

Monitoring”, and “Guidance for National Authorities Operating the Countercyclical Capital Buffer”, each as published by the Basel Committee on Banking Supervision in December 2010 (as revised from time to time), and “Basel III: The Liquidity Coverage Ratio and Liquidity Risk Monitoring Tools”, as published by the Basel Committee on Banking Supervision in January 2013 (as revised from time to time).

“Benchmark” means, initially, with respect to any Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to, Dollars or a Foreign Currency, the applicable Relevant Rate; provided that, if a Benchmark Transition Event has occurred with respect to such Relevant Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means, with respect to such Obligations, interest, fees, commissions or other amounts, the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.21(a).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark 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 such Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time and (b) the related Benchmark Replacement Adjustment, if any; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of any 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 syndicated credit facilities denominated in the applicable Agreed Currency at such time.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark for any Agreed Currency:

- (a) in the case of clauses (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 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 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 any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clauses (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, with respect to the then-current Benchmark for any Agreed Currency, the occurrence of one or more of the following events with respect to such 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 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);
- (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, the central bank for the Agreed Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (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 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, 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 Transition Start Date” means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, with respect to any then-current Benchmark for any Agreed Currency, the period (if any) (a) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has

replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.21 and (b) ending at the time that a Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.21.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applied and (c) any Person whose assets include (for purposes of the Plan Asset Regulations 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”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Tesla, Inc., a Delaware corporation.

“Borrowing” means Loans of the same Type, denominated in the same currency, made, converted or continued on the same date and, if applicable, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03, which shall be substantially in the form of Exhibit E hereto or any other form approved by the Administrative Agent.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York, are authorized or required by law to remain closed; provided that (i) when used in connection with Loans denominated in Pounds Sterling and the calculation or computation of SONIA, the term “Business Day” shall mean SONIA Business Day, (ii) when used in connection with any Loans denominated in Euros, the term “Business Day” shall exclude any day which is not a TARGET Day and (iii) when used in connection with any Term Benchmark Loans denominated in Dollars, such day shall also be a U.S. Government Securities Business Day.

“Calculation Date” means, with respect to any Foreign Currency, the last day of each calendar month (or, if such day is not a Business Day, the next succeeding Business Day) and any other day during the continuation of a Default that the Administrative Agent may designate as a “Calculation Date”; provided that the date of issuance of any Borrowing Request pursuant to Section 2.03 with respect to, and each date of any continuation of, any Loan denominated in a Foreign Currency, shall also be a “Calculation Date” with respect to such Foreign Currency.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or tangible personal property, or a combination thereof, which obligations are required to be classified and accounted for as financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP; provided that, notwithstanding anything to the contrary contained in Section 1.04(a), any change in GAAP after

December 31, 2018 that would require obligations that would be classified and accounted for as operating leases under GAAP as existing on December 31, 2018 to be classified and accounted for as capital leases or otherwise reflected on the consolidated balance sheet of the Borrower and its Subsidiaries, such obligations shall continue to be treated as an operating leases for all purposes under this Agreement.

“Captive Insurance Subsidiary” means a Subsidiary established by the Borrower or any of its Subsidiaries for the sole purpose of insuring the business, facilities, employees, officers and/or directors of the Borrower and its Subsidiaries.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

“CFC Holdco” means any (i) Domestic Subsidiary or (ii) Foreign Subsidiary that is a “disregarded entity” for U.S. federal income tax purposes, in each case that owns (directly or indirectly) no material assets other than cash or cash accounts and equity interests (or equity interests and indebtedness), each as determined for U.S. federal income tax purposes, of one or more (a) Foreign Subsidiaries that are CFCs or (b) subsidiaries that themselves are CFC Holdcos.

“Change in Control” means the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) other than a Permitted Holder, of Equity Interests of Borrower representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 2.14(b), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rule, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

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

“Charging Agreements” means (i) electric vehicle charging station related agreements, including lease and license agreements and all associated real property and other rights provided in the applicable agreement, (ii) agreements and other rights related to customer accounts, payments and data; equipment lease agreements entered into with a customer pursuant to which such customer agrees to lease a Charging System, and all rights related thereto and (iii) agreements to provide vehicle charging related services such as equipment installation, equipment maintenance or customer billing service.

“Charging Assets” means (i) Charging Systems, (ii) Charging Agreements, (iii) Equity Interests in Excluded Charging Subsidiaries and (iv) Vehicle Environmental Attributes.

“Charging Systems” means all parts of an electric vehicle charging station, including charge posts, charging connectors, power electronics equipment, switchgear, conduit, wiring, metering equipment, concrete pads, signage, fences or visual barriers, mobile charging stations, canopies, solar panels, energy storage systems and other related equipment.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans and to acquire participations in Letters of Credit hereunder as set forth on Schedule 1.01 as its “Commitment”, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, or in the documentation pursuant to which such Lender became a party hereto in accordance with Section 2.02(e), as applicable, in each case as it may be (a) reduced from time to time pursuant to Section 2.08, (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04 and (c) increased from time to time pursuant to Section 2.02(e). The initial aggregate amount of the Lenders’ Commitments as of the Effective Date is USD\$5,000,000,000.

“Conforming Changes” means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR” (if applicable), the definition of “Business Day,” the definition of “SONIA 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 2.15 and other technical, administrative or operational matters) that the Administrative Agent decides 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 decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Consolidated Liquidity” means, as of any date of determination, the sum of (a) the Total Available Commitments at such date, plus (b) total cash (other than restricted cash), cash equivalents and Marketable Securities of the Borrower and its Domestic Subsidiaries that are Restricted Subsidiaries as determined by the Borrower based on adjustments to the amount of total cash (other than restricted cash), cash equivalents and Marketable Securities, as reported in the Borrower’s most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as applicable, filed with SEC.

“Consolidated Net Tangible Assets” means the aggregate amount of the Borrower’s and the Restricted Subsidiaries’ consolidated assets (less applicable reserves and other properly deductible items), after deducting therefrom (i) all current liabilities and (ii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles all as set forth on the Borrower’s most recent audited consolidated balance sheet prepared in accordance with GAAP.

“Consolidated Subsidiaries” means, as of any date, all Subsidiaries of the Borrower to the extent the accounts of such Person are consolidated with the accounts of the Borrower as of such date in accordance with the principles of consolidation reflected in the audited financial statements most recently delivered in accordance with this Agreement.

“Consolidated Total Assets” means, at any time of determination thereof, the aggregate amount of all assets of the Borrower and its Consolidated Subsidiaries 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.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlled” has a meaning correlative thereto.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to it in Section 9.18.

“Credit Exposure” means, with respect to any Lender at any time, the sum of such Lender’s Revolving Credit Exposure and its LC Exposure.

“Customer Lease Agreement” means a lease agreement entered into with a customer, pursuant to which such customer agrees to lease an Energy Storage System.

“Daily Simple SONIA” means, for any day (a “SONIA Rate Day”), a rate per annum equal to, for any Obligations, interest, fees, commissions or other amounts denominated in, or calculated with respect to Pounds Sterling, the greater of (i) SONIA for the day (such day, a “Sterling Determination Day”) that is five (5) SONIA Business Days prior to (A) if such SONIA Rate Day is a SONIA Business Day, such SONIA Rate Day or (B) if such SONIA Rate Day is not a SONIA Business Day, the SONIA Business Day immediately preceding such SONIA Rate Day, in each case, as such SONIA is published by the SONIA Administrator on the SONIA Administrator’s Website; provided that, if by 5:00 p.m. (London time) on the second (2<sup>nd</sup>) SONIA Business Day immediately following any Sterling Determination Day, SONIA in respect of such Sterling Determination Day has not been published on the SONIA Administrator’s Website and a Benchmark Replacement Date with respect to Daily Simple SONIA has not occurred, then SONIA for such Sterling Determination Day will be SONIA as published in respect of the first (1<sup>st</sup>) preceding SONIA Business Day for which such SONIA was published on the SONIA Administrator’s Website; provided, further, that SONIA as determined pursuant to this proviso shall be utilized for purposes of calculation of Daily Simple SONIA for no more than three consecutive SONIA Rate Days and (ii) the Floor. Any change in Daily Simple SONIA due to a change in SONIA shall be effective from and including the effective date of such change in SONIA without notice to the Borrower.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that has (a) failed to fund any portion of its Loans or participations in Letters of Credit required to be funded by it hereunder within three (3) Business Days of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified in writing and with supporting facts) has not been satisfied, (b) notified the Borrower, the Administrative Agent or any Lender in writing, or has made a public statement to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement states that such position is based on such Lender’s good faith determination that a condition precedent to funding a loan under this Agreement cannot be met) or generally under other agreements in which it commits to extend credit, (c) failed, within three (3) Business Days after a request in writing by the Administrative Agent, any Issuing Bank or the Borrower, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement: provided that such Lender shall cease to be Defaulting Lender pursuant to this clause (c) upon the Administrative Agent’s, such Issuing Bank’s or Borrower’s receipt of such certification, (d) has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity) or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity), or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, (e) has, or has a direct or indirect parent company that 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 such Lender or a parent company thereof by a Governmental Authority or an instrumentality thereof; provided, further, that such ownership or interest by a Governmental Authority does not result in or provide such Lender or a parent company thereof 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 Governmental Authority to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Lender or a parent company thereof or (f) otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless such requirement to pay is the subject of a good faith dispute. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (f) above shall be conclusive and binding absent manifest error.

“Disclosed Matters” means the actions, suits and proceedings and, to the extent disclosed pursuant to Item 103 of Regulation S-K, the environmental proceedings, disclosed in (a) the Borrower’s Annual Report on Form 10-K for the year ended December 31, 2021, (b) all other Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and, in each case, filed by the Borrower with the SEC since January 1, 2022 and prior to the Effective Date which have been posted on the website of the SEC at [www.sec.gov](http://www.sec.gov) and (c) any other information generally made available by the Borrower to the public through the issuance of a press release or posting to the Borrower’s website since the Borrower’s most recent Quarterly Report on Form 10-Q filed by the Borrower with the SEC.

“Discretionary Guarantor” means any Domestic Subsidiary that is a Restricted Subsidiary that the Borrower, in its sole discretion elects to cause to be a Guarantor by providing a Guarantee in respect of the Obligations.

“Disqualified Institution” means, on any date, (a) any Person designated by the Borrower as a “Disqualified Institution” by written notice delivered to the Administrative Agent on or prior to the date hereof and (b) any other Person that is a reasonably identifiable competitor of the Borrower or any of its Subsidiaries, whether directly or through a controlled subsidiary or portfolio company, and, in each case, Affiliates of any such Person clearly identifiable solely on the basis of the similarity of their name; provided that “Disqualified Institutions” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent from time to time.

“Documentation Agents” means, collectively, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, GOLDMAN SACHS BANK USA, HSBC BANK USA, NATIONAL ASSOCIATION, MORGAN STANLEY SENIOR FUNDING, INC., SOCIÉTÉ GÉNÉRALE, THE TORONTO-DOMINION BANK, NEW YORK BRANCH and WELLS FARGO BANK, NATIONAL ASSOCIATION, in their capacities as documentation agents.

“Dollar Amount” means, at any time:

- (a) with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding; and
- (b) with respect to any Loan denominated in Euros or Pounds Sterling, the principal amount thereof then outstanding in such currency, converted to Dollars in accordance with Section 2.18.

“Dollars” or “USD” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

“DQ List” has the meaning assigned to it in Section 9.04(e)(iv).

“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 from time to time, 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.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).



“Effective Date TEO Subsidiary” means any direct or indirect subsidiary of TEO as of the Effective Date.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“EMU” means Economic and Monetary Union as contemplated in the Treaty.

“Energy Environmental Attribute” means any credit, benefit, reduction, offset or allowance (such as so-called renewable energy certificates, green tags, green certificates, and renewable energy credits), howsoever entitled or named, resulting from, attributable to or associated with the storage or generation of energy, other than the actual electric energy produced, and that is capable of being measured, verified or calculated and in any case may be lawfully marketed to third parties. By way of illustration, Energy Environmental Attributes may result from: the generation system’s use of a particular renewable energy source; avoided NO<sub>x</sub>, SO<sub>x</sub>, CO<sub>2</sub> or greenhouse gas emissions and other carbon credits and offsets; avoided water use or as otherwise specified under any applicable energy-related private or governmental program. Notwithstanding any of the foregoing in this definition or any other provision of this Agreement, Energy Environmental Attributes shall not in any case include: (i) any of the foregoing obtained by, provided to, used by or necessary for the Borrower or any of its Restricted Subsidiaries to conduct any of its operations at any location (and shall not include any water rights or other rights or credits obtained pursuant to requirements of applicable law in order to site and develop any facility); or (ii) any production tax credits.

“Energy Storage Agreement” means a battery services contract, a battery sale contract, a battery installation contract, a battery dispatch contract, a market participation contract involving batteries, a shared revenue and cost avoidance contract, a capacity contract, a tolling contract, demand response contract, a software contract pertaining to the dispatch or other management of batteries, or any agreement similar to the foregoing.

“Energy Storage Assets” means Energy Storage Systems, Host Customer Agreements and Projects and Equity Interests in Excluded Energy Storage Subsidiaries.

“Energy Storage Systems” means all parts of an energy storage system, including batteries, solar panels, inverters, wiring and other electrical devices, conduit, housings, hardware, remote monitoring equipment, connectors, meters, disconnects and other related devices, including associated balance of plant.

“Environmental Attribute” means an Energy Environmental Attribute or a Vehicle Environmental Attribute.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments or injunctions issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment or the management, release or threatened release of any Hazardous Material or, to the extent relating to exposure to Hazardous Materials, human health matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Restricted Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of

any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, any successor statute thereto, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Loan Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) or (o) of the Code.

“ERISA Event” means (a) the occurrence of any “reportable event,” as defined in Section 4043 of ERISA with respect to any Plan (other than an event for which the 30-day notice period is waived), (b) any failure by any Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) a determination that any Plan is, or is expected to be, in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), (e) the incurrence by any Loan Party or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (f) the incurrence by any Loan Party of any liability under Section 4975 of the Code with respect to the occurrence of a non-exempt prohibited transaction under Section 4975(c) of the Code or Section 406 of ERISA, (g) the receipt by any Loan Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (h) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (i) the receipt by any Loan Party or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Loan Party or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, terminated (within the meaning of Section 4041A or 4042 of ERISA), insolvent, or in “endangered” or “critical” status (within the meaning of Sections 431 or 432 of the Code or Sections 304 or 305 of ERISA).

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

“Erroneous Payment Deficiency Assignment” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Impacted Class” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Return Deficiency” has the meaning assigned to it in Section 8.07(d).

“Erroneous Payment Subrogation Rights” has the meaning assigned to it in Section 8.07(f).