day period shall be extended to a total period of ninety (90) days in the aggregate (inclusive of the original thirty day period) so long as (A) such Default is subject to cure and (B) the Borrower or such Loan Party, as applicable, is diligently pursuing a cure;

(h) Judgments and Attachments. A final judgment or order, or series of judgments or orders, for the payment of money in excess of \$500,000,000 in the aggregate (net of insurance proceeds which are reasonably expected to be paid) shall be rendered against a Loan Party, in each case, by one or more Governmental Authorities, arbitral tribunals or other bodies having jurisdiction over any such entity and the same shall not be discharged (or provision shall not be made for such discharge), dismissed or stayed, within ninety (90) days from the date of entry of such judgment or order or judgments or orders;

(i) Illegality. Any Financing Document or any material provision of any Financing Document, (i) is declared by a court of competent jurisdiction to be illegal or unenforceable, (ii) should otherwise cease to be valid and binding or in full force and effect or shall be materially impaired (in each case, except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default thereunder)) or (iii) is (including the enforceability thereof) expressly terminated, contested or repudiated by any Loan Party;

(j) Change of Control. A Change of Control shall have occurred; or

(k) ERISA Event. There shall occur one or more ERISA Events that would reasonably be expected to result in a Material Adverse Effect.

**THEN**, (1) upon the occurrence of any Event of Default described in Section 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) or Section 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of Required Lenders, upon notice to the Borrower by the Administrative Agent, (A) the Revolving Commitments, if any, of each Lender having such Revolving Commitments and the obligation of each Issuing Bank to issue any Letter of Credit shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Loan Party: (I) the unpaid principal amount of and accrued interest and premium, if any, on the Loans, (II) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit) and (III) all other Obligations; provided, the foregoing shall not affect in any way the obligations of Lenders under Section 2.3(c) (*Drawings and Reimbursements; Funding of Participations*); (C) pursue other remedies available under the Financing Documents and applicable laws; and (D) the Administrative Agent shall direct the Borrower to pay (and the Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Sections 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) or 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*) to pay) to Cash Collateralize the L/C Obligations (in an amount equal to 102% of the amount of the Outstanding Amount of L/C Obligations thereof).

Notwithstanding anything to the contrary in this Agreement or any other the Financing Document, a Default or Event of Default that is capable of being cured and that is cured by a subsequent action prior to the expiration of any grace period or any remedial action pursuant to this Agreement or any other Financing Document (including the written declaration by the Required Lenders or the Administrative Agent acting at the direction of the Required Lenders of any Event of Default) shall be deemed cured for purposes of this Agreement and the other Financing Documents.

## SECTION 9. AGENTS

9.1 **Appointment of Agent.** MUFG Bank, Ltd. is hereby appointed Administrative Agent hereunder and under the other Financing Documents and each Lender and Issuing Bank hereby authorizes MUFG Bank, Ltd. to act as Administrative Agent in accordance with the terms hereof and the other Financing Documents. The Administrative Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Financing Documents, as applicable. The provisions of this Section 9 (*Agents*) are solely for the benefit of the Agents and Lenders and no Loan Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower or any of its Subsidiaries. Notwithstanding anything to the contrary herein, none of the Arrangers, in their capacity as such, shall have any duties, responsibilities or obligations under this Agreement or any other Financing Document nor any fiduciary relationship with any Lender, and no implied

covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Arrangers, in such capacity, but each Arranger, in such capacity, shall be entitled to all benefits of this Section 9 (Agents). Each of the Arrangers, and any Agent described in clause (d) of the definition thereof appointed to serve in a similar capacity may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower.

**9.2 Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Financing Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Financing Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Financing Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Financing Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Financing Documents except as expressly set forth herein or therein.

**9.3 General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Financing Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Loan Party to any Agent or any Lender in connection with the Financing Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Loan Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Financing Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or L/C Obligations or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Financing Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Financing Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.6 (Amendments and Waivers)), and upon receipt of such instructions from Required Lenders (or such other Lenders, as the case may be), such Agent shall

be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed) refraining from acting hereunder or any of the other Financing Documents in accordance with the instructions of Required Lenders (or such other Lenders as may be required to give such instructions under Section 10.6 (*Amendments and Waivers*)). Without limiting the generality of the foregoing, no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Financing Document or applicable law; and no Agent shall, except as expressly set forth herein and in the other Financing Documents, have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity. Each Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to such Agent by a Loan Party or a Lender.

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Financing Document by or through any one or more sub-agents appointed by the Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 (*General Immunity*) and of Section 9.6 (*Right to Indemnity*) shall apply to any Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.4 Agents Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with any of the Borrower’s Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

**9.5 Lenders’ Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the Borrower and its Subsidiary Guarantors in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of the Borrower and its Subsidiary Guarantors. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

(b) Each Lender or Issuing Bank, as applicable, by delivering its signature page to this Agreement, an Assignment Agreement and funding its Loan or issuing a Letter of Credit on a Credit Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document and each other document required to be approved by any Agent, Required Lenders, Issuing Banks or Lenders, as applicable on such Credit Date or the Closing Date.

**9.6 Right to Indemnity.** Each Lender or Issuing Bank, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Loan Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Financing Documents or Letters of Credit or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement or the other Financing Documents or Letters of Credit; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

**9.7 Successor Administrative Agent.**

(a) Administrative Agent may resign from the performance of all its functions and duties hereunder and under the other Financing Documents at any time by giving thirty (30) days' prior notice to the Borrower and the Lenders. The Administrative Agent may be removed at any time (i) by the Required Lenders for such Person's gross negligence or willful misconduct or (ii) by the Borrower, with the consent of the Required Lenders, for such Person's gross negligence or willful misconduct. In the event MUFG Bank, Ltd. is no longer the Administrative Agent, any successor Administrative Agent may be removed at any time with



cause by the Required Lenders. Any such resignation or removal shall take effect upon the appointment of a successor Administrative Agent, in accordance with this Section 9.7 (*Successor Administrative Agent*).

(b) Upon any notice of resignation by the Administrative Agent or upon the removal of the Administrative Agent by the Required Lenders, or by the Borrower with the approval of the Required Lenders pursuant to Section 9.7(a) (*Successor Administrative Agent*), the Required Lenders shall appoint a successor Administrative Agent, hereunder and under each other Financing Document to which the Administrative Agent is a party, such successor Administrative Agent to be a commercial bank having a combined capital and surplus of at least one billion Dollars (\$1,000,000,000); provided that, if no Event of Default shall then be continuing, appointment of a successor Administrative Agent shall also be acceptable to the Borrower (such acceptance not to be unreasonably withheld, conditioned or delayed). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor.

(c) If no successor Administrative Agent has been appointed by the Required Lenders within thirty (30) days after the date such notice of resignation was given by such resigning Administrative Agent, or the Required Lenders elected to remove such Person, any Lender may petition any court of competent jurisdiction for the appointment of a successor Administrative Agent. Such court may thereupon, after such notice, if any, as it may deem proper, appoint a successor Administrative Agent, who shall serve as Administrative Agent hereunder and under each other Financing Document to which it is a party until such time, if any, as the Required Lenders appoint a successor Administrative Agent, as provided above.

(d) Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent, and the retiring (or removed) Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Financing Documents. After the retirement or removal of the Administrative Agent hereunder and under the other Financing Documents, the provisions of this Section 9 (*Agents*) and Section 10.4 (*Indemnity*) shall continue in effect for the benefit of such retiring (or removed) Person, its sub-agents and their respective Agent Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Person was acting in its capacity as Administrative Agent.

#### **9.8 Guaranty.**

(a) Agents under Guaranty. Each Beneficiary hereby further authorizes Administrative Agent to, on behalf of and for the benefit of the Beneficiaries, be the agent for and representative of the Beneficiaries with respect to the Guaranty. Subject to Section 10.6 (*Amendments and Waivers*), without further written consent or authorization from any Beneficiary, the Administrative Agent may execute any documents or instruments necessary release any Subsidiary Guarantor from the Guaranty pursuant to Section 7.12 (*Discharge of Guaranty Upon Sale of Guarantor*) or with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 10.6 (*Amendments and Waivers*)) have otherwise consented.

(b) Right to Enforce Guaranty. Anything contained in any of the Financing Documents to the contrary notwithstanding, Borrower, Administrative Agent and each

Beneficiary hereby agree that no Beneficiary shall have any right individually to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Financing Documents may be exercised solely by the Administrative Agent, for the benefit of the Lenders and the Issuing Banks in accordance with the terms hereof and thereof.

(c) Rights under Permitted Hedging Agreements. No Hedging Agreements will create (or be deemed to create) in favor of any hedging counterparty that is a party thereto any rights in connection with the management or release of the obligations of any Subsidiary Guarantor under the Financing Documents.

(d) Release of Guarantees, Termination of Financing Documents. Notwithstanding anything to the contrary contained herein or any other Financing Document, upon the occurrence of the Discharge of Obligations, upon request of the Borrower, the Administrative Agent shall take such actions as shall be required to release all guarantee obligations provided for in any Financing Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Subsidiary Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Subsidiary Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

9.9 **Withholding Taxes.** To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this Section 9.9 (Withholding Taxes).

9.10 **Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on the

Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, Issuing Banks and Administrative Agent, including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under Sections 2.3 (Letters of Credit), 2.10 (Fees), 10.3 (Expenses) and 10.4 (Indemnity) allowed in such judicial proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and Issuing Banks to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.3 (Letters of Credit), 2.10 (Fees), 10.3 (Expenses) and 10.4 (Indemnity). To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.3 (Letters of Credit), 2.10 (Fees), 10.3 (Expenses) and 10.4 (Indemnity) hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or Issuing Banks may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

#### **9.11 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, the Coordinating Lead Arranger and each of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Revolving Commitments;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of ERISA Section 406 and Code Section 4975, such Lender’s entrance into, participation in, administration of and performance of the Loans, the Revolving Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Revolving Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Revolving Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, the Coordinating Lead Arranger and each of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Coordinating Lead Arranger or their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Financing Document or any documents related to hereto or thereto).

## **SECTION 10.MISCELLANEOUS**

### **10.1 Notices.**

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Loan Party, the Administrative Agent or each Issuing Bank, shall be sent to such Person’s address as set forth on Appendix B or in the other relevant Financing Document, and in the case of any Lender, the address as indicated to the Administrative Agent in

writing from time to time. Except as otherwise set forth in Section 3.3 (Notices) or paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by facsimile (except for any notices sent to the Administrative Agent) or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three (3) Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent; provided further, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) (Delegation of Duties) hereto as designated by the Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent, Lenders and each Issuing Bank hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to (x) notices to any Agent, any Lender or any Issuing Bank pursuant to Section 2 (Loans and Letters of Credit) if such Person has notified the Administrative Agent or the Borrower, as applicable, that it is incapable of receiving notices under such Section by electronic communication or (y) the issuance of any Letter of Credit. The Administrative Agent, any Issuing Bank, any Lender or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to it to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of

third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications.

(iv) Each Loan Party, each Lender, each Issuing Bank and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) The Administrative Agent shall give prompt notice to each Lender and Issuing Bank of receipt of each notice or request required or permitted to be given to the Administrative Agent by any Loan Party pursuant to the terms of this Agreement or any other Financing Document (unless concurrently delivered to the Lenders and Issuing Banks by the Loan Parties).

(vi) Any notice of Default or Event of Default to the Borrower shall be provided by delivery of written notice thereof.

(c) Private Side Information Contacts. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to information that is not made available through the "Public Side Information" portion of the Platform and that may contain Non-Public Information with respect to the Borrower, its Affiliates or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither any Loan Party nor Administrative Agent has any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Financing Documents.

## 10.2 Reserved.

10.3 **Expenses.** Whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to pay promptly (a) all actual, reasonable and documented fees and expenses of advisors to the Agents (but, in the case of legal fees and expenses, limited to the legal fees and expenses of Norton Rose Fulbright US LLP; provided that in the event of an actual or potential conflict of interest, the affected Agents shall be entitled to reimbursement of the actual, reasonable and documented fees, expenses and disbursements of one additional counsel) in connection with the negotiation, preparation, execution and administration of the Financing Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Borrower; (b) all the actual, reasonable and documented out-of-pocket costs and expenses incurred by each Agent in connection with the syndication of the Loans and Revolving Commitments and the transactions contemplated by the Financing Documents and any consents, amendments, waivers or other modifications thereto; and (c) after the occurrence and during the continuance of an Event of Default, all actual, documented and reasonable out-of-pocket costs and expenses (but, in the case of legal fees and expenses, limited to the legal fees and expenses of one primary counsel designated by the Coordinating Lead Arranger for all such Persons and, to the extent applicable, one local counsel

reasonably necessary in each applicable jurisdiction for all such Persons), incurred by any Agent, any Issuing Bank and Lenders in enforcing any Obligations of or in collecting any payments due from the Borrower or any of its Subsidiary Guarantors hereunder or under the other Financing Documents by reason of such Event of Default (including in connection with the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work out” or pursuant to any insolvency or bankruptcy cases or proceedings; provided that in the event of an actual or potential conflict of interest, each affected Agent, Issuing Bank and Lender shall be entitled to reimbursement of the actual, reasonable and documented fees, expenses and disbursements of one additional counsel. This Section 10.3 (*Expenses*) shall not apply with respect to Taxes that are imposed with respect to payments to or for the account of any Agent or any Lender under any Financing Document which are covered by Section 2.18 (*Taxes; Withholding, Etc.*) or that are specifically excluded from the scope of Section 2.18 (*Taxes; Withholding, Etc.*).

#### 10.4 Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.3 (*Expenses*), whether or not the transactions contemplated hereby shall be consummated, the Borrower agrees to defend (subject to Indemnitees’ selection of counsel), indemnify, pay and hold harmless, each Agent, each Issuing Bank and Lender and each of their and their Affiliates’ respective officers, partners, members, directors, trustees, advisors, employees, attorneys, agents, sub-agents, affiliates and controlling Persons (each, an “**Indemnitee**”), from and against any and all Indemnified Liabilities; provided that, the Borrower shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from (x) such Indemnitee’s gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction or (y) material breach of such Indemnitee’s express obligations hereunder, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.4 (*Indemnity*) may be unenforceable in whole or in part because they are violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. If for any reason the foregoing indemnification is unavailable to any Indemnitee, or insufficient to hold it harmless, then the Borrower will contribute to the amount paid or payable by such Indemnitee, as applicable, as a result of such Indemnified Liability in such proportion as is appropriate to reflect the relative economic interests of (i) the Borrower and its Affiliates, shareholders, partners, members or other equity holders on the one hand and (ii) such Indemnitee on the other hand with respect to the transactions under the Financing Documents, as well as the relative fault of (x) the Borrower and its Affiliates, shareholders, partners, members or other equity holders and (y) such Indemnitee with respect to such Indemnified Liability. The reimbursement, indemnity and contribution obligations of the Borrower under this Section 10.4 (*Indemnity*) will be in addition to any liability which the Borrower may otherwise have, and will be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Borrower, the Indemnitees, any such Affiliate and any such Person. Notwithstanding the foregoing, the Borrower shall not be required to indemnify any Indemnitee for losses, claims, damages or liabilities arising solely out of disputes as between the Indemnitees that are not based on any act or omission of the Borrower

or any of its Subsidiaries or Affiliates, excluding any disputes against any Agent acting in such capacity.

(b) To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against each Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. Other than with respect to the obligations of each Loan Party pursuant to clause (a), to the extent permitted by applicable law, no Indemnitee shall assert, and each Indemnitee hereby waives, any claim against Borrower and its Affiliates, officers, partners, members, directors, trustees, advisors employees, attorneys, agents, sub-agents or controlling Persons, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Indemnitee hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Each Loan Party also agrees that no Indemnitee will have any liability, based on its or their exclusive or contributory negligence or otherwise, to each Loan Party (or their respective Affiliates) or any Person asserting claims on behalf of or in right of any Loan Party (or their respective Affiliates) or any other Person in connection with or as a result of this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except to the extent that any losses, claims, damages, liabilities or expenses incurred by the Borrower or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (x) the gross negligence or willful misconduct of such Indemnitee or (y) the material breach of such Indemnitee's express obligations under the Financing Documents by, such Indemnitee in performing its obligations under this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event will such Indemnitee have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Indemnitee's activities related to this Agreement or any Financing Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein. Notwithstanding the foregoing, the Borrower shall not be required to indemnify any Indemnitee for any Indemnified Liabilities arising solely out of disputes as between the Indemnities that are



not based on any act or omission of the Borrower or any of its Subsidiaries or Affiliates, excluding any disputes against any Agent acting in such capacity.

(d) Promptly after receipt by any Arranger, Lender, Issuing Bank or Agent of notice of its involvement in any action, proceeding or investigation, such Arranger, Lender, Issuing Bank or Agent will, if a claim for indemnification in respect thereof is to be made against the Borrower under this Section 10.4 (Indemnity) notify the Borrower in writing of such involvement. Failure by any Arranger, Lender, Issuing Bank or Agent to so notify the Borrower will not relieve the Borrower from the obligation to indemnify the Indemnitees under this Section 10.4 (Indemnity) except to the extent that the Borrower suffers actual prejudice as a result of such failure, and will not relieve the Borrower from its obligation to provide reimbursement and contribution to such Arrangers, Lenders, Issuing Banks or Agents.

This Section 10.4 (Indemnity) shall not apply with respect to Taxes other than any Taxes that represent Indemnified Liabilities arising from any non-Tax claim.

#### **10.5 Set Off.**

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence and during the continuation of any Event of Default each Lender and each Issuing Bank is hereby authorized by each Loan Party at any time or from time to time, without notice to any Loan Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender or such Issuing Bank to or for the credit or the account of any Loan Party against and on account of the obligations and liabilities of any Loan Party to such Lender or such Issuing Bank hereunder, the Letters of Credit and participations therein and under the other Financing Documents, including all claims of any nature or description arising out of or connected hereto, the Letters of Credit and participations therein or with any other Financing Document, irrespective of whether or not (a) such Lender or such Issuing Bank shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 2 (Loans and Letters of Credit) and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Sections 2.15 (Ratable Sharing) and 2.20 (Defaulting Lenders) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, Issuing Banks and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section 10.5 (Set Off) are in addition to other rights and remedies (including other rights of setoff) that such Lender, Issuing Bank or their respective Affiliates may have.

#### **10.6 Amendments and Waivers.**

(a) Required Lenders' Consent. Subject to the additional requirements of clauses (b) and (c) and subject to clause (d), no amendment, modification, termination or waiver of any provision of the Financing Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of the Required Lenders; provided that the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any other Financing Document (i) to cure any ambiguity, omission, defect, inconsistency, any typographical error or other manifest error in any Financing Document (in each case, as reasonably determined by the Administrative Agent and the Borrower), (ii) to release Subsidiary Guarantors in accordance with this Agreement, (iii) to make any change that would provide any additional right or benefits to the Lenders (as reasonably determined by the Administrative Agent and the Borrower), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender (or any Issuing Bank if applicable) or the Lenders shall have received at least five (5) Business Days' prior written notice thereof and Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment, (iii) to revise any schedule or appendix to reflect any change in notice information, and (iv) to effectuate the implementation of a Benchmark Replacement pursuant to the terms of Section 2.30(a) (Benchmark Replacement).

(b) Affected Lenders' Consent. The consent of each Lender directly and adversely affected thereby shall be required with respect to:

(i) increases or extensions to the Revolving Commitment of such Lender or extensions of the Maturity Date of any Loan of such Lender; provided that, no amendment, modification or waiver of any condition precedent, covenant, Default, or Event of Default shall constitute an extension of a Revolving Commitment or the Maturity Date;

(ii) waivers, reductions or postponements of repayments of any Loan of such Lender beyond the Maturity Date;

(iii) reductions to the rate of interest on any Loan of such Lender or any premium or any fee payable to such Lender (other than a waiver of default interest and it being understood that any change in the levels set forth in the pricing grid agreed to between the Administrative Agent and the Borrower in accordance with the definition of Applicable Margin shall not constitute a reduction in any rate of interest or fees);

(iv) extensions to the time for payment of any interest, fees or premium payable to such Lender (it being understood that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default shall constitute any such extension); and

(v) reductions of the principal amount of any Loan owed to such Lender.

(c) Other Consents. Subject to clause (d), the consent of all Lenders shall be required with respect to:

(i) any amendment, modification, waiver or termination of any provision of this Section 10.6 or any other provision that purports to reduce any voting

percentages or requirements set forth in the definition of “Required Lenders” and this Section 10.6;

(ii) releases of all or substantially all of the value of the Guaranty (other than in accordance with the Financing Documents);

(iii) modifications to the pro rata sharing provisions among the Lenders or pro rata Commitment reductions, except as otherwise set forth in the Financing Documents;

(iv) consent to the assignment or transfer by the Borrower of any of its rights and obligations under any Financing Document, without the written consent of all Lenders, except with respect to any such assignment or transfer resulting from any transactions permitted by Section 10.7 (*Successors and Assigns; Participations*).

Notwithstanding anything herein to the contrary, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended, or the maturity of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any amendment, waiver or consent requiring the consent of all the Lenders or each affected Lender that by its terms affects any Defaulting Lender materially and more adversely than the other affected Lenders shall require the consent of such Defaulting Lender, (B) only the consent of the applicable Issuing Bank and the Administrative Agent shall be required with respect to any amendment that, (i) extends the Letter of Credit Expiration Date beyond the Final Maturity Date, (ii) extends the time for payment of any interest, fees or premium payable to such Issuing Bank (it being understood that no amendment, modification or waiver of any condition precedent, covenant, or event of default shall constitute any such extension), (iii) reduces any reimbursement obligation in respect of any Letter of Credit owed to such Issuing Bank or (iv) increases the Letter of Credit sublimit of such Issuing Bank, (C) the consent of the Administrative Agent or the applicable Issuing Bank, as applicable, will also be required with respect to modifications of the Financing Documents which adversely affects the rights and duties of the Administrative Agent or such Issuing Bank and (D) the Borrower and the Administrative Agent may (or, at the written direction of the Borrower, the Administrative Agent shall), without the need to obtain consent of any other Lender (other than, in the case of clause (x)(iv) below, the Extending Lenders with respect to the applicable Extended Commitments) or Issuing Bank, enter into an amendment or other modification to this Agreement and the other Financing Documents (x) to effectuate (i) any Additional Secured Indebtedness satisfying the conditions of Section 2.23 (*Additional Secured Indebtedness*), (ii) any Additional Unsecured Indebtedness satisfying the conditions of Section 2.24 (*Additional Unsecured Indebtedness*), (iii) any increase in Revolving Commitments in accordance with Section 2.25 (*Increase of Revolving Commitments*) and (iv) any Extension Amendment in accordance with Section 2.28 (*Amend and Extend*) and (y) to permit the extensions of credit from time to time thereunder and the accrued interest and fees in respect thereof to share equally and ratably in the benefits of this Agreement and the other Financing Documents, as applicable (including, by the Administrative Agent modifications to the “Required Lender” definition and related definitions).

(d) Non-Responding Lenders. If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Financing Document or any other vote of Lenders under the terms of this Agreement, other than in respect of Section 10.6(b) above, within ten (10) Business Days or such longer period specified in the request (a “**Non-Responding Lender**”), the Revolving Commitment of such Non-Responding Lender shall be disregarded in determining the Revolving Commitments of the Lenders required to approve such consent, waiver or amendment.

(e) Execution of Amendments, Etc. The Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender or any Issuing Bank, execute amendments, modifications, waivers or consents on behalf of any Lender or Issuing Bank. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.6 (Amendments and Waivers) shall be binding upon each Lender and Issuing Bank at the time outstanding, each future Lender or Issuing Bank and, if signed by a Loan Party, on such Loan Party.

#### 10.7 **Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties hereto and the successors and permitted assigns of Lenders. Neither the Borrower’s rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of all Lenders (except to the extent resulting from any transaction permitted pursuant to Section 6.3 (Fundamental Changes)). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any benefit, legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. The Borrower, the Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders or Issuing Banks in the Register as the holders and owners of the corresponding Revolving Commitments and Loans listed therein for all purposes hereof. The entries in the Register shall be conclusive absent manifest error. No assignment or transfer of any such Revolving Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in clause (d) below. Each assignment shall be recorded in the Register promptly following receipt by the Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to the Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “**Assignment Effective Date.**” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender or Issuing Bank shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Revolving Commitments or Loans.

(c) Right to Assign.

(i) Lender Assignments. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Revolving Commitment and Loans owing to it and any participations in Letters of Credit that it has purchased (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Revolving Commitments) to a Person (A) with the Required Ratings and (B) who also (1) meets the criteria of clause (i) of the definition of the term of "Eligible Assignee" or (2) meets the criteria of clause (ii) of the definition of the term of "Eligible Assignee" and, solely in the case of this clause (2) (or an Eligible Assignee not satisfying the Required Ratings requirement in clause (A) above), is consented to by the Borrower and the Issuing Banks (such consent not to be (x) unreasonably withheld or delayed or (y) in the case of Borrower, required at any time an Event of Default pursuant to Section 8.1(a) (*Failure to Make Payments When Due*), Section 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) or Section 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*) shall have occurred and then be continuing); provided further that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof. Any assignment in violation of this Section 10.7(c)(i) (*Lender Assignments*) shall be null and void.

(ii) Issuing Bank Assignments. Each Issuing Bank shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Letter of Credit Issuance Commitment and any Letters of Credit that it has issued (provided, however, that pro rata assignments shall not be required; provided, further, that no partial assignment of any outstanding Letter of Credit shall be permitted) to a Person with the Required Ratings who is also an Eligible Assignee and reasonably satisfactory to the Administrative Agent as a Issuing Bank hereunder and consented to by the Borrower (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default pursuant to Section 8.1(a) (*Failure to Make Payments When Due*), Section 8.1(e) (*Involuntary Bankruptcy; Appointment of Receiver, Etc.*) or Section 8.1(f) (*Voluntary Bankruptcy; Appointment of Receiver, Etc.*) shall have occurred and then be continuing); provided further that (A) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof. Upon a Issuing Banks assignment of L/C Obligations and Letter of Credit Issuance Commitments to an additional Issuing Bank, (a) such additional Issuing Bank shall become vested with all of the rights, powers, privileges and duties of a Issuing Bank hereunder, and (b) the assignee Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, assigned to such Issuing Bank. Any assignment in violation of this Section 10.7(c)(ii) (*Issuing Bank Assignments*) shall be null and void.

(d) Mechanics.

(i) Assignments and assumptions of Loans and Revolving Commitments by Lenders shall be effected by execution and delivery to the Administrative

Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to the Administrative Agent such forms, certificates or other evidence, if any, with respect to withholding tax matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.18(c) (Status of Lenders), together with payment to the Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Revolving Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Revolving Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Revolving Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Revolving Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.7 (Successors and Assigns; Participations), the disposition of such Revolving Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it will not provide any information (other than customary administrative information) obtained by it in its capacity as a Lender to the Borrower or any Affiliate of the Borrower.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.7 (Successors and Assigns; Participations), as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder and under the other Financing Documents to the extent of its interest in the Loans and Revolving Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which

survive the termination hereof under Section 10.9 (*Survival of Representations, Warranties and Agreements*)) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Financing Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Revolving Commitments shall be modified to reflect any Revolving Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to the Administrative Agent for cancellation, and thereupon the Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations without restriction to any Person (other than Borrower, any of its Subsidiaries or any of their respective Affiliates, or any natural Person) in all or any part of its Revolving Commitments, Loans or any other Obligation. Each Lender that sells a participation pursuant to this clause (g) shall, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of the Borrower, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's participation interest with respect to the Revolving Commitments, Loans and other Obligations (each, a "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Revolving Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Revolving Commitment, Loan or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and Proposed Section 1.163-5(b) (or, in each case, any amended or successor version). Unless otherwise required by the U.S. Internal Revenue Service ("**IRS**"), any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the IRS. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of the applicable participation for all purposes under this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) subject to the terms, conditions and limitations set forth in Section 10.6 (*Amendments and Waivers*), extend the final scheduled maturity of any Loan in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon or

reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Revolving Commitment shall not constitute a change in the terms of such participation, and that an increase in any Revolving Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), or (B) consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement, except to the extent resulting from any transaction permitted pursuant to Section 6.3 (*Fundamental Changes*) or (C) release all or substantially all of the Subsidiary Guarantors from the Guaranty (in each case, except as expressly provided in the Financing Documents) supporting the Loans hereunder in which such participant is participating.

(iii) The Borrower agrees that each participant shall be entitled to the benefits of Sections 2.17 (*Increased Costs; Capital Adequacy*) and 2.18 (*Taxes; Withholding, Etc.*) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c) of this Section 10.7 (*Successors and Assigns; Participations*); provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.17 (*Increased Costs; Capital Adequacy*) or 2.18 (*Taxes; Withholding, Etc.*) than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the participant acquired the applicable participation, (y) a participant shall not be entitled to the benefits of Section 2.18 (*Taxes; Withholding, Etc.*) unless such participant agrees, for the benefit of the Borrower, to comply with Section 2.18 (*Taxes; Withholding, Etc.*) and provide all forms required by Section 2.18(c) (*Status of Lenders*) as though it were a Lender (it being understood that the forms required by Section 2.18(c) (*Status of Lenders*) shall be delivered to the participating Lender and if required by law for reduced withholding, copies shall be delivered to the Borrower or to the Administrative Agent) and (z) a participant agrees to be subject to the provisions of Sections 2.18 (*Taxes; Withholding, Etc.*) and 2.21 (*Removal or Replacement of Lenders*) as if it were an assignee under clause (c) of this Section 10.7 (*Successors and Assigns; Participations*); provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to the Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.5 (*Set Off*) as though it were a Lender, provided such participant agrees to be subject to Section 2.15 (*Ratable Sharing*) as though it were a Lender. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of Sections 2.18 (*Taxes; Withholding, Etc.*) and 2.21 (*Removal or Replacement of Lenders*) with respect to any participant.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.7 (*Successors and Assigns; Participations*) any Lender or Issuing Bank may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender or Issuing Bank, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank or other central bank; provided, that no Lender or Issuing Bank, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further that in no event shall the



applicable Federal Reserve Bank, pledgee or trustee, be considered to be a “Lender” or “Issuing Bank” or be entitled to require that assigning Lender to take or omit to take any action hereunder.

#### **10.8 Independence of Covenants.**

All covenants hereunder 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. Any determination regarding whether or not a Default or Event of Default has occurred or is existing or continuing under this Agreement or any other Financing Document shall be made by the Borrower and the Required Lenders (or Administrative Agent) to the extent such Default or Event of Default, if it had occurred, would be waivable by the Required Lenders pursuant to Section 10.6 (Amendments and Waivers) hereof. The Lenders shall act collectively through Administrative Agent with respect to all such determinations; provided that the Required Lenders may direct Administrative Agent with respect to any such determination; provided further that the foregoing shall not in any manner prohibit any Lender from communicating with any other Lender or with Administrative Agent regarding any such actual or claimed Event of Default, Default, default, event or condition, what action the Borrower have taken, are taking and propose to take with respect thereto, the terms and conditions of any amendment or waiver with respect to such Default or Event of Default or any other matter relating to the Loan Parties or any Financing Document.

#### **10.9 Survival of Representations, Warranties and Agreements.**

All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in Sections 2.16(c) (Compensation for Losses), 2.17 (Increased Costs; Capital Adequacy), 2.18 (Taxes; Withholding, Etc.), 10.3 (Expenses) and 10.4 (Indemnity), 10.5 (Set Off), 10.8 (Independence of Covenants) and 10.24 (No Fiduciary Duty) and the agreements of Lenders set forth in Sections 2.15 (Ratable Sharing), 9.3(b) (Exculpatory Provisions) and 9.6 (Right to Indemnity) shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder and the termination hereof.

#### **10.10 No Waiver; Remedies Cumulative.**

No failure or delay on the part of any Agent, any Issuing Bank or any Lender in the exercise of any power, right or privilege hereunder or under any other Financing Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Financing Documents. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy. Nothing herein shall prohibit any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank) hereunder and under the other Financing Documents.

#### **10.11 Marshalling; Payments Set Aside.**

Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent, any Issuing Bank or Lenders (or to the Administrative Agent, on behalf of Lenders or any Issuing Bank), or any Agent, Issuing Bank or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

#### **10.12 Severability.**

In case any provision in or obligation hereunder or under any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. Without limiting the foregoing provisions of this Section 10.12 (Severability), if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or an Issuing Bank, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### **10.13 Obligations Several; Independent Nature of Lenders' Rights.**

The obligations of Lenders (which term shall include each Issuing Bank for purposes of this Section 10.13 (Obligations Several; Independent Nature of Lenders' Rights)) hereunder are several and no Lender shall be responsible for the obligations or Revolving Commitment of any other Lender hereunder. Nothing contained herein or in any other Financing Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and (subject to the provisions hereof) enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

#### **10.14 Headings.**

Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

#### **10.15 APPLICABLE LAW.**

**THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND**

ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

10.16 CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER FINANCING DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH LOAN PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY SECURITY AGREEMENT GOVERNED BY A LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK); (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE LOAN PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1 (NOTICES); (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE LOAN PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS, ISSUING BANKS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE ENFORCEMENT OF ANY JUDGMENT. EACH LOAN PARTY, FOR ITSELF AND ITS AFFILIATES, AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

10.17 WAIVER OF JURY TRIAL.

EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER FINANCING DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE

SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.17 (WAIVER AND JURY TRIAL) AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**10.18 Confidentiality.**

Each Agent and each Lender (which term shall for the purposes of this Section 10.18 (Confidentiality) include each Issuing Bank) shall hold all non-public information regarding Borrower and its Subsidiaries and Affiliates and their respective businesses identified as such by the Borrower and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by the Borrower that, in any event, Administrative Agent may disclose such information to the Lenders and each Agent and each Lender and each Agent may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other experts, agents and advisors (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.18 (Confidentiality)) who need to know such information and on a confidential basis, (ii) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein, by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to the Borrower and its obligations under the Loans or any potential providers of credit protection, in each case, who are advised of the confidential nature of such information, (iii) disclosure to any rating agency on a confidential basis; provided that such information is supplied to such rating agency after consultation with Administrative Agent, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Financing Document, (vi) disclosures to the extent that such information is publicly available or becomes publicly available other than by reason of improper disclosure by such Person, (vii) disclosures received by a Person on a non-confidential

basis from a source (other than the disclosing party or any of its affiliates, advisors, members, directors, employees, agents or other representatives) not known by such Person to be prohibited from disclosing such information to such Person by a legal, contractual or fiduciary obligation, (viii) disclosures to the extent that such information was already in the disclosing party's possession or is independently developed by the disclosing party, (ix) with respect to the Arrangers only, disclosures for purposes of establishing a "due diligence" defense, (x) disclosures to market data collectors and similar services providers in the lending industry, and service providers to the Administrative Agent, the Arrangers and the Lenders in connection with the administration and management of the Loans, (xi) disclosures required or requested by any court, administrative or governmental agency, body, committee or representative thereof or by the NAIC or pursuant to applicable law or legal, administrative or judicial process, or pursuant to a subpoena or order issued by a court of competent jurisdiction, in which case such Person agrees to inform Borrower promptly thereof to the extent permitted by applicable law and (xii) disclosures upon the request or demand of any regulatory or quasi-regulatory authority purporting to have jurisdiction over such Person or any of its Affiliates. Notwithstanding anything to the contrary set forth herein, each party (and each of their respective employees, representatives or other agents) may disclose to any and all Persons without limitation of any kind, the Tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other Tax analyses) that are provided to any such party relating to such Tax treatment and tax structure. However, any information relating to the Tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties hereto, their respective Affiliates, and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the U.S. federal income Tax treatment of the transactions contemplated by this Agreement but does not include information relating to the identity of any of the parties hereto or any of their respective Affiliates.

#### **10.19 Usury Savings Clause.**

Notwithstanding any other provision herein, the aggregate interest rate charged by any Lender with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law, shall not exceed the Highest Lawful Rate applicable to such Lender. If the rate of interest (determined without regard to the preceding sentence) under this Agreement charged by any Lender at any time exceeds the Highest Lawful Rate applicable to such Lender, the outstanding amount of the Loans held by such Lender made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due thereunder equals the amount of interest which would have been due thereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made thereunder are repaid in full the total interest due thereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due thereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid to such Lender and the amount of interest which would have been paid to such Lender if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate applicable to such Lender, then any such excess shall be cancelled

automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Loans made hereunder to such Lender or be refunded to the Borrower.

**10.20 Effectiveness; Counterparts.**

This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by the Borrower and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (i.e., "pdf" or "tif") shall be effective as delivery of an original executed counterpart of this Agreement.

**10.21 Entire Agreement.**

This Agreement and the other Financing Documents with respect to fees payable to the Administrative Agent or the syndication of the Loans and Revolving Commitments constitute the entire contract and understanding among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**10.22 Patriot Act.**

Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective for each Lender, Agent and Issuing Bank. The Borrower agrees to provide any information reasonably requested in writing by the Administrative Agent, pursuant to this Section 10.22 in connection with its or any Lender's compliance with the PATRIOT ACT and Beneficial Ownership Regulations.

**10.23 Electronic Execution of Assignments.**

The words "execution," "signed," "signature," and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as an original executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state, provincial or territorial laws based on the Uniform Electronic Transactions Act.

**10.24 No Fiduciary Duty.**

Each Agent, each Lender, each Issuing Bank and their respective Affiliates (collectively, solely for purposes of this paragraph, the "**Lenders**"), are full service financial institutions engaged, either directly or through their respective affiliates, in a broad array of activities,

including commercial and investment banking, financial advisory, market making and trading, investment management (both public and private investing), investment research, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage and other financial and non-financial activities and services globally. In the ordinary course of their various business activities, each Lender and funds or other entities in which the Lenders invest or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers. In addition, any Lender may at any time communicate independent recommendations and/or publish or express independent research views in respect of such assets, securities or instruments. Any of the aforementioned activities may involve or relate to assets, securities and/or instruments of the Borrower and/or any of its Affiliates, as well as of the Borrower and/or other Persons which (i) may be involved in transactions arising from or relating to the Transactions or (ii) have other relationships with Borrower or its Affiliates. In addition, any Lender may provide investment banking, commercial banking, underwriting and financial advisory services to such other Persons. The Transactions may have a direct or indirect impact on the investments, securities or instruments referred to in this Section 10.24 (No Fiduciary Duty), and employees working on the financing contemplated hereby may have been involved in originating certain of such investments and those employees may receive credit internally therefor, and may have economic interests that conflict with those of the Loan Parties, their respective equity holders and/or their respective Affiliates. Although any Lender in the course of such other activities and relationships may acquire information about the Transaction or other Persons which may be the subject of the Transactions, none of the Lenders shall have any obligation to disclose such information, or the fact that such Lender is in possession of such information, to the Loan Parties or to use such information on the Loan Parties' behalf. Each Loan Party acknowledges and agrees that nothing in the Financing Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, their respective equity holders or their respective Affiliates, on the other. The Loan Parties acknowledge and agree that (i) each Lender will act under the Financing Documents as an independent contractor, (ii) the transactions contemplated by the Financing Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other, and (iii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, their respective equity holders or their respective Affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its equity holders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Financing Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Loan Party, any of their respective management, equity holders, Affiliates, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that the Loan Parties, their respective equity holders and their respective Affiliates are each responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto. In addition, any

Lender may employ the services of its Affiliates in providing services hereunder and may exchange with such Affiliates information concerning Borrower or its equity holders or their respective Affiliates and other companies that may be the subject of the Transactions, and such Affiliates will be entitled to the benefits afforded to such Lender hereunder. Consistent with each Lender's policies to hold in confidence the affairs of its customers, each Lender will not furnish confidential information obtained from the Loan Parties by virtue of the Transactions to any of its other customers. Furthermore, the Loan Parties acknowledge that none of the Lenders or any of their respective Affiliates has an obligation to use in connection with the Transactions, or to furnish to the Loan Parties, confidential information obtained or that may be obtained by them from any other Person.

Each of the Lenders or Issuing Banks or its respective Affiliates are, or may at any time be, a counterparty (in such capacities, the "**Derivative Counterparties**") to the Loan Parties and/or any of their respective subsidiaries with respect to one or more agreements with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, entered into by to the Loan Parties (collectively, the "**Derivatives**"). Each Loan Party acknowledges and agrees for itself and its subsidiaries that each Derivative Counterparty (a) will be acting for its own account as principal in connection with the Derivatives, (b) will be under no obligation or duty as a result of such Lender's or its respective Affiliates' role in connection with the Transactions or otherwise to take any action or refrain from taking any action, or exercising any rights or remedies, that such Derivative Counterparty may be entitled to take or exercise in respect of the applicable Derivatives and (c) may manage its exposure to the Derivatives without regard to such Lenders' or its respective Affiliates' role hereunder.

#### 10.25 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank, or other recipient (and each of their respective successors and assigns), a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided, that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within five (5) Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 10.25 (*Erroneous Payments*) and held in trust for the benefit of the Administrative Agent, and such Lender or Issuing Bank shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient



to) promptly, but in no event later than two (2) Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Issuing Bank shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within two (2) Business Days of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 10.25(b) (*Erroneous Payments*).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 10.25(b) (*Erroneous Payments*) shall not have any effect on a Payment Recipient's obligations pursuant to Section 10.25(a) (*Erroneous Payments*) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Financing Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank under any Financing Document with respect to any

payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an “**Erroneous Payment Return Deficiency**”), upon the Administrative Agent’s notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Revolving Commitments) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Revolving Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with Borrower) deemed to execute and deliver an Assignment Agreement (or, to the extent applicable, an agreement incorporating an Assignment Agreement by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Revolving Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Revolving Commitments of any Lender and such Revolving Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.6 (Amendments and Waivers) (but excluding, in all events, any assignment consent or approval requirements (whether from Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency

owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Issuing Bank, to the rights and interests of such Lender or Issuing Bank, as the case may be) under the Financing Documents with respect to such amount (the “**Erroneous Payment Subrogation Rights**”) (provided that Borrower’s Obligations under the Financing Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by Borrower; provided that this Section 10.25(e) (Erroneous Payments) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on “discharge for value” or any similar doctrine.

Each party’s obligations, agreements and waivers under this Section 10.25 (Erroneous Payments) shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Revolving Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Financing Document

**10.26 Restricted Lenders.** Notwithstanding anything to the contrary in Section 5.9 (*Sanctions and Anti-Corruption Laws*) or Section 5.3(*Compliance with Law*) of this Agreement, in relation to each Loan Party that is incorporated in Germany or that otherwise notifies its Agent to this effect (each a “Restricted Lender”), the representations and undertakings in the provisions of such Sections shall only apply for the benefit of such Restricted Lender and shall only be given by a Loan Party to such Restricted Lender to the extent that the sanctions provisions would not result in (i) any violation of, conflict with or liability under EU Regulation (EC) 2271/96 or

(ii) a violation or conflict with Section 7 of the foreign trade rules (AWV) (Außenwirtschaftsverordnung) (in connection with section 4 paragraph 1 no. 3 and Section 19 paragraph 3 no. 1(a) foreign trade law (AWG) (Außenwirtschaftsgesetz)) or a similar anti-boycott statute as in effect in that Restricted Lender's home jurisdiction.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**CHENIERE ENERGY PARTNERS, L.P.**

as Borrower

By Cheniere Energy Partners, GP, LLC as its  
general partner

By: /s/ Matthew Healey

Name: Matthew Healey

Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**CHENIERE PIPELINE GP INTERESTS, LLC**  
as Subsidiary Guarantor

By: /s/ Matthew Healey \_\_\_\_\_  
Name: Matthew Healey  
Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---

**CHENIERE ENERGY INVESTMENTS, LLC**  
as Subsidiary Guarantor

By: /s/ Matthew Healey

Name: Matthew Healey

Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**SABINE PASS LNG-GP, LLC**  
as Subsidiary Guarantor

By: /s/ Matthew Healey \_\_\_\_\_  
Name: Matthew Healey  
Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---



**SABINE PASS LNG, L.P.**  
as Subsidiary Guarantor

By its general partner, Sabine Pass LNG-GP, LLC

By: /s/ Matthew Healey

Name: Matthew Healey

Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---

**SABINE PASS TUG SERVICES, LLC**

as Subsidiary Guarantor

By: /s/ Matthew Healey

Name: Matthew Healey

Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**CHENIERE CREOLE TRAIL PIPELINE, L.P.**  
as Subsidiary Guarantor

By its general partner, Cheniere Pipeline GP  
Interests, LLC

By: /s/ Matthew Healey \_\_\_\_\_  
Name: Matthew Healey  
Title: Vice President, Finance and Treasury

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**MUFG BANK LTD.,**  
as Administrative Agent

By: /s/ Lawrence Blat

Name: Lawrence Blat

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**BANCO BILBAO VIZCAYA  
ARGENTARIA, S.A. NEW YORK  
BRANCH,**  
as Lender

By:/s/ Cara Younger

\_\_\_\_\_  
Name: Cara Younger

Title: Managing Director

By:/s/ Armen Semizian

\_\_\_\_\_  
Name: Armen Semizian

Title: Executive Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**BANCO SANTANDER S.A., NEW YORK  
BRANCH,**  
as Lender

By: /s/ Andres Barbosa

Name: Andres Barbosa

Title: Managing Director

By: /s/ Daniel Kostman

Name: Daniel Kostman

Title: Executive Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**BANK OF AMERICA, N.A.,**

as Lender

By: /s/ Christopher Baethge

Name: Christopher Baethge

Title: Vice President

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**BANK OF CHINA, NEW YORK BRANCH,**  
as Lender

By: /s/ Raymond Qiao

Name: Raymond Qiao

Title: Executive Vice President

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**CANADIAN IMPERIAL BANK OF  
COMMERCE, NEW YORK BRANCH,**  
as Lender

By:/s/ Peter O'Neill

\_\_\_\_\_  
Name: Peter O'Neill

Title: Managing Director,  
Project Finance & Infrastructure

By:/s/ Luis Rios

\_\_\_\_\_  
Name: Luis Rios

Title: Executive Director, Energy Transition  
Project Finance & Infrastructure

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**CHINA MERCHANTS BANK CO., LTD.,  
NEW YORK BRANCH,**

as Lender

By:/s/ Xin He

\_\_\_\_\_  
Name: Xin He

Title: Deputy General Manager

By:/s/ Joseph M. Loffredo

\_\_\_\_\_  
Name: Joseph M. Loffredo

Title: Deputy General Manager

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**CITIBANK, N.A.,**  
as Lender

By: /s/ Maureen Maroney

Name: Maureen Maroney

Title: Vice President

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,**

as Lender

By:/s/ Page Dillehunt

\_\_\_\_\_  
Name: Page Dillehunt

Title: Managing Director

By:/s/ Michael Willis

\_\_\_\_\_  
Name: Michael Willis

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**DBS BANK LTD.,**  
as Lender

By: /s/ Ronald Wong

Name: Ronald Wong

Title: Senior Vice President

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**GOLDMAN SACHS BANK USA,**  
as Lender

By: /s/ Andrew Vernon

Name: Andrew Vernon

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**HSBC BANK USA, National Association,**  
as Lender

By: /s/ Balaji Rajgopal

Name: Balaji Rajgopal

Title: Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**INDUSTRIAL AND COMMERCIAL BANK  
OF CHINA LIMITED, NEW YORK  
BRANCH,**

as Lender

By:/s/ Lin Sun

\_\_\_\_\_  
Name: Lin (Allan) Sun

Title: Head of Project and Infrastructure  
Finance

By:/s/ Yeqing Liu

\_\_\_\_\_  
Name: Yeqing (Ivy) Liu

Title: Assistant Vice President

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**ING Capital LLC,**  
as Lender

By: /s/ Subha Pasumarti

Name: Subha Pasumarti

Title: Managing Director

By: /s/ Catharina van der Woude

Name: Catharina van der Woude

Title: Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**INTESA SANPAOLO S.P.A., NEW YORK  
BRANCH,**

as Lender

By: /s/ Nicholas A. Matacchieri

\_\_\_\_\_  
Name: Nicholas A. Matacchieri

Title: Managing Director

By: /s/ Stephen J. Spencer

\_\_\_\_\_  
Name: Stephen J. Spencer

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**JPMORGAN CHASE BANK, N.A.,**  
as Lender

By: /s/ Arina Mavilian

Name: Arina Mavilian

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**MIZUHO BANK, LTD.,**  
as Lender

By: /s/ Edward Sacks

Name: Edward Sacks

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**MORGAN STANLEY BANK, N.A.,**  
as Lender

By: /s/ Michael King

Name: Michael King

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**MUFG BANK, LTD.,**  
as Lender

By: /s/ Chip Lewis

Name: Chip Lewis

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

---

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**NATIXIS, NEW YORK BRANCH,**  
as Lender and Issuing Bank

By: /s/ James Kaiser

Name: James Kaiser

Title: Managing Director

By: /s/ Amit Roy

Name: Amit Roy

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**ROYAL BANK OF CANADA,**  
as Lender

By: /s/ Jason S. York

Name: Jason S. York

Title: Authorized Signatory

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**SOCIÉTÉ GÉNÉRALE**, as  
Lender and Issuing Bank

By: /s/ Eric Kim

Name: Eric Kim

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**STANDARD CHARTERED BANK,**  
as Lender

By: /s/ Kristopher Tracy

Name: Kristopher Tracy

Title: Director, Financing Solutions

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**SUMITOMO MITSUI BANKING  
CORPORATION,**

as Lender and Issuing Bank

By: /s/ Jeffrey Cobb

Name: Jeffrey Cobb

Title: Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**THE BANK OF NOVA SCOTIA, HOUSTON  
BRANCH**

as Lender and Issuing Bank

By: /s/ Joe Lattanzi

Name: Joe Lattanzi

Title: Managing Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**TRUIST BANK,**  
as Lender

By: /s/ Benjamin L. Brown  
\_\_\_\_\_  
Name: Benjamin L. Brown  
Title: Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers as of the Effective Date.

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION,**

as Lender and Issuing Bank

By: /s/ Borden Tennant

\_\_\_\_\_  
Name: Borden Tennant

Title: Director

Signature Page to CQP 2023 Senior Unsecured Credit Facility

**Corpus Christi Liquefaction, LLC**

May 18, 2023

Attention: Commercial Operations  
Endesa S.A.  
Calle Ribera del Loira 60  
28042 Madrid, Spain  
Fax: [fax\\_gas@enel.com](mailto:fax_gas@enel.com)

Re: LNG Sale and Purchase Agreement, dated April 1, 2014, between Corpus Christi Liquefaction, LLC and Endesa S.A. (assignee of Endesa Generacion S.A.), as amended (the "SPA 1")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month SOFR"** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

**700 Milam Street, Suite 1900, Houston, Texas 77002**  
**+1 713-375-5000**

---

Sincerely,

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

Endesa S.A.

By: /s/ Elena Perez Ferreiro

Name: Elena Perez Ferreiro

Title: Head of Gas Iberia



**Corpus Christi Liquefaction, LLC**

May 18, 2023

Attention: Commercial Operations  
Endesa S.A.  
Calle Ribera del Loira 60  
28042 Madrid, Spain  
Fax: [fax\\_gas@enel.com](mailto:fax_gas@enel.com)

Re: LNG Sale and Purchase Agreement, dated April 7, 2014, between Corpus Christi Liquefaction, LLC and Endesa S.A., as amended (the "SPA 2")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month SOFR"** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

**700 Milam Street, Suite 1900, Houston, Texas 77002**  
**+1 713-375-5000**

---

Sincerely,

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

Endesa S.A.

By: /s/ Elena Perez Ferreiro

Name: Elena Perez Ferreiro

Title: Head of Gas Iberia

**Corpus Christi Liquefaction, LLC**

June 8, 2023

Attention: Mr. Ignacio Martin  
Head of Gas & LNG International Supply  
Naturgy LNG GOM, Limited  
12 Merrion Square North  
Dublin 2, Ireland  
D02 H798  
Fax: +353 1 876 1825

Re: LNG Sale and Purchase Agreement, dated June 2, 2014, between Corpus Christi Liquefaction, LLC and Naturgy LNG GOM, Limited (assignee of Gas Natural Fenosa LNG SL), as amended (the "SPA")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month SOFR"** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

**700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000**

---

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

Sincerely,

**CORPUS CHRISTI LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

Naturgy LNG GOM, Limited

By: /s/ Jonas Ledo

Name: Jonas Ledo

Title: Director

***700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000***

**Sabine Pass Liquefaction, LLC**

May 18, 2023

Attention: Chief Counsel  
BG Gulf Coast LNG, LLC  
811 Main Street,  
Suite 3400  
Houston, TX 77002

Re: Amended and Restated LNG Sale and Purchase Agreement, dated January 25, 2012, between Sabine Pass Liquefaction, LLC and BG Gulf Coast LNG, LLC as amended (the "SPA")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month SOFR"** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

**700 Milam Street, Suite 1900, Houston, Texas 77002**  
**+1 713-375-5000**

---

Sincerely,

**SABINE PASS LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

BG Gulf Coast LNG, LLC

By: /s/ Dexter Belmar

Name: Dexter Belmar

Title: Director

***700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000***

**Sabine Pass Liquefaction, LLC**

June 16, 2023

Attention: Chief General Manager (International LNG)  
GAIL (India) Limited  
GAIL Bhawan, 16, Bhikaiji Cama Place  
R.K. Puram, New Delhi - 110066  
India

Re: LNG Sale and Purchase Agreement, dated December 11, 2011 between Sabine Pass Liquefaction, LLC and GAIL (India) Limited, as amended, (the "SPA")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month SOFR"** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

**700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000**

---

Sincerely,

**SABINE PASS LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

GAIL (India) Limited

By: /s/ Sumit Nath Jha

Name: Sumit Nath Jha

Title: Chief General Manager, Int'l LNG & Shipping

***700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000***



**Sabine Pass Liquefaction, LLC**

June 30, 2023

Attention: LNG Procurement Department, LNG Trading & Operation Team  
Korea Gas Corporation  
120, Cheomdan-ro, Dong-gu, Daegu, 41062  
Republic of Korea

Re: LNG Sale and Purchase Agreement, dated January 30, 2012 between Sabine Pass Liquefaction, LLC and Korea Gas Corporation, as amended (the "SPA")

**Letter agreement regarding change from LIBOR to SOFR ("Letter Agreement")**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of "LIBOR" in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month Term SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month Term SOFR; and (ii) replacing each instance of "LIBOR" in the SPA with "Three-Month Term SOFR". In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**"Three-Month Term SOFR** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);"

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

**700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000**

---

Sincerely,

**SABINE PASS LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

\_\_\_\_\_  
Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

Korea Gas Corporation

By: /s/ Lee, In Keun

\_\_\_\_\_  
Lee, In Keun

Head of LNG Procurement Department

***700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000***

**Sabine Pass Liquefaction, LLC**

June 08, 2023

Attention: Mr. Ignacio Martin  
Head of Gas & LNG International Supply  
Naturgy LNG GOM, Limited  
12 Merrion Square North  
Dublin 2, Ireland  
D02 H798

Re: LNG Sale and Purchase Agreement dated November 21, 2011 between Sabine Pass Liquefaction, LLC and Naturgy LNG GOM, Limited (assignee of Gas Natural Aprovevisionamientos SDG S.A.), as amended (the “SPA”)

**Letter agreement regarding change from LIBOR to SOFR (“Letter Agreement”)**

Dear Sir or Madam:

Reference is made to the SPA. Capitalized terms used in this Letter Agreement and not defined herein shall have the meanings given them in the SPA.

The Parties hereby agree, as contemplated by the definition of “LIBOR” in Section 1.1 of the SPA and Section 1.3 of the SPA, that Three-Month SOFR (as defined below) shall replace LIBOR in the SPA effective as of July 1, 2023. Effective as of such date, the SPA shall hereby be amended by: (i) replacing the definition of LIBOR with the below definition of Three-Month SOFR; and (ii) replacing each instance of “LIBOR” in the SPA with “Three-Month SOFR”. In addition, any other terms relating to LIBOR or the replacement of LIBOR in the SPA shall be disregarded.

**“Three-Month SOFR** the forward-looking term rate based on a rate equal to the secured overnight financing rate administered by the Federal Reserve bank of New York (or a successor administrator of the secured overnight financing rate) for a tenor of three (3) months, as administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) and published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate);”

Except as expressly agreed herein, all terms and conditions of the SPA remain in full force and effect and are acknowledged and ratified.

**700 Milam Street, Suite 1900, Houston, Texas 77002**  
**+1 713-375-5000**

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Please indicate Buyer's agreement with the terms of this Letter Agreement by executing a copy where indicated below and returning it to Seller.

Sincerely,

**SABINE PASS LIQUEFACTION, LLC**

By: /s/ Florian Pintgen

Florian Pintgen

Vice President, Commercial Operations

**Accepted and Agreed:**

Naturgy LNG GOM, Limited

By: /s/ Jonas Ledo

Name: Jonas Ledo

Title: Director

***700 Milam Street, Suite 1900, Houston, Texas 77002  
+1 713-375-5000***

**CERTIFICATION BY CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULE 13a-14(a) AND 15d-14(a) UNDER THE EXCHANGE ACT**

I, Jack A. Fusco, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cheniere Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

/s/ Jack A. Fusco

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Jack A. Fusco  
Chief Executive Officer of  
Cheniere Energy, Inc.

**CERTIFICATION BY CHIEF FINANCIAL OFFICER  
PURSUANT TO RULE 13a-14(a) AND 15d-14(a) UNDER THE EXCHANGE ACT**

I, Zach Davis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cheniere Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

/s/ Zach Davis

Zach Davis  
Chief Financial Officer of  
Cheniere Energy, Inc.

**CERTIFICATION BY CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Cheniere Energy, Inc. (the “Company”) on Form 10-Q for the quarter ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Jack A. Fusco, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2023

/s/ Jack A. Fusco

Jack A. Fusco  
Chief Executive Officer of  
Cheniere Energy, Inc.

**CERTIFICATION BY CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Cheniere Energy, Inc. (the “Company”) on Form 10-Q for the quarter ended June 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Zach Davis, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2023

/s/ Zach Davis

Zach Davis  
Chief Financial Officer of  
Cheniere Energy, Inc.