

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“EURIBOR” means the rate per annum equal to the Euro Interbank Offered Rate as administered by the European Money Markets Institute (or any other Person that takes over the administration of such rate) for a period comparable in length to such Interest Period (the “EURIBOR Rate”), at approximately 11:00 a.m. (Brussels time) two TARGET Days prior to the commencement of such Interest Period; provided that, if such rate is not available at such time for any reason, then the “EURIBOR Rate” with respect to such Term Benchmark Borrowing for such Interest Period shall be the Interpolated Rate; provided, further, that if EURIBOR Rate as so determined shall ever be less than the Floor, then EURIBOR Rate shall be deemed to be the Floor.

“EURIBOR Rate” has the meaning assigned to it in the definition of “EURIBOR.”

“Euro” or “€” means the single currency of Participating Member States introduced in accordance with the provisions of Article 109(1)4 of the Treaty and, in respect of all payments to be made under this Agreement in Euros, means immediately available, freely transferable funds.

“Events of Default” has the meaning assigned to such term in Article VII.

“Exchange Rate” means on any day, with respect to any Foreign Currency, the rate at which such Foreign Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m., London time, on such date on the Reuters World Currency Page for such Foreign Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate with respect to such Foreign Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be selected by the Administrative Agent (with respect to which the Administrative Agent shall promptly notify the Borrower), or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such Foreign Currency are then being conducted, at or about 10:00 a.m., London time, on such date for the purchase of the relevant currency for delivery two (2) Business Days later; provided that, if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Charging Subsidiary” means those direct or indirect Subsidiaries of the Borrower (a) in which the Borrower owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets other than Charging Assets, (c) whose sole assets consist of Equity Interests in Excluded Charging Subsidiaries of the type described in the foregoing clause (b), or (d) created for or encumbered by transactions involving monetization of Vehicle Environmental Attributes.

“Excluded Domestic Subsidiary” means any Domestic Subsidiary that is (i) a direct or indirect Subsidiary of a Subsidiary of Borrower that is a Foreign Subsidiary or (ii) a CFC Holdco.

“Excluded Energy Storage Subsidiaries” means those direct or indirect Subsidiaries of the Borrower (a) in which the Borrower owns, directly or indirectly, Equity Interests of less than fifty-one percent (51%), (b) that own, lease or finance (or own any Subsidiary that is formed for such purpose) no assets other than Energy Storage Assets, (c) whose sole assets consist of Equity Interests in Excluded Energy Storage Subsidiaries of the type described in the foregoing clause (b), or (d) created for or encumbered by transactions involving monetization of credits, certificates or incentives.

“Excluded Subsidiary” means (i) any Subsidiary to the extent (and for so long as) a Guarantee by such Subsidiary would be prohibited or restricted by applicable law, rule or regulation or by any restriction in any contract existing on the Effective Date or, so long as any such restriction in any contract is not entered into in contemplation of such Subsidiary becoming a Restricted Subsidiary, at the time such Subsidiary becomes a Restricted Subsidiary (including any requirement to obtain the consent, approval, license or authorization of any Governmental Authority (including any regulatory authority) or third party), (ii) Excluded Domestic Subsidiaries (and any direct or indirect Subsidiary thereof), (iii) any Subsidiary that is a Foreign Subsidiary or a CFC Holdco (and any direct or indirect Subsidiary thereof), (iv) Unrestricted Subsidiaries (and any direct or indirect Subsidiary thereof), (v) Captive Insurance Subsidiaries, (vi) not-for-profit Subsidiaries, (vii) special purpose entities (including finance entities), (viii) any Immaterial Subsidiary, (ix) any subsidiary to the extent that the burden or cost of obtaining a guaranty outweighs the benefit afforded thereby as determined by Borrower in consultation with the Administrative Agent, (x) any Subsidiary to the extent a Guarantee by such Subsidiary would result in material adverse tax consequences as reasonably determined by the Borrower in consultation with the Administrative Agent, (xi) any Subsidiary formed to satisfy state dealer requirements, (xii) any Specified Tesla Subsidiary, (xiii) for the avoidance of doubt, any direct or indirect Subsidiary of an Excluded Subsidiary (other than, in each case, any such direct or indirect Subsidiary that is a Discretionary Guarantor) and (xiv) any Subsidiary that is not a wholly-owned Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on, with respect to or required to be withheld or deducted from a payment to the Administrative Agent, any Lender or any other 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 Person 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 imposes 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 requested by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.16, amounts with respect to such Taxes were payable either to the 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 Person’s failure to comply with Section 2.16(f) and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated ABL Credit Agreement, dated as of March 6, 2019 (as amended by that certain First Amendment to Amended and Restated ABL Credit Agreement, dated as of December 23, 2020), among the Borrower, Tesla Motors Netherlands B.V., the lenders party from time to time thereto and Deutsche Bank AG New York Branch, as administrative agent.

“Existing Maturity Date” has the meaning assigned to such term in Section 2.05(a).

“Extending Lender” has the meaning assigned to such term in Section 2.05(b).

“Extension Request” has the meaning assigned to such term in Section 2.05(a).

“Facility” means the Commitments and the Loans made thereunder.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement or any amended or successor version that is substantively comparable and not materially more

onerous to comply with, any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it; provided that, if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Floor” means 0.0%.

“Foreign Currency” means (i) Euros and (ii) Pounds Sterling.

“Foreign Pension Plan” means any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Funding Office” means the Administrative Agent’s office located at One Penn’s Way, OPS II, New Castle, DE 19720, Attn: Agency Operations, or such other office as may be designated by the Administrative Agent by written notice to the Borrower and the relevant Lenders.

“GAAP” means (a) with respect to the Borrower and any other Person organized under the laws of any state in the United States of America, generally accepted accounting principles in the United States as in effect from time to time and (b) with respect to any other Person organized under the laws of any Governmental Authority outside of the United States, generally accepted accounting principles in the country of such Person’s organization or generally accepted accounting principles of the International Accounting Standards Board, or International Financial Reporting Standards as designated by the Borrower, in each case as the same are applicable to the circumstances as of the date of determination.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the

purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantee Agreement” means the Guarantee Agreement to be executed and delivered by each Guarantor, substantially in the form of Exhibit J hereto.

“Guarantors” means each Discretionary Guarantor which becomes a Guarantor and each Domestic Subsidiary of the Borrower which becomes a Guarantor pursuant to Section 5.09 (in each case other than any such Domestic Subsidiary that has been released from its guarantee under the Guarantee Agreement in compliance with the terms of the Loan Documents).

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, 1,4-dioxane, radon gas, infectious or medical wastes, and all other substances or wastes of any nature regulated pursuant to or that could give rise to liability under, any Environmental Law due to their dangerous or deleterious properties or effects.

“Host Customer Agreements” means the Energy Storage Agreements and Customer Lease Agreements.

“Illegality Notice” has the meaning assigned to such term in Section 2.22.

“Immaterial Subsidiary” means, as of the most recently ended fiscal quarter of the Borrower, any wholly-owned Domestic Subsidiary of the Borrower, taken together with its consolidated subsidiaries (x) whose consolidated total assets (as set forth in the most recent consolidated balance sheet of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany assets), do not constitute more than 5.0% of the Consolidated Total Assets and (y) whose consolidated total revenues (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP, but excluding intercompany revenues) do not constitute more than 5.0% of the consolidated total revenues of the Borrower and its Consolidated Subsidiaries (as set forth in the most recent income statement of the Borrower and its Consolidated Subsidiaries delivered to the Lenders pursuant to this Agreement and computed in accordance with GAAP).

“Increasing Lender” has the meaning assigned to such term in Section 2.02(e).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable

incurred in the ordinary course of business and obligations in respect of the funding of Plans under ERISA or the Code), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (provided that the amount of any such Indebtedness that has not been assumed shall be equal to the lesser of the face amount of such Indebtedness and the fair market value of the property subject to such Lien), (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations in respect of the principal of any Indebtedness incurred in connection with any Securitization Transaction in which such Person participates and (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, Indebtedness shall not include (i) accrued expenses and deferred tax and other credits incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (ii) any earn-out obligations to the extent such obligation is due and payable, (iii) obligations incurred among the Borrower and its Restricted Subsidiaries in the ordinary course of business for the purchase of goods and services, (iv) third party obligations included in the Borrower's financial statements as a result of variable interest entity accounting and (v) payments for property or services in the ordinary course of business that are payable over a period not to exceed one year and at 0% interest.

"Indemnified Taxes" means Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower hereunder.

"Indemnitee" has the meaning assigned to such term in Section 9.03(b).

"Index Debt" means senior, unsecured, long-term indebtedness for borrowed money of the Borrower that is not guaranteed by any other Person or subject to any other credit enhancement.

"Information" has the meaning assigned to such term in Section 9.12.

"Insurance Subsidiary" means any Subsidiary of the Borrower that is engaged in the insurance business.

"Intellectual Property" has the meaning assigned to such term in Section 3.18.

"Interest Election Request" means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07, which shall be substantially in the form of Exhibit F hereto or any other form approved by the Administrative Agent.

"Interest Payment Date" means (a) with respect to any ABR Loan, each Quarterly Payment Date, (b) with respect to any Term Benchmark Loan, as applicable, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) with respect to any SONIA Loan, each date that is on the numerically corresponding day in each calendar month that is one month after the borrowing of such advance (or, if there is no such corresponding day in such month, then the last day of such month).

“Interest Period” means with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months 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, in the case of a Term Benchmark Borrowing, as applicable, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Term Benchmark Borrowing, as applicable, 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.

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

“Interpolated Rate” means, at any time, with respect to any Term Benchmark Borrowings denominated in Euros and for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the EURIBOR Rate for the longest period (for which the EURIBOR Rate is available) that is shorter than the Interest Period and (b) the EURIBOR Rate for the shortest period (for which that EURIBOR Rate is available) that exceeds the Interest Period, in each case, at approximately 11:00 a.m. (Brussels time) two TARGET Days prior to the commencement of such Interest Period.

“Issuing Bank” means CITIBANK, N.A., DEUTSCHE BANK AG NEW YORK BRANCH, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY BANK, N.A., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH, WELLS FARGO BANK, NATIONAL ASSOCIATION, and any other Lender that agrees to act as an Issuing Bank, each in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.04(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “Issuing Bank” in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant Issuing Bank with respect thereto.

“Joint Bookrunners” means, collectively, CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC and WELLS FARGO SECURITIES, LLC, in their capacities as joint bookrunners.

“Joint Lead Arrangers” means, collectively, CITIBANK, N.A., DEUTSCHE BANK SECURITIES INC., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS LENDING PARTNERS LLC, HSBC SECURITIES (USA) INC., MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, TD SECURITIES (USA) LLC and WELLS FARGO SECURITIES, LLC, in their capacities as joint lead arrangers.

“Judgment Currency” has the meaning assigned to such term in Section 9.16(b).

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the LC Exposure at such time.

“Lead Arrangers” means, collectively, the Joint Lead Arrangers and the Joint Bookrunners.

“Lenders” means the Persons listed on Schedule 1.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or pursuant to Section 2.02(e), other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Issuing Banks.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Agreement” has the meaning assigned to it in Section 2.04(b).

“Letter of Credit Commitment” means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit hereunder. The initial amount of each Issuing Bank’s Letter of Credit Commitment is set forth on Schedule 1.01 as its “Letter of Credit Commitment”, or if an Issuing Bank has entered into an Assignment and Assumption or has otherwise assumed a Letter of Credit Commitment after the Effective Date, the amount set forth for such Issuing Bank as its Letter of Credit Commitment in the Register maintained by the Administrative Agent. The Letter of Credit Commitment of an Issuing Bank may be modified from time to time by agreement between such Issuing Bank and the Borrower, and notified to the Administrative Agent. The initial aggregate amount of the Issuing Banks’ Letter of Credit Commitments as of the Effective Date is USD\$500,000,000.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, financing lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities; provided that “Lien” shall not include any non-exclusive licenses to Intellectual Property in the ordinary course of business or not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Restricted Subsidiaries.

“Loan Documents” means this Agreement, including schedules and exhibits hereto, each Letter of Credit, the Guarantee Agreement and any agreements entered into in connection herewith by the Borrower with or in favor of the Administrative Agent and/or the Lenders, including any Notes, and, in each case, any amendments, modifications or supplements thereto or waivers thereof.

“Loan Party” means the Borrower and each Guarantor.

“Loans” means the Loans made by the Lenders to the Borrower pursuant to Section 2.03 of this Agreement.

“Manufacturing Facility” means any manufacturing facilities or Gigafactory facilities established by the Borrower or any of its Subsidiaries from time to time.

“Marketable Securities” means, with respect to any Person, investments by such Person in time deposits and fixed income securities with original maturities greater than three (3) months that have a determinable fair value, are liquid and are readily convertible into cash. For avoidance of doubt, (i) such investments are passive investments, purchased by such Person in the ordinary course of business as part of its liquidity and/or cash management activities and (ii) for all purposes of the Loan Documents, the amount of Marketable Securities of the Borrower and its Domestic Subsidiaries as of the last day of any fiscal quarter or fiscal year of the Borrower is equal to the amount reported on the Borrower’s Annual Report on Form 10-K and Quarterly Report on Form 10-Q consolidated balance sheet for such fiscal quarter or fiscal year, as the case may be, as the line “Short-term marketable securities” or “Investments”, less any adjustment for securities that do not satisfy the requirements of the first sentence of this definition.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, property or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole or (b) legality, validity or enforceability of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans, Letters of Credit and non-recourse Indebtedness), or obligations in respect of Swap Agreements, of any one or more of the Borrower and the Restricted Subsidiaries that are also Significant Subsidiaries in an aggregate principal amount exceeding \$350,000,000 (or, if denominated in another currency, the equivalent thereof in Dollars). For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Restricted Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Restricted Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” “means the later of (a) January 20, 2028 and (b) for any Lender agreeing to extend its Maturity Date pursuant to Section 2.05, such date pursuant to which the Maturity Date of such Lender has been extended; provided, however, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Maximum Rate” has the meaning assigned to it in Section 9.20.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA that is subject to ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, during the preceding five plan years has made or been obligated to make contributions, or has any liability.

“Non-Consenting Lender” means any Lender that withholds its consent to any proposed amendment, modification or waiver that cannot become effective without the consent of such Lender under Section 9.02 and that has been consented to by the Required Lenders.

“Non-Extending Lender” has the meaning assigned to such term in Section 2.05(b).

“Non-Funding Lender” has the meaning assigned to such term in Section 2.19(c).

“Note” has the meaning assigned to such term in Section 2.09(e).

“NYFRB” means The Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that, if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. New York City time on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all advances to, and debts, liabilities and obligations of, the Borrower arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Borrower or any Affiliate thereof of any proceeding under any debtor relief laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed or allowable claims in such proceeding. Without limiting the foregoing, the Obligations include: (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that the Administrative Agent or any Lender, in each case in its sole discretion, may elect to pay or advance on behalf of the Borrower.

“Other Connection Taxes” means, with respect to any Lender, Taxes imposed, as a result of a present or former connection between the Lender and the jurisdiction imposing such Taxes (other than a connection arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to, or enforced, this Agreement, or sold or assigned an interest in any Loan).

“Other Taxes” means any and all present or future stamp, or documentary, Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery, or enforcement of, or otherwise with respect to, this Agreement, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight borrowings by U.S. managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“Overnight Rate” means for any day, (a) with respect to any amount denominated in Dollars, the Federal Funds Effective Rate and (b) with respect to any amount denominated in a Foreign Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight deposits in the relevant Foreign Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of the Administrative Agent in the applicable offshore interbank market for such Foreign Currency to major banks in such interbank market.

“Participant” has the meaning set forth in Section 9.04(c).

“Participant Register” has the meaning set forth in Section 9.04(c).

“Participating Member State” means each state so described in any EMU legislation.

“Payment Recipient” has the meaning assigned to it in Section 8.07(a).

“Payoff” has the meaning set forth in Section 4.01(f).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Encumbrances” means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than sixty (60) days or are being contested in compliance with Section 5.04;

(c) Liens made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, government contracts, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) easements, zoning restrictions, rights-of-way and similar encumbrances and other minor defects or irregularities in title on real property imposed by law or arising in the ordinary course of business that are not substantial in amount and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of the Borrower or any Restricted Subsidiary;